

International Law

Final Examination
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This exam is designed to test how much of the material, both factual and conceptual, you are able to effectively use.

There are three sections to this examination. Answer one question from each section. Each answer has a *maximum response length of three pages*; you should be *pushing that limit* on each answer (not including the bibliography). I will ignore any writing beyond the three-page limit. As with most things in International Law, the actual answer is not as important as the argument you present (although a 'right' answer is easier to defend successfully). Offer proof of your assertions. With this (and the page limit) in mind, make sure your arguments are concise and clear and *do not ramble*. It is also a good idea to discuss whether or not the court has jurisdiction to decide the case (unless the scenario states it has jurisdiction).

The packet you hand in to me will include your answers, each on separate pages, and a single bibliography, which includes references from all of your answers. Make sure you alphabetize and format your bibliography page correctly. When you are ready to turn in your answers, please email them to me as an attachment at OleForsberg@creighton.edu. The filename for your answers must be your username (in lowercase), followed by exam537. Thus, for me, the filename would be ojf38491exam537.doc. The file format must be either rtf or doc.

Your answers are due at the close of the exam period for this course (2:40 on Wednesday, April 30, 2008). If you turn in your answers before 11:59 pm on Sunday, April 27, 2008, you will receive a 5% bonus.

You are allowed to use *neither* Wikipedia nor the Slomanson text as sources in your answers. Thankfully, Slomanson provides very good citations that allow you to locate and use the original source. The quality of Wikipedia varies from article to article, but the better articles also include citations for your use. Any citation of treaties must come from the *original treaties and not from a secondary source*. The important treaties are easily found on the Internet. The United Nations has an online collection of all treaties deposited with them. Reinert Library has online access to many International Law databases through its database portal (Law and Political Science).

A quick note on referencing and citing treaties: Do not *reference* the treaties. Do *cite* them correctly: The first time you mention a treaty, you need to give its full official name. If you have plans on using the treaty again, you will follow the full name with its shortened name in parentheses and quotation marks. Thereafter, you can use its shortened name without the quotation marks. For instance, at first mention, I would write: Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other

Celestial Bodies (“Outer Space Treaty”). From that point forward in the answer, I would just talk about the Outer Space Treaty. To cite from the treaty, use Article-Section notation. For instance: In dealing with archipelago states, UNCLOS defines territorial waters, in part, by drawing “straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago” (Article 42, Section 1). You may abbreviate Article as ‘Art.’ and Section as §, thus (Art. 42, §1).

Note: Some of these questions deal with fictional states. In such cases, you are to apply general concepts of International Law and not state-specific alterations (unless spelled out in the question). In cases where a real state is used, apply state-specific facts *from reality* to the case.

Finally, you may want to look at the style sheet for the course; it is *still* in effect. Any variation from the requirements in the style sheet will result in a loss of points. Pay attention to line spacing and font size.

Do not be cute.

Cite.

Section One: The International Court of Justice

The International Court of Justice (ICJ) is the primary judicial organ of the United Nations. As such, it deals with legal conflicts between member states. For contentious cases, the decision handed down by the court is legally binding in international law. The lifecycle of a case before the ICJ starts with the submission of a dispute to the ICJ, followed by submission of written proceedings, public (oral) proceedings, deliberation by the court, ending with the decision by the court (and publishing of its decision).

There are currently two cases in the ICJ in this final stage, where all of the proceedings have been offered and the justices are deliberating on the answer. The two cases are listed below. Your task for this section is to render a decision on either of the two cases. As these are real-world cases, *use reality in your answers*. The ICJ website offers all of the documents directly related to these two cases.

Cite.

Select *one* for 30 points:

Case 1.1: Sovereignty over Pedra Branca / Pulau Batu Puteh, Middle Rocks, and South Ledge
(Malaysia v. Singapore)

Case 1.2: Certain Questions of Mutual Assistance in Criminal Matters
(Djibouti v. France)

Section Two: Laws of the Sea and Laws of War

In international law, there are two major areas of contention: seas and war. This has not been true throughout all time, but the current trend is to examine these two areas of law. The Law of the Sea is important as the ocean floor offers much by way of natural resources (especially petroleum), which can be used to help states become richer and stronger. War is in vogue now, simply because of the changing mores and norms about the validity of violent force, in general.

There are three options in this section. The first is a real-life case, which has not been heard by the ICJ. The case simply answers the question: Who owns the Spratly Islands? The other two are contrived cases. In the Spratly Island case, use reality, which should include geography, measurements, UNCLOS, and so forth. In the fictional cases, use general principles and the information given to you in the scenario. The maps are drawn to scale, although the scale differs between maps. If the map is difficult to decipher, it is located on the website.

Cite.

Select *one* for 30 points:

- Case 2.1: Sovereignty over the Spratly Islands
(The PRC v. Republic of China v. Malaysia v. Vietnam v. The Philippines)
- Case 2.2: Fishing Rights over the Irrawaddy Dolphin in the Great Western Bight
(Avalon v. Hibernia)
- Case 2.3: On the Legality of the Acts in Metsuchin
(Republic of Tamagotchistan v. Kingdom of Pokemonia)

Section Three: People in International Law

An argument can be made that people are irrelevant in international law, as international law deals with the legal relations between sovereign states. However, that argument would ignore many of the advances in international law since the Peace of Westphalia of 1648. In fact, the easier argument to make is that the individual is at the center of international law, especially with the growing emphasis on human rights and liberties.

This question focuses on sub-state actors in international law. All of the cases in this section are contrived. As such, you need to use general principles of international law, unless explicitly modified in the scenario. The maps are drawn to scale, although the scale differs between maps. If the map is difficult to decipher, it is located on the website.

Cite.

Select *one* for 30 points:

- Case 3.1: Diplomatic Transport on the High Seas
(The Sovereign Republic of Neverland v. United States of America)
- Case 3.2: Forced Retention of Non-Citizens
(Gray Faulkner v. King Rudolf V)
- Case 3.3: Regarding the Citizenship of Tommy Albright
(Tommy Albright v. Brigadoon)

Case 2.2: Fishing Rights over the Irrawaddy Dolphin in the Great Western Bight (Avalon v. Hibernia)

The people living on the island of Avalon rely heavily on the abundance of Irrawaddy Dolphin for food and commerce. Approximately 50% Avalonians are fishermen; several fish cleaning and dressing facilities operate; and many restaurants that serve the island's fresh seafood, especially its delicacy, the Irrawaddy Dolphin (*Orcaella brevirostris*).

Unfortunately, Avalon's great fishing and abundant marine life also attract tourists from the island of Hibernia, forty nautical miles distant at their closest points. Some Hibernian fishing trawlers have recently been seen fishing for the Irrawaddy Dolphins in the waters of the Great Western Bight.

Avalon has gently curving, unobstructed shorelines all around the island, except for the Great Western Bight, an area of indented coast where the Avalon River drains into the sea. This area is the primary habitat for the Irrawaddy Dolphins, who are attracted to the small shrimp that thrive in the freshwater/saltwater mouth of the river.

When confronted by the Avalonian President, Hibernia defends its pursuit of the fish, stating that they are fishing in international waters according to the 1945 Treaty of Camelot, which defined all non-internal waters between Avalon and Hibernia as international. Avalon asserts two things. First, the waters in question are internal waters, and are thus not affected by the Treaty of Camelot. Second, as both states signed the UN Convention on the Law of the Sea, that treaty takes precedence.

Avalon's fishermen are beginning to get angry, as they have been the only ones to hunt the Irrawaddy Dolphin for years. The citizens who depend on the fish for their livelihood are getting worried that perhaps their skills and services will no longer be needed if Hibernia is able to hunt the fish for which the island of Avalon is famous.

Avalon brings Hibernia to the International Court of Justice, which decides to give the case to you alone to decide.

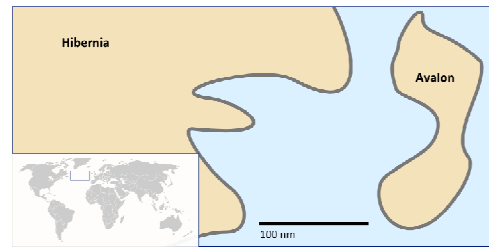


Figure 2.2a: Map showing Avalon and Hibernia, located in the north Atlantic Ocean between Ireland and Labrador. Hibernia is on the left. Avalon is on the right. The Great Western Bight is on the western side of Avalon.

**Case 2.3: On the Legality of the Acts in Metsuchin
(Republic of Tamagotchistan v. Kingdom of Pokemonia)**

On 2 March 2008, the Republic of Tamagotchistan filed a complaint to the International Court of Justice due to the actions of the Kingdom of Pokemonia that they consider acts of aggression and acts of war.

During the period between 14 February and 2 March, Pokemonia has been testing conventional explosive devices in a military operation in the Pokemoni desert region called Metsuchin. Metsuchin is a region entirely within Pokemonia, but with the nearest city being in Tamagotchistan: Tamagochun is 25 miles from the center of the military activities (which include the blasts). There are no roads or cities within Metsuchin.

There have been no casualties due to the military operations thus far. President Bandai of Tamagotchistan notes, however, that the amount of sand and grit in the air has increased more than 500% since the beginnings of the operations. This casts a pall over the entire Tamagotchi land and makes defensive military maneuvers impossible. In fact, Tamagotchistan can no longer fly its F-16 fighter jets because of the level of sand and grit in the air. President Bandai has placed his military on *vermillion alert* (an equivalent of DEFCON 1), fearing an incipient attack from Pokemonia, a traditional rival in the region.

Malik (king) Tajiri of Pokemonia replies that the increased airborne sand is due to the increased winds and not to the military operations. As such, the military operations, including the bomb tests, continue. Malik Tajiri sees the Tamagotchi military mobilization as merely an excuse for war.

Is Tamagotchistan legally justified in declaring war on Pokemonia now?



Figure 2.3a: Map showing Tamagotchistan (on the right) and Pokemonia (on the left). The grey states are neutral, neighboring states. The red dot is Tamagochun, the capital of Tamagotchistan. The dark brown region near the capital, across the inlet, is the region of Metsuchin.

Case 3.1: Diplomatic Transport on the High Seas (The Sovereign Republic of Neverland v. The United States of America)

Neverland is a small state in northern South America. As with most Latin American states, it has suffered a history of political (and economic) instability. Since it gained independence from Spain in 1898, there have been no fewer than nine coups in this small banana republic. Throughout much of the Cold War, Neverland regularly switched allegiance between the United States and the Soviet Union, attempting to gain the greatest economic benefit. Its rulers have tended to be varying degrees of center-left in terms of economy, and varying degrees of brutal in terms of politics.

In 1984, President Ronald Reagan met with Captain Hook, the junta leader of Neverland, who gained his leadership role through the 1983 (relatively bloodless) military coup in which over 1000 Neverlanders died. The purpose of the meeting was to negotiate a treaty designed to stabilize the state and to avoid a leftist coup.

In addition to an extradition treaty,¹ Reagan signed, and the Senate ratified, this treaty of friendship and non-interference with Neverland. This treaty, called the Perpetual Treaty of Friendship and Assistance between the United States and the Sovereign Republic of Neverland (PTFABUSSRON), had three primary provisions of interest to us. One of the provisions of this treaty provided the US Coast Guard with full access and authority in the territorial waters of Neverland. A second provision asserted that the United States would hereafter have authority to intervene in Neverland's affairs in the event of social and political unrest. A third provision held that, the United States has full authority to train and equip Neverland's police force.



Official Languages:	Spanish, English
Population:	370,784
Human Development Index:	
1980:	0.352
1990:	0.502
2000:	0.781
2007:	0.514
Currency:	Neverdollar (NVD) 1.00 NVD \equiv 1.00 USD (Fixed exchange rate since the 1983 coup.)
Calling Code:	+541
GDP:	\$2.898 billion (2007) est.
GDP per capita:	\$3,158 (2007) est. \$5,683 (2005)
Primary Economy:	Bananas, Sugarcane, Rice, Tourism, Banking, Textiles, Timber

¹ The extradition treaty number is TIAS 314159. The full text of which can be located on the course website. You should read it and be familiar with it.

On March 25, 2005, Peter Pan and his Lost Boys finally wrested control of Neverland from Captain Hook (in a relatively bloody coup), who fled to the United States to avoid charges of torturing some of the Lost Boys and their Fairies. Four months later, on July 25, the US Congress passed, and President Bush signed, the Fairy Dust on the High Seas Act (FDHSA/2005), which made the possession of any amount of Fairy Dust a crime, with a maximum penalty of life in prison and a \$50,000,000,000 fine. For those who do not know, Fairy Dust is a very addictive and powerful hallucinogen. It is also dangerous, as it kills once every thousand uses. Few states in the United Nations agree that Fairy Dust is an illicit drug, but the United States is trying to gain support for a universal ban on it. So far, only the United States, Colombia, Brazil, and the European Union (and its member states) have made Fairy Dust illegal.

Two weeks later, Chancellor Pan (Neverland's Head of State *and* Head of Government) and President George W. Bush signed an executive agreement agreeing that the US Coast Guard no longer had any authority within Neverland's territorial waters and that the US Coast Guard would no longer be allowed in Neverland's territorial waters. The US Congress initiated legal proceedings claiming that the executive order violated the Constitution, as it altered a treaty.

Last week, the US Coast Guard, patrolling inside the territorial waters of Neverland, exercised what it called its "right of approach" on a flagless vessel carrying Ambassador Tinkerbell and four and a half tons of Fairy Dust. Upon inspection of registration documents, the US Coast Guard found the boat to be of Neverland registry. Tinkerbell was returned to the United States and charged with possession of Fairy Dust. Pan objected. Bush did not.

Pan held that the ship was Tinkerbell's diplomatic pouch. Tinkerbell is the Neverland ambassador to Cuba. Pan and Tinkerbell assert that the ship was *en route* to Havana from the capital of Neverland, Wendyville. Additionally, Pan argues that the pixie dust was property of the Neverland government, that Tinkerbell is an agent of the state of Neverland and that the dust was to be sold in Cuba to raise money for the State of Neverland to combat poverty and Michael Jackson.

Neverland wants the United States to perform its duties under the 1985 extradition treaty between the United States and Neverland. The United States claims that the treaty is null and void because of the bloody coup; the current regime is illegitimate.

The Republic of Neverland is a party to the Vienna Convention on the Law of Treaties, the UN Conventions on the Law of the Seas, and the Outer Space Treaty. Neverland is a member of NAFTA, the United Nations, and the Organization of American States (OAS).

Neverland is suing the United States in the Permanent Council of the OAS for violations on the OAS Charter, especially Chapter IV. The Permanent Council has determined that they have jurisdiction in this case. As such, they have handed the case to you to decide. Is the United States in violation of the OAS Charter? If so, what is an appropriate penalty to levy against the United States?

Case 3.2: Forced Retention of Non-Citizens (Gray Faulkner v. King Rudolf V)

Faulkner Petroleum, an independent oil and natural gas producer based in Texas, has recently expanded its operations to the landlocked state of Ruritania after winning contract bids to work for the government. Ruritania is located between the Czech Republic and Germany. They are neither a member of the United Nations nor of the European Union.

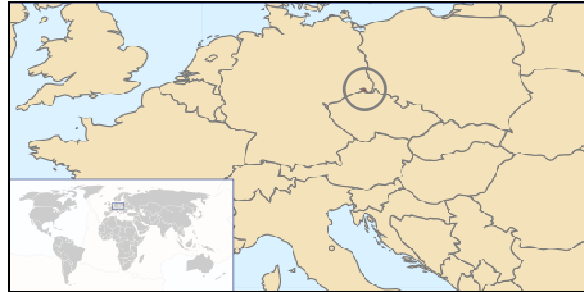


Figure 2.3a: Map of Europe showing the location of Ruritania.

Before the discovery of natural gas, fully 75% of its economy was based on banking. It is autocratic with a small ruling elite, but draws its ruling talents from all over the world, including a Yale educated Nebraskan Finance Minister. The recent discovery of natural gas occurred when an itinerant Czech farmer miscalculated the border and wandered on to Ruritania land to drill a well to water his cows (wealthy land owners will not let peasants use the stream water). In the process of digging his water well he hit a pocket of natural gas.

Eager to exploit this new resource, King Rudolf V searched for a small oil company with whom he thought he would be able to strike a deal. Faulkner Oil won the contract and began a private-capital solicitation from area Texans and through the Ruritania banking sector. The company was able to raise \$10 million from Texans and \$1.5 million from the Ruritania banking community. While the capital was tight, the company was able to transport the necessary drilling rigs and most of its Texas-based employees. It began drilling in the Ruritania Veldt and was able to strike gas at all 25 of the initial test wells. With the production secure, and nearly 2.5 trillion cubic meters in reserves, Faulkner Petroleum built a natural gas pipeline to service Germany.

Rudolf, a long-time sympathizer with the Soviet Union who studied at Moscow State University, was not afraid to enter into competition with Gazprom, interestingly enough. As such, the pipeline was built and a final agreement was reached at the 50/50 level of pricing control and profit sharing for the Faulkner/Ruritania joint venture. Once the pipeline and natural gas production were off and flowing, Rudolf V began to become uneasy with some of the Texas company's ways. Although long known in Texas for being a wildcat company and for taking large risks, Faulkner Petroleum acted with restraint in Ruritania, hoping to maximize production and profit. Rudolf, eager to prevent wildcatting and to reap more of the profits for his country, decided to expropriate all materials belonging to the joint Faulkner/Ruritania venture. Rudolf also mandated that the upper-level management team leave the country within 30 days.

Faulkner was further instructed to leave all lower level employees and infrastructure to continue the production of natural gas. CEO Gray Faulkner protested, but he and his senior executive team were deported. Their lower staff were denied exit visas and forced to stay and continue production. Gray Faulkner arrived back in the United States and decided to sue King Rudolf V for damages pertaining to the expropriation of resources, and for trapping his employees in Ruritania.

As he lives in Tyler, and as Faulkner Petroleum has Tyler as its corporate address, Faulkner took the case to the US District Court for the Eastern District of Texas. You are the judge of that court hearing the case. What is your verdict?

**Case 3.3: The Citizenship of Tommy Albright
(Tommy Albright v. Brigadoon)**

Tommy Albright, a citizen of the United States of America, has recently decided to travel to far away Brigadoon to spend a week relaxing. While there, Tommy thoroughly falls in love with the culture and lifestyle of the local Brigadonnors (and with one Meg Brockie); he would love to live there for the rest of his life. As such, he decides to give up his American citizenship. As there is no American Embassy in Brigadoon, Tommy realizes he must make this very official.

To that end, he invites Angus McGuffie, a dairy vendor and notary public, to McConnachy Square. Then, at the stroke of noon, Tommy clearly and loudly states before all to hear that he fully and irrevocably renounces his American citizenship. Tommy Albright, out of pure excitement from his new situation, fails to look up any of the above information after renouncing his American citizenship. He just assumes he is now a citizen of Brigadoon since he gave up his other citizenship, found a job, found a residence, and found a wife (Meg Brockie).

However, according to Brigadonner Law, one can become a citizen in one of only three ways. First, one can be born to Brigadonner parents. Second, one can be born on Brigadonner soil. Third, one can attain citizenship through the naturalization process, which requires ten years of documented residency, ten years of gainful employment in Brigadoon, an extensive course of studies on Brigadonner history and culture, and a lack of a criminal history. The first two are not paths available to Tommy.

Almost a decade later, Tommy makes the mistake of participating in a barroom brawl that causes severe property damage and injures two patrons. The local constable arrests all involved in the fight and takes them to jail. While in jail, Tommy is given three square meals daily, shower opportunities, a bed, a semi-private toilet, and opportunities stroll within the gates. Brigadoon has high standards in its justice system. Typically, one only waits a day in jail for arraignment and is then released if the judge feels that there is no flight risk. Brigadoon's constitution guarantees trials within six months of arraignment.

Tommy is arraigned after a two-week wait. Upon arraignment, Tommy is held in jail and not released because of the perceived flight risk. Tommy argues that he should be released since Brigadonner citizens are granted that privilege. The court argues that he is not a citizen; he never applied for citizenship. Additionally, the Brigadonner constitution also states that they have the right to detain any stateless person the courts deem necessary.

After hearing this, Tommy calls his brother-in-law Jeff Douglas, an attorney specializing in international law from New York City, to fix his problems. The United States denies Tommy's citizenship, but Jeff goes to Brigadoon to argue on Tommy's behalf.

You are Archie Beaton, seller of wool and plaids and the Judge of Brigadoon's District Court (a court of first instance). Jeff Douglas brought the case to your court. Three important questions arise before the trial even starts: Is Tommy a stateless person? Does Brigadoon have the

right to detain stateless people as their courts see fit? Are there any concerns about violations of an International Minimum Standards with respect to denying release of Tommy Albright? In a well-organized essay, answer each of these three questions in the setting of the case before the court.