

Basic Documents in International Law edited by Ian Brownlie [Oxford, Clarendon Press, fourth edition, 1995, xi + 474 pages, ISBN 0-19-876380-8, ISBN 0-19-876381-6 (pbk)]

When I was a student in law school, my lecturer, Professor LC Green, prescribed two books for his course on Public International Law. One was his casebook, *International Law through the Cases*, now in its fourth edition.¹ The other was Ian Brownlie's *Basic Documents in International Law*.² I have kept both, and still rely on them. However, I must admit that the latter especially looks faded and tattered, and is kept together as an integral whole by sticky tape. Its pages are heavily underlined and scribbled all over, to keep the collection updated.

At the beginning of this year, I received a visit from the academic representative of Oxford University Press who noticed my tattered but cherished copy of *Basic Documents* on my office shelf. Shortly after the visit, I received a new copy of the latest version of that collection in the post. I choose to believe that the kind gesture was one of goodwill rather than pity. It is this new copy that is now the subject of review here.

As the title of this work suggests, it is a collection of basic documents in international law. In the Preface to the first edition, Professor Brownlie writes:

There is a need for a very short collection of basic texts which would provide a modest aid, complementary to existing course books, for the student of international law and also be an amenity for any lawyer using international law materials. It should also have some value for the student of international relations.³

The object of the work is to provide "utility, rather than completeness according to some formal model".⁴ This modest reference to the work belies

¹ 1978, Carswell Co Ltd, Toronto.

² 1967, reprinted 1969, Oxford University Press, Oxford.

³ Preface to the third edition.

⁴ *Ibid.*

its actual utility and success. The object has remained the same over the years, and “[t]he model of the first edition has been adhered to”.⁵ At the outset, the selection of documents “was made on empirical grounds and attempts to combine essential instruments like the United Nations Charter, with examples of important classes of instrument”. This is still the case and the carefully selected documents are presented in convenient form and updated.⁶ Further, introductory notes continue to be included, providing “an up-to-date guide to the general matters raised”.⁷

The latest edition has grown to twice the size of the original. The original has also undergone a number of editions, the second in 1972, the third in 1983 and now the fourth in 1995. In the fourth edition, more recent materials have been included, like the significant Protocol 11 to the European Convention on Human Rights (which deals with the restructuring of the control machinery of the Convention)⁸ and the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991.⁹

The content is divided into ten parts and, as noted above, useful introductory notes preface some of the documents presented. Part One deals with International Organisations, starting with the grandfather (or grandmother) of international instruments, the Charter of the United Nations.¹⁰ An instrument of the same ilk is the Statute of the International Court of Justice,¹¹ which is the only instrument in Part Nine, headed Judicial Settlement of Disputes.

⁵ Preface to the fourth edition.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ At 372-387.

⁹ At 456-468; hereafter “Statute of the International Tribunal for Yugoslavia”.

¹⁰ At 1.

¹¹ At 438.

Part Two presents the Law of the Sea and includes the four 1958 Conventions¹² that were adopted by the United States Conference on the Law of the Sea on 29 April 1958. It also includes the more recent 1982 Convention on the Law of the Sea, but only Parts I-X are presented because they are the main parts of the Convention and space would not have permitted the reproduction of the Convention in its entirety.

Part Three is devoted to Outer Space, which also contains only one instrument, the 1967 Outer Space Treaty.¹³ However, three other treaties are mentioned in the introductory note. These treaties, together with the 1979 Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (five in all), collectively provide the international legal regime governing outer space. Unlike the earlier treaties, the 1979 treaty, more commonly referred to as the "Moon Treaty", has been signed or ratified by a limited number of states only, including Australia, France and India. It is worth noting that the biggest players in outer space activities, Russia and the United States, have not signed this treaty. Other notable players that have not signed either are China and the United Kingdom.

The United Nations General Assembly has adopted five sets of Principles to supplement to this body of international law on outer space, which are the following: (1) 1963 Declaration of Legal Principles Governing the Activities of States in the Exploration of Outer Space; (2) 1982 Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting; (3) 1986 Principles Relating to Remote sensing of the Earth from Outer Space; (4) 1992 Principles Relevant to the Use of Nuclear Sources in Outer Space; and (5) 1996 Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries.¹⁴ In practice, the Principles assist in

¹² At 87. The four Conventions are those on (1) the Territorial Sea, (2) the High Seas, (3) Fishing and Conservation of the Living Resources of the High Seas, and (4) the Continental Shelf.

¹³ At 209.

¹⁴ The treaties and Principles are conveniently found in a booklet entitled "United Nations Treaties and Principles on Outer Space", compiled by the Office for Outer Space Affairs in Vienna (1997, United Nations, New York).

the interpretation of the treaties and concern important activities that are now occurring in outer space.

Part Four deals with Diplomatic Relations and once again, there is only one instrument in this section, namely, the 1961 Vienna Convention on Diplomatic Relations.¹⁵ The complementary instrument in this area is the 1963 Vienna Convention on Consular Relations which, albeit important, has not been included because it contains provisions that are similar to the Diplomatic Convention.

Part Five is a short section of two documents on Permanent Sovereignty over Natural Resources.¹⁶ Here, the 1962 General Assembly Resolution 1803 (XVII) on Permanent Sovereignty over Natural Resources, and the 1974 General Assembly Resolution 3281 (XXIX) on the Charter of Economic Rights and Duties of States, are reproduced.

On the other hand, Part Six is a lengthy section that deals with Human Rights and Self-Determination.¹⁷ This Part begins with the 1948 Universal Declaration of Human Rights and ends with the European Convention on Human Rights and its eleven Protocols. This is the section that has seen the most legislative work, with no sign of abatement. Owing to the exponential growth of international law in this area, in 1971 the editor saw fit to expand this section into a second collection of documents devoted to human rights entirely.¹⁸

Part Seven presents the Law of Treaties and the 1969 Vienna Convention on the Law of Treaties.¹⁹ Often times, when there is a chapter on the law of treaties in a textbook on international law, the discussion begins with a

¹⁵ At 271.

¹⁶ At 235.

¹⁷ At 255.

¹⁸ See Brownlie I (ed), *Basic Documents on Human Rights* (1971, Clarendon Press, Oxford). The latest edition was the third in 1992, reprinted a number of times. The latest reprint is the 1997 reprint which is reviewed at 217 below.

¹⁹ At 388.

statement that the customary international law rules on treaties were codified in this convention. This may give the wrong impression that the entire Convention is a codification of existing rules. However, it is gratifying to note that in the introductory note to this Part, the editor provides a more accurate observation and states that the "Convention is not simply declaratory of general international law, since in part it involves the progressive development of the law."²⁰ This reflects the twin function of codification and progressive development of international law by the International Law Commission.

Part Eight deals with State Responsibility and the 1980 Draft Articles provisionally adopted by the International Law Commission on the Origin of State Responsibility ("Draft Articles") is presented here. It is noteworthy that work in this area has been ongoing for several decades and awaits finalisation. The delay has been due largely to the inability of states to agree on the type and scope of their responsibilities. More specifically, the problem turns on the interpretation of the word "responsibility" as it has different meanings for different states, depending on whether the state is capital importing or capital exporting.

Certainly some progress has been made since Professor EM Borchard wrote his treatise on this topic, which he restricted to the diplomatic protection of citizens abroad.²¹ This treatise was followed closely by Professor Clyde Eagleton's *The Responsibility of States in International Law*.²² These works had been concluded during an era when the only entities recognised as subjects of international law were "States and States alone...and [States] were the only wearers of international personality".²³ Today, the word "responsibility" has taken on an extended meaning as seen in Article 1 of the Draft Articles. Article 1 provides:

²⁰ Ibid.

²¹ *The Diplomatic Protection of Citizens Abroad* (1928, Banks Publishing Co, New York).

²² 1928, New York University Press, New York.

²³ Birkenhead FES (Moelwyn-Hughes R (ed)), *International Law* (sixth edition, 1927, JM Dent & Co, London) 31.

Every internationally wrongful act of a State entails the international responsibility of that State.²⁴

Part Ten²⁵ concludes the collection and this section deals with Responsibility for Serious Violations of International Humanitarian Law. The only document here is the 1993 Statute of the Yugoslavia War Crimes Tribunal which sat in The Hague. Since then, the Rwanda War Crimes Tribunal was also established, and in mid-1998 the United Nations General Assembly voted to establish an International Criminal Court.²⁶

The need to establish a permanent court of this nature has never been more justified than now as the problems in Africa, the Balkans and the Middle East show very little evidence of abatement. An example is Kosovo today where allegations of ethnic cleansing are rampant. The international community has the opportunity to show its resolve and prosecute international criminals for offences against humanity before this new and independent international tribunal.

The current edition of *Basic Documents* was published some time ago. The time is about right for it to be updated, possibly with new topics or parts to incorporate the changes that have been happening, in areas like weapons, disarmament and the environment. The charter of the new International Criminal Court is another instrument which should be considered for inclusion if available, to replace the 1991 Statute of the International Tribunal for Yugoslavia which now appears in Part Ten.

Finally, I have no doubt that this current work will become as indispensable a part of a student's international law collection as my old copy has become for me. For my part, however, it would be difficult for sentimental reasons to replace old with new.

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²⁴ At 426.

²⁵ For reference to Part Nine see above at 206.

²⁶ Note that the United States did not vote for this resolution.