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International Law: Final Examination (January 18, 1971)

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Total credit of 100 points, distributed equally.

This is a series of incidents in the saga of the United States destroyer "Boondock" (a moderate-sized warship) from its purchase by the United States government in the United Kingdom under a special US-UK offshore procurement contract to its sale for scrap at the end of its adventurous career.

Unless otherwise indicated, state (a) the international law issue involved in the question, and (b) how that issue should be resolved according to the best international law (custom, comity, convention, etc.) rules, using the latter word in its broad, general sense.

Assumption of further facts may be needed occasionally, but should not be done without careful consideration.

1. The "Boondock" was constructed in 1948 in the privately owned Imperial Shipyard, Clydebank, Scotland. Payment for her was made by the United States government in US dollars upon her acceptance following the usual sea trials. What significance has this transaction from an international monetary standpoint, assuming that Imperial were permitted to keep the payment in the dollar form originally tendered? What potential difference would it make had Imperial been required by UK law to surrender these dollars in exchange for their sterling equivalent, and the United Kingdom had retained those dollars until present date (January, 1971)?

2. Upon putting to sea under commission, the "Boondock" entered the harbor at Malta, there (navigation being very tricky, even for career pilots) rather carelessly ramming and sinking the privately owned British freighter "Exeter." The latter's owners, Lion Transport Co., Ltd., libelled the "Boondock," and the British Admiralty Court in Malta had her sold and the proceeds applied in part to the damages found by the court to have been done by the "Boondock" to the "Exeter." There was no question that the "Boondock" was solely at fault in the incident. The US Navy Department appeared in these proceedings protesting both the action itself and the sale of the vessel to satisfy judgment. What result?

3. Restored by acceptable legal means to US Naval Operation, the "Boondock" was ordered to proceed to Santa Clara, a seaport of the Latin American republic of Nomadia, to rescue some private US civilians and their property. This was done, Santa Clara then being the only city of Nomadia under the domination of the then insurgent government of that nation. The duly constituted government of Nomadia effectively controlled the remainder of the country at all times, and shortly thereafter reasserted control over Santa Clara as well. Meanwhile, however, the beleaguered civilians had captured Nomadian funds from the Santa Clara branch of the Nomadian National Bank in order to compensate

themselves for insurgent damage. This money they had removed to the United States in the "Boondock" and transferred to their private accounts there.

What legal issues are presented by the actions of the "Boondock" and the US civilians? What disposition should be made of the Nomadian funds?

4. Shortly thereafter, the "Boondock" was sold by the Bureau of Ships to a private Liberian shipping company, Sea Transport, Ltd., which converted it into a small merchant ship. The company protested duty imposed by the Collector of Customs of the Port of New York on the "Boondock's" cargo--soybeans--on the ground of the conditional mfn clause in the fcn treaty with Liberia coupled with the fact that the similar US-Japanese treaty imposed duty on this commodity at only one-half the rate demanded. The United States had never discriminated against Liberia or any other nation on soybean import duty. The US revenue authorities refused Sea Transport's demand for a refund of this claimed excess duty. Will the company succeed in its demand, and if so why (or if not, why not)?

5. While the "Boondock" was making ready for departure from New York, but still within the port, one member of the crew shot and killed another while both were on board. Both were Liberian citizens. The New York authorities boarded the ship, seized the offender, and filed charges against him in the appropriate New York court. Liberian diplomatic authorities protested this as an invasion of Liberian sovereignty. The defendant had been a United States citizen until shortly before preparing to sail, but had acquired Liberian citizenship (valid under the law of that nation) by mail on payment of a modest fee. He had never visited Liberia, nor had he had any other connection with that nation except for signing on as a crew member of the "Boondock." What result, had the defendant been born a Liberian citizen? Is the result here any different because of the means of his acquisition of his Liberian citizenship?

6. Shortly after World War II, the "Boondock" brought into the United States a cargo of automobiles made in Italy, on which was charged duty at a rate higher than that on comparable British vehicles. The US and Italy had at that time an mfn treaty with an unconditional fcn clause, which went into effect in 1938 and had not been renegotiated since. The shipper protests this discriminatory rate. Can he do so effectively under international law?

7. On the high seas after leaving New York, the "Boondock," through the fault of its navigational officer, rammed the Norwegian tanker "Oslo." On the "Boondock's" putting into Bergen thereafter, that officer was arrested by Norwegian authorities, while on shore leave, tried for the injury caused by his negligence under proper Norwegian legal process, and sentenced to a term in a Norwegian jail. He protests, demanding release and trial--if any--in the appropriate US court. May he do so successfully under international law?

8. Finally--in 1971--the tired old "Boondock" was sold in Greece for US dollars. What effect had this sale on the US international balance of payments?