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International Criminal Law: A Guide to U.S. Practice and Procedure

Reviewed by Edward Kwakwa

INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE (Ved Nanda and Cherif Bassiouni, eds.)
New York: Practising Law Institute, 1987. Pp xiv, 546.

What sources of law can a United States practitioner turn to when faced with a case that has international criminal ramifications? What are some of the procedural aspects of criminal law issues most likely to be encountered by the international business transactions practitioner? Which areas of international judicial assistance in criminal matters are of interest to a United States attorney? Where does he find the relevant laws on extradition, diplomatic and consular immunity? Above all, what judicial remedies are available in United States courts for breaches of internationally protected human rights? These ubiquitous and important questions are the focus of inquiry in Ved Nanda and Cherif Bassiouni's *International Criminal Law: A Guide to U.S. Practice and Procedure*.¹

The book is a combination of essays by several distinguished practitioners and academicians. It is appropriately divided into six subject areas: jurisdiction, mutual assistance and judicial cooperation, extradition, immunities, constitutional limitations and judicial remedies. It is not possible, within the confines of this review, to adequately summarize and appraise in sufficient detail the various and varied essays in *International Criminal Law*. The variation in attention or length of review given to a particular essay should therefore not be construed as a judgment on its quality.

The first part of *International Criminal Law* is a very useful introduction by the editors. The introduction is essentially a discussion of the reasons for, and scope of coverage of the book. Part II deals with the subject of jurisdiction. Professor George gives a comprehensive discussion of United States Federal anti-terrorist legislation, with particular emphasis on the Comprehensive Crime Control Act of 1984.² His discussion has been given greater relevance by the ongoing trial of several terrorists in United States federal courts.

Theodore Banks also addresses the issue of international activities and criminal considerations under United States antitrust laws. His principal concern is with the Sherman Act, a task for which he draws upon

1. INTERNATIONAL CRIMINAL LAW: A GUIDE TO U.S. PRACTICE AND PROCEDURE (V. Nanda & C. Bassiouni, eds. 1987) [hereinafter INTERNATIONAL CRIMINAL LAW].

2. See Pub. L. No. 98-473, 98 Stat. 1976 (1984).

his experience as corporate counsel. For the international business practitioner concerned with antitrust laws, the issue of which practices violate the antitrust laws is inextricably tied to the question of jurisdiction under the Sherman Act. Banks' discussion of such landmark cases as *American Banana*,³ *Timberlane*,⁴ and *Mannington*,⁵ as well as subsequent developments in the case law, will be of invaluable assistance to the interested practitioner. Following up on the theme of jurisdiction, Professor Herman addresses issues pertaining to the extraterritorial application of United States securities laws. He presents a summary of criminal provisions in United States securities laws, surveys some of the leading cases on extraterritorial application of the United States securities laws, and concludes that the test of "reasonableness," rather than the "conduct and effects" test, will more appropriately facilitate a determination of the extraterritorial reach of U.S. securities laws and any criminal prosecution brought under those laws.

In his chapter on tax crimes and extraterritorial discovery, David Pansius argues that if one accepts the need for broad powers possessed by the government in the domestic setting, then one must *a fortiori* give United States discovery powers the broadest construction in the international setting. Any contrary position, he insists, would permit foreign-based individuals or wealthy Americans to evade taxes through foreign transactions in jurisdictions that have secrecy laws. The chapter also discusses conflict of laws problems that arise in two different situations - those in which there is a tax treaty in force between the United States and the foreign jurisdiction, and those in which there is no such treaty. The section on jurisdiction ends with Reed Kathrein's essay on criminal enforcement of the Export Administration Act, Francis Higgins' chapter on procedural aspects of anti-boycott laws and regulations, and that of Robert Gareis and Paul McCarthy on the Foreign Corrupt Practices Act and related statutes.

The third major section of *International Criminal Law* is on the subject of mutual assistance and judicial cooperation. Prominent among the essays in this section is Cherif Bassiouni's examination of issues arising from bilateral treaties that allow for the transfer of convicted criminal offenders. Parts IV, V and VI of the book cover the areas of extradition, immunities and constitutional limitations, respectively. The final chapter of the book is on judicial remedies. Written by Professor Nanda, the chapter is, as is to be expected, penetrating and incisive. Professor Nanda's discussion provides a variation on the dominant theme by shifting attention from domestic law limitations to international law limitations. The focus of inquiry is on the remedies available to a plaintiff who invokes norms of international human rights law in United States court. Professor Nanda asserts that the international community has success-

3. 213 U.S. 347 (1909).

4. 549 F.2d 597 (9th Cir. 1976).

5. 595 F.2d 1287 (3d Cir. 1979).

fully established norms of international human right law in the post-1945 era. Unfortunately, however, the achievements in prescribing norms "have not been matched by availability of remedies to the victims of the violations of those norms."⁶ The chapter also discusses the interface between international criminal law and international human rights, and examines the treatment of treaties and customary norms of international human rights law United States courts. Professor Nanda ends the book on an optimistic note by predicting that conventional and customary international human rights law will eventually find their proper place in United States courts.

International Criminal Law is a major contribution to international scholarly literature. As far as this reviewer knows, it is the first of its kind that has brought together so many essays by such distinguished experts on international criminal law and how it impacts on United States practice and procedure. The book is extensive in scope — it covers some of the most important and crucial aspects encountered on an everyday basis by the international legal practitioner. The individual essays are all concisely written, lucid in style and very well documented. The book also provides the reader with an extensive table of authorities, as well as an index.

The editors state at the outset that the book is meant to provide an international law practitioner with a useful set of materials; it is their hope that the book proves to be useful for those practicing in the international criminal law area. Professors Nanda and Bassiouni skillfully succeed in performing the task they set out to do with the publication of *International Criminal Law*. But they do more than that — the book will be of invaluable assistance not only to international law practitioners, but also to teachers, students and even government officials involved in substantive and procedural aspects of international criminal law in United States practice. Professors Nanda and Bassiouni deserve congratulations for adding *International Criminal Law* to their already extensive list of publications.

