
I have heard it said of Professor Bassiouni that he is the personal embodiment of much of the momentum for the contemporary development of International Criminal Law. While I am sure he would be the first to admit that many others are also making significant contributions to this important area, few would argue about the extent of his own contributions. He is often responsible for significant initiatives to commence new or to advance existing negotiating processes and the sheer volume of his written work is daunting. It is hard enough keeping up with reading the output – one shudders at the amount of time and energy consumed in the writing of it!

This particular book is another of Professor Bassiouni's weighty volumes – this time over 1100 pages (including the introductory material), with a substantial proportion of the content dedicated to primary source materials. While Bassiouni often includes lengthy primary documents in his books, this particular book contains a greater proportion of primary source material than most of his earlier works. In more than one section of the book Bassiouni explains that the lack of development of International Criminal Law, and the heavy emphasis hitherto on national trials of alleged perpetrators of international crimes, have resulted in a lack of international rules of procedure and a concomitant articulation of principles of legality. Bassiouni uses this book to draw on existing sources of international legal principle relevant to the work of the War Crimes Tribunal as part of his contribution to remedying the lacuna in International Criminal Law.

As the Chairman of the Secretary-General's Commission of Experts set up to investigate the allegations of atrocity in the former Yugoslavia, Bassiouni was responsible for an enormous effort in the preliminary gathering of evidence, identification of witnesses and documentation of particular events. Bassiouni was Boutros Boutros-Ghali's original nominee for the position of Prosecutor for the Tribunal and some of the author's personal pain in the political decision-making that saw his nomination rejected is evident in the following paragraph:

'In August 1993 the UK requested the SC to appoint the Prosecutor by consensus, thereby effectively ensuring that a candidate would not be approved if one of the major powers opposed the nomination . . . The [UN Secretary-General's] letter of nomination [of Professor Bassiouni] was not presented to the full SC until 31 August, though informal consultations among members began earlier. The SC did not agree to appoint Professor Bassiouni.'
There are a number of references throughout the book to the significance of the work of the Commission of Experts. At one point, Bassiouni also mentions that he was invited to meet with the judges of the Tribunal but that, regrettably, the meeting only lasted for a few hours. These references to Bassiouni’s personal involvement in the work of the Tribunal are indicative both of his desire to be involved and of his personal disappointment at the political obstacles which prevented a greater level of involvement.

The book represents an attempt by Bassiouni to continue to influence the work of the Tribunal. The author admits as much in his Preface where he states that ‘[t]he observations made in the book are intended to assist the participants in this new international initiative, particularly the judges, prosecutors, and defence counsels in this novel justice system.’ The book was published after the Tribunal had prepared its Rules of Procedure and had issued its first indictments but before proceedings in the first case had commenced. Throughout the book Bassiouni repeatedly speaks of the issues the Tribunal will need to resolve, what its options are and how he suggests those issues should be resolved. He also often proffers advice about how the UN Security Council needs to act in its dealings with the Tribunal. It is not my intention to criticise the author’s motivations – they are clearly laudable. But, one consequence of Bassiouni’s objectives in producing the book is that it has already become dated as a result of events which have superseded many of the author’s suggestions and recommendations. For example, the writing of the book preceded:

1. The Dayton Peace Accords. Bassiouni expressed his concern about the possibility of the Security Council endorsing an agreement between the warring factions to give primacy over trials of alleged war criminals to national courts. According to him, the acceptance of any such agreement as the political price of a peaceful resolution to the conflict would have constituted a de facto acknowledgment of the inevitability of impunity for the suspects. The possibility of ‘amnesty for peace’ was recognised by the international community and widely criticised. In the negotiation of the Dayton Accords, not only was an amnesty excluded, but agreement was reached to prohibit candidature for public office of any individual indicted for international crimes. Pursuant to that important development, the Security Council did not agree to relinquish the primacy of the Tribunal;

2. The preliminary procedural decisions of the Tribunal as well as the actual trial decision against Duško Tadic. Much of Professor Bassiouni’s original writing in the book involves his suggestions and recommendations about what the Tribunal will need to decide, what options the Tribunal has and how, in his view, the Tribunal should decide. Throughout the trial process against the Tribunal’s first defendant, the Tribunal has had to make many of these decisions. The Tribunal has had to interpret and implement its Rules of Procedure; identify the applicable law and articulate the precise elements of each of the crimes Tadic was alleged to have committed; determine what evidence it could consider and weigh up the admissible evidence presented to it; undertake measures and procedures to ensure protection for witnesses etc. The Tribunal has now convicted Duško Tadic of 11 of the 34 crimes for which he was tried. Now the Tribunal is faced with the question of imposing a sentence in respect of the convictions.