I

Professor Christina Binder has suggested that:

“[O]pposed conceptions of treaty rights ... emanate from contradictory

conceptions of the relationships between sovereignty and the

international legal order. If treaty rights are rooted in a transcendent

legal order, then they may constrain sovereignty; if, however, they are

dependent on the will of the signatories, they may at most create

obligations. The former view is generally associated with the claim that

sovereignty is conferred on states by the international legal order; the

latter view is generally associated with the view that sovereignty is

created by particular communities.”

Is there any escape from the duality of sovereignty conferred by international law and the age-old tensions between natural law ideas and strict positivism? What does your answer imply for the “international legal system”? Illustrate your answer with examples drawn from the treaties, cases, and theories. In particular, focus on treaties that have generated customary international law, and on the relationship between treaty and custom as sources of international law (15%)

II

The Kingdom of Trieste has decided that the best defense is a good offense. Accordingly, it sends spies to assassinate all foreign heads of state that are “actual or suspected enemies of Trieste.” Several other countries begin to take similar measures, each attempting to kill the head of an enemy state. Some succeed. Prato is a state sharing a border with Trieste. The Prime Minister of Prato was recently assassinated, and Pratonian intelligence reports that Trieste spies are responsible for the murder. Prato, therefore, makes its own, unsuccessful, attempt on the life of the Trieste leader. Prato then decides to lodge a complaint with the Security Council of the United Nations, pursuant to Article 35 of the U.N. Charter, claiming that Trieste is “violating international law” by its policy of assassination. Trieste responds by arguing before the Security Council that:

1. the “custom” among states of not assassinating heads of state has changed due to

recent events, and

2. its policy of assassinating heads of state falls within the provisions of Article 51,

“self-defense,” in a broad understanding of preemptive self-defense.

How should Prato respond? Explain your answer. (20%)

III

Ravenna Jahar, a citizen of both Canada and Israel, claims that in 2017 he was detained at Los Angeles International Airport in New York by United States authorities while on his way home to Vancouver after a family vacation abroad. Jahar alleges that the US authorities then flew him to Israel and handed him over to Israeli authorities, who tortured him for one year in order to extricate information about his alleged links to a Hamas Terrorist Group cell in Canada. Jahar

was released by Israeli authorities after one year because they concluded he had no

link to Hamas. Jahar states that he repeatedly begged US authorities not to send him

to Israel because he would be tortured or killed there. Advise Jahar as to his legal

recourse, if any, against the United States government. (15%)

IV

In 2017, Donald Trump, then President of the United States signed, and the Senate

ratified, a treaty with Captain Hook, the ruler of Neverland Pirates following a

military coup. One of the provisions of this agreement provided for the extension of

the customs waters of the United States to include the territorial waters of Neverland

Pirates.

In 2020, Peter Pan and his Lost Boys wrested control of Neverland Pirates from

Captain Hook, who fled to the United States to avoid charges of torturing some of the

Lost Boys. Later that same year, Congress, overriding a Presidential veto, passed the

Pixie Dust on the High Seas Act, which made the possession of pixie dust with the

intent to distribute a crime.

Shortly thereafter, Neverland Pirates President Peter Pan and US President Joe

Biden signed an executive agreement agreeing that the customs waters of the United

States would no longer extend to the territorial waters of Neverland.

On June 05, 2021, the US Coast Guard, on patrol inside the territorial waters of

Neverland Pirates, 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 Pirates registry. Tinkerbell was returned to

the United States and charged with possession of pixie dust with intent to distribute.

Neverland Pirates has objected to this.

In all of the following, Neverland Pirates is a party to the Vienna Convention on the

Law of Treaties.

1. Which if any of the US actions described above were legal under international

law? Which if any were illegal under international law? (10%)

2. Suppose Tinkerbell argues, and Peter Pan confirms, that the pixie dust was

property of the Neverland Pirates government, that Tinkerbell is a diplomatic agent

of the state of Neverland, and that the dust was to be sold to raise money for the State

3

of Neverland’s government-run Home for Aged Crocodiles. Would this change your

answer to any of the above? Why or why not? (15%)

V

[Global discontent is threatening the security of Middle Earth. A war is brewing

between the People's Republic of Rivendell and the Nation of Mordor. The success of

this war largely depends on the possession of one golden ring.]

In anticipation of a war with the People's Republic of Rivendell, the Nation of Mordor

adopted Mordor Law No. 666, authorizing the Mordor government to "nationalize all

golden rings belonging to foreign citizens who will not swear allegiance to Sauron as

their 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 Frodo

Baggins, a citizen of the United States of the Shire. The ring had been entrusted to

Frodo's care by Elron, a citizen of Rivendell.

After attempting diplomatic recovery of his ring, Elron brought an action for

conversion in the Court of Rivendell, against the present possessor of the ring,

Sauron. Elron 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. Sauron contends that even if Elron can prove ownership of the ring by

familial succession, the Court of Rivendell is barred from granting any relief by

reason of the sovereignty of states and state immunity from suit.

The Supreme Court of the People's Republic of Rivendell considers the immunity of

foreign states to be a principle of international law. However, it is against Rivendell’s

domestic policy and laws to nationalize property without affording adequate

compensation. In accordance with these policies, the People’s Republic of Rivendell

has a law prohibiting its courts from applying the state immunity if the challenged

state act is in violation of well-established principles of international law. Rivendell

Elf Law No. 999 states:

"Courts in the People’s Republic of Rivendell shall not rely upon the state immunity

from suit 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."

(1) Please explain whether Sauron's use of the state of should succeed in barring

Elron's claim? In doing so, please discuss the effect of the Mordor Law 666, if it is

declared in violation of international law by the Court of Rivendell? (15%)

(2) Would your answer change if, since the commencement of this suit, the Nation of

Mordor has collapsed and a new regime headed by Gandalf the White has emerged?

(10%)