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/detaitoc.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:


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
- 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
- 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

- Organization of American States Inter-American Convention against Corruption (1996), discussed supra § II.C.2.b.v


- 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. 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.