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III.F. Criminal Justice

No less than in other areas of the law, globalization has affected criminal justice. U.S. police agencies now routinely cooperate with their counterparts abroad to gather evidence, locate fugitives, and otherwise investigate criminal matters with transnational aspects. These agencies act pursuant to criminal statutes that reach beyond U.S. borders – statutes sometimes enacted to implement treaties to which the United States belongs. Defendants likewise may invoke international law; for instance, to contest the government’s exercise of criminal jurisdiction; to seek suppression of evidence obtained abroad; to challenge the government’s request for extradition or return to another country; or to ask for a transfer so they may serve their postconviction sentence in their home country. *See generally* Ethan Nadelmann, *Cops across Borders: The Internationalization of U.S. Criminal Law Enforcement* (1993); Diane Marie Amann, *Harmonic Convergence? Constitutional Criminal Procedure in an International Context*, 75 Ind. L.J. 809 (2000).

1. *Benchbook* Sections Related to Criminal Justice

This edition of the *Benchbook on International Law* discusses these matters in the course of broader discussions. Of particular significance are:

- § II.A, “Jurisdiction,” which sets out principles or bases of extraterritorial jurisdiction, types and sources of jurisdiction, applicability in U.S. courts, and how to determine whether Congress intended a statute to have extraterritorial effect.
- § II.B, “Immunities and Other Preliminary Considerations,” which treats *inter alia* immunities and the act of state and political question doctrines.
- § II.C, “Discovery and Other Procedures,” which discusses the gathering of evidence both by the traditional method of letters rogatory and by the more contemporary method authorized in Mutual Legal Assistance Treaties, or MLATs.
- § III.B, “International Law Respecting Families and Children,” which cites criminal statutes that implement treaties banning child-soldiering and sex tourism, and furthermore, in § III.B.4, details how courts adjudicate the federal criminal prohibition against the abduction of children by a parent.

¹ For what this section contains, see the Detailed Table of Contents, <http://www.asil.org/benchbook/detailtoc.pdf>.

- § III.E.3, the section in the chapter entitled “Human Rights” that details U.S. criminal, as well as civil, measures designed to combat human trafficking.
- § III.E.4, the section in the chapter entitled “Human Rights” that describes *non-refoulement*, or non-return, an international law principle that criminal defendants sometimes invoke in an effort to avoid being transferred to another country.
- § IV, “Research and Interpretive Resources,” which describes the principal international law methodology for interpreting treaties, and further discusses print and online resources for researching international law.

2. Federal Criminal Statutes with Extraterritorial Reach

This edition of the *Benchbook* likewise discusses numerous federal criminal statutes that involve transnational offenses. These include:

- Child Soldiers Accountability Act of 2008, Pub. L. No. 110-340, § 2, 122 Stat. 3735, 3735, codified as amended at 18 U.S.C.A. § 2442 (West Supp. 2010), discussed *supra* § III.B.1
- International Parental Kidnapping Crime Act, Pub. L. 103-173, § 2(a), 107 Stat. 1998, codified as amended at 18 U.S.C. § 1204 (2006), discussed *supra* § III.B.4
- Maritime Drug Law Enforcement Act (MDLEA), 46 U.S.C. § 70501 *et seq.* (2006), discussed *supra* § II.A.4.a
- Military Extraterritorial Jurisdiction Act (MEJA), 18 U.S.C. § 3261 *et seq.* (2006), discussed *supra* § II.A.4.a
- Omnibus Diplomatic Security and Antiterrorism Act of 1986, Pub. L. No. 99-399, 100 Stat. 853, § 1202, codified at 18 U.S.C. § 2332 (2006), discussed *supra* § II.A.3.d
- Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. 108-21, § 105(c), 117 Stat. 650 (2003), codified at 18 U.S.C. § 2423(c) (2006), discussed *supra* §§ II.A.3.c, III.B.1
- Victims of Trafficking and Violence Prevention Act of 2000 (TVPA), Pub. L. No. 106-386, 114 Stat. 1466 (2000), codified as amended in chapter 77 of Title 18 of the U.S. Code), discussed *supra* § III.E.3
- 18 U.S.C. § 7 (2006) (special maritime and territorial jurisdiction), discussed *supra* § II.A.3.a.ii
- 18 U.S.C. § 1091 (2006) (genocide), discussed *supra* § II.A.3.e

- 18 U.S.C. § 1546 (2006) (visa fraud), discussed *supra* §§ II.A.3.b, III.E.3.e.iii
- 18 U.S.C. § 2381 (2006) (treason), discussed *supra* § II.A.3.c
- 18 U.S.C. § 1651 (2006) (piracy under the law of nations), discussed *supra* § II.A.3.e
- 18 U.S.C. § 2340A (2006) (torture), discussed *supra* § II.A.3.e
- 18 U.S.C. § 2441 (2006) (war crimes), discussed *supra* § II.A.3.e

3. International Treaties Concerning Criminal Justice

This edition of the *Benchbook* furthermore discusses numerous international treaties, to which the United States belongs, that deal with criminal justice matters. These include:

- Agreement Between the United Nations and the United States Regarding the Headquarters of the United Nations (1947), discussed *supra* § II.B.1.c
- Convention Against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment (1984), discussed *supra* §§ III.E.2.b.ii.1, III.E.4.b.ii
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents (1972), discussed *supra* § II.A.3.e
- Geneva Conventions on the laws and customs of war (1949), discussed *supra* § III.E.2.b.ii.2
- Hague Convention for the Suppression of Unlawful Seizure of Aircraft (1970), discussed *supra* § II.A.3.e
- Inter-American Convention on Letters Rogatory (1975), discussed *supra* § II.C.1.a
- Inter-American Convention on Mutual Assistance in Criminal Matters (1992), discussed *supra* § II.C.2.b.v.3.a
- International Convention against the Taking of Hostages (1979), discussed *supra* § II.A.3.e
- Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971), discussed *supra* § II.A.3.e
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed Conflict (2000), discussed *supra* § III.B.1

- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000), discussed *supra* § III.B.1
- Organization of American States Inter-American Convention against Corruption (1996), discussed *supra* § II.C.2.b.v
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the U.N. Convention against Transnational Organized Crime (2000), discussed *supra* § III.E.3.b
- Treaty between the United States of America and the Russian Federation on Mutual Assistance in Legal Matters (U.S.-Russia MLAT) (1999), discussed *supra* §§ II.C.2.b.v.1, II.C.2.b.v.3.a
- U.N. Convention Against Corruption (2000), discussed *supra* § II.C.2.b.v
- U.N. Convention Against Transnational Organized Crime (2001), discussed *supra* §§ II.C.2.b.v, III.E.3.b
- U.N. Model Treaty on Mutual Assistance in Criminal Matters (1990), discussed *supra* § II.C.2.b.v.3.a
- Vienna Convention on Consular Relations (1963), discussed *supra* § II.B.1.b and *infra* § IV.A.1
- Vienna Convention on Diplomatic Relations (1961), discussed *supra* §§ II.B.1.b, III.E.3.f.iv and *infra* § IV.A.1
- Vienna Convention on the Law of Treaties (1969), discussed *infra* § IV.A.1

4. Conclusion

In future editions of this *Benchbook*, the instant chapter will elaborate in greater detail the ways that U.S. courts encounter transnational criminal law.