

International Law

Final Exam — Fall 2006

This exam is designed to test how much of the material, both factual and conceptual, you are able to effectively use. As such, view these questions as guides that allow you to demonstrate your mastery of the material.

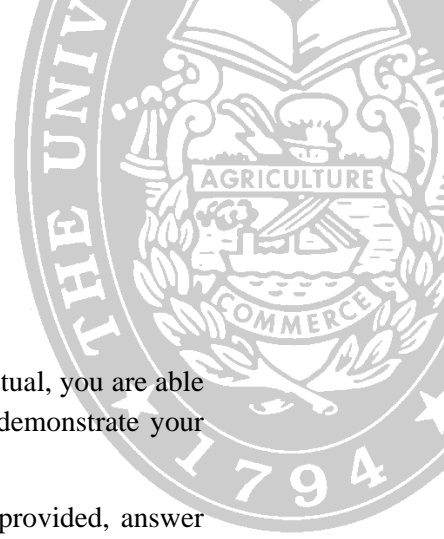
There are five questions in this packet. However, of the five questions provided, answer any four. Each answer has a maximum response length of one page (in fact, you should be pushing that limit on each answer). I will ignore any writing beyond the one-page limit. As with most things in International Law, the actual answer is not as important as the argument you present (although a ‘right’ answer is easier to defend successfully). With this (and the one-page limit) in mind, make sure your arguments are concise and clear and do not ramble.

The packet you hand in to me will include a title page, your four answers, and a single reference list, which includes references from all four answers. 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. Hodges 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).

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 specific state is mentioned, you are to 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.



Question 1

Global discontent is threatening the security of Middle Earth. A war is brewing between the two most powerful states in Middle Earth: the Republic of Rohan and the Kingdom of Mordor. The success of this war largely depends on the possession of one specific golden ring.

In anticipation of a war with Rohan, the Kingdom of Mordor adopted Mordor Public Law PL17–222, which authorizes the Mordor government to “nationalize all golden rings belonging to foreign citizens who will not swear allegiance to Sauron as their one, true king.”

In accordance with this law, the Mordor Army seized a golden ring from Gollum, a citizen of Mordor. Gollum had previously stolen the ring from a Mr. Frodo Baggins, a citizen of the United Shire States. The ring had been entrusted to Frodo’s care by Aragorn, a private citizen of Rohan.

After attempting diplomatic recovery of his ring, Aragorn brought an action for conversion in the Court of Rohan against the present possessor of the ring, King Sauron. Aragorn alleges that he is the direct descendent of the original owner of the ring and that he is the rightful owner of the ring by reason of familial succession. King Sauron contends that even if Aragorn can prove ownership of the ring by familial succession, the Court of Rowan is barred from granting any relief by reason of the Act of State Doctrine. (The Act of State Doctrine of Mordor is traditional and is not affected by the modifications of the AoS under the law of the United States of America in real life.)

The Supreme Court of the Republic of Rohan considers the non-justiciability of acts of foreign states to be a fundamental principle of international law. However, it is against Rohan domestic policy and domestic laws to nationalize any property without affording adequate and reasonable compensation for the taking (quite similar to US law and policy). In accordance with these policies, the Republic of Rohan has a law prohibiting its courts from applying the Act of State Doctrine if the challenged state act is in violation of well established principles of international law. Specifically, Rohan Law No. 334 states:

Courts in the Republic of Rowan shall not rely upon the Act of State Doctrine to decline to adjudicate a case in which a claim of title or other right to property is asserted based on a confiscation, or other taking, in violation of the principles of International Law.

Now for the questions:

1. Please explain whether King Sauron’s use of the Act of State Doctrine should succeed in barring Aragorn’s claim. In doing so, please discuss the effect of the Mordor Law PL17–222, if it is declared in violation of International Law by the Court of Rohan.
2. Would your answer change if, since the commencement of this suit, the Kingdom of Mordor had collapsed and a new regime had emerged? Let us assume that the Kingdom was overthrown in a popular revolution and replaced by the People’s Democratic Republic of Mordor, a communist dictatorship, whose government is recognized as legitimate by the government of Rohan, but not by any of the other 45 governments of Middle Earth.

Question 2

Mehmet Çiller, a citizen of both Canada and Egypt, claims that in December 2002 he was detained at Kennedy International Airport in New York by United States authorities while on his way home to Toronto after a family vacation abroad. Çiller alleges that the US authorities flew him to Cairo, Egypt and handed him over to Egyptian authorities, who tortured him for one year in order to extricate information about his alleged links to an al Qaeda sleeper cell in Toronto. Çiller was released by Egyptian authorities after one year because they concluded he had no link to al Qaeda. Çiller states that he repeatedly begged US authorities not to send him to Egypt because he would be tortured and/or killed there.

You are an International Law expert. Advise Çiller as to his legal recourse, if any, against the United States government.

Question 3

Signed by President Carter, Executive Order 12283 prohibits the American hostages or their families from suing the Government of Iran for damages related to their captivity during the 444-day hostage crisis of 1979–1981. On December 17, 2001, Senator Harkin of Iowa planned to introduce legislation that would give the former hostages and their families the right to sue Iran for damages resulting from the ordeal. (I, personally, cannot find any evidence that he actually introduced this legislation, only that he planned to do so.)

Let us assume the following facts (that never happened, but that add to this question): Harkin actually did introduce the legislation. It passed both the House and the Senate. President Bush vetoed the legislation. The House and Senate both overrode his veto. The bill became a law.

Is the law enforceable?

Question 4

In 1984, US President Ronald Reagan signed, and the Senate ratified, a treaty with Captain Hook, the ruler of Neverland, who gained his leadership role following a bloodless military coup d'état. One of the provisions of this treaty provided for the extension of the customs waters of the United States to include the territorial waters of Neverland.

On March 25, 2005, Peter Pan and his Lost Boys finally wrested control (in a bloody coup) of Neverland from Captain Hook, who fled to the United States to avoid charges of torturing some of the Lost Boys. Four months later, Congress passed the Pixie Dust on the High Seas Act (PDHSA-2005), which made the possession of Pixie Dust with the intent to distribute a crime, with a maximum penalty of life in prison and a \$50,000,000,000 fine.

Shortly thereafter, Chancellor Pan (Neverland's Head of State *and* Head of Government) and President George W. Bush signed an executive agreement agreeing that the customs waters of the United States would no longer extend to the territorial waters of Neverland.

Last week, the US Coast Guard, on patrol inside the territorial waters of Neverland, exercised what it called its "right of approach" on a flagless vessel carrying Tinkerbell and four and a half tons of Pixie Dust. Upon inspection, the Coast Guard found the boat to be of Neverland registry. Tinkerbell was returned to the United States and charged with possession of Pixie Dust with intent to distribute. Neverland has objected to this.

In all of the following, assume Neverland is a party to the Vienna Convention on the Law of Treaties, the UN Conventions on the Law of the Seas, the Outer Space Treaty, and NAFTA.

1. As a matter of US domestic law, does the US have jurisdiction to prosecute Tinkerbell for violation of the Pixie Dust on the High Seas Act?
2. Suppose Tinkerbell argues, and the Neverland Head of State confirms, 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 to raise money for the State of Neverland to combat poverty. Would this change your answer to any of the above? Why or why not?

Question 5

On November 9, 2006, the New York-based Center for Constitutional Rights (CCR) announced that a group of human rights groups (both US and international) plans to file a war crimes lawsuit against former Secretary of Defense Donald Rumsfeld. According to the CCR, the complaint was actually filed on November 14, 2006, and is

... a request for the German Federal Prosecutor to open an investigation and, ultimately, a criminal prosecution that will look into the responsibility of high-ranking U.S. officials for authorizing war crimes in the context of the so-called "War on Terror." The complaint is brought on behalf of 12 torture victims – 11 Iraqi citizens who were held at Abu Ghraib prison and one Guantánamo detainee – and is being filed by the Center for Constitutional Rights (CCR), the International Federation for Human Rights (FIDH), the Republican Attorneys' Association (RAV) and others, all represented by Berlin Attorney Wolfgang Kaleck.

To make matters even more exciting, because of his former governmental position, Rumsfeld enjoys statutory immunity in the United States.

1. Is there a principle of International Law which would allow Germany to have jurisdiction in this case? If so, which one? Further comment on the strength of cases brought under this principle.
2. Were the United States a member of the ICC, could Rumsfeld be tried in this venue as well? Make sure you address the requirements for ICC jurisdiction.
3. Let us assume that Rumsfeld is found guilty by the German Federal Court and is sentenced to life in a German prison. What are the ways in which Rumsfeld could be forced to serve the sentence?

Additional Information

The press release of this announcement can be found at:

<http://www.ccr-ny.org/v2/reports/report.asp?ObjID=c85mT3vNvG&Content=886>

The website for the CCR can be found at:

<http://www.ccr-ny.org/>