

## International Law

The Neverland Scenario for the First Day

Ole J. Forsberg, Ph.D.

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Please read the following scenario carefully. While reading it, in your notes, please make note of the words and terms that you do not understand. Write down the facts of the case you think are important in deciding the case. Make a list of facts not provided that you think may be important in deciding the case. Finally, try to answer the questions at the end.

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The Democratic Republic of Neverland is a small state in South America. As with most South and Central American states, it has suffered a history of political (and economic) instability. Since it gained independence from the Netherlands in 1957, 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, US President Ronald Reagan met with General Hook, President of Neverland, who gained his leadership role through the 1983 relatively bloodless military *coup d'état* in which approximately 100 Neverlanders died. The main purpose of the meeting between the heads of state was to negotiate a treaty designed to stabilize the state and to avoid a leftist *coup*. President Reagan signed, and the US Senate ratified, this treaty with Neverland. This treaty, called the Perpetual Treaty of Friendship and Assistance (PTFA), had three provisions of interest to us in this course: One of the provisions of this treaty provided the US Coast Guard with full access to and authority in the territorial waters of Neverland. A second provision ensured that the United States would have authority to intervene in Neverland's domestic affairs in the event of social and political unrest. A third provision held that the United States has full authority and duty to train and equip Neverland's relatively weak police force.

On June 15, 2008, the Lost Boys (designated an FTO, a "Foreign Terrorist Organization," by the US Department of State), led by Peter Pan finally wrested control of Neverland from General Hook (in a



Capital:	Elfje
Population:	470,784
Official Language:	Dutch
HDI (2009):	0.514 (medium) 150/179
FSI (2009):	104.2 10/177
Currency:	Neverdollar (NVD) 1.00 NVD = 1.00 USD (Fixed exchange rate since the 1983 coup.)
Calling Code:	+666
Internet ccTLD:	.nv
GDP:	\$2.898 billion (2009) est.
GDP per capita:	\$3,158 (2009) est. \$5,683 (2005)

relatively bloody coup, 7500 died), who fled to the United States to avoid charges of torturing some of the Lost Boys.

Four months later, on October 15, the United States passed the Naval Transfer Act of 2008 (PL110-429). One of the law's lesser-known provisions made Pixie Dust a Schedule I drug, with the possession of *any* amount of Pixie Dust a crime, with a maximum penalty of life in prison and a \$50,000,000 fine. For those who do not know, Pixie Dust is addictive, hallucinogenic, and physiologically dangerous, with death occurring (on average) once per hundred thousand doses.

Shortly thereafter, President Peter Pan (Neverland's head of state *and* head of government) and President George W. Bush signed an executive agreement stating that the US Coast Guard no longer had any extraordinary rights within Neverland's territorial waters. The US Congress initiated legal proceedings claiming that the executive order violated the Constitution as it altered a duly signed and ratified treaty. The US Supreme Court has yet to rule on this case.

Last week, the US Coast Guard, inside the territorial waters of Neverland, exercised what it called its "right of approach" on a flagless vessel carrying Tinker Bell, the Secretary of the Navy for Neverland, and two and a half tons of Pixie Dust. Upon inspection of registration documents, the US Coast Guard found the boat to be of Neverland registry. Secretary Bell was returned to the United States and charged with possession of Pixie Dust. President Pan objected.

Additionally, 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; that is, the current regime is illegitimate. Pan claims two things: first, this fact is irrelevant, as the extradition treaty was signed between two states, not two governments; and second, this fact is incorrect, as the US Congress passed a resolution recognizing the new regime.

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Now, for the sake of completeness, let us assume 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, and that Neverland is a member of CARICOM, the UN, and the OAS.

1. As a matter of International Law, does the United States have jurisdiction to prosecute Secretary Bell for violation of the Naval Transfer Act of 2008? Which principle of jurisdiction is strongest for the United States?
2. Would it matter if President Obama objected to the proceedings?
3. Suppose Secretary Bell argues, and Chancellor Pan confirms, the Pixie Dust was property of the Neverland government, that Secretary Bell is an agent of the Democratic Republic of Neverland, and that the Dust was to be sold to raise money for Neverland to combat poverty. Would this change your answer to any of the above? Why might Secretary Bell think it would? Why might the US government think it would not?