A FISTFUL OF DOLLARS: "OPERATION CASABLANCA" AND THE IMPACT OF EXTRATERRITORIAL ENFORCEMENT OF UNITED STATES MONEY LAUNDERING LAW

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I. INTRODUCTION

Ever since a border has existed between the United States and Mexico, there have been unique and substantial problems in enforcing the laws of both countries in this border region. Because the border is so long, and largely unpatrolled, it has served as a convenient escape route for fugitives from the laws of both countries. What often complicates matters is the seemingly inherent distrust that each country's government harbors for the other. Despite vows of mutual cooperation in the law enforcement arena, both countries have often refused requests for assistance ranging from extradition of fugitives to giving the agents of one country temporary authority to operate in the other country. Perhaps this mutual distrust can best be summed up as follows: the Mexican government resents the United States for being a northern "bully" who never compromises, and the United States characterizes the Mexican system as being hopelessly corrupt.¹

Although Mexico and the United States are particularly close trading partners,² the Mexican public views the United States as hypocritical when it criticizes Mexican antidrug actions while remaining the largest illegal drug-consuming nation in the world.³ The recent money laundering sting by the

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¹ See Gary Martin, Drugs, Trade, Immigration on Clinton's Visit Agenda, SAN ANTONIO EXPRESS-NEWS, May 4, 1997, at 9A. But see Alan D. Bersin, El Tercer Pais: Reinventing the United States/Mexico Border, 48 STAN. L. REV. 1413, 1418 (noting that bribery convictions of United States border officials are not rare occurrences).

² See Charles L. Davis, Mass Support for Regional Economic Integration: The Case of NAFTA and the Mexican Public, 14 MEXICAN STUDIES 105 (1998), available in 1998 WL 13216107 (noting that nearly 70 percent of Mexican import and export trade in 1990 was with the United States).

United States government, dubbed "Operation Casablanca," underscores the intense divisiveness that still remains.

Money laundering is an indispensable element of organized crime. Without the ability to shift and conceal the vast amount of money derived directly from illegal activity, large scale criminal activity could operate at only a small fraction of current levels and with far less flexibility. Although the world's financial networks have grown exponentially in both size and complexity in the past few years, so has the scope of international money laundering.

This Note will attempt to gauge the legal and political effects of extraterritorial application of United States law enforcement in Operation Casablanca under four areas of law: the United States anti-money laundering statute, the United States Constitution, the United States-Mexico Mutual Legal Assistance Treaty, and principles of international law. Throughout, the Note will also argue that although Operation Casablanca produced sensational results, the United States could have avoided a foreign relations crisis if only it had adhered to its international obligations.

II. HISTORY BEHIND THE PRESENT STATE OF UNITED STATES-MEXICO BORDER RELATIONS

The United States and Mexico have unfortunately shared a rocky past when it comes to transborder law enforcement cooperation. True to the image portrayed in western movies (including the namesake of this Note), criminals have for the last 150 years crossed the Rio Grande border with ease, often avoiding prosecution by the applicable country's police. In return, such transborder activity has offered a lucrative profit to smugglers and cattle rustlers, safe havens for bandits, and economic hope for illegal migrant (predicting that drugs may be the most debilitating feature of Mexican political life).


5 In the case of Operation Casablanca, the illegal activity was drug trafficking.

6 See id. at 966.

7 See William J. Olson, International Organized Crime: The Silent Threat to Sovereignty, FLETCHER F. WORLD AFF., Fall 1997, at 65, 76. Mr. Olson also suggests that, while free trade and "banking without borders" are necessary to our modern economic system, this global system, due to its sheer size and complexity, has created a "haven for the unscrupulous," placing governments at a disadvantage in attempting to combat international financial criminal activity. Id.
workers. Recently, the border has also been an easily exploitable asset for drug traffickers and money launderers.

Concerns of jurisdiction and state sovereignty often confound the apprehension of transborder criminals. The border is a fascinating area, symbolizing the meeting point of two distinct cultures. However, law enforcement officials usually regard the border as a serious obstacle to their tasks. The border represents the limits of their jurisdiction and power; they have no dominion over events across the border and are often dependent on the authorities on the other side.

Tension over transborder law enforcement is nothing new. In 1824, Mexico abolished slavery. In 1825, to forestall an imminent flood of slaves from Texas into Mexico, the United States offered to negotiate a treaty with Mexico, which included a provision for the extradition of fugitive slaves. However, slave owners in Texas often contacted Mexican military officials to aid them in tracking runaway slaves, despite an 1857 provision in the Mexican Constitution protecting fugitive slaves from extradition.

Another source of the uncooperative relationship between the two countries was the seizure of Mexican territory as a result of the Mexican-American War in the 1840s. The combination of United States expansionism and the conquest of half the Mexican territory by the United States set the stage for future divisiveness. When political relations between the United States and Mexico have gone awry, the relationships between local Mexican and United States law enforcement agencies along the border have also suffered.

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11 See Zagaris & Peralta, supra note 8, at 522.
12 See id.; NADELMANN, supra note 10, at 62.
13 See Zagaris & Peralta, supra note 8, at 523.
14 This was a Treaty of Amity, Commerce, and Navigation with Mexico. Id. Opposition to the extradition clause resulted in its removal by the Mexican Chamber of Deputies. Id.
15 See id. at 524.
16 See NADELMANN, supra note 10, at 62.
17 See Bersin, supra note 1, at 1413.
18 See NADELMANN, supra note 10, at 62. The effect of political maneuvering on field agents is a particular problem in the area of drug enforcement. See Philip True, Drug Sting Pact Fails to Heal Rifts; Experts Say Operation Casablanca Has Left Lingering Controversies, SAN
However, national political animosity has sometimes resulted in the cultivation of informal, effective working relationships between these local law enforcement agencies. Such cooperation might not be the result of any official action, but rather is a consequence of the distance between the borderlands and the capitals of both countries. This "frontier" mentality has come at the cost of defying considerations of sovereignty.

After the United States Civil War concluded, the troubles on the border did not end, as gangs of bandits used the border as an escape route. By this time, Mexico and the United States had a formal extradition treaty in place. However, a lack of cooperation between both countries resulted in officials on both sides accusing each other of cooperation in cross-border criminality.

It is not surprising that the usual response of United States law enforcement agents was to take matters into their own hands and operate extraterritorially. United States agents often ignored the requirement of formal permission, much to the anger of the Mexican public. Perhaps the most striking example of the United States operating extraterritorially in Mexico was General John "Black Jack" Pershing's 1916 expedition into Mexico to pursue Mexican outlaw Pancho Villa who had raided New Mexico and killed United States citizens.

Difficulty in transborder drug enforcement is also nothing new. Starting in the Prohibition Era of the 1920s and 1930s, the United States cracked down on the smuggling of alcohol into the United States from Mexico. When prohibition was repealed in 1933, the emerging international character of drug smuggling was becoming apparent. In an attempt to combat this growing scourge, United States law enforcement officials once again operated with impunity on Mexican soil, albeit covertly. Although negotiations did occur between the United States and Mexican governments over the role of


19 See NADELMANN, supra note 10, at 62.
20 See id.
21 The first formal extradition treaty between Mexico and the United States, concluded in 1861, listed twelve extraditable crimes but provided that neither country would have to deliver its own citizens to the other country. See Zagaris & Peralta, supra note 8, at 524-25.
22 See id. at 525.
23 See id.
24 See id. at 527. This was a direct order from President Woodrow Wilson. Although Pershing was not able to directly apprehend Villa, secret agents employed by Pershing did eventually poison and kill Villa. The end result of Pershing's military mission was to force Villa's army deeper into Mexico, although the army still remained at large. See id.
25 See U.S. CONST. amend. XXI.
26 See Zagaris & Peralta, supra note 8, at 529.
27 See Zagaris & Resnick, supra note 9, at 15; Zagaris & Peralta, supra note 8, at 529.
these agents, the United States rejected any formal accord, under the belief that it might curtail the freedom of these agents to operate.28

In its early days of enforcing anti-narcotics law, United States agents encountered a variety of problems, including corruption at all levels, inadequate numbers to police the large border, and "sensitivity of both governments... concerning the operations of freewheeling United States drug enforcement agents south of the border."29 These same problems and attitudes in transborder law enforcement are still prevalent over sixty years later.

III. OPERATION CASABLANCA

In November 1995, United States Customs Service (a branch of the United States Department of the Treasury) agents in Los Angeles learned that Mexican banks on the United States-Mexico border were being used by drug traffickers of the infamous Juarez and Cali cartels to "wash" their cash.30 Without informing President Clinton, Secretary of State Madeleine Albright, or drug czar Barry McCaffrey,31 these agents set the wheels in motion for the largest money-laundering sting in United States history. The three-year operation involved more than two hundred undercover agents, and it is estimated that the sting has resulted in almost 170 arrests and the confiscation of a total of nearly one hundred million dollars in drug-related profits.32 On May 18, 1998, the United States indicted twenty-two bank officials from twelve of Mexico's largest banks for money laundering.33 The United States government also froze sixty-eight million dollars from the institutional accounts of twelve Mexican and two Venezuelan financial institutions.34

28 See Zagaris & Peralta, supra note 8, at 529.
29 Id.
31 See True, supra note 18, at A1.
32 See Antonio Fins & Oswaldo Zavala, Sting Sparks Feud Between Neighbors, SUN-SENTINEL (Ft. Lauderdale), Aug. 9, 1998, at 1F.
indictments directly charged Mexico’s second and third-largest banks (Bancomer and Banca Serfin, respectively) and Banca Confia, which had been purchased by Citibank on May 11, 1998.35

The scheme used by the agents in Operation Casablanca is fairly typical.36 First, United States Customs Service agents posed as drug sellers with money to launder to representatives of the drug cartels.37 The agents then deposited these proceeds in Los Angeles banks, including Bank of America.38 The United States banks wired the money to Mexican banks. Next, the Mexican bankers who were part of the money-laundering scheme converted the money into cashier’s checks under fictitious names.39 At this point, the money appeared to have a “clean” source: the Mexican bank, which skimmed 4 to 5 percent of the money for this service.40 Finally, these “legitimate” drafts were either hand-carried or wired to members of the cartel in Mexico.41 At this point, the cartels could use the money without arousing any suspicion.

The United States agents, operating in Mexico at times, gradually gained the confidence of both the bankers and the cartels.42 As this confidence grew,


37 See True, supra note 18, at 1A.


39 Incredibly enough, one Mexican banker’s proposed strategy in handling any subsequent money laundering investigation was to “act stupid.” See Diane Lindquist, Sting Leaves a Mark: Some Mexican Bankers Caught in U.S. Net, But Their New Law is Tougher Than Ours, SAN DIEGO UNION-TRIBUNE, Sept. 29, 1998, at C1.

40 See Matthews, supra note 33, at 1.

41 See Finora, supra note 38, at 9.

42 Incredibly enough, the United States Customs Service used the services of a former drug dealer who had been involved in a plot to airlift 80 tons of cocaine into the United States. See David Rosenzweig, Drug Witness Says Agents Never Asked About Criminal Record, L.A. TIMES, Apr. 29, 1999, at B1 [hereinafter Drug Witness]. This informant, the alleged nephew of a Colombian drug lord with reported ties to the Cali drug cartel, has already received more than $2.1 million for his services and may receive even more. See David Rosenzweig, Drug Money Laundering Trial Underway, L.A. TIMES, Nov. 18, 1999, at B3.
the agents lured the Mexican bankers to a phony grand opening of a casino outside of Las Vegas called Casablanca (hence the code name of the operation). The agents claimed to have an interest in the casino, and they represented it as an easy place to launder cash. Once the Mexican bankers arrived, the trap was completed.

There was only one hitch with the apparent success of Operation Casablanca. The United States Treasury Department did not inform the Mexican government of its activities, which included sending agents posing as drug traffickers into Mexico. The presence of United States law enforcement agents in Mexican territory for the purpose of implementing United States domestic law without the permission of the Mexican government raises serious issues of United States respect for foreign sovereignty. While extraterritorial jurisdiction is not, in and of itself, inconsistent with principles of territorial sovereignty, extraterritorial enforcement of a country’s law does go “to the heart of political and economic independence and national sovereignty.”

A. Latin American Reactions to Operation Casablanca

Casablanca has caused an uproar of disapproval from both the Mexican government and media. Most seriously, the Mexican government is of the opinion that United States law enforcement officers have violated Mexico’s national sovereignty.

Casablanca effectively bound opposing Mexican political parties together with the tie of anti-United States sentiment. Senator Mario Saucedo Perez of the Party of the Democratic Revolution (PRD) declared, “The problem of drug trafficking is nothing more than a political pretext used by the United States

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43 See Finora, supra note 38, at 10. These bankers were mostly mid-level managers from banks located in the Mexican border state of Jalisco. See True, supra note 18, at 1A.
44 See Finora, supra note 38, at 10.
47 See Fins & Zavala, supra note 32, at 1F. Mexican Senator Martha Lara, also president of the Mexican Senate Foreign Affairs Commission, said, “To infiltrate an agent (in Mexico) can only be done with direct authorization from the attorney general of Mexico. . . . United States Customs did not comply with this law.” Id. She also has demanded that the United States Customs agents involved in Casablanca be arrested if they set foot in Mexico. See id.
48 See Finora, supra note 38, at 8.
government to involve themselves in our internal affairs.” Deputy Javier Corral Jurado of the National Action Party said that the Casablanca indictments were “proof of a unilateral, deceitful, and disloyal relationship.”

The Mexican government also demanded the extradition of the United States agents who violated Mexican law during the sting. Recently however, the Mexican Attorney General’s office concluded that it was not able to obtain the evidence needed to press charges against the United States agents. In addition to the complaints of sovereignty violations, sting operations are considered a form of entrapment by Mexican law and are illegal. Mexican President Ernesto Zedillo formally protested to both the United Nations and to the United States, declaring that Operation Casablanca violated Mexican law and United States-Mexico cooperation agreements. Mexican Foreign Secretary Rosario Green noted that United States citizens need to learn that legal boundaries exist in other countries that are as solid as their own and that these boundaries should be respected. Ironically, while Operation Casablanca unfolded, the Mexican government was in the process of implementing new, tough anti-money laundering rules. Furthermore, perhaps in retaliation for United States lack of respect for Mexican sovereignty, the Mexican government denied a United States request for extradition of five individuals connected to Operation Casablanca.

50 Id.
54 See MONEY LAUNDERING L. REP., supra note 51, at 8; True, supra note 18, at A1 (noting that Mexican Foreign Minister Rosario Green informed Secretary of State Albright that President Zedillo had ordered an investigation of illegal activities).
55 See Fallout From Operation Casablanca, supra note 53. Secretary Green also declared that “we have to educate [the United States]; probably it will take a lot of time, but I believe that we have to keep trying.” Id.
56 See Lindquist, supra note 39, at C1 (noting that experts predict the new Mexican banking rules, once fully implemented, may be even stricter than the United States law). The Mexican Congress is considering legislation that would close loopholes in investigations involving illegally obtained goods or proceeds. See Embassy of Mexico Press Release, supra note 52.
57 These individuals will be tried in Mexico. See id. The Secretariat of Foreign Relations based this denial in part on the United States-Mexico Extradition Treaty. See id.
The outrage in other Latin American countries has been similar. In Venezuela, where two financial institutions were affected by Operation Casablanca, the government declared that it will seek to prosecute the United States agents for violations of its laws.58 One of the Venezuelan banks, Banco Industrial de Venezuela, has filed suit in United States federal court for the four million dollars it allegedly lost during the undercover operation.59 The Venezuelan ambassador said his country is "so angry with the United States that it will prosecute" the undercover United States agents and that "[Venezuela] can now state that the [agents] . . . broke Venezuelan laws and will be prosecuted accordingly."60 Cuba has characterized Operation Casablanca as "particularly target[ing] Mexico and Venezuela without the knowledge or cooperation of those countries' authorities."61

B. United States Reaction to Operation Casablanca

The sting has been widely praised by United States government officials and by money laundering experts.62 United States Attorney General Janet Reno triumphantly declared, "Today is a very bad day for drug dealers in the Hemisphere."63 Similarly, members of both the Republican and Democratic political parties commended the actions of the United States agents.64 Senator Diane Feinstein also wholeheartedly endorsed this action in the wake of a

60 Motison, supra note 58, at A13.
62 Former United States Treasury Secretary Robert Rubin said, "Today, we have hurt the drug cartels where it hurts the most—in their pocketbooks." Fins & Zavala, supra note 32, at 1F. Jeffrey Robinson, author of THE LAUNDRYMEN, a study of money-laundering probes, declared, "Casablanca sent a serious message to the (drug dealers) in Mexico and (in the U.S.). . . . It was a home run." Id.
63 See Rosenberg, supra note 30.
64 See generally 144 CONG. REC. S5463 (daily ed. May 22, 1998) (statement of Sen. Feinstein) (thanking Secretary Rubin, Undersecretary of the Treasury for Law Enforcement Ray Kelly, and the undercover agents for their work in establishing "this necessary beachhead in the war on drugs").
perceived inability of the Mexican government to police its own financial institutions. 65

To further complicate matters, many United States politicians have treated the Mexican reaction as a deep disappointment. 66 This congressional attitude even extended to a personal rebuke of Mexican Foreign Secretary Green's request for extradition as "intemperate rhetoric." 67 Furthermore, in an uncharacteristic display of solidarity, the United States Congress passed a near-unanimous rejoinder to President Zedillo, endorsing Operation Casablanca and rejecting the Mexican claims for extradition. 68 The general congressional mood was summed up by Representative Bachus: "The war on drugs will always be stymied if we put our diplomatic concerns first and let drug dealers continuously hide behind national borders." 69 The House of Representatives passed the Bachus resolution, declaring official congressional support for Operation Casablanca and refusing to support extradition of the agents to Mexico. 70

However, even in the United States, reactions have not been entirely pro-Casablanca. Secretary of State Albright, originally expressing praise for the operation, altered her position when she discovered the lack of communication between the two countries. 71 Drug czar McCaffrey has admitted mistakes in

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65 See id. (noting that "[d]espite Mexico's lax enforcement of its own money-laundering statutes, it is good to see that the United States is not afraid to use its own resources to address this serious problem").

66 See True, supra note 18, at A1. The reaction came in the form of a May 26, 1998, response letter from Senate Majority Leader Trent Lott to President Zedillo; see also 144 CONG. REC. S5464, supra note 64 (expressing the hope that Casablanca would spur tougher Mexican enforcement of its anti-money-laundering statutes, "rather than the erratic and insufficient cooperation we have seen until now").


69 Bachus Press Release, supra note 68.


71 Secretary Albright issued a letter to Treasury Secretary Rubin suggesting that "[w]e might have achieved more favorable results if we had brought [Mexican] Attorney General Madrazo and a few others into our confidence a few days before the public announcement." This letter was reprinted in 144 CONG. REC. S6012 (daily ed. June 10, 1998). Furthermore, Secretary Albright declared that she "would appreciate being kept personally informed of developing
the handling of the operation.\textsuperscript{72} When the operation failed to receive the continuing support of Secretary Albright, members of Congress expressed intense disapproval of her new position.\textsuperscript{73} Secretary Albright has since retreated somewhat, labeling any further pursuit by Mexico to extradite the agents as "counterproductive."\textsuperscript{74}

Since then, the two countries have pledged to keep each other fully informed about sensitive law enforcement activities to avoid further damage to relations between the two countries.\textsuperscript{75} Attorneys General Reno and Madrazo Cuellar introduced a program that would train law enforcement officials from both countries in proper investigative techniques.\textsuperscript{76} However, this posturing has been viewed with skepticism.\textsuperscript{77}

Supporters of Operation Casablanca label the Treasury Department's secrecy as necessary for the safety of the undercover agents and for the success of the operation.\textsuperscript{78} This reveals a deep distrust by United States agents of the infamous (and possibly exaggerated, in this case) corruption of the Mexican government, even in light of much recent successful cooperation between investigations in Mexico . . . that could have a significant foreign policy fallout." \textit{Id.}

\textsuperscript{72} See Wainer, \textit{supra} note 49. McCaffrey said that the United States may have been "inadequately [sic] sensitive" in the handling of Casablanca. \textit{Id.}

\textsuperscript{73} For a nutshell of the basic American position, see generally 144 CONG. REC., \textit{supra} note 67, at S6011 (statement of Sen. Grassley). Senator Grassley reasons that United States Customs agents closed the most successful undercover operation in history. According to Grassley, the operation took down a gang of "drug thugs" who violated United States, Mexican, and international law by laundering illegal drug money, thus "abetting one of the nastiest businesses on the planet" to make "an illegal dollar." \textit{Id.} Clearly, what puzzled United States lawmakers was the Mexican reaction. "Instead of joining hands in congratulating efforts . . . [t]he Foreign Minister of Mexico has called the law enforcement people the criminals . . . [and] called for [their] extradition . . ., claiming they have violated Mexican law." \textit{Id.}


\textsuperscript{76} See Lara Becker, Madrazo, Reno Announce Binational Anti-Drug Effort, THE NEWS, Nov. 11, 1998, available in 1998 WL 22724620. Madrazo Cuellar and Reno have even agreed to install a hotline between their two offices to offer advance notice of sensitive transborder activities. However, even this gesture comes with a caveat: notification would not be required if disclosure might threaten the lives of undercover agents. \textit{See} Kempster, \textit{supra} note 75, at A4.

\textsuperscript{77} Larry Birns, director of the Council on Hemispheric Affairs, states that this does not solve the true problem: the unwillingness of Mexican officials to use the law as a weapon to fight drug trafficking. "There is absolutely no grounds for optimism that this will be any different from what it was before." Becker, \textit{supra} note 76.

\textsuperscript{78} See True, \textit{supra} note 18, at A1.
United States and Mexican law enforcement officials. For example, 1997 was a banner year for extradition of fugitives from Mexico to the United States, with a record twenty-three fugitives returned from Mexico to the United States. Law enforcers from both countries have collaborated to prosecute members of a San Diego gang with ties to the Arellano-Felix Mexican drug cartel. Furthermore, despite the Operation Casablanca fiasco, United States Customs agents have since been authorized to operate in Mexico for the purpose of collecting anti-narcotics information. Although the final legal outcome of Operation Casablanca in the United States court system is unclear, what is clear is that the success of Operation Casablanca has come at the price of a further decline in United States-Mexican relations.

IV. THE INTERNATIONAL DANGERS OF MONEY LAUNDERING

Money laundering is "the financial process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate." In simpler terms, it transforms "dirty" drug money into "clean" money that is commercially usable by the drug cartels. In spite of the technological advances in law enforcement, it is relatively easy for organized crime to launder its money.

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79 See id. (quoting William Walker, Latin American drug enforcement analyst at Florida International University: "If Mexican authorities still cannot be trusted after decades of work on binational drug-enforcement policies, when will they ever be trustworthy?").

80 See Kempster, supra note 75, at A4.

81 See id.


83 The case is being heard in the United States Federal District Court for the Central District of California as United States v. Alcala Navarro. See Indictment, supra note 33. Victor Manuel Alcala Navarro (also known as Dr. Navarro) is accused of directing the entire money laundering operation in Mexico. See Rosenzweig, supra note 36, at B1.


85 For a brief overview of the life cycle of money laundering, see Bruce Zagaris, A Brave New World: Recent Developments in Anti-Money Laundering and Related Litigation Traps For The Unwary in International Trust Matters, 32 VAND. J. TRANSNAT'L L. 1023, 1027-28 (1999).

86 See id. at 1090.
Money laundering is, to say the least, a massive problem. According to the United Nations (UN), money launderers process between one hundred billion and five hundred billion dollars each year.\(^7\) It is a problem worldwide in scope, although some of the best-known safe havens for money launderers are in the Western Hemisphere.\(^8\) Annual drug proceeds from the United States alone have been estimated at 40 billion to 60 billion dollars.\(^9\) This is much greater than the total revenues of Colombia ($16 billion), Bolivia ($3.7 billion), and Peru ($2 billion) combined.\(^9\) This means that illegal drug operations actually have more resources at their disposal than the governments of many drug-producing countries. Often these resources are utilized to compromise the integrity of these governments.\(^9\)

V. THE UNITED STATES ANTI-MONEY LAUNDERING STATUTE

The United States Congress decided to try to hit international criminals in their pocketbooks by enacting the Money Laundering Control Act of 1986.\(^{92}\) It has been widely recognized as one of the most stringent anti-money laundering initiatives in the world.\(^{93}\) The act combines a very broad knowledge requirement with an extraterritorial jurisdictional element.

A. Liability under the Act

First, a person or financial institution can be liable if, knowing that “the property involved in a financial transaction represents the proceeds” from illegal activity, that person tries to conduct a financial transaction involving


\(^9\) See Matthews, supra note 33, at 1.

\(^9\) See Olson, supra note 7, at 73.

\(^9\) See id. It is sometimes said that the drug cartels try to “bribe government officials, hire thugs to intimidate those that cannot be bought, and kill those that cannot be intimidated.” Id.


\(^{93}\) See John L. Evans, International Money Laundering: Enforcement Challenges and Opportunities, 3 Sw. J. L. & TRADE AM. 195, 212 (1996) (noting that the strengthening of United States money laundering laws has resulted in conviction of several high ranking members of criminal organizations).
the illegal property. The act also extends liability to anyone who attempts to transfer, transport, or transmit funds to or from the United States if that person has the intent of carrying on illegal activity or the knowledge that the property involved in the transaction was produced by illegal means.

Furthermore, and most relevant to the facts of Operation Casablanca, the act allows for the use of "sting" operations. Liability attaches if a person, with the intent to carry on or conceal proceeds from an illegal activity, attempts to conduct a financial transaction involving property represented by a law enforcement officer (or someone with the approval of such an officer) "to be the proceeds of specified unlawful activity." Thus, the act authorizes the use of informants as well as actual law enforcement officials.

The transaction (or series of transactions) must also exceed $10,000. This $10,000 requirement is important because, under the Banking Secrecy Act, financial institutions are required to report all cash transactions over $10,000 directly to the Secretary of the Treasury. Any attempt to avoid the reporting requirement through physically transporting amounts of money less than $10,000 ("smurfing") is a crime.

The act also allows for extraterritorial jurisdiction. There is extraterritorial jurisdiction over the conduct prohibited by the act (money laundering) if "the conduct is by a United States citizen, or, in the case of a non-United States citizen, the conduct occurs in part in the United States." Although there is always a concern of intruding upon another state's sovereignty when a law is applied extraterritorially, it is well-established United States practice to assert extraterritorial jurisdiction under the authority of the United States Constitution. What should immediately give rise to concern is that although the act

95 Id. § 1956(a)(2).
96 Id. § 1956(a)(3).
97 See Camelio & Pergament, supra note 4, at 970.
103 See Andreas F. Lowenfeld, United States Law Enforcement Abroad: The Constitution and International Law, 83 AM. J. INT'L L. 880, 892 (1989) [hereinafter Lowenfeld I]; United States v. Bowman, 280 U.S. 94 (1922); see also Bruce Zagaris & David R. Stepp, Criminal and Quasi-
provides for extraterritorial application, it does not specify any guidelines for such application and enforcement. Especially troubling is the fact that the act indiscriminately extends United States jurisdiction to foreign financial institutions.\textsuperscript{104}

At first blush it might appear that it is against common sense to hold an entire financial institution liable for the actions of a few guilty money launderers within its ranks. However, under the "collective knowledge" theory, a corporation is deemed "to know everything known by all its employees."\textsuperscript{105} In this respect, United States corporate criminal liability law is the broadest in the world.\textsuperscript{106}

\section{B. The Act As Applied to Operation Casablanca}

Presently, thirty-one people have pleaded guilty even before going to trial.\textsuperscript{107} Sixty of the one hundred individuals remain fugitives.\textsuperscript{108} Those found guilty face a maximum of twenty years in prison and a fine of $500,000 or more.\textsuperscript{109} Although some defendants have been acquitted, one Mexican businessman was sentenced to over seven years in a United States federal prison.\textsuperscript{110} Several other defendants convicted of money laundering under the


\textsuperscript{104} 18 U.S.C. § 1956(a)(1) (1994 & Supp. IV 1998). The act is designed to apply to "whoever," a word not limited to individuals and intended to be as broad as it must be to ensnare financial institutions as well. The act makes explicit reference to conviction of financial institutions. \textit{Id.} § 1956(g).

\textsuperscript{105} Kirk W. Munroe, \textit{Surviving the Solution: The Extraterritorial Reach of the United States}, 14 DICK. J. INT'L L. 505, 512 (1996). Ironically, situations have arisen in which a bank was found guilty, but the individual employees who committed the criminal acts were set free. \textit{Id.} (citing United States \textit{v.} Bank of New England, N.A., 821 F.2d 844, 856 (1st Cir. 1987)).

\textsuperscript{106} See Munroe, \textit{supra} note 105, at 512.


\textsuperscript{108} See id.

\textsuperscript{109} This is the maximum punishment under federal law. See 18 U.S.C. § 1956(a) (1994 & Supp. IV 1998). The maximum fine is either $500,000 or twice the value of the funds involved in the illegal transaction, whichever is greater. Thus, the Casablanca defendants could face fines greater than $500,000. See id.; Rosenzweig, \textit{supra} note 36, at B1.

\textsuperscript{110} See Businessman Gets 7 Years in Money Laundering, L.A. TIMES, Sept. 28, 1999, at B6. The harshness of this sentence was likely influenced by the judge's suspicion that this particular defendant had lied while being examined at trial. \textit{See id.}
act face terms of eight to ten years in federal prison. Each bank will pay a criminal fine of $500,000 and will forfeit millions of dollars in money seized during Operation Casablanca. The third bank defendant, Banca Confia, agreed to forfeit over twelve million dollars in exchange for dismissal of criminal charges. The apparent key to the United States government’s success was a hidden video that captured admissions by the various defendants of their knowing participation in an illegal money laundering operation.

VI. HOW OPERATION CASABLANCA WENT WRONG

Does the defendants’ conduct justify extraterritorial application of the Money Laundering Control Act of 1986? When one confines the analysis to the black letter of the statute, it certainly seems to. Especially convincing is that cross-border money laundering is exactly the type of conduct that the United States Congress was seeking to crack down on in enacting the act. However, extraterritorial provisions in criminal statutes contemplate international cooperation in enforcing these laws. There are certain rules that the United States should follow in applying its laws extraterritorially. First, the United States Constitution and domestic federal law should be adhered to. Second, a Mutual Legal Assistance Treaty exists for exactly this type of law enforcement opportunity and should be utilized. Third, principles of international law should be followed.

A. The Role of the United States Constitution and United States Domestic Law

The United States Constitution is the supreme law of the United States, and it mandates that treaties entered into under federal auspices hold a position of
authority on the same level as federally enacted laws. The agents involved in Casablanca were operating under the authority of the United States. Therefore, their conduct was governed by the United States Constitution, any applicable treaties, and federal law. One treaty that bears directly on the Casablanca situation is the Mexico-United States Mutual Legal Assistance Cooperation Treaty.

Furthermore, if United States law enforcement officers act in a foreign state (like Mexico), they must observe the laws of that state. Somewhat surprising, given the widespread congressional support for Operation Casablanca, is that historically Congress has been very cautious about extraterritorial law enforcement. In 1976, Congress even amended the Foreign Assistance Act of 1961 to reflect its antipathy to anti-drug police operations in foreign countries. This statute declares that "[n]o officer or employee of the United States may directly effect an arrest in any foreign country as part of any foreign police action with respect to narcotics control efforts, not withstanding any other provision of law."

It is very peculiar that Congress chose to single out the "war on drugs" as an area to restrict extraterritorial action. The Senate, in its report on this amendment, explained:

116 See U.S. CONST. art. VI, § 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made . . . under the Authority of the United States, shall be the supreme Law of the Land.") (emphasis added).
119 See, e.g., RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 433(1)(b) (1987) [hereinafter RESTATEMENT (THIRD)]; Lowenfeld II, supra note 117, at 451. Lowenfeld frames the issue as whether United States officers may act in a foreign state free from the restraints of United States law, including, of course, the Constitution. Id. at 458; see also Mark Gibney, Policing the World: The Long Reach of United States Law and the Short Arm of the Constitution, 6 CONN. J. INT'L L. 103, 103-05 (1990) (exploring the growing internationalization of United States law enforcement and the apparently scant protection that the Constitution offers).
In adopting this restriction, the Committee seeks to reconcile two important U.S. interests: motivating foreign governments to cooperate to the fullest degree in stopping drugs from reaching the U.S. and avoiding excessive U.S. intervention in the internal affairs of other nations. The range of actions carried out by U.S. narcotics agents overseas covers a wide spectrum—from the innocuous (exchanging information and intelligence) to the clearly objectionable (actions involving the use of force and actions involving the arrest of foreign nationals).

It is the Committee's intent the "police action," as used in this provision, is meant to prohibit U.S. narcotics agents abroad from engaging in actions involving the use of force and actions involving the arrest of foreign nationals—whether unilaterally (acting on their own) or as members of teams involving agents or officials of other foreign governments. And more broadly, it is the Committee's intent that the Drug Enforcement Administration and Chiefs of U.S. diplomatic missions overseas exercise special care to insure that U.S. narcotics agents overseas not engage in any types of actions in which there is a reasonable risk of embroiling the United States in the internal affairs of other countries by tending to lead them into situations involving the use of force or the arrest of foreign nationals.\(^{122}\)

More recently, in 1986, Congress reiterated its stance:

The committee continues to believe that [the amendment to § 481(c) of the 1961 Foreign Assistance Act] inhibits the ability of United States officials, particularly DEA agents, to carry out their duties overseas. However, the committee also recognizes that the presence of U.S. officials at narcotics arrest actions can be a sensitive political issue which may have an impact on bilateral relations.\(^{123}\)

\(^{122}\) **SENATE COMM. ON FOREIGN RELATIONS, INTERNAL SECURITY ASSISTANCE AND ARMS EXPORT CONTROL ACT, S. REP. NO. 94-605, at 55 (1976).**

\(^{123}\) **HOUSE COMM. ON FOREIGN AFFAIRS, INTERNATIONAL NARCOTICS CONTROL ACT OF 1986, REPORT ON H.R. 5352, H.R. REP. NO. 798 (1986).**
Even in 1986 there was, ironically, a divided federal reaction to extraterritorial law enforcement operations similar to the tension that arose between the United States State Department and Congress regarding Operation Casablanca. In the spring of 1986, President Reagan signed a “secret” National Security Decision Directive declaring that international drug trafficking was a matter of national security and authorizing the use of military personnel in foreign anti-drug campaigns. The often-present dichotomy between congressional and executive policies is disturbing, given the fact that the same principles of law apply to both branches. However, it remains that the official congressional stance is not one of extraterritorial law enforcement, but rather one which emphasizes assistance and international cooperation.

Although the Casablanca agents were not narcotics agents per se, the campaign on money laundering is inseparable from the war on drugs. Given the seeming about-face in congressional conduct, it is unclear if we are witnessing a sea change in United States extraterritorial law enforcement policy.

B. Effect of Mexico-United States Mutual Legal Assistance Cooperation Treaty

A recent trend in international law enforcement is the Mutual Legal Assistance Treaty, or MLAT. Mutual legal assistance is one of the formal processes for obtaining evidence from abroad for use in United States proceedings. Some of the circumstances for the use of these formal requests for mutual legal assistance include: when a prosecutor wishes to compel the testimony of a witness located abroad, production of documents located abroad, and, of most pertinence to Casablanca, search and seizure of evidence abroad and freezing of overseas assets. MLATs are replacing the unwieldy former system of letters rogatory. The reasons that the letters rogatory system

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124 See Gibney, supra note 119, at 105-06.
126 See Extraterritorial Application, supra note 46, at 392 (remarks by Lisa Cacheris, Office of International Affairs, Criminal Division, United States Dep't of Justice).
127 See id. at 392.
is being abandoned are that it can be extremely time-consuming and it is only available post-indictment.

In contrast, MLATs can be used pre-indictment to acquire grand-jury investigation-type evidence. For example, an MLAT can enable the prosecution to gain access to copies of a defendant's foreign bank records. MLAT requests do not require a court order; rather, the head of a prosecuting entity in one country sends the request directly to his or her counterpart in the foreign country for execution.

By cutting out many time-consuming steps required under the letters rogatory process, the MLAT process has greatly streamlined foreign law enforcement cooperation. One final advantage is that, unlike an executive agreement, an MLAT is a treaty and thus has a much broader scope of effect.

The Mexican Senate approved the MLAT on December 29, 1987, but it was not entered into force by the United States until May 3, 1991. There was a surprising wave of opposition to the ratification of the MLAT led by Senator Jesse Helms, who was concerned about drug-related corruption in Mexico and the potential for corrupt Mexican officials taking advantage of their right to request information. Another problem was anti-Mexican sentiment in the United States government due to the assassination of a United

128 See id. Letters rogatory have sometimes been called "the black hole of evidence gathering." Id. It involves a request from a United States court to a foreign court for whatever assistance is sought. The United States Department of Justice then reviews the request and sends it to the State Department, which sends it through diplomatic channels to the foreign government, where it is presented to the foreign court. In the meantime, the prosecution must wait while the foreign government acts on the request and the evidence slowly winds its way back to the United States through the same diplomatic channels. Id.

129 See id. at 393.

130 See Marian Nash (Leich), Contemporary Practice of the United States Relating to International Law, 91 AM. J. INT'L L. 93, 102 (1997) (answers of the United States State Department to questions by Sen. Jesse Helms, Chairman of the Senate Committee on Foreign Relations, on how MLATs will aid United States law enforcement).

131 See Extraterritorial Application, supra note 46, at 393.

132 See id.

133 See id.

134 See MLAT, supra note 118, S. TREATY DOC. No. 100-13 at iii, 27 I.L.M. at 445. The Mexican ratification process was rather routine, despite traditional Mexican concerns over potential infringements of its sovereignty. See Zagaris & Resnick, supra note 9, at 19.

135 See NADELLEMN, supra note 10, at 384.

136 See Zagaris & Resnick, supra note 9, at 20-21.
States Drug Enforcement Administration (DEA) agent, Enrique Camarena, in Mexico.\(^{137}\)

The purpose of the Mexico-United States MLAT is to more effectively counter transborder criminal activities, including such "modern criminals" as drug cartels, white collar criminals, and terrorists.\(^{138}\) The MLAT provides for a broad range of cooperation in criminal matters, including the execution of requests for searches and seizures and the taking of measures to immobilize, secure, or forfeit assets and instrumentalities of crime.\(^{139}\)

The foundation of the United States-Mexico MLAT is cooperation between countries in order to prevent, investigate, and prosecute crimes through requests for mutual legal assistance.\(^{140}\) It explicitly "does not empower one Party's authorities to undertake, in the territorial jurisdiction of the other, the exercise and performance of the functions or authority exclusively entrusted to the authorities of that other Party by its national laws or regulations."\(^{141}\)

Furthermore, the MLAT expressly facilitates assistance for the very sort of situation that Casablanca concerned: the immobilization, seizure, and forfeiture of the proceeds of crime.\(^{142}\) To effect the overall goals of cooperation and communication, the parties are required to meet at least once every two years to review and improve the effectiveness of the MLAT.\(^{143}\)

The meetings apparently envisioned by the MLAT drafters have occurred, but unfortunately the most recent were in the wake of the Casablanca fiasco.

\(^{137}\) The DEA believed that Dr. Humberto Alvarez-Machain, a Mexican citizen, was behind the torture and killing of Camarena. It negotiated with the Mexican government to extradite Alvarez-Machain to the United States. When these negotiations failed to secure Alvarez-Machain's extradition, the DEA abducted Alvarez-Machain from Guadalajara, Mexico, to El Paso, Texas, in order for him to stand trial in the United States. This action caused an international outcry. The case made its way to the United States Supreme Court. See United States v. Alvarez-Machain, 504 U.S. 655 (1992). For the argument that hemispheric cooperation, through the Organization of American States, is necessary to avoid such violations of territorial sovereignty, see Jennifer J. Veloz, Comment, In the Clinton Era, Overturning Alvarez-Machain and Extraterritorial Abduction: How a Unified Western Hemisphere, Through the OAS, Can Win the War on Drugs and Do It Legally, 12 TEMP. INT'L & COMP. L.J. 241 (1998).

\(^{138}\) See MLAT, supra note 118, S. TREATY DOC. No. 100-13 at iii, 27 I.L.M. at 445 (Letter of Transmittal from President Reagan to the United States Senate).

\(^{139}\) Id., S. TREATY DOC. No. 100-13 at v, 27 I.L.M. at 446 (Letter of Submittal from Secretary of State Shultz to President Reagan).

\(^{140}\) MLAT, supra note 118, art. 1, §1, S. TREATY DOC. No. 100-13 at 2, 27 I.L.M. at 447; art. 2, §1, S. TREATY DOC. No. 100-13 at 2, 27 I.L.M. at 448.

\(^{141}\) Id. S. TREATY DOC. No. 100-13 at 1, 27 I.L.M. at 447 (emphasis added).

\(^{142}\) See id. art. 11, §2, S. TREATY DOC. No. 100-13 at 6, 27 I.L.M. at 450.

\(^{143}\) See id. art. 18, S. TREATY DOC. No. 100-13 at 7, 27 I.L.M. at 450.
United States drug czar Barry McCaffrey, United States Attorney General Janet Reno, and Mexican Attorney General Jorge Madrazo Cuellar have held several conferences in an attempt to control the damage caused to United States-Mexico relations. McCaffrey announced in November 1998 that the United States would provide X-ray machines and other technological assistance to United States and Mexican customs officers on the border.\textsuperscript{144} Madrazo, Reno, McCaffrey, and Mexican Secretary of Foreign Relations Rosario Green met in December 1998 at the Sixth Plenary Meeting of the High Level Contact Group on Drug Control (HLCG) to review the status of bilateral cooperation.\textsuperscript{145} Not surprisingly, one of the main topics was money laundering and law enforcement. Although it is too soon to gauge the impact of these meetings, there is reason to hope for better disclosure in the future.\textsuperscript{146} After all, “[i]nternational cooperation is unavoidable and indispensable.”\textsuperscript{147}

C. International Law Violations

United States conduct in Operation Casablanca clearly violated several principles of international law. “International law is part of [U.S.] law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction. . . .”\textsuperscript{148} International law has the character and quality of law, and functions as both a restraint against arbitrary state action and a guide in international relations.\textsuperscript{149} Although sometimes it is assumed that states only follow international law when convenient, this impression is mistaken. States

\textsuperscript{144} See United States, Mexico Speak of Expanding Joint Anti-Drug Efforts, But Relations Remain Strained, SOURCEMEX ECON. NEWS & ANALYSIS ON MEXICO, Nov. 18, 1998, available in 1998 WL 8779152.

\textsuperscript{145} See Embassy of Mexico Press Release, ASSOCIATED PRESS POL. SERV., Dec. 16, 1998, available in 1998 WL 7471941. The HLCG was established in 1996 by Presidents Zedillo and Clinton to ensure continuous coordination and cooperation at the highest level in the war on drugs. See id. In other words, it was established to prevent the very situation caused by Operation Casablanca.

\textsuperscript{146} See Alice Ann Love, United States, Mexico Work to Mend Relations, ASSOCIATED PRESS ONLINE, Dec. 16, 1998, available in 1998 WL 23511760. Madrazo declared that “our exchanges have more depth and are more satisfying,” and McCaffrey presented a bundle of documents several inches thick to show how much information was shared by the two countries at the HLCG conference. Id.; see discussion supra note 82 and accompanying text.


\textsuperscript{148} The Paquette Habana, 175 U.S. 677, 700 (1900). This statement is the oft-quoted official position of United States courts in applying principles of international law.

\textsuperscript{149} See RESTATEMENT (THIRD), supra note 119, pt. I, ch. 1, Intro. Note.
freely consider themselves bound by it and take it into account in their international relations.\textsuperscript{150}

There are two basic principles of international law that the United States violated during Operation Casablanca: territorial sovereignty and \textit{pacta sunt servanda}, the principle that, generally, agreements of parties must be observed. These principles are in the Charter of the Organization of American States,\textsuperscript{151} the United Nations Charter,\textsuperscript{152} to which the United States is a signatory, and also the Restatement (Third) of Foreign Relations Law of the United States.\textsuperscript{153}

Under international law, a state has sovereignty over its own territory.\textsuperscript{154} As interpreted by United States courts, sovereignty implies a state’s lawful and exclusive control over its territory, and its authority to govern and apply law there.\textsuperscript{155} This attitude has been partly shaped by foreign protests to past United States “extravagant and exorbitant exercises” of extraterritorial jurisdiction.\textsuperscript{156} The OAS Charter, which was adopted by the United States in 1948, is based on principles of mutual respect for and the sovereignty of each member state.\textsuperscript{157} It also prohibits any state from committing unjust acts against another.\textsuperscript{158} It further states that no state may interfere in the affairs of another\textsuperscript{159} and that the territory of each state is inviolable.\textsuperscript{160} Finally, the

\begin{itemize}
\item \textsuperscript{150} See id.
\item \textsuperscript{152} U.N. CHARTER, art. 2, para. 4.
\item \textsuperscript{153} \textit{RESTATEMENT (THIRD), supra} note 119, pt. III, ch. 3, § 321 cmt. a.
\item \textsuperscript{154} See id. pt. II, ch. 1, § 206(a).
\item \textsuperscript{155} See id. § 206 cmt. b.
\item \textsuperscript{156} 58 A.L.I. PROC. 262 (1981) (comments of Louis Henkin).
\item \textsuperscript{157} See CHARLES G. FENWICK, \textit{THE ORGANIZATION OF AMERICAN STATES: THE INTER-AMERICAN REGIONAL SYSTEM} 3 (1963).
\item \textsuperscript{158} See O.A.S. CHARTER, \textit{supra} note 151, art. 11, 2 U.S.T. at 2419, \textit{amended by} art. 5, 21 U.S.T. at 662. Article 11 provides: “The right of each State to protect itself and to live its own life does not authorize it to commit unjust acts against another State.” \textit{Id.}
\item \textsuperscript{159} See id. art. 15, 2 U.S.T. at 2419-20, \textit{amended by} art. 5, 21 U.S.T. at 662. Article 18 sets forth: “No State . . . has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force, but also any other form of interference of attempted threat against the personality of the State or against its political, economic, and cultural elements.” \textit{Id.}
\item \textsuperscript{160} See id. art. 17, 2 U.S.T. at 2420, \textit{amended by} art. 5, 21 U.S.T. at 662. Article 17 provides: “The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatsoever.” \textit{Id.}
\end{itemize}
United Nations Charter requires that all member states respect each other’s territorial integrity. 161

Hypothetically, let us envision a situation in which a United States arms dealer in San Diego has been smuggling guns to a drug cartel in Mexico. Given Mexico’s tough anti-gun laws (and very permissive gun purchase laws in the United States), this situation is not far from an every day occurrence. 162 Mexican agents slip across the border and proceed to conduct a sting operation. They ensnare the United States gun dealer and lure him south of the border to Acapulco for the opening of a new resort. When the dealer arrives in Mexico, he is promptly taken into custody and charged with violations of Mexican law. While awaiting trial, he languishes in a Mexican jail. Although this scenario is unlikely, one can envision the United States reaction to such cavalier disregard of American borders, especially if no United States law enforcement entity was informed. Mexico has not sponsored such blatant action since the Mexican-American War of the 1840s. Recall that Pancho Villa was not a state-backed agent when he rode into Texas in 1916. The point is simple: borders do matter and should be respected.

Operation Casablanca is not the only incident in which United States law enforcement agents violated the territorial sovereignty of their neighbors. The Jaffe case was an instance in which a Canadian citizen was kidnapped from his Toronto apartment building in 1981 by two United States bounty hunters. 163 He was later convicted on land fraud charges and sentenced to thirty-five years in prison. 164 Similar to the Mexican reaction, the Canadian government officially protested this violation of Canadian sovereignty and requested that Jaffe be returned to Canada. 165 Jaffe later was granted bail on new charges (after the overturning of the land fraud charges) and escaped to Canada. 166

161 See U.N. CHARTER, art. 2, para. 4 (providing that “[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”).

162 See Marcus Gee, Mexico Awash in Tide of United States Weapons: Despite Gun Laws as Strict as Canada’s, Cross-border Smuggling Has Created Deadly Problems for Officials and Fearful Residents, TORONTO GLOBE & MAIL, Dec. 3, 1998, at A25. Roberto Rodriguez, the Mexican consul in Nogales, Arizona, on the border with Mexico, said, “It’s a firearms supermarket up here. [United States gun dealers] sell everything from shotguns to machine pistols and it’s almost impossible to control.” Id. Mexican gun laws forbid most people from owning handguns and also prohibit gun shops. See id.

163 See Extraterritorial Application, supra note 46, at 395.

164 See id.

165 See id.

166 See id. at 396.
end result was that Jaffe became a fugitive from United States justice, and the
two bounty hunters were extradited to Canada where they were convicted of
kidnapping.\textsuperscript{167}

Clearly, such flagrant violations of territorial sovereignty do not create the
results hoped for. Casablanca is another example: millions of dollars in assets
frozen and dozens of indictments but at the cost of a foreign relations fiasco,
with the United States once again living up to its reputation as "bully of the
Americas." Some have tried to justify this course of action as resting on the
powers of the United States as a self-declared sovereign with the ability to
conduct itself as it chooses in both domestic and international matters.\textsuperscript{168}
Another theory is that a state like Mexico might pretend to be angry, but in
truth is happy for the United States to come in and do its dirty work by
removing dangerous criminals.\textsuperscript{169}

The United States also violated the principle of \textit{pacta sunt servanda}. As
noted earlier, \textit{pacta sunt servanda} is the principle that, generally, agreements
of parties must be observed. Every international agreement in force is binding
upon the parties to it.\textsuperscript{170} \textit{Pacta sunt servanda} lies at the very heart of the law
of international agreements and is perhaps the most important principle of
international law.\textsuperscript{171} A state has a responsibility to other states for the breach
of its duties under international law and its agreements.\textsuperscript{172} This is codified in
the Vienna Convention on the Law of Treaties as follows: "Every treaty in
force is binding upon the parties to it and must be performed by them in good
faith."\textsuperscript{173} Because respect for territorial sovereignty is found in two treaties to
which the United States is a signatory (the OAS Charter and the MLAT), the

\textsuperscript{167} See id.

\textsuperscript{168} See, e.g., Michael R. Pontoni, Comment, \textit{Authority of the United States to
Extraterritorially Apprehend and Lawfully Prosecute International Drug Traffickers and Other
Fugitives}, 21 CAL. W. INT'L L.J. 215, 239 (1990/1991). This argument is based partly on the
notion that the United States as a sovereign can apply extraterritorial criminal jurisdiction to acts
committed outside its borders but having an effect within its borders, and partly on the fact that
United States courts have construed themselves as not bound to follow the guidelines of the
United Nations Charter. See id. at 222, 230. This is so because the United Nations Charter is
not “self-executing” and does not have an executory clause. See id. at 230. The question of the
binding (or non-binding) nature of non-self-executing treaties is beyond the scope of this paper.

\textsuperscript{169} See Lowenfeld II, supra note 117, at 488.

\textsuperscript{170} See \textit{RESTATEMENT (THIRD), supra} note 119, § 321.

\textsuperscript{171} See id. § 321 cmt. a.

\textsuperscript{172} See id. § 206 cmt. e.

\textsuperscript{173} Vienna Convention on the Law of Treaties, opened for signature May 2, 1969, 1155
U.N.T.S. 331.
United States failure to abide by this condition has resulted in a breach of those treaties.

VII. CONCLUSION

Unfortunately, the current attitude in the United States regarding treaty commitments has been indifferent at best. The recent congressional stance in reaction to Operation Casablanca supports this observation. Money laundering is a serious crime with ramifications throughout the global financial network, and governments should not “permit the law to be manipulated to render the free world ineffective in dealing with those who have no regard for law.” However, the United States and Mexico have negotiated a treaty, the MLAT, that envisions exactly a Casablanca-type situation. The United States should give it a chance to work. As Lowenfeld has aptly declared, “The interrelation among statute, Constitution and treaty is, to put it charitably, confusing. But the ultimate values of limited government transcend any given triumph of law enforcement.” Adhering to treaty obligations is crucial to any state’s ability to negotiate and obtain compliance with future treaties. In the future, the United States will hopefully exercise greater discretion when enforcement of its domestic laws extends beyond its borders.

176 Lowenfeld I, supra note 103, at 893.
177 See Vagts, supra note 174, at 462 (arguing that a “reputation for playing fast and loose with treaty commitments can only do harm to [the United States’] capacity to be a leader in the post-Cold War period”).