

INTERNATIONAL LAW
Professor Turack
Fall Semester 1996

Preface

- 1.This is an open book examination, that is, you can use any materials in the library, computer, internet, etc. at your disposal.
- 2.Write legibly in ink, not pencil.
- 3.You may answer these questions, two questions, one blue book for each question, using only one side of each page. Each blue book has 8 pages, therefore, no more than 8 pages for each question. Question #1 in one blue book; Question #2 in a second blue book.
- 4.Each question is worth the same in points.
- 5.Plan your answer before writing.
- 6.Your answers to this examination are due in my office (Room #228) on the second floor at 4:00p.m. on Wed. November 27th.
- 7.You can keep the examination questions.
- 8.You are not to discuss this questionnaire or the issues with anyone before handing in the blue books on Nov.27.
- 9.Grading: You will receive one point for every legal issue correctly identified. However, you will lose one point for every incorrect legal issue identified. Therefore, do not guess.

GOOD LUCK

QUESTION #1

The Spratly Islands group or archipelago is situated in the South China Sea and comprises a collection of hundreds of shoals, reefs, atolls, and small, mostly uninhabited islets. Although the archipelago is predominately of volcanic origin, considerable sedimentary deposition is evident in some parts. The Spratlys lie 900 miles south of the Chinese island of Hainan, 230 miles east of the Vietnamese coast, 120 miles west of the Philippine island of Palawan, 150 miles northwest of the Malaysian State of Sabah; and they cover an area of approximately 150,000 square miles. The Spratlys are separated from the continental shelves of China and Taiwan by a 3,000-meter trench to the north and northeast and from the Philippines, Brunei, and Sabah (Malaysia) by the East Palawan Trough. The area is poorly surveyed and marked as "Dangerous Ground" on navigation charts. The largest island, Itu Aba, is 0.4 square miles in area, and Spratly Island is 0.15 square

miles.

Strategically vital sea lines of communication-linking the Indian and Pacific oceans via the Malacca, Sunda, and Lombok straits,--run close by the islands. Maritime traffic proceeding to Southeast and Northeast Asia, Indo-China, and the central and eastern Pacific, all traverse the South China Sea. Exercise of sovereign control of the Spratlys, with the attendant territorial seas and exclusive economic zones (EEZS), presents a potentially central and commanding position in the region. The regional strategic balance has undergone recent and dramatic change with the collapse of the Soviet Union and its withdrawal from Cam Ranh Bay, the United States' withdrawal from the Philippines, the emergence of the Peoples Republic of China (as a maritime power, and the strong economic growth of the smaller regional powers, principally South Korea, Taiwan, and Singapore. A 1969 United Nations seismology report declared that the area was possibly rich in hydrocarbon deposits. Tangible evidence of economically viable seabed exploitation south and east of the Spratlys is already available, as Brunei has a highly productive offshore oilfield and Malaysia is already a significant exporter of natural gas. Six coastal states lay claim to all or part of the Spratly Islands: the PRC, Taiwan, and Vietnam claim all islands; Malaysia and the Philippines claim several islands, and Brunei claims one reef. The bases for these claims vary from historical (PRC, Taiwan, and Vietnam), to right of discovery (Philippines), to continental shelf prolongation (Malaysia and Brunei).

Disputes over territorial sovereignty are complicated by conflicting and overlapping bilateral and multilateral claims without a common basis for negotiation.

Although the United Nations Convention on the Law of the Sea (1982-) is now in force, it will not be used as an aid to resolve the sovereignty issues. The provisions on navigation of this LOS Convention are regarded as customary international law.(see Figure I).

Claims to the Spratly Islands

The various claims to the Spratly Islands are complex, being based upon incomplete and sometimes inconsistent historical data, ancient oriental concepts of ownership, and imaginative interpretations of contemporary international law. The claimants' cases are presented in chronological sequence, beginning with the earliest historical "evidence of sovereignty."

PRC and Taiwan

The PRC and Taiwan begin with the same historical claim that the Spratly Islands and other islands in the South China Sea have been Chinese territory "since ancient times." The islands of the South China Sea are collectively described in Chinese mythology as the "Tongue of the Dragon" and are seen as an inseparable part of China. Since the separation of the PRC and the Republic of China (ROC or Taiwan) in 1947, separate claims and attempts at occupation and administration have been pursued.

The Chinese claim to have first recorded using the Spratlys for fishing activities in the Western Han Dynasty (206 B.C. to A.D. 24). During the 10th-16th centuries, the South China

Sea was used as a principal Chinese transit route for world trade. Chinese claim to have surveyed, worked, and administered the islands in the period A.D. 206-220. Specific records of transit were reported in 1292, during the Yuan Dynasty (A.D. 1280-1368), and in 1403-1433 by the Chinese navigator Cheng Ho of the Ming Dynasty (A.D. 1368-1644), when the Spratlys were first roughly charted. The islands were geographically described by a Chinese scholar, Ch'en Lun-Chiung in a book published in 1730. The names used for the islands change frequently in Chinese literature, which makes research confusing; the PRC has used the name Nansha Islands since about 1934. There is evidence of intermittent use of some Spratly Islands and surrounding waters by Chinese fishermen, principally from Hainan Island, since ancient times. Chinese claim that the Spratlys were "terra nullius" prior to their discovery and that they have been "effectively occupied" by Chinese fishermen "since time immemorial." Ancient records are sparse, incomplete, and do not provide compelling evidence of routine occupation, effective administration, or assertion of sovereign control. The claim that the islands were exclusively Chinese is further weakened by an official Chinese government report published in 1928 that shows the southernmost delineation of Chinese territory as the Xisha Islands (Paracels) and makes no mention of the Nansha (Spratly) Islands.

More recent history includes a treaty between China and France dated June 26, 1887, which formalized the establishment of Vietnam as a French protectorate, and in which the French laid claim to territory west of 105°43' east of Paris (or 108°03' east of Greenwich) to be French, therefore ceding territory east of this line to China. Since the Spratlys lie east of the prescribed line, the Chinese argue that the 1887 treaty constitutes further evidence of Chinese ownership, even though the islands are not named, no north/south or eastern limits are specified, and respective interpretations of the treaty in Chinese and French are controversial.

On July 25, 1933, France announced that it had occupied and placed under its sovereign control a number of islands in the South China Sea (including some in the Spratly archipelago). This assertion was protested diplomatically by China in 1933 and again in 1934. In 1939, Japan invaded Hainan and the Paracel and Spratly Islands, establishing the first recorded permanent garrison and effective sovereign control over the Spratlys. The Japanese dubbed the islands "Shin-Nan Gunto" (New South Islands) and placed them under Taiwanese jurisdiction (then a territory of the Japanese Empire). The Japanese withdrew in 1945. In November 1946 the ROC sent a naval contingent, followed by a small garrison, to Itu Aba islet in the Spratlys, and in 1947 placed them administratively under Kuangtung Province, to be followed by the temporary "administration of the Navy." ROC forces withdrew to Taiwan in May 1950 when PRC forces landed on Hainan Island.

The San Francisco Allied-Japanese Peace Conference in September 1951, in which neither the PRC nor the ROC participated, stated that "Japan renounces all right, title, and claim to the Spratly Islands . . ." but did not name a sovereign successor. The PRC Foreign Minister, Chou En-lai, protested the treaty, stating that "no matter how these provisions are worded, the inviolable sovereignty of the People's Republic of China over Nanwei Island (the Spratly Islands) . . . will not be in any way affected." A separate, bilateral treaty was signed between Japan and the ROC on April 28, 1952. It stated: "It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the city of San Francisco ... on September 8, 1951, Japan has renounced all

right, title and claim to Taiwan (Formosa) as well as the Spratly Islands." Taiwan claims that this treaty is compelling and substantive proof that the ROC thenceforth exercised "complete sovereignty" over the Spratly Islands.

Taiwanese physical occupation of the Spratlys was suspended in 1950. The ROC government claims to have reestablished its garrison on Itu Aba in 1956, and has maintained and supported it with naval patrols since. On September 4, 1958, the PRC issued a Declaration of Territorial Sea, extending its territorial sea boundary to 12 nautical miles, stipulating the use of straight baselines, and claiming the Nansha (Spratly) Islands as belonging to China. In 1973, Vietnam occupied several Spratly islands, which prompted a very strong warning from the PRC in January 1974.

The PRC's first assertion of effective control occurred in March 1988, when it encountered Vietnamese supply forces in a brief naval engagement, sinking three transport vessels and killing 72 Vietnamese troops. The PRC subsequently took possession of several insular features, including Fiery Cross Reef. The latter is 14 nautical miles long, has been developed as a base for the Peoples Liberation Army-Navy (PLA-N) South China Sea Fleet, and includes an air strip. The PRC claim to sovereignty of the whole Spratly Island group was reiterated on February 25, 1992, in its declaration of "The Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone," which specifically identifies the Nansha (Spratly) Islands in Article 2. The PRC moved to allay fears of Chinese hegemony among the regional states by participating in multilateral talks hosted by Indonesia at Bandung in July 1991 (an informal meeting attended by the PRC, Vietnam, and Taiwan), - and during Li Peng's visit to Hanoi in December 1992. The PRC has indicated a willingness to negotiate peacefully with Vietnam to resolve territorial disputes, urging that "because some of the problems are very complicated, we must not become impatient." In a joint communique "both sides agreed to seek to use "the generally recognised principles of international law ... (to) accelerate the process of negotiations to settle the territorial and boundary disputes. . . ." The possibility of laying aside the territorial and sovereignty issue to facilitate mutually beneficial cooperation in developing resources has also been proposed by the PRC.

Comment. The PRC and Taiwan cite the same ancient historical evidence to support their claims of sovereign control of the Spratly Islands. While the assertion of "terra nullius" status prior to Chinese discovery is undoubtedly valid, the subsequent history is unconvincing. Evidence is sparse, intermittent, and does not evince continuous occupation, administration, or effective control but rather, occasional transit by mariners and infrequent visitation by fishermen. The case for secession to China of the Spratlys by the Sino-French Treaty of 1887 is vague and nonspecific and is weakened by the official 1928 Chinese chart excluding the Spratlys. Apart from occasional diplomatic protests, PRC occupation and therefore effective control in the Spratlys did not occur until 1988, when naval facilities and garrisons were established on a small number of features. The Taiwan case appears stronger in the contemporary period in its having effectively occupied Itu Aba Island between 1946 and 1950 and from 1956 onward, combined with the Japanese surrender of ownership of the Spratlys in the Japan-Taiwan Treaty of 1952, although this treaty did not cede sovereignty specifically to Taiwan or any other state. However, the Taiwanese claim can probably be effectively sustained only for Itu Aba, not the whole of the Spratly archipelago.

Vietnam.

The Vietnamese claim to sovereignty over all the Spratly Islands derives from historical arguments premised upon events both before, during, and after French occupation. Recent official Vietnamese documents claim that ownership can be traced back to 1650-1653, although the basis for this claim is not identified. Governance under Emperor Gia-long is claimed from 1816, and an inaccurate 1838 Vietnamese map presents the Spratlys under the name of "Van Ly Truong Sa" as part of Vietnamese territory. The Vietnamese lost interest in the Spratlys during the French occupation. In the Sino-French Treaty of 1887, the French protectorate declarations over Vietnam specifically avoided claims to South China Sea territory.

The French government sent a naval expedition to the Spratlys in 1933 and laid claim to six or seven groups of islets. Only Japan protested, claiming Japanese occupation since 1917. French claims to sovereignty effectively ceased with the Japanese invasion in 1939 and no attempts were made to reassert them, even at the 1951 San Francisco Peace Conference, where France signed the treaty without reservations. Vietnam was also represented at the peace conference and affirmed sovereign control over the Spratly archipelago. The claim passed uncontested at the conference, a fact which Vietnam later argued as universal recognition of the Vietnamese claim, despite immediate and strong rebuttal of the Vietnamese claim by the PRC, which was not represented at the peace conference.

In June 1956 when the Philippines first laid claim to the Spratlys, the Republic of South Vietnam (RVN) protested, thereby reaffirming Vietnamese ownership of the Spratlys. On October 22, 1956, the islands were assigned by the RVN to Phuoc Tuy Province for governance. The government of North Vietnam (NVN) supported Chinese ownership of the Spratlys (the PRC was then a strong ally), going against the RVN claim, a position which was reiterated by the NVN prime minister in 1958.

Vietnamese activity in the Spratlys was nonexistent for the next 15 years, as all energies were focused on the civil war. In September 1973, the RVN incorporated 11 islands into Phuoc Tuy Province and occupied five. In April 1975, Saigon surrendered and the reunified Vietnam reasserted sovereignty claims to the entire group, despite the earlier NVN support for the PRCs claim, thereby greatly contributing to the deterioration of relations between the two countries.

The Vietnamese have continued to maintain precarious garrisons on up to 22 features in the Spratlys, supporting a claim to effective occupation of part of the Spratly archipelago since 1973. Comment: the Vietnamese historic ownership claim appears weak as significant gaps in sovereign control are apparent before and during French occupation of Vietnam. France specifically stated that annexation of the Spratlys in 1933 was never ceded to Vietnam. North Vietnamese support for Chinese sovereignty claims against South Vietnam in 1956 and 1958, followed by a subsequent reversal of that position in 1975, further weaken the Vietnamese historic case. The current government of Vietnam is a successor to the NVN government not the RVN; therefore effective concession to the Chinese in 1956 would appear binding. Notwithstanding these deficiencies in its historic case, Vietnam has effectively occupied numerous Spratly islets and other insular features since 1973, and this may give more recent claims some validity.

The Phillipines.

The Philippine claim to most of the Spratly Island archipelago is based upon the "discovery" of several islands, then asserted to be "terra nullius;" by a Filipino businessman and lawyer, Tomas Cloma. In 1947 he claimed to have discovered a group of unoccupied islands, and in May 1956 he proclaimed a new state called "Kalayaan" (Freedomland), declaring himself to be the chairman of the Supreme Council of the Kalayaan State. This declaration revived international interest in the Spratlys, invoked numerous diplomatic protests, and incited ship visits to the area by several navies. Cloma established small settlements on a number of islets, but only remained for a few months.

The Philippine government did not fully support Cloma's claim officially, remaining vague and noncommittal. An assertion was offered that the Kalayaan State and the Seven Island group, known internationally as the Spratlys, were separate. The Philippine government argued that Kalayaan territory was considered "terra nullius" after the 1951 San Francisco Peace Treaty, which left the Seven-Island group Spratly Islands de facto under the trusteeship of the Allied Powers.

In 1955, the Philippines declared straight baselines around the Philippine archipelago but made no mention of the Kalayaan State. ROC artillery fired upon a Filipino fishing vessel from Itu Aba Island in 1971, which generated a Philippine government protest, the legal grounds of which included: (a) the Philippines had legal title to the island group as a consequence of Cloma's occupation; (b) the Chinese had occupied some islands, which were de facto under trusteeship of the World War II Allied Powers, a fact that precluded the garrisoning of the islands without the Allies' consent; and (c) the Spratly group was within the archipelagic territory claimed by the Philippines. In 1974, Cloma transferred ownership of Kalayaan to the Republic of the Philippines. In June 1978, President Marcos decreed that the Kalayaan Island Group was part of Philippine sovereign territory and a distinct and separate municipality of the province of Palawan. A 200-nautical-mile EEZ, extending from the territorial sea baselines, was also declared. The Philippine claim persists and some drilling activity has been conducted in the region with limited results. Eight Spratly Islands are occupied by Filipino personnel. Comment: The Philippine claim has little credence in international law where the independent activities of individuals is given little value. There is a distinct and deep trough between the Philippine archipelago and the Spratlys, so while a 200-nautical-mile continental shelf claim could be sustained under Article 76 of the 1982 LOS Convention, a 350-nautical-mile claim could not. Such a claim would include part of the east Spratly area, but would fall well short of the current claim. The Philippines does not assert a historic connection, and the assertion that the islands had been abandoned is subject to dispute by Vietnam, the PRC, and Taiwan. One observer has described the Philippine action as "creeping annexation."

Malaysia

Malaysia claims the southern part of the Spratlys. The Malaysian claim is based upon geography and uses the provisions of the 1982 LOSC on the continental shelf as justification.

Malaysia promulgated a continental shelf act in 1966 that closely follows the provisions of the 1958 Geneva Convention on the Continental Shelf. The Malaysian claim to the southern Spratlys coincided with the issuing of the Malaysian Map of 1979, which defines the Malaysian continental shelf area. Malaysia has declared sovereign jurisdiction over all islands and atolls on the prescribed continental shelf on the theory that the 1958 Geneva Conventions on territorial waters and continental shelf boundaries and LOSC support such an assertion. Malaysia proclaimed an EEZ Act in 1984, but has not yet published an official map showing the coordinates of these delimitations, nor have baselines yet been published.

The Malaysians have employed an inverse application of the continental shelf (LOSC Article 76) provisions, which define the legal continental shelf as "the submerged prolongation of the land mass of the coastal State, (which) consists of the sea-bed and subsoil of the shelf, the slope and the rise." There is no reference to, or provision for, islands, rocks, or other obstacles on the continental shelf that rise above sea level. Malaysia has asserted that ownership of the continental shelf extends to the off-lying obstacles thereon and has claimed a 12-nautical-mile territorial sea around Swallow Reef and Amboyna Cay. These features have been classified by Malaysia as islands under LOSC Article 121 (1).

Malaysia has garrisoned troops on three insular features in the southern Spratlys since 1983-1986, in order to reinforce claims of effective sovereign control, and is reported to have established a holiday resort on one islet. Paradoxically, the coastal state is not required to display any specific form of control over the continental shelf in order to meet the ownership provisions of LOSC Article 77.

Malaysia and the Philippines have held frequent bilateral talks since 1988 in an attempt to find a solution to their overlapping claims to the Spratlys, but to no avail. Malaysia has not been involved in negotiations with the other claimants, except for as yet unproductive negotiations with Brunei, over delimitations of respective continental shelf boundaries.

Comment: The Malaysian claims make the greatest reference to contemporary law of the sea concepts. While exhibiting broad compliance with several key provisions on the Continental Shelf and EEZ, the Malaysian claims also exhibit misuse of the LOSC provisions in defining sovereign control over features on the continental shelf that rise above sea level. Malaysia's claims to sovereignty have no historical basis except recent "effective control" of three insular features, and must therefore be viewed on their merits in competition with other similar claims.

Brunei

Brunei is a small, oil-rich state that is already reaping great benefit from hydrocarbon deposits discovered close to its narrow coast. Brunei claims Louisa Reef, which is well south of the main Spratly archipelago, and which is counter-claimed by Malaysia only. Brunei's claim is based upon delimitation of its continental shelf first established by Britain in 1954. The area claimed terminates at the 100-fathom line. In 1980, Britain issued a note to Malaysia proposing discussions on the seaward delineation of their adjacent maritime boundaries. After Brunei's independence in 1994, Malaysian and Brunei negotiations continued, but the issue of the

ownership of Louisa Reef remains unresolved, as the claims are incompatible.

In 1988, Brunei issued a map displaying a continental shelf claim that extends beyond Rifleman Bank. The basis for this claim is not fully understood, but would appear to be based upon a 350-nautical-mile continental shelf interpretation. Should this be the case, this claim would exceed the stipulations of LOSC Article 76, since the East Palawan Trough terminates the natural prolongation of the continental shelf 60 to 100 miles off Brunei. Comment: The Brunei claims are similar to Malaysia's and derive from its interpretation of LOSC. There are no attending island or territorial sea claims, so the whole basis is the continental shelf provisions (Articles 76 and 77). Brunei has indicated its readiness to invoke Article 83, which tells parties to refer to the International Court of Justice for a ruling if bilateral negotiations are unsuccessful. Unfortunately, the multilateral nature of the Spratlys dispute would render a bilateral solution to be of limited relevance.

The United States Central Intelligence Agency World Factbook describes the islands:

GEOGRAPHY:

Total area: less than 5 sq. km; includes 100 or so islets, coral reefs, and sea mounts scattered over the South China Sea Climate: tropical

Terrain flat

Natural resources fish guano; undetermined oil and natural gas potential land use: arable land 0%; Permanent crops 0%; meadows and pastures 0%; forest and woodland 0%; other 100%

Natural hazards: subject to typhoons, serious maritime hazard because of numerous reefs and shoals.

Geography Note: strategically located near several primary shipping lanes in the central South China Sea

PEOPLE:

Population: no indigenous inhabitants; Note: there are scattered garrisons.

GOVERNMENT:

Conventional country name, long form: none, conventional short form: Spratly Islands

ECONOMY:

Overview: Economic activity is limited to commercial fishing. The proximity to nearby oil and gas producing sedimentary basins suggests the potential for oil and gas deposits, but the Spratlys region is largely unexplored and there are no reliable estimates of potential reserves; commercial exploitation has yet to be developed.

Spratly Islands-A Recent Chronology

1887 Treaty between China and France setting Tonkin Gulf boundary on meridian 108 degrees longitude.

1933 French announce occupation of nine Spratly Islands.

1939 Japanese invade the South China Sea Islands, build naval base on Itu Aba.

1946 ROC forces temporarily occupy Itu Aba.

1947 ROC government announces claim to South China Sea islands, including Spratlys.

1950 ROC forces withdraw to Taiwan.

1951 San Francisco Peace Conference. Japan renounces claims to South China Sea islands; neither China nor Taiwan in attendance; Vietnam announces claim; China reaffirms claim.

1952 Bilateral peace treaty between Taiwan and Japan.

1956 Tomas Cloma of the Philippines claims Kalayaan for private colonization scheme.

1956 Vietnam reasserts claim to Spratly Islands.

1956 Philippines declares Spratlys area terra nullius, subject to exploitation by any party.

1956 ROC forces reoccupy Itu Aba.

1958 Chinese territorial sea law names Nansha (Spratly) Islands.

1968 Philippines occupies three Spratly islands.

1973 South Vietnam occupies five Spratly islands.

1974 Philippines makes formal claim to Kalayaan (Spratlys).

1975 Hanoi takes over Spratly Islands occupied by South Vietnam.

1978 Philippines presidential decree annexes Kalayaan to Palawan Province.

1978 Philippines occupies another Spratly Island.

1978 United Vietnam issues first of many reaffirmations of claim to Spratly Islands.

1979 Malaysia issues continental shelf declaration, claiming islands incorporated in it.

1980-1989 Philippines occupies four more Spratly islands.

1983 Malaysia garrisons one Spratly island.

1986 Malaysia occupies two more Spratly islands.

1987 China conducts naval maneuvers in the Spratlys.

1988 China occupies Fiery Cross Reef and five more Spratly islands.

1988 Vietnam occupies fifteen more Spratly islands.

1988 Chinese and Vietnamese forces clash near Chigua Reef

1989 Vietnam builds platforms over Rifleman (Bombay Castle), Vanguard, and Prince of Wales banks.

1990 Indonesia hosts Bali workshop on Spratly Islands conflict management.

1991 Indonesia hosts Bandung workshop on Spratly Islands conflict management.

1991 Malaysia announces tourism and airfield development for Swallow Reef.

1992 Philippines announces naval and air build up of its eight occupied Spratly Islands.

1992 New Chinese territorial sea law names South China Sea islands again.

Identify all of the legal issues involved in determining which country or countries are entitled to sovereignty over the Spratly Islands. Do not present the various legal arguments that any State may have on their behalf or legal arguments to refute any State's legal arguments. Only present the issues.

QUESTION #2

Abdul Abu, a national of Bahrain, an independent state in the Middle East, while on a sailing trip around the world, picked up an old man on Antarctica, when he stopped off to get some fresh penguin meat for subsistence. For the next three months the men sailed together on the trip back to Bahrain.

During their trip the old man disclosed that he had lived in Antarctica since 1945, when he escaped from Germany, also by sailboat. When his sailboat was destroyed near Antarctica it became his jail, and he has not seen anyone since he left Germany.

As the old man did not have any identification, he was taken into custody by the Bahrain immigration authorities. Upon investigation, the old man turned out to be Martin Bormann, the second in command to Adolf Hitler in Nazi Germany. Bormann had been tried and convicted in absentia by the International Military Tribunal at Nuremberg, Germany in 1946. Bormann was unaware of any trial, the United Nations, or any events since his departure from Germany near the end of World War II.

Bahrain did not exist as an independent State until many years after the events of World War II, and it only became a member of the United Nations during the late 1970s. It only has extradition treaties with Iraq, Iran and Libya, three other Islamic States like itself. None of those extradition treaties specify crimes against humanity as an extraditable offense.

As an Islamic State, Bahrain's criminal law provide for trial for crimes not against humanity, but it does provide for crimes against Allah. The head of state of Bahrain wants to know whether he can legally bring Bormann to trial and whether to allow Bormann to remain in the country, as Bormann has asked for asylum as a political refugee. Bormann has promised to donate \$1 million to Bahrain from funds in his Swiss bank account. Switzerland was neutral during World War II.

As a member of the United Nations, Bahrain is concerned whether it would be violating any international law rules by its decision on any point. Bahrain is also aware that Spandau prison was intentionally destroyed by the former Allies of World War II after the last prisoner, Rudolf Hess, died, so that there is no international prison in existence for war criminals. Identify all of the legal issues involved in this fact pattern. Do not present the various legal arguments that can be made by any State, either for or against any particular position, only the LEGAL ISSUES.