II. Annotated Bibliography

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II. Annotated Bibliography

The following collection of annotations represents a sampling of the legal literature examining various aspects of criminal procedure in an international context. While special care has been taken to provide a representative sampling of works published between 1976 and 1981, a number of prominent pieces written prior to that five-year period have also been included.

JURISDICTION

Chase, Anthony. *Aspects of Extraterritorial Criminal Jurisdiction in Anglo-American Practice*, 11 INT’L LAW 555-65 (1977). The author argues *inter alia* that the applicability of the Foreign Enlistment Act of 1970 to British nationals is a matter exclusively within the competence of England as a sovereign state. Thus the Diplock Committee, investigating the enlistment of British nationals as mercenaries in the Angolan Civil War in 1976, need not have recommended decriminalizing foreign enlistment on the grounds that securing extraterritorial enforcement of British law is impossible.

Fidell, Eugene R. *Hot Pursuit from a Fisheries Zone: United States v. Fishing Vessel Taiyo Maru No. 28; United States v. Kawaguchi*, 70 AM. J. INT’L LAW 95-101 (1976). In denying motions to dismiss criminal charges (as well as a civil forfeiture action) arising from the seizure of a Japanese vessel for violation of the federal prohibition on foreign fishing within twelve miles of the coast of the United States, a federal district court approved for the first time the hot pursuit practices consistently followed by the United States since the contiguous fisheries zone was created. The author concisely discusses the evolution of the hot pursuit doctrine.

the extraterritorial application of a state's penal laws the author proposes a social defense theory under which a society may rightfully act to protect itself against those acts of individuals which amount to direct attacks on the society.

Horbaly, Jan & Mullin, Miles J. Extraterritorial Jurisdiction and its Effects on the Administration of Military Criminal Justice Overseas, 71 Mil. L. Rev. 1-93 (1976). From a military point of view, the proposed Criminal Justice Reform Act of 1975, "S.1," which would have expanded the jurisdiction of the federal courts in cases involving Americans who committed crimes abroad, failed to address two significant issues: the first concerned whether the military would be able to retain its court-martial jurisdiction over soldiers who committed nonservice-related offenses overseas; the second concerned the Posse Comitatus Act and the propriety of using military personnel to investigate violations of federal civil law by civilians overseas. Although S.1 was not passed, the authors' expositions of these problems remains valuable because similar bills have subsequently been introduced into Congress.

Lew, Julian D. M. The Extra-Territorial Criminal Jurisdiction of English Courts, 27 Int'l & Comp. L. Q. 168-214 (1978). After analyzing the English common law rule that courts will not prosecute an alleged offense committed outside of English territorial jurisdiction, the author turns his attention to the modifications of the rule made by contemporary international law and by statute. Despite the modifications, he concludes that the traditional rule remains largely intact.

Morgenstern, Felice. Jurisdiction in Seizures Effected in Violation of International Law. 29 Brit. Y.B. Int'l L. 265-282 (1952). This article examines the assumption of jurisdiction over persons and things seized in violation of international law in three types of cases: individuals seized in the territory of another state; vessels seized in the waters of another state; the seizure of vessels on the high seas in cases where such a seizure is not permitted by customary law or treaty. The author urges municipal courts to enforce rules of international law by declining to exercise jurisdiction over persons and things seized in violation of international law.

the Coast Guard is authorized to board, search and seize vessels in international waters, the applicability of fourth amendment protections to Coast Guard searches, and whether such searches violate the Convention on the High Seas.

Note. Criminal Jurisdiction in Antarctica, 33 U. MIAMI L. REV. 489-514 (1978). Disputes over Antarctic territory create problems regarding criminal jurisdiction in Antarctica. After discussing various modes for asserting criminal jurisdiction, the author proposes the creation of a multi-national tribunal designed to meet the needs of Antarctica.

Note. Extraterritorial Jurisdiction and Jurisdiction Following Forcible Abduction: A New Israeli Precedent in International Law, 72 Mich. L. REV. 1087-1113 (1974). This note examines the basis under international law for Israel's exercise of jurisdiction over nonnationals under the 1972 amendment to the Israeli Penal Law.

Note. International Law: Jurisdiction over Extraterritorial Crime: Universality Principle: War Crimes: Crimes Against Humanity: Piracy: Israel's Nazis and Nazi Collaborators (Punishment) Law, 46 CORNELL L.Q. 326-36 (1961). This note examines the legality of Israel's jurisdiction over Adolf Eichmann. After briefly discussing the territorial, nationality, protective, and passive personality theories of international criminal jurisdiction, and dismissing them as inapplicable to the Eichmann case, the author develops a detailed historical argument for applying the universality principal not only to piracy but also to war crimes and crimes against humanity.

Note. Kidnapping Of Fugitives From Justice On Foreign Territory, 29 AM. J. INT'L L. 502-507 (1935). This note discusses a landmark case in which the legality of the kidnapping of a German emigre in Switzerland and his forced removal to Germany for trial was questioned before an international arbitration tribunal. The author concludes that when a fugitive is kidnapped by private persons and brought by force to the territory of a foreign state for arrest, the arresting state is not obligated to release the prisoner unless there was official complicity in the kidnapping.

Note. Quick Before it Melts: Toward a Resolution of the Jurisdictional Morass in Antarctica, 10 CORNELL INT'L L. J. 173-198 (1976). Eight countries have asserted jurisdiction to enforce their national criminal laws in Antarctica. When viewed in light of the continuing dispute regarding territorial sovereignty over the continent, the implementation of national criminal laws in Antarctica clearly
threatens the delicate balance among nations claiming territorial interests. The writer therefore concludes that territoriality should be removed as a basis for the exercise of criminal jurisdiction and replaced by the nationality of the individuals involved in each case, with the understanding that the resulting jurisdiction does not affect the ongoing territorial dispute.

Note. United States v. Postal, 6 BROOKLYN J. INT’L L. 134-156 (1980). This note comments on the Fifth Circuit’s decision in U.S. v. Postal to exercise jurisdiction over aliens arrested for narcotics possession aboard a foreign vessel beyond the United States territorial limit. The authors contend that this was an improper assertion of jurisdiction over aliens which infringes the right of each state to protect its citizens abroad.

Strausberg, Gary Igal. Erdos v. United States: Expansion of Extraterritoriality and Revival of Extraterritoriality, 3 GA. J. INT’L & COMP. L. 257-270 (1973). After reviewing the legislative history of 18 U.S.C. § 7(3), the author concludes that the Erdos court misinterpreted the statute when it claimed jurisdiction over an American diplomat charged with the murder of an American within the confines of the American embassy in Equatorial Guinea. The court based jurisdiction on the theory that the embassy is American property and so within the jurisdiction of American courts, a theory the author finds to be discredited in recent times.

Symmons, C. R. The Criminal Law (Jurisdiction) Act 1976 and International Law, 13 IRISH JURIST 36-66 (1978). This article recounts in detail the Irish Parliamentary debates over the jurisdictional basis of the Criminal Law (Jurisdiction) Bill and its alleged infringements of the European Convention on Human Rights. Although the author concludes that the Irish Act is consistent with the principles of international law, he concedes that the infrequency with which the Act has been used substantiates the opposition Fianna Fail party’s initial claim that the Act was “unworkable.” For the reader unfamiliar with the joint Anglo-Irish legislation which established a basis for legal cooperation in dealing with the problem of fugitive political offenders, a helpful discussion of the Act’s legislative history can be found in a companion article at 13 IRISH JURIST 1-35 (1978).

Zucker, Symon. Extraterritoriality and Canadian Criminal Law, 17 CRIM. L. Q. 146-177 (1975). This article describes the past and possible future development of extraterritorial criminal jurisdiction in
Canada, decidedly favoring extraterritoriality. The author traces the Canadian background of the currently prevailing "classic territorialism" doctrine, distinguishing between traditional subjective and more modern objective strains of territorialism. Finally, the author explores the nationality, protective, floating, universal and passive principles of extraterritorial criminal jurisdiction, and the ways in which these principles may be applied to Canadian jurisprudence in order to expand Canada's extraterritorial criminal jurisdiction to the fullest extent permitted under international law.

EXTRADITION AND OTHER FORMS OF JUDICIAL ASSISTANCE

United States

Abramovsky, A. & Eagle, S. J. U. S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition?, 57 Ore. L. Rev. 51-93 (1977). This article examines policy concerns and practical problems underlying the use of abduction and other methods of obtaining physical custody of a fugitive without resort to established extradition procedures. The article focuses on whether the alternatives to extradition violate United States law, the laws of the asylum state, or international law. The authors conclude that, where circumstances make extradition impractical, foreign policy implications and the protection of individual rights require that all three branches of the government participate in the decision to apprehend a fugitive by extraordinary means.

Cummings, Edward R. The Extradition of Military Offenders for Common Crimes in Current United States Practice. The John Patrick O'Sullivan Case, 17 Revue de Droit Penal Militaire et de Droit de la Guerre 677-689 (1978). This brief article focuses on the first case of extradition of an American soldier to the United States for a crime committed outside of United States territory and judged by United States General Court Martial. The soldier had been found guilty, inter alia, of unpremeditated murder and absence without leave, but was extradited by Canada, only for the murder conviction, in keeping with the United States practice of non-extradition for military offenses. The author concludes that the case affirms the view that strictly common crimes tried by court martial are extraditable.

Evans, Alona E. Acquisition of Custody Over The International Fugitive Offender—
Alternatives To Extradition: A Survey of United States Practice, 40 Brit. Y.B. Int'l L. 77-104 (1964). Although the United States cannot legally be a party to the extradition of a fugitive in the absence of a treaty, the U.S. Government has often been involved in transfers of fugitives through the use of various methods such as exclusion, expulsion or special arrangement. The author describes the types of irregular methods that have been used, the rationale supplied by the United States in such situations, and the problems that arise from the use of such methods. Blaming overzealous officials and the cumbersome nature of the extradition process she criticizes these methods of circumventing the legal requirements for extradition primarily because they violate rights of the accused.

Glaser, Dr. S. A. The Conception of Political Delict, 1959 Y.B. Int'l Aff. 16-31. This brief article explores the objective, subjective, and mixed theories of what constitutes a political offense. The author traces the incorporation of these theories into the criminal codes of various Western European nations and the United States and concludes by developing his own definition of a political delict.


Note. Extradition: The Statute of Limitations is Tolled By Constructive Flight—Jhirad v. Ferrandina, 536 F.2d 478 (1976). 10 Case W. Res. J. Int’l L. 521-542 (1978). In cases involving extradition under United States law, the statute of limitations will be tolled if the offender flees from justice, though confusion about what constitutes “fleeing from justice” has led to inconsistent court opinions in extradition cases. This note discusses an unprecedented Second Circuit opinion that held that “constructive flight” was sufficient to toll the statute of limitations. After a short discussion of the history, purpose and policies of extradition, the author concludes that the new “constructive flight” test which examines the reason for an absence is preferable to the mechanical “mere absence” test.

Note. Subpoena Service on Citizens Residing Abroad: A proposal for the adoption of an international approach in criminal proceedings, 12 Int’l Law. 563-579 (1978). This brief note examines service of subpoenas on U.S. citizens residing abroad and the service of documents on foreign
citizens residing in the United States. The author concludes that given the problems inherent in the present system of serving documents, a multilateral convention covering service of criminal documents is both possible and necessary.

Note. Toward a More Principled Approach to the Principle of Specialty, 12 Cornell Int'l L. J. 309-327 (1979). The principle of specialty can be viewed as either a right of the individual or as a right of the extraditing nation. The author discusses these two conflicting views and formulates an approach to the principle of specialty which recognizes specialty as a right of both the individual and the surrendering state.

Note. United States v. Flores, 3 Brooklyn J. Int'l L. 293-307 (1977). The writer comments on the Second Circuit's determination that the doctrine of specialty does not bind the United States where the extradition order attempts to impose restrictions upon evidentiary or procedural rules. This note discusses the ground of Flores, the doctrine of specialty, and applicable extradition treaties.

Pearson, N. Executive Authority—Extradition of U.S. Servicemen Under Status of Forces Agreements, 6 N.Y.U. J. Int'l L. & Pol'y, 357-368 (1973). The author criticizes a 1971 Eighth Circuit decision allowing a U.S. serviceman's extradition under an executive agreement between the United States and the Republic of the Philippines. He concludes that the decision can be interpreted as approving implicit grants of extradition powers in general enabling legislation, thereby allowing the President to surrender servicemen to a nation with which the U.S. has no extradition treaty in force.

Other Countries

Amerasinghe, C.F. The Schtraks Case, Defining Political Offences and Extradition, 28 Mod. L. Rev. 27-45 (1965). The author traces the historical development of the definition of political offenses in the United Kingdom. He stresses conflicts in current law and identifies considerations which are not relevant in assessing the political nature of an act.

Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition, 7 Vand. J. Transnat’l L. 25-70 (1973). The author contends that alternatives to extradition such as abduction, informal rendition, and disguised extradition violate internationally recognized human rights. The author reviews domestic and foreign law, and proposes sanctions for human rights violations committed by states and individual agents.

Bedi, Satya Deva. Extradition in International Law and Practice. Rotterdam: Bronder-Offset (1966). Bedi’s work is thorough and arranged to give easy access to general materials on any phase of the extradition process. While much of the information appears to be dated, the book is still useful for initiating research into legal systems other than that of the United States.

Procedures for Extradition to and from Commonwealth Countries, 12 Indian J. Int’l L. 381-396 (1972). The author surveys the procedures established by the British Commonwealth countries for the surrender of foreign fugitives and the extradition of domestic criminals from foreign states.

Carbonneau, Thomas E. Terrorist Acts—Crimes or Political Infractions? An Appraisal of Recent French Extradition Cases, 3 Hastings Int’l Comp. L. Rev. 265-297 (1980). This article examines the application of the political offense doctrine to terrorists in French extradition cases. Professor Carbonneau first explores the problems involved in extraditing terrorists and describes the tests used to determine whether an act constitutes a political offense. He then considers French judicial decisions and concludes that although early court decisions rejected the prevailing international view that terrorist acts could not legally be considered political offenses, French courts have since reversed their position.

Defensor-Santiago, Miriam. Political Offenses in International Law. The University of the Philippines Law Center (1977). The author provides an excellent exploration of the political offense doctrine in international extradition, both past and present. Arguing that the doctrine has been sporadically employed, the author points to the increasing fragmentation of the international political milieu and predicts the doctrine’s increasing importance. The various philosophical bases for the political offense doctrine are extensively and objectively analyzed. An excellent bibliography is also provided.
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Procedural Aspects of the Political Offense Doctrine, 51 Phil. L.J. 238-63 (1976). This article provides a confusing discussion of several procedural problems surrounding the application of the political offense exception to extradition, including the power of the requested state to determine the applicability of the exception and to deny extradition and punish the fugitive for an offense committed in the requesting state. The author also examines the political offense exception in British and American extradition practice indicating that the present practice is inconsistent and fails to adequately protect a fugitive who faces prosecution for political reasons upon his extradition to the requesting state.

Evans, Alona E. Reflection Upon the Political Offense in International Practice, 57 Am. J. Int'l L. 1-24 (1963). This article examines the various approaches to the problem of defining "political offense" used by courts throughout the world. The author notes that courts consider motive, objective, circumstances surrounding the commission of the act, and the weight of evidence offered by the requesting state and the accused. She recommends the comparison of various judicial practices in an attempt to arrive at a uniform judicial standard for the definition of a political offense.

Feller, S. J. Reflections on the Nature of the Specialty Principle in Extradition Relations, 12 Israel L. Rev. 466-525 (1977). The article discusses an aspect of the "specialty principle" called "limitation of competence," defined by the author as the "binding correlation between the material competence of the requesting state to try and punish the wanted person and the specificness of extradition within the material limits set by the requested state." It is maintained that the "limitation of competence" is a rule of customary international law which is an essential condition for the maintenance of extradition relations between countries, and that any norm of municipal law which contradicts the limitation is without legal significance.

The Significance of the Requirement of Double Criminality in the Law of Extradition, 10 Israel L. Rev. 51-80 (1975). The author analyzes in great detail an opinion of the Supreme Court of Israel in which the Court denied an appeal by an extraditee to extradition to the United States on the grounds that the alleged offense was not a crime under Israeli law.

Garcia-Mora, Manuel R. Crimes Against Humanity and the Principle of Nonextrad-


tion of Political Offenders, 62 Mich. L. Rev. 927-960 (1964). The article contains a discussion of the nature and various definitions of crimes against humanity. Particular emphasis is given to the jurisdiction of war crimes tribunals. The author calls for the exclusion of crimes against humanity from the category of political offenses.

Treason, Sedition and Espionage as Political Offenses Under the Law of Extradition, 26 U. Pitt L. Rev. 65-97 (1964). The article argues strongly for the traditional rule denying extradition of persons accused of political offenses. The author examines the constitutional and statutory definitions of treason, sedition and espionage and then outlines a disturbing modern tendency to ignore the political character of these offenses in order to justify extradition.

Ginsbergs, George. The Soviet Union and International Cooperation in Legal Matters: Criminal Law the Current Phase, 19 Int'l & Comp. L.Q. 626-670 (1970). This article builds on an earlier analysis of Soviet judicial assistance and cooperation in international criminal procedural matters. The author examines the occasional arrangements entered into between the Soviet Union and other countries dealing with an exchange of specific services to facilitate the administration of justice and the comprehensive agreements on legal assistance concluded by the U.S.S.R. with most of its Eastern European allies.

Green, L. C. Extradition v. Asylum for Aerial Hijackers, 10 Israel L. Rev. 207-224 (1975). After discussing the right of asylum and the political offense exception to extradition, the author concludes that the courts of a variety of countries would not recognize acts of hijacking, however politically motivated, as constituting political offenses of the kind that would warrant exemption from extradition.

Meron, T. Non-Extradition of Israeli Nationals and Extraterritorial Jurisdiction: Reflections on Bill No. 1306, 13 Israel L. Rev. 215-229 (1978). The article criticizes an amendment to Israel's Extradition Law of 1954 which precludes entirely the possibility of extraditing Israeli nationals to foreign States. The author points out several problems presented by the amendment including its potential effects on Israel's existing extradition agreements and the possibility that Israel could become a haven for criminals drawn by the prospect that they would neither be extradited nor punished by Israel. The author concludes that the amendment was unneces-
sary, since Israel's interests were amply protected by the Extradition Law in its previous form.

Morrison, Stephan R. *Extradition from Canada: Rights of the Fugitive following Committal for Surrender*, 19 CRIM. L.Q. 366-404 (1976-77). This article provides a brief review of the remedies available to a fugitive detained in Canada, and argues for an appeal procedure in extradition matters. The preliminary discussion considers Canadian pre-committal procedure and the status of the fugitive who has been discharged, but most of the author's attention is focused on the operation of the writ of *habeas corpus* in the Canadian judicial system—its history and the rationale behind it, its relation to the writ of *certiorari*, and the jurisdictional problems its use entails. The author also considers other means of judicial review in extradition matters as well as the role of executive intervention.

Note. *The Abu Daoud Affair*, 11 J. INT'L L. & Econ. 539-582 (1977). This note discusses the refusal of French authorities to extradite a self-confessed Palestinian terrorist to West Germany or Israel. The note includes a chronological account of the events surrounding the refusal, an account of French extradition practice, an analysis of the French court's decision not to extradite the accused, and appendices containing relevant documents. The author tentatively concludes that French and German authorities failed to prosecute extradition proceedings vigorously for political reasons, and asserts that the Abu Daoud Affair represents a setback for efforts to establish the use of international extradition to combat international terrorism.

Note. *An Analysis of the Philippine–Indonesian Extradition Treaty*, 54 PHILIPPINE L.J. 63-106 (1979). The authors analyze the substantive provisions of the Philippine–Indonesian Extradition Treaty, signed February 10, 1976, in light of standard extradition issues such as double criminality, the rule of specialty, exceptions for political offenders and nationals. Since this treaty is the first extradition treaty concluded by the Philippines as a sovereign state, the drafters relied extensively on provisions of European and American extradition treaties. Thus, this article highlights the major issues in the negotiation of modern bilateral extradition treaties.

rejecting the Polish government's application for extradition of seven Polish sailors the divisional court delineated the scope of the definition of political offense and the magistrate's role in determining whether or not an offense was political.

Note. *Pre-requisites for Extradition to and from Commonwealth Countries, 12 Indian J. Int'l L. 252-262 (1972).* This brief note explores three pre-requisites for extradition to and from Commonwealth countries: jurisdiction, double criminality, and accession by the requesting party to a treaty.

O'Higgins, Paul. *The Irish Extradition Act, 1965*, 15 Int'l & Comp. L. Q. 369-394 (1966). The article first analyzes extradition procedures prior to the Irish Extradition Act, 1965 and uncovers the need for new procedures. The act, heavily influenced by the Council of Europe's Multilateral Extradition Convention, is evaluated as it applies to Britain and as it applies to the rest of the world. In exposing possible problems under the act, the author is critical of the removal of the prima facie evidence requirement and fears the effect this will have on the protection of human rights.


Sarup, Raj. *Credit for Time Spent in Detention During Extradition Proceedings Abroad, 73 Am. J. Int'l L. 272-76 (1979).* The Indian Code of Criminal Procedure provides that the period spent in detention in a foreign country during extradition proceedings is deemed to be equivalent to preconviction detention time and is thus set off against any term of imprisonment imposed by India. The author traces the development of this rule and discusses the rationale behind it. Comparing it with the French rule, which holds that measures taken by foreign authorities—including detention pending extradition—do not constitute preconviction detention, he laments the absence of any uniform rule of international law in this area.

Shearer, I.A. *Extradition in International Law.* Dobbs Ferry, New York: Oceana Publications, Inc. (1971). Though more than ten years old, this book is still a leading work on all aspects of international extradition. The author has examined in detail the histo-
ry of extradition, the mechanism through which extradition is accomplished with and without a treaty, internationally recognized principles and procedures governing the extradition process, and alternatives to extradition. The extensive appendices and detailed bibliography provided at the end of this treatise are useful to readers conducting extensive research on extradition.

Szpak, Leon. *Extradition of Criminals in Bilateral Agreements Concluded by Poland*, 5 Polish Y.B. Int’l L. 153-70 (1972-73). The author outlines the provisions of Poland’s bilateral extradition agreements and describes the principles upon which the provisions were based. After comparing Poland’s agreements with socialist and capitalist states, the author concludes that the agreements with socialist states are better adapted to contemporary requirements.

CONSTITUTIONAL CONSTRAINTS

Carmichael, James S. *At Sea With The Fourth Amendment*, 32 U. Miami L. Rev. 51-104 (1977). The author examines the development of the law of searches at sea and discovers a trend towards stricter scrutiny of such searches.

Comment. *Execution of Foreign Sentences in the United States: A Treaty with Mexico*, 9 St. Mary’s L.J. 118-134 (1977). This comment provides a concise survey of the ramifications of the United States–Mexico Treaty on the Execution of Penal Sentences, which allows reciprocal enforcement of foreign criminal sanctions. The comment briefly discusses the forces behind the making of the treaty, its transfer provisions, its constitutional aspects (including United States, Mexican and international due process issues) and the treaty’s implementation.

Comment. *Jurisdiction Following Illegal Extraterritorial Seizure: International Human Rights Obligations as an Alternative to Constitutional Stalemate*, 54 Tex. L. Rev. 1439-70 (1976). The jurisdiction of American courts over defendants illegally seized or kidnapped abroad is examined in light of due process issues and recent developments in international law protecting human rights. After citing examples in United States case law, the author concludes that the due process clause of the U.S. Constitution divests a court of jurisdiction only in egregious cases of brutal conduct by American agents, but argues that courts can lose jurisdiction if the defen-
dant asserts a violation of an international human rights obligation assumed by the United States.

Note. Constitutional Problems in the Execution of Foreign Penal Sentences: The Mexican-American Prisoner Transfer Treaty, 90 Harv. L. Rev. 1500-1527 (1977). The Treaty Between the United States of America and the United Mexican States on the Execution of Penal Sentences permits some Americans held in Mexican prisons and some Mexicans held in American prisons to elect, with the approval of both nations' authorities, to serve the remainder of their sentences in their own nation's facilities. The note analyzes the treaty's reservation to the transferring nation of exclusive jurisdiction "over any proceedings, regardless of their form, intended to challenge, modify or set aside sentences handed down by its courts." It concludes that the treaty's denial to American courts of jurisdiction to entertain due process challenges to Mexican convictions is constitutionally suspect.

Note. Fifth Circuit Cases Concerning Search and Seizure upon the High Seas. The Need for a Limiting Doctrine, 10 Ga. J. Int'l & Comp. L. 167-201 (1980). The note criticizes the Fifth Circuit's expanded jurisdiction and restricted fourth amendment analysis in its treatment of cases involving Coast Guard searches of vessels without a showing of probable cause or a search warrant. The note argues that the Fifth Circuit is more concerned with repressing narcotics than with the proper interpretation of treaties, statutes and the Constitution.

Note. High on the High Seas: Drug Smuggling, the Fourth Amendment, and Warrantless Searches at Sea, 93 Harv. L. Rev. 725-751 (1980). This note examines the fourth amendment implication of maritime searches conducted by the United States Coast Guard pursuant to two statutory provisions. In view of the Supreme Court's finding that a warrant based upon probable cause generally is required by the fourth amendment, the note analyzes the three main exceptions which the government has relied on to justify vessel search authority under these statutes: searches in exigent circumstances, border searches and administrative searches. The writer concludes that the provisions, intended to enhance efforts to halt drug traffic, give the Coast Guard virtually unlimited power to make warrantless searches without probable cause in violation of the fourth amendment.

Appeals’ departure from the traditional civilian approach to the exclusionary rule in cases involving foreign searches is examined in light of the deterrence, judicial integrity, and personal constitutional rights rationales for the exclusionary rule. The author then establishes a framework for the application of the exclusionary rule to United States criminal prosecutions where evidence has been uncovered by a foreign search or seizure.

Note. Warrantless Opening and Search of Foreign Letters Bound for a United States Address by United States Customs Inspector Not Violative of Fourth Amendment Protection Against Warrantless Search and Seizure—United States v. Ramsey, 431 U.S. 606 (1977), 51 Temp. L.Q. 315-71 (1978). A considerable body of law has developed regarding acceptable conduct of officials charged with the protection of U.S. borders. Within that law is the “border exception” which permits persons, packages, and automobiles to be searched without a warrant as they enter the United States. This note uses this context to explain the history and development of the “border exception” as applied to international mails. The author offers cautious criticism of a U.S. Supreme Court decision affirming the right of customs officials to inspect international mails without a warrant.

Saltzburg, S. The Reach of the Bill of Rights Beyond the Terra Firma of the United States, 20 Va. J. Int’l L. 741 (1980). The article analyzes the extraterritorial reach of the Bill of Rights in two situations: 1) when U.S. officials search ships on the high seas and interrogate their passengers, and 2) when foreign officials, operating with varying degrees of U.S. support, conduct searches abroad at the request of the United States. As to the former situation, Saltzburg concludes that these searches violate the Constitution if conducted without a warrant. As to the latter, if the U.S. is involved in the search or seizure, constitutional standards apply. If the U.S. is not actively involved in the requested search and seizure, the manner and content of the request must comport with Constitutional standards. If the foreign government is independently interested in the case, the Constitution is not applied.

Stephan, Paul B. Constitutional Limits on International Rendition of Criminal Suspects, 20 Va. J. Int’l L. 777-800 (1980). After reviewing case law, the author concludes that analytical confusion has resulted in unacceptable precedents in this area. He calls for the recognition of distinctions between overseas citizens and overseas aliens, and
between unlawful and unconstitutional behavior, and for a more careful tailoring of remedies to irregularities.

Weistreich, B. *Federal Judicial Compulsion of an Alien's Testimony Contrary to the Mandate of the Laws of his Native Land*, 16 *COLUM. J. TRANSNAT'L L.* 357-384 (1977). The author discusses the constitutional principles and policy considerations involved in assessing the scope of federal judicial authority to compel the testimony of an individual when giving the desired testimony will be a violation of the laws of the foreign witness' country of residence. While examining this issue in the context of a specific case, the author discusses the rationale for judicial rejection of the "two sovereignties" rule and enunciates guidelines for testing the effectiveness of a judicial grant of immunity. After criticizing the Fifth Circuit for failing to realize that the act of testifying, and not just the content of the testimony, could incriminate a witness, the author concludes that a more equitable result could have been reached in the case in question if the court had considered the interest of all parties to be affected by the desired testimony.

**UNIQUE PROBLEMS ASSOCIATED WITH TERRORISM**

Bassiouni, M. Cherif. *Methodological Options for International Legal Control of Terrorism*, 7 *AKRON L. REV.* 388-396 (1974). In this article, the repercussions of defining terrorism as an international crime requiring an international enforcement machinery are considered in light of the current methods of dealing with terrorism. Problems of enforcement and implementation at the regional, domestic and universal levels are also discussed.

Declan, Costello. *International Terrorism and the Development of the Principle 'Aut Dedere aut Judicare,'* 9 *IRISH JURIST* 209-222 (1974). By briefly surveying international actions and agreements concerning terrorism, the article suggests effective measures to ensure the trial of persons accused of terrorist acts. Costello concludes that internationally agreed upon safeguards for the rights of the accused plus the careful delineation of those acts of terrorism that are globally unacceptable would increase international cooperation in prosecuting terrorism.

briefly compares and criticizes the two basic methods employed by the international community to thwart aerial terrorism: the "piecemeal approach" of the Tokyo, Hague, and Montreal Conventions, and the "comprehensive approach," which, although not yet fully implemented, is at least partially exemplified by certain Annexes to the Chicago Convention. Several measures designed to facilitate international efforts to suppress aircraft hijackings are suggested.


MISCELLANEOUS

Bassiouni, M. & Nanda, V., eds. A Treatise on International Criminal Law. Springfield, Illinois: Charles C. Thomas (1973). This two-volume treatise surveys a wide variety of international problems associated with criminal law and procedure. A number of different authors contributed to the treatise; the quality of the book varies accordingly. Although some of the book is now out of date, it is a good starting point for research.

Blishchenko, N. Shdanov. The Problem of International Criminal Jurisdiction, 14 Can. Y.B. Int'l L. (1976). The author summarizes past efforts by various groups to develop an international criminal court and offers reasons why the concept has found few supporters. The article covers in some detail efforts made by the League of Nations, the United Nations, and the International Law Commission to establish an international court with criminal jurisdiction.

Bridges, J.W. The European Communities and the Criminal Law, 1976 Crim. L. Rev. 88-97. Written from a British perspective, this short article examines and illustrates with specific examples the ways in which European Economic Community (EEC) laws interact with the national criminal laws of the EEC member states. The author notes that in those cases where an EEC member state's national criminal law is found to be incompatible with EEC law, the member state is obliged to refuse to apply the incompatible national law. Although the absence of any EEC legal machinery for the imposition of criminal sanctions requires the EEC to rely on the national criminal laws and courts of member states, the author concludes that because of the limited number of criminal law problems affecting the EEC, a supranational system of EEC criminal law is not needed.

Burke, Kathryn Jean. New United Nations Procedure to Protect Prisoners and Other Detainees, 64 Cal. L. Rev. 201-28 (1976). This article presents an early review of efforts by the United Nations Sub-Commission on Prevention of Discrimination and Protection to establish a procedure for confronting the problems of prisoners and other detainees worldwide. More theoretical than documentary, the article may provide a useful standard by which the Sub-Commission's progress in cataloging and correcting abuses in international detention practices may be evaluated. Two appendices
provide the texts of the resolutions establishing procedural parameters for the subcommission’s efforts.

Comment. *The Collateral Use of Foreign Convictions in American Criminal Trials*, 47 U. Chi. L. Rev. 82-111 (1979-80). This comment argues that unfamiliar procedures used in foreign forums may meet the “reliability standard,” which the author argues is the proper standard for determining if collateral use of a foreign conviction is permissible. The comment addresses the practical obstacles to implementing the reliability standard and proposes a procedural scheme for screening foreign convictions for collateral use in American proceedings.

Harari, M.S., McLean, R.J., & Silverwood, J.R. *Reciprocal Enforcement of Criminal Judgments*, 45 Revue Internationale de Droit Penal 585-638 (1974). This detailed study draft of a Convention for the service of a criminal sentence at home after conviction abroad was prepared by a research team of the New York University Criminal Law Education and Research Center for the United Nations N.G.O. Alliance on Crime Prevention and Criminal Justice. The authors demonstrate the need for the Convention with detailed charts and statistics on existing agreements. The full text of the Convention is included, followed by comments on its scope and purpose.

Lillich, R. ed. *International Aspects of Criminal Law: Enforcing United States Law in the World Community. The Fourth Sokol Colloquium*. Virginia: The Michie Company (1981). This collection brings together current materials by experts in the fields of extradition, the collection of evidence from abroad, the extraterritoriality of United States criminal and constitutional law, and prisoner exchange treaties. Each of eight articles provides a quick update on recent developments in a particular field of international criminal law. The focus is primarily on United States law, though one piece is devoted to the French perspective on the applicability of the political offender doctrine to terrorists.

Pye. *The Effect of Foreign Criminal Judgments in the United States*, 32 U. Mo. Kansas City L. Rev. 114-141 (1964). Questions arise in a variety of contexts regarding the legal effect to be given to foreign criminal judgments in courts of the United States. The author reviews both currently accepted practices and policy considerations which govern judicial recognition of foreign criminal judgments with regard to double jeopardy defenses,
the guarantees of the North Atlantic Treaty Organization's Status of Forces Agreement, the imposition of increased penalties under multiple offender statutes, the exclusion of immigrants, the determination of the competency and credibility of a witness convicted outside of the United States, and the use of foreign traffic offenses in state driver's license revocation proceedings. The author also gives attention to standards employed by the judiciary to classify foreign judgments, determine double criminality, and assess foreign procedures in light of due process considerations.

Sciacca, S.J. *Executive Discretion to Enforce the Fair Trial Guarantees of the NATO Status of Forces Agreement*, 6 N.Y.U. J. Int'l L. & Pol. 343-356 (1973). One generation after its promulgation (1951), the author concludes that the United States has failed in practice to ensure the rights the North Atlantic Treaty Organization's Status of Forces Agreement guaranteed to servicemen tried in foreign courts. The author points to a recent judicial decision to illustrate the breakdown of protective mechanisms and executive failure to act on denial of rights guaranteed under the agreement. She concludes that the resulting violation of "treaty due process" can be remedied only through more active government participation and intervention to ensure that the guarantees are enforced.

Siemer, Deanne C. and Effron, Andrew S., *Military Participation in United States Law Enforcement Activities Overseas: The Extraterritorial Effect of the Posse Comitatus Act*, 54 St. John's L. Rev. 1-54 (1979). This article explores possible extraterritorial effects of the Posse Comitatus Act. After determining that the Act does not preclude use of military personnel if the executive branch is authorized to act, state officials or federal civilian officers cannot reasonably take the required action, and the necessary action requires military force, the authors conclude that the Act should not be given extraterritorial effect where the executive acts to further U.S. foreign policy or protect American lives rather than to enforce the law. More controversially, the authors also suggest that neither the Act's legislative history or principles of statutory construction warrant extraterritorial use of American military to enforce domestic law.