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THE INTERSTELLAR RELATIONS OF THE FEDERATION: INTERNATIONAL LAW AND "STAR TREK. THE NEXT GENERATION"

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I. INTRODUCTION

A recent *University of Toledo Law Review* article concerning the legal issues dealt with in the television series *Star Trek: The Next Generation (STNG)*¹ became an overnight national sensation.² Given that, during its seven seasons of first-run episodes,³ *STNG* had been the most popular syndicated series on American television,⁴ it is perhaps not surprising that the article should engender so much public attention. The article, written by law professors Paul Joseph and

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1. Paul Joseph & Sharon Carton, *The Law of the Federation: Images of Law, Lawyers, And the Legal System in "Star Trek: The Next Generation,"* 24 U. Tol. L. Rev. 43 (1992).

2. The Nova Southeastern University clipping service has documented 175 newspaper articles and radio stories about the article. See, e.g., Richard Cole, *Lawyering at Warp Speed*, L.A. TIMES, Mar. 28, 1993 (Sunday Home Edition TV Times Section), at 7; Richard Cole, *Star Trek Gives Lawyers Hope*, TORONTO STAR, Mar. 23, 1993, at D4; *Enterprising Critique of the Law*, CHI. DAILY L. BULL., Mar. 8, 1993, at 3; Kurt Greenbaum, *Law Professors Boldly Go Into "Star Trek" Research*, ORLANDO SENTINEL TRIB., Mar. 1, 1993, at D1; Pat Sims, *Star Trek: The Next Litigation*, NAT. L.J., Apr. 19, 1993, at 43. See also Mark A. Altman, *UFP Law: The Legal Quagmires of the Federation*, STAR TREK: THE OFFICIAL FAN CLUB, Sept./Oct. 1993, at 2.

3. The series ran from 1987 to 1994.

4. See Steve McClellan, *Star Trek: The Next Generation Bests Wheel of Fortune in Ratings*, BROADCASTING, Dec. 2, 1991, at 6.

Sharon Carton of Nova Southeastern University Law School, was not intended as entertainment, however. Rather, it was a serious examination of the way *STNG*'s United Federation of Planets dealt with such weighty legal issues as the right to privacy,⁵ the right to life⁶ and rights to sexual orientation⁷ as an implicit commentary on the salient issues facing American courts in the 1990s.

Written from the perspective of professors who teach domestic law courses, the Joseph and Carton article limited its primary focus to law as applied within the Federation, rather than between members of the Federation and foreign worlds. The same rationales for examining the Federation's internal substantive and procedural law are applicable to an in-depth exploration of interstellar legal relations in *STNG*. The purpose of this article is to re-examine the law of *STNG* from an international legal perspective. Many of *STNG*'s episodes raise issues of interstellar law analogous to fundamental tenets of today's international law. The series has, for example, dealt with rules of treaty interpretation, state succession, diplomatic relations and immunities, international dispute resolution, membership in international organizations, law of the sea concepts, international environmental law, terrorism, extradition, extraterritorial jurisdiction, extraterritorial apprehensions, asylum, human rights, war crimes, genocide, the principle of non-interference in domestic affairs, humanitarian intervention, the principle of "jus cogens" and rules governing use of force and violations of territorial sovereignty.⁸

In an effort to deal with interstellar legal questions consistently, *STNG* has transported international law into the 24th century. While there are a score of television series today portraying domestic law in operation,⁹ *STNG* is the only example of episodic television that regularly deals with principles of international law, albeit in a futuristic interstellar context. Unique among television series in this respect, *STNG* can be used as a pedagogical aid to international law teaching, just as the original *Star Trek* series has been used to teach ethics at the undergraduate level.¹⁰

5. Joseph & Carton, *supra* note 1, at 80-84.

6. *Id.* at 72-80.

7. *Id.* at 67-72.

8. Strictly speaking, virtually all of the interstellar legal issues raised in *STNG* might properly be characterized as falling within the relatively nascent field of "space law." Many of the issues raised by the series have been recognized by space law commentators as worthy of future analysis. Nevertheless, the level of technological development and interspecies interaction in *STNG* is so far beyond the scope of the existing aerospace literature that, with few exceptions, the issues raised by the series are more akin to terrestrial international law than contemporary space law.

9. *E.g.*, *L.A. Law* (NBC television broadcast); *Law and Order* (NBC television broadcast); *Equal Justice* (ABC television broadcast); *The People's Court* (syndicated); *Matlock* (NBC and ABC television broadcasts).

10. Ethics courses based on *Star Trek* have been offered at some of the nation's most prestigious colleges. See Jeffrey H. Mills, *Star Trek in the Classroom*, in *THE BEST OF THE BEST OF TREK* 324 (Walter Irwin & G.B. Love eds., 1990) (describing course entitled "The Cultural Relevance of *Star Trek*" taught at Oberlin College in Ohio).

II. USING *STNG* TO TEACH INTERNATIONAL LAW

Although a relatively recent phenomenon, the examination of law in literature has seen explosive growth in academic circles. The works of Shakespeare, for example, have proven to be an extremely popular subject for analysis,¹¹ as have those of Nietzsche¹² and Dickens.¹³ It may seem odd at first to speak of *STNG* in the same breath with such classics. Yet, because of its immense popularity, *STNG*'s Starship U.S.S. Enterprise N.C.C. 1701-D (Enterprise) might in fact prove to be a better vehicle for exploration and discussion of important legal principles in the classroom than these more traditional works.

STNG is watched by tens of millions of viewers in the United States and several foreign countries on a daily and weekly basis. The crew of *STNG*'s Enterprise is soon to be featured in a major motion picture. One spin-off series, *Star Trek: Deep Space Nine*, is rapidly gaining popularity and a second, *Star Trek: Voyager*, is scheduled to begin airing next year.¹⁴ Meanwhile, more than 130 books set in the *Star Trek* universe, both novelizations of series episodes and new fiction, have appeared in print, with more than seventy attaining best-seller status.¹⁵ *Star Trek* video games, amusement park entertainment, models, posters, action figurines, T-shirts, Halloween costumes and even Christmas ornaments abound.¹⁶ *STNG* has become such an important part of popular culture that many of today's students are likely to be more familiar with Picard than Pol Pot, Klingons than Koreans, the United Federation of Planets than the United Nations, and are more likely to be able to identify the demilitarized zone which separates the Romulan or Cardassian Empires from the Federation than the DMZ between Iraq and Kuwait or between North Korea and South Korea.

11. See, e.g., RICHARD A. POSNER, *LAW AND LITERATURE: A MISUNDERSTOOD RELATION* (1988); Theodor Meron, *The Laws of War and Henry the V in INTERPRETING LAW AND LITERATURE: A HERMENEUTIC READER* (Sanford Levinson & Steven Mailloux eds., 1988) [hereinafter *HERMENEUTIC READER*]; Charles Fried, *Sonnet LXV and the "Black Ink" of the Framers Intention*, in *HERMENEUTIC READER*, *supra*.

12. See Richard Weisberg, *On the Use and Abuse of Nietzsche for Modern Constitutional Theory*, in *HERMENEUTIC READER*, *supra* note 11, at 181.

13. See Larry M. Wertheim, *Law, Literature and Morality in the Novels of Charles Dickens*, 20 WM. MITCHELL L. REV. 111 (1994); Allen Boyer, *The Antiquarian and the Utilitarian: Charles Dickens vs. James Fitzjames Stephen*, 56 TENN. L. REV. 595 (1989).

14. John Lippman, *'Star Trek Has Been A Virtual Money Machine. Now A New Series, Film Are Due With Paramount Set 'To Boldly Go*, L.A. TIMES, May 21, 1994, at D1; *'Star Trek: The Next Generation Logs Its Last Stardate On TV After Going Where But One TV Series Had Gone Before—And Beyond*, NEWSDAY, May 19, 1994, at B4; Daniel Cerone, *Trek On Into the 21st Century; In the Beginning, There Was 'Star Trek, Which Begat 'Star Trek: The Next Generation, Which Begat 'Star Trek: Deep Space Nine, Which is Begetting 'Star Trek: Voyager Whose Stars Will No Doubt Get A Film Series of Their Own*, L.A. TIMES, April 2, 1994, at F1.

15. *Star Trek: The Next Publication*, U.P.I., May 31, 1994, available in LEXIS, NEXIS Library, UPI File.

16. Official *Star Trek* merchandise can be ordered through the magazine STAR TREK: THE OFFICIAL FAN CLUB, widely available at newsstands and bookstores or by writing P.O. Box 111000, Aurora, Colorado 80042.

Rather than decry the decline of cultural literacy among today's student population, teachers can take advantage of students' existing store of knowledge concerning *Star Trek* to illustrate points of international law.¹⁷ While it may at first seem unorthodox, referring to episodes of *STNG* during classroom discussion is really no more unconventional than the common tactics of using illustrative fictional hypotheticals crafted by the teacher or employing well-known fictional characters in final examinations.

STNG's widespread appeal also offers an opportunity to increase the visibility of international law by exposing the principles to students at virtually all levels of development. While the authors have had success employing *STNG* in a law school setting, the popularity of the series makes it possible to craft teaching exercises which would appeal to grade school, high school and undergraduate students as well.¹⁸ In this way, *STNG* can be used to implement one of the main goals of the "United Nations Decade of International Law,"¹⁹ namely, exposing students to international law concepts at the earliest practicable point in their education.

To facilitate the use of *STNG* in international law teaching, the remainder of this article surveys the international law issues raised in the series,²⁰ comparing application of interstellar law in the 24th century to late 20th-century international

17 Recognizing *Star Trek*'s impact in popular culture, a recent article in the JOURNAL OF LEGAL EDUCATION suggested that the original *Star Trek*'s Captain Kirk reverberates more strongly than Magellan as a common reference point in talking about sailing into new, uncharted territory. See Lawrence Frolik, *Cultural Literacy: Or Why is Magellan Better than Kirk*, 43 J. LEGAL EDUC. 283, 286 (1993).

18. For the teacher who may not have watched the series as diligently as his/her students during the last seven years, or who desires a fuller description of relevant episodes than is provided in this article, a number of books containing plot summaries of *STNG*'s 175 episodes are commercially available. For the most detailed collections of plot summaries, see PHIL FARRAND, *THE NITPICKER'S GUIDE FOR NEXT GENERATION TREKKERS* (1993); LARRY NEMECEK, *THE STAR TREK: THE NEXT GENERATION COMPANION* (1992). See also MICHAEL OKUDA ET AL., *THE STAR TREK ENCYCLOPEDIA: A REFERENCE GUIDE TO THE FUTURE* (1994); MICHAEL OKUDA & DENISE OKUDA, *STAR TREK CHRONOLOGY: THE HISTORY OF THE FUTURE* (1993).

19. See Annex to G.A. Res. 47/32, Sec. IV U.N. GAOR, 47th Sess., Supp. No. 49, at 285, U.N. Doc. A/RES/47/32 (1992) (Programme for the activities to be commenced during the second term (1993-94) of the United Nations Decade of International Law). With the globalization of business and trade, knowledge of the basic concepts of international law is becoming a critical component of an educated citizenry. International law is no longer the prerogative of a small circle of lawyers and academics; it has become a feature of everyday life to be reckoned with throughout the nation. See A.B.A. Section on International Law and Practice, Report on Testing International Law on the Bar Exam, 1993. Unfortunately, the United States lags far behind most developed countries in finding ways to incorporate international law into the "national curriculum."

20. All dialogue quotes from episodes of *STNG* are from the televised version. The following citation format is used: *STNG Episode Title*, episode number (original air date). The episode number and original air date information for the first five seasons are taken from NEMECEK, *supra* note 18, at 209-211. For sixth- and seventh-season episodes, the air date is reported by year only. The authors express their gratitude to Debbie Mirek, a co-author of OKUDA ET AL., *supra* note 18, for providing detailed information about seventh-season episodes via the Internet.

law While the similarities are striking, the article also illustrates the ways in which *STNG*'s conception of international law deviates from existing international law

III. INTERNATIONAL LAW IN THE 24TH CENTURY

The episodes of *STNG* revolve around the adventures of the U.S.S. Enterprise and its captain and crew.²¹ While the Enterprise's mission is ostensibly "to explore strange new worlds, to seek out new life and civilizations, to boldly go where no one has gone before,"²² its function is really more akin to that of naval vessels in the early age of mercantilism. In describing the similarities, series creator Gene Roddenberry noted:

In those days ships of the major powers were assigned to patrol specific areas of the world's oceans. They represented their governments in those areas and protected the national interests of their respective countries. Out of contact with the admiralty office back home for long periods of time, the captains of these ships had very broad discretionary powers. These included regulating trade, fighting bush wars, putting down slave traders, lending aid to scientific expeditions, conducting exploration on a broad scale, [and] engaging in diplomatic exchanges and affairs

²³

Perhaps not coincidentally, it was in response to the needs of international relations during the mercantile period that modern international law evolved.²⁴ It is therefore appropriate that the universe of *Star Trek* would develop an analogous system of interstellar law

STNG actually depicts two very separate systems of law. The first, which is analogous to our domestic law, applies within the United Federation of Planets. The Federation, which *STNG* tells us was formed in the year 2161,²⁵ is sort of an evolved United Nations. The Federation is governed by a Council similar to the U.N. Security Council, whose members are representatives of the planets making up the Federation.²⁶ To become a member of the Federation, the

21. The captain of *STNG*'s U.S.S. Enterprise is Jean Luc Picard. Other characters regularly appearing on *STNG* include: the first officer, Commander William Riker; the science officer, an android, Lieutenant Commander Data; the chief engineer, Geordie LaForge; the medical officer, Beverly Crusher; the ship's counselor, Deanna Troy and the Klingon-born security officer, Lieutenant Worf.

22. *STNG: episode introduction narration* (from the Star Fleet Charter).

23. See STEPHEN WHITEFIELD & GENE RODDENBERRY, *THE MAKING OF STAR TREK* 203 (1968).

24. See HUGO GROTIUS, *DE JURE BELLI AC PACIS LIBRI TRES* (James B. Scott ed. & Francis W. Kelsey et al. trans., 1925) (1623). This text is generally regarded as the foundation of modern international law.

25. See OKUDA & OKUDA, *supra* note 18, at 24 (citing *STNG: The First Duty*, No. 118 (May 30, 1992); *STNG: The Outcast*, No. 116 (Mar. 16, 1992)).

26. *Id.*

government of a planet²⁷ must apply for membership and convince the Council that the planet's people are ready and willing to fulfill the terms of the Federation constitution, much in the same way a state applies for membership in the United Nations today²⁸ The Federation is headquartered in the City of San Francisco on Earth,²⁹ where Earth's United Nations was first established in 1945. Two notable distinctions between the Federation and today's United Nations are that the Federation's constitution guarantees individual rights³⁰ and that the Federation has a standing military force, in the form of Starfleet, which protects the Federation from external threats.³¹ However, unlike U.N. peace keeping forces, Starfleet cannot be used to impose order within the Federation or the planets with whom the Federation is in alliance.³²

As Joseph and Carton explain in their article, within the Federation, relations are governed by "a legal system in which formality has been replaced by informality and procedural safeguards have been replaced by trust."³³ In contrast, relations with those from the many worlds outside the Federation—especially the Cardassians, Romulans, Sheliak, Ferengi and to some extent the Klingons, with whom the Federation is in an uneasy alliance—are marked by mistrust and occasional hostility³⁴ As illustrated below, this second system of law portrayed in *STNG* is governed by rules analogous to today's international law.

27. It is established in the seventh-season episode "attached" that a planet must have a unified planetary government to qualify for Federation membership.

28. See *infra* notes 85-95, and accompanying text.

29. See OKUDA & OKUDA, *supra* note 18, at 24.

30. See *id.* at 24. While the U.N. Charter states in Article 55 that the organization "shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion," such rights are not enumerated or guaranteed by the Charter. U.N. CHARTER art. 55. Many of the members of the United Nations, however, are party to the International Covenant on Political and Civil Rights, Dec. 16, 1966, 999 U.N.T.S. 171. This treaty, which was negotiated under U.N. auspices, guarantees the same sorts of specific individual rights as are guaranteed by the Federation constitution.

31. See OKUDA & OKUDA, *supra* note 18, at 24. The United Nations is currently debating proposals to establish a standing U.N. military force. Until such a force is established, the United Nations must rely on personnel and equipment loaned from its member countries. See generally U.N. DEP'T OF PUBLIC INFO., *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACEKEEPING*, U.N. Sales No. E.90.I.18 (1990).

32. See *STNG: Redemption II*, No. 100 (Sept. 23, 1991) (including a scene where Picard tells the leader of the Klingon High Council that Starfleet has no authority to prevent an anticipated coup by another Klingon faction).

33. Joseph & Carton, *supra* note 1, at 59.

34. For a text providing detailed descriptions of the worlds making up the Federation and the worlds outside the Federation, see SHANE JOHNSON, *STAR TREK: THE WORLDS OF THE FEDERATION* (1989).

A. *Treaties in the 24th Century*

Under today's principles of international law, binding international agreements are referred to generically as "treaties," although a particular agreement may be labeled a convention, pact, protocol, charter, covenant, declaration, exchange of notes, *modus vivendi* or *communiqué*. On 20th-century Earth, treaties are the principal, though not exclusive, source of obligation in international law. The other major source of obligation is international custom, as evidence of a general practice accepted as law.³⁵ While a number of *STNG* episodes concern the application of treaties between foreign worlds and the Federation, no episode mentions a 24th-century counterpart to customary international law. The 24th-century preference for treaty over custom makes sense in the context of a universe in which most parties have had little past interaction with one another and therefore have not developed anything approaching a general practice. Moreover, given their likely divergent conceptions of law, the worlds of the 24th century would wisely choose to govern their relations through negotiation of written, concrete instruments, which clearly express their intentions. The disappearance of the concept of customary international law over the next 400 years might be the natural outcome of the contemporary effort to codify custom in texts that bring clarity and precision where there had been obscurity and doubt.

Many of the treaties at issue in *STNG* are types that are common in today's international legal system. For instance, there are several episodes dealing with mutual defense treaties, treaties defining territorial boundaries³⁶ and peace treaties.³⁷ Notable examples include the treaties with the Klingons, Romulans and Cardassians. In *Redemption*,³⁸ viewers learn that the Federation-Klingon Treaty of Alliance includes a pledge of mutual defense. This treaty is similar to the North Atlantic Treaty,³⁹ which established the North Atlantic Treaty Organization in 1949 and the Treaty of Friendship, Co-operation and Mutual Assistance,⁴⁰ which established the Warsaw Pact in 1955. Several episodes deal with the Federation-Romulan Treaty of Algeron,⁴¹ which establishes the neutral zone, an area of space in which Federation and Romulan ships are prohibited,

35. Customary international law is similar to domestic common law in that it is legally binding though it is not contained in a treaty or statute.

36. See, e.g., *STNG: The Ensigns of Command*, No. 49 (Oct. 2, 1989) (demonstrating that through the Treaty of Armen, the Federation ceded planet Tau Cygna V to the Sheliak Corporate).

37. See, e.g., *STNG: Suddenly Human*, No. 77 (Oct. 15, 1990) (referring to a peace agreement between the Federation and the Talarans).

38. *STNG: Redemption*, No. 99 (June 17, 1991).

39. North Atlantic Treaty, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243.

40. Treaty on Friendship, Co-operation and Mutual Assistance (Warsaw Pact), May 14, 1955, 219 U.N.T.S. 3.

41. See, e.g., *STNG: Data's Day*, No. 84 (Jan. 7, 1991); *STNG: Future Imperfect*, No. 81 (Nov. 12, 1990); *STNG: The Defector*, No. 57 (Jan. 1, 1990); *STNG: The Enemy*, No. 54 (Nov. 6, 1989); *STNG: Contagion*, No. 36 (Mar. 20, 1989); *STNG: The Neutral Zone*, No. 25 (May 16, 1988).

similar to the existing DMZ between North and South Korea. In *The Wounded*,⁴² viewers are told that in the year 2367, the Federation signed a peace treaty with the planet Cardassia, concluding a long and bloody conflict with its inhabitants.

Today's international law makes a somewhat artificial distinction between agreements that are governed by international law and agreements between states that by their very nature do not constitute international treaties. An often cited example of the latter type of agreement is a contract between states for the purchase of commodities.⁴³ Interestingly, interstellar law does not appear to recognize such a distinction. In *Code of Honor*,⁴⁴ for example, the Enterprise is on a "diplomatic mission" to establish a "treaty" with planet Ligon II to acquire a rare vaccine needed to treat the outbreak of a virulent plague on planet Stryis IV. The treaty is essentially a contract for a commodity.

One episode in particular, *The Ensigns of Command*,⁴⁵ is especially useful in illustrating a range of 24th-century principles of treaty interpretation in operation. In that episode, the Enterprise receives a message from a race known as the Sheliak Corporate demanding the immediate removal from planet Tau Cygna V of Federation colonists who have been on the planet for ninety-three years. The Sheliak claim the settlement exists in contravention of the Treaty of Armens, in which the Federation, *inter alia*, ceded the planet to the Sheliak. The Sheliak tell Captain Picard that if the Federation colony is not immediately removed, the Sheliak will exercise their right under the treaty to destroy the colony. Seizing on the treaty's arbitration clause, which provides that in the event of a dispute concerning the treaty's interpretation each side would be represented by an arbitrator of its choosing, Picard asserts the right to select as his arbitrator a member of a race which is in the midst of a six-month period of dormancy, thereby buying time to evacuate the colonists.

While Captain Picard spends hours studying the text of the treaty for a way out of his dilemma, it is curious that he never turns to the treaty's travaux preparatoires (negotiating record) for a possible answer. By confining himself to the text of the treaty, Picard's action suggests that, in the 24th century, the text is the primary, and possibly sole, source of treaty interpretation.⁴⁶ This has also been the practice of the International Court of Justice, which has consistently declined to "resort to preparatory work if the text of a convention is sufficiently clear in itself."⁴⁷ Other courts, however, including the U.S. Supreme Court, are

42. *STNG: The Wounded*, No. 85 (Jan. 28, 1991).

43. See LOUIS HENKIN ET AL., *INTERNATIONAL LAW: CASES AND MATERIALS* 421 (3d ed. 1993).

44. *STNG: Code of Honor* No. 3 (Oct. 12, 1987).

45. *The Ensigns of Command*, *supra* note 36.

46. It is also possible that this approach is unique to the agreement with the Sheliak, a race of beings so formalistic that they required a 500,000 word treaty in order to eliminate any ambiguity. The question of whether the "words alone" approach can be generally applied to other races highlights the difficulty inherent in extrapolating broad legal principles from anecdotal material.

47. *Conditions of Admission of a State to Membership in the United Nations*, 1948 I.C.J. 57,

quicker to resort to the negotiating record in interpreting an international treaty⁴⁸ In addition to examining the record for clues regarding original intent, courts also frequently examine the subsequent conduct of the parties as evidence of such intent.⁴⁹ Had Picard done so in *The Ensigns of Command*,⁵⁰ he could have argued that the Sheliak's failure to protest the establishment of the colony for ninety-three years was evidence that the treaty should be interpreted as permitting the continued existence of the colony

Finally, the Sheliak's acquiescence in Picard's delay tactic of selecting an unavailable arbitrator indicates a propensity for stricter adherence to the treaty text than usually found in today's cases of treaty interpretation. In two recent cases before the International Court of Justice, for example, the World Court read an exception for futility into a treaty clause that provided for a six-month period of arbitration as a precondition before resort to the Court.⁵¹ In one case, the President of the World Court stated that "the Respondent's argument whereby the Court's jurisdiction is denied through the non-lapse of the six-month period would appear too legalistic."⁵²

The Ensigns of Command also demonstrated *STNG*'s recognition of the international law rule that a violation of a treaty by one party does not automatically render the treaty a nullity. Rather, a material breach gives rise to a right in the other party to terminate the treaty or to suspend the performance of its own obligations under the treaty.⁵³ Thus, the Sheliak do not claim that the Federation's breach of the Treaty of Armens *ipso facto* puts an end to the treaty.

A similar point is made in *The Enemy*,⁵⁴ in which the Enterprise responds to a distress signal from the wreckage of a Romulan vessel at planet Galorndon Core, located a half-light-year within Federation space. When a Romulan warship arrives to take custody of the survivor of the wreck, the Romulan commander, Tomalak, denies that the incursion was a treaty violation, claiming it was the result of a navigational error. Although doubting the validity of the claim, Picard lets the incident pass with just a warning. This situation also illustrates the 24th-century analogue to the international law principle that state responsibility for a violation of an international obligation "is precluded if the act was due to an

63 (Advisory Opinion May 28, 1948). See also Article 32 of the Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf. 39/27 (May 23, 1969), reprinted in 63 AM. J. INT'L L. 875 (1969).

48. See *United States v. Stuart*, 489 U.S. 353 (1989) (looking to Senate Committee Report, the floor debates and the President's transmittal letter and proclamation in interpreting a treaty).

49. See *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, (1982).

50. *The Ensigns of Command*, *supra* note 36.

51. See *Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 3, 48 (Judgment of May 24, 1980); *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S. s/b U.K.)*, Provisional Measures, 1992 I.C.J. 3 (Order of Apr. 14, 1992).

52. *Case Concerning Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libya v. U.S. s/b U.K.)*, Provisional Measures, 1992 I.C.J. 3, 130 (Order of Apr. 14, 1992).

53. International Law Commission Report (1966) 2 Y.B. Int'l L. Comm'n 169, 253-55.

54. *The Enemy*, *supra* note 41.

irresistible force or to an unforeseen external event beyond its control."⁵⁵ This episode is similar to the 1983 incident involving the Soviet downing of a Korean civilian airplane. In assessing whether the Soviet Union violated international law, commentators have noted that the question turns on whether the plane was in Soviet airspace as the result of a navigational error or other inadvertence.⁵⁶

The seventh-season episode entitled *The Pegasus*⁵⁷ indicates that in the 24th century, violations of some treaties result in individual criminal responsibility. In this episode, Rear Admiral Eric Pressman is beamed aboard the *Enterprise* with a secret mission: to beat the Romulans in locating the U.S.S. *Pegasus*, which disappeared years ago while experimenting with a phasing cloaking device that not only renders matter invisible, but also allows it to pass unimpeded through normal matter. Such devices were outlawed by the Federation-Romulan peace treaty known as the Treaty of Algeron. When, at Admiral Pressman's insistence, the *Enterprise* enters a hollow asteroid to retrieve the device from the *Pegasus*, the Romulans seal off the entrance, trapping the *Enterprise* inside. To save his ship, Picard orders the device installed aboard the *Enterprise*. The device works, and the ship escapes the asteroid. Picard then orders the *Enterprise* decloaked directly in front of the Romulan ship, thus revealing the illegal possession of the cloaking device. Picard assures the Romulans that their government will be contacted regarding the incident and places Admiral Pressman under arrest for violating the treaty, "a treaty by which we are sworn to abide."⁵⁸ Starfleet Command then orders an investigation, which Picard tells Riker will probably result in the general court-martial of Pressman and several others in Starfleet Intelligence behind the secret mission.

Individual criminal responsibility for the breach of a treaty is rare under today's international law. Under traditional principles of international law, violations of treaties are the responsibility of the state, not the government officials and military personnel involved.⁵⁹ The post-World War II Nuremberg Tribunal established that there could be individual criminal responsibility for violations of treaties codifying the laws of war.⁶⁰ Since then, a handful of conventions have been adopted establishing individual liability for specified violations of international law,⁶¹ but the vast majority of today's treaties do not contemplate

55. *Article 31 of the Draft Articles on State Responsibility*, (1979) 2 Y.B. Int'l L. Comm'n 22, U.N. Doc. A/CN.4/SER.A/1979/Add.1 (Part 2).

56. *See Note, Legal Argumentation in International Crises: The Downing of Korean Air Lines Flight 007* 97 HARV. L. REV. 1198 (1984).

57. *STNG: The Pegasus*, No. 164 (1994).

58. *Id.* (Picard).

59. *See HISTORY OF THE UNITED NATIONS WAR CRIMES COMMISSION AND THE DEVELOPMENT OF THE LAWS OF WAR*, COMPILED BY THE UNITED NATIONS WAR CRIMES COMMISSION 263-65 (1948).

60. *See Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis, Charter of the International Military Tribunal*, Aug. 8, 1945, Art. 7, 82 Stat. 1544, 82 U.N.T.S. 279.

61. Such treaties include the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31;

individual criminal responsibility for their breach. It is not clear from *The Pegasus*⁶² whether the Treaty of Algeron uniquely provides for individual responsibility, or whether in the 24th-century individuals are criminally liable for violations of any treaty. A subsequent episode, *Lower Decks*,⁶³ suggests the answer to this question. To find Ensign Sito, who disappeared while on a covert mission to return a Cardassian spy who was working for the Federation, Captain Picard orders a probe launched into Cardassian space. While Commander Riker warns Picard that such action would be a clear treaty violation, he does not raise the possibility of individual criminal responsibility, suggesting that the Treaty of Algeron may be unique in this respect.

B. State Succession

Under today's international law, when territory passes from one state to another, issues arise relating to the extent the territory continues to be governed by the laws and treaties applicable to its former sovereign as opposed to those of its new sovereign.⁶⁴ Recently, the question of state succession has arisen in connection with the absorption of East Germany by West Germany to form a unified Germany, the merger of the Yemen Arab Republic (North Yemen) and

Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287; Protocol Additional to the Geneva Convention of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, *opened for signature* Dec. 12, 1977, 1125 U.N.T.S. 3 [Protocol I]; Convention for the Suppression of the Unlawful Seizure of Aircraft (Hague Convention) Dec. 16, 1970, 22 U.S.T. 1641, 860 U.N.T.S. 105; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (Montreal Convention) Sept. 23, 1971, 24 U.S.T. 564, T.I.A.S. No. 7570; International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, G.A. Res. 3068, U.N. GAOR, 28th Sess., Supp. No. 30, U.N. Doc. A/9030 (1974); Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons including Diplomatic Agents (New York Convention) Dec. 14, 1973, 28 U.S.T. 1975, 1035 U.N.T.S. 167; International Convention Against the Taking of Hostages, Dec. 17, 1979, *reprinted in* 18 I.L.M. 1456 (1979); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 39/46, *reprinted in* 23 I.L.M. 1027 (1984); Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (Rome Convention) March 10, 1988, *reprinted in* 27 I.L.M. 672 (1988); Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf (Rome Convention) March 10, 1988, *reprinted in* 27 I.L.M. 685 (1988); United Nations: Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) Dec. 19, 1988, U.N. Doc. E/Conf. 82/15 (1988), *reprinted in* 28 I.L.M. 493 (1989). See Report of the Working Group on a draft statute for an International Criminal Court, U.N. GAOR, 48th Sess., Supp. No. 10, at 255, U.N. Doc. A/48/10 (1993).

62. *The Pegasus*, *supra* note 57.

63. *STNG: Lower Decks*, No. 167 (1994).

64. See generally D.P. O'CONNELL, STATE SUCCESSION IN MUNICIPAL LAW AND INTERNATIONAL LAW (1967).

the People's Democratic Republic of Yemen (South Yemen) to form the unified Republic of Yemen and the dissolution of the former Soviet Union, Yugoslavia and Czechoslovakia. In *STNG*, the 24th-century version of state succession is at issue in two seventh-season episodes, *Journey s End*⁶⁵ and *Preemptive Strike*.⁶⁶

Both episodes involve Federation colonies located on planets that have been ceded to the Cardassian Empire as part of the Federation-Cardassian peace treaty. In *Journey s End*, the colonists, who are descendants of American Indians, choose to become Cardassian citizens, subject to Cardassian rule, rather than relocate to another planet in Federation space. In contrast, the colonists of the planets concerned in *Preemptive Strike* decide to launch a war of independence rather than agree either to evacuate their planets or come under Cardassian rule. These episodes demonstrate that in the 24th century, when a planet comes under the sovereignty of another, the inhabitants become citizens of the latter planet and subject to its laws. This is consistent with the contemporary rules of state succession, as codified in the Vienna Convention on Succession of States in Respect of Treaties.⁶⁷ Applying today's precedent to *STNG*, the former Federation colonists would not only lose their Federation citizenship and the rights that accrue therefrom, but also the benefit of any treaties that had previously been applicable to their planet as part of the Federation.

If the colonists in *Preemptive Strike* succeeded in their quest for independence, 20th-century international law would suggest that their planet should be given a clean slate, with neither rights nor obligations under the treaties of its predecessor.⁶⁸ There is a modern debate over whether human rights treaties

65. *STNG: Journey's End*, No. 172 (1994).

66. *STNG: Preemptive Strike*, No. 176 (1994).

67. Vienna Convention on Succession of States in Respect of Treaties, U.N. Doc. A/Conf. 80/31, reprinted in 72 AM. J. INT'L L. 971 (1978) (not in force).

When part of the territory of a State, or when any territory for the international relations of which a State is responsible, not being part of the territory of that State, becomes part of the territory of another State:

(a) treaties of the predecessor State cease to be in force in respect of the territory to which the succession of States relates from the date of the succession of States; and

(b) treaties of the successor State are in force in respect of the territory to which the succession of States relates from the date of the succession of States, unless it appears from the treaty or is otherwise established that the application of the treaty to that territory would be incompatible with the object and purpose of the treaty or would radically change the conditions for its operation.

Id. at art. 15.

68. Vienna Convention on Succession of States in Respect of Treaties, U.N. Doc. A/Conf. 80/31, reprinted in 72 AM. J. INT'L L. 971 (1978) (not in force).

A newly independent State is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of States the treaty was in force in respect of the territory to which the succession of States relates.

Id. at art. 16.

should be exempt from the clean slate theory.⁶⁹ The question is particularly relevant to *STNG* since viewers learn in another episode⁷⁰ that the Federation and the Cardassian Empire are both parties to the Seldons IV Convention, which governs the treatment of prisoners of war. If the clean slate theory applies even to this Convention, then the newly independent worlds would be free to mistreat any Cardassian or Federation prisoners captured during the fight for independence.

C. Diplomatic Relations

In *Sarek*,⁷¹ viewers find the Enterprise on a diplomatic mission to host a conference between Federation Ambassador Sarek of Vulcan and a delegation from Legara IV. After difficult negotiations, the Legarans agree to diplomatic relations with the Federation. Although the accomplishment is hailed as the final triumph of Sarek's distinguished career, the episode does not indicate the legal significance of establishing diplomatic relations in the 24th century.

Under today's international law, the establishment or maintenance of diplomatic relations between states does not necessarily constitute a seal of approval.⁷² Technically, the establishment of diplomatic relations means only that a state will send diplomatic representatives to a country and agree to receive that country's diplomatic representatives in turn. As a consequence of establishing such relations, diplomatic premises and diplomatic agents (and members of their families) are entitled to certain privileges and immunities, such as immunity from arrest or criminal prosecution.⁷³ *STNG* recognizes a similar concept of

69. Compare U.N. Human Rights Comm'n Res. 1993/23 of Mar. 9, 1993, U.N. Doc. E/CN.4/1993/L.11/Add.5 (1993) (recognizing that successor states continue to be bound to international human rights treaties to which the predecessor states have been parties) with RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 210, cmt. f (asserting that the clean slate theory applies to new states unless the new state indicates a desire to adopt a particular agreement and the other party or parties agree).

70. *STNG: Chain of Command, Part II*, No. 137 (1993).

71. *STNG: Sarek*, No. 70 (May 14, 1990).

72. Then Deputy Secretary of State Warren Christopher stated as follows in a speech at Occidental College on June 11, 1977:

We maintain diplomatic relations with many governments of which we do not necessarily approve. The reality is that, in this day and age, coups and other unscheduled changes of government are not exceptional developments. Withholding diplomatic relations from these regimes, after they have obtained effective control, penalizes us. It means that we forsake much of the chance to influence the attitudes and conduct of a new regime. Without relations, we forfeit opportunities to transmit our values and communicate our policies. Isolation may well bring out the worst in the new government.

HENKIN ET AL., *supra* note 43, at 263.

73. See Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95; RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES, §§ 464-466 (1987). Under international law, diplomatic envoys and their families are, *inter alia*, accorded absolute immunity from arrest or criminal prosecution, and their personal baggage is

diplomatic immunity in *The Mind's Eye*,⁷⁴ in which Klingon Ambassador Kell, accused of being an accomplice in the attempted assassination of the Kriosian Governor, declares that as an Emissary of the Klingon High Council, he cannot be searched without his consent.

D. *Interstellar Dispute Resolution*

There exists in *STNG* no counterpart to today's International Court of Justice. Nor are domestic courts seen as having jurisdiction over interstellar disputes. This is perhaps due to a broader conception of foreign sovereign immunity than currently applied under international law. Originally under international law, states were immune in all cases from suit in the courts of other states. This absolute immunity was based on the conception that all states are equal and that no state may exercise authority over any other.⁷⁵ As states became increasingly involved in commercial activities, the absolute immunity has been replaced by a restrictive doctrine of immunity. This restrictive doctrine provides that a state can be sued in the courts of another state on issues involving activity or property that is commercial rather than public in nature.⁷⁶ Apparently, immunity in *STNG* follows the original absolute rule rather than the modern doctrine.

Rather than resort to interstellar adjudication, most disputes in *STNG* are settled by non-adjudicatory procedures, referred to in today's lexicon as "alternative dispute resolution."⁷⁷ Two types of non-adjudicatory measures for dispute resolution that are frequently mentioned in *STNG* are mediation and arbitration.

Under international law, mediation is the use of a third party to induce quarreling parties to resolve their dispute. The mediator takes an active role in defining areas of difference and agreement and making proposals for compromise. The mediator can be a state, an international organization or a private party. Similarly, the mediators portrayed in *STNG* include a private individual, a Starship captain and a Federation ambassador. In *Loud as a Whisper*,⁷⁸ the Enterprise is assigned to transport famed mediator Riva to help resolve a bitter conflict on planet Solais V. Events in *The Outrageous Okona*⁷⁹ require Captain Picard to mediate a dispute between the twin planets Altec and Straleb, whose ruling families have filed claims against erstwhile Captain Thadiun Okona. Federation Ambassador Odan is assigned in *The Host*⁸⁰ to diplomatic duty

exempt from inspection.

74. *STNG: The Mind's Eye*, No. 97 (May 27, 1991).

75. See *The Schooner Exchange v. McFaddon*, 11 U.S. (7 Cranch) 116 (1812).

76. See Foreign Sovereign Immunities Act of 1976, 90 Stat. 2891 (codified at 28 U.S.C. §§ 1602-1606).

77. See Kathryn L. Hale, Note, *Nonbinding Arbitration: An Oxymoron?* 24 U. TOL. L. REV. 1003, 1004 (1993); Joseph B. Stulberg, *Training Interveners for ADR Processes*, 81 KY. L.J. 977, 977, 978 (1993).

78. *STNG: Loud as a Whisper*, No. 30 (Jan. 9, 1989).

79. *STNG: The Outrageous Okona*, No. 29 (Dec. 12, 1988).

80. *STNG: The Host*, No. 96 (May 13, 1991).

aboard the Enterprise to help mediate a dispute between the two moons of the Peliar Zel system.

The second form of non-adjudicatory dispute resolution portrayed in *STNG* is arbitration. Under today's international law, arbitration, in contrast to mediation, leads to a binding dispute settlement on the basis of law. Arbitration differs from adjudication in that the parties themselves pick the arbitrators,⁸¹ determine the procedure and indicate the applicable law. As mentioned above, the dispute between the Sheliak and the Federation in *The Ensigns of Command*⁸² is resolved by referring it to arbitration. The episode clearly demonstrates the right under arbitration for the parties to choose their arbitrator. In *Redemption*,⁸³ Picard presides over an arbitration to decide which of two Klingons⁸⁴ should succeed as Leader of the High Council of the Klingon Empire. This episode focused particularly on the choice of governing law. Though Picard is a Starfleet officer, this arbitration is governed by Klingon rather than Federation rules of procedure and substantive law.

E. Membership in Interstellar Organizations

Several episodes of *STNG* concern application by alien worlds for membership in the United Federation of Planets.⁸⁵ These episodes indicate that the criteria for membership in the Federation are similar to the criteria for membership in the United Nations as laid down in Article 4 of the U.N. Charter.⁸⁶ Article 4 requires that the applicant be a peace-loving state that is ready and willing to fulfill the obligations of the Charter.

In *The Hunted*,⁸⁷ revelations about the Angosia III government's inhumane treatment of its genetically altered soldier class convince Picard to recommend against Federation membership for Angosia III.⁸⁸ One of the obligations of the U.N. Charter, which applicants must demonstrate a willingness to fulfill, is the obligation to "promot[e] and encourage respect for human rights."⁸⁹ Just as Picard recommends that the Angosian application for membership in the

81. Roger T. Patterson, *Dispute Resolution in a World of Alternatives*, 37 CATH. U. L. REV 591, 593 (1988) (stating that usually each party selects one arbitrator, and the two arbitrators select a third).

82. *The Ensigns of Command*, *supra* note 36.

83. *Redemption*, *supra* note 38.

84. Gowron or Duras. *Id.*

85. See, e.g., *STNG: Manhunt*, No. 44 (June 19, 1989). In this episode, the Enterprise is on a diplomatic mission to transport Antedian and Betazoid delegates to a conference on the planet Pacifica to consider the question of admitting planet Antede III to the Federation.

86. Charter of the United Nations, June 26, 1945, art. IV ¶ 1, 59 Stat. 1031, 1038, T.S. No. 993, 3 Bevans 1153, 1155.

87. *STNG: The Hunted*, No. 58 (Jan. 8, 1990).

88. See *The Hunted*, *supra* note 87.

89. Charter of the United Nations, June 26, 1945, art. I, ¶ 3, 1031, T.S. No. 933, 3 Bevans 1153.

Federation be rejected, the United Nations may deny membership to an applicant with a record of human rights abuses.⁹⁰

Similarly, in *Lonely Among Us*,⁹¹ the Enterprise is on a diplomatic mission to transport delegates from planets Antica and Selay in the Beta Renner system to an interstellar conference in hope of resolving conflicts between the two antagonistic planets, both of which have applied for membership in the Federation. This episode indicates that the Federation, like the United Nations, will not admit an applicant that has not demonstrated that it is "peace-loving. The principle is also illustrated in the seventh-season episode, *Attached*,⁹² in which Commander Riker tells the Kes ambassador that he will submit the following report on Kes admission to the Federation: "Kesprit, a deeply troubled world—social, political, military problems that they have yet to solve. The Kes, while a friendly and democratic people, are driven by suspicion, deviousness and paranoia. It is the opinion of this officer that they are not ready for membership."⁹³

After admission to either the Federation or the United Nations, members might commit acts incompatible with the principles of the organization. While *STNG* has not yet tackled the issue of expelling a member, Article 6 of the U.N. Charter provides a model. It stipulates that a member of the United Nations "which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon recommendation

90. The United States has recently taken such a position with respect to the admission of Serbia-Montenegro:

[The United States] looks forward to the day when [it] can support Serbia-Montenegro's application for admission to the United Nations. Unfortunately that day appears to be far away. Earlier this week the Bosnian Serbs launched new attacks on Bosnian Government positions near Bihac. Gross violations of human rights continue. There are close to two million displaced persons. Many have been killed, and physically and mentally abused. It appears that the Serbs are making a special effort to show their contempt for this institution. The Belgrade authorities must end their support for the Bosnian Serbs. They must end their support for aggression in Bosnia and Croatia. The international community, and this organization have gone on record as demanding that the Bosnian Serbs sign and implement the peace plan which the other two parties have signed. Until that day they will remain international pariahs. The United States will support Serbia-Montenegro's membership in this organization when, and only when, Serbia-Montenegro meet the criteria in the United Nations Charter. That is, Serbia-Montenegro must show that it is a peace loving state, and demonstrate its willingness to comply fully with Chapter Seven resolutions.

USUN Press Release 59-(93) (REV), April 29, 1993 (statement of Ambassador Madeleine K. Albright, U.S. Representative to the 47th Session of the U.N. General Assembly, in Resumed Session, on the Situation in the Former Yugoslavia).

91. *STNG: Lonely Among Us*, No. 6 (Nov. 2, 1987).

92. *STNG: Attached*, No. 160 (1994).

93. *Id.* (Riker).

of the Security Council."⁹⁴ The United Nations, however, has never acted under this provision.⁹⁵

F *Interstellar Law as an Analogy to Law of the Sea*

In *The Price*,⁹⁶ the Enterprise serves as host for negotiations for use of the Barzan wormhole, a phenomenon that would allow almost instant travel to an unexplored corner of the galaxy. The Barzan government hopes the proceeds from the sale of rights to use the wormhole will bolster the economy of its poor planet. The assumption underlying the episode is that Barzan has the right to control the wormhole as it pleases since the entrance to the wormhole is in Barzan space. This would be consistent with international law if the wormhole were viewed as an international watercourse, which is usually a river that connects land-locked states to the high seas through coastal states. There is no customary international law right of freedom of navigation in an international watercourse. Any state controlling both banks of the river is free, in the absence of a controlling treaty, to regulate and even block shipping to and from upper and lower riparian states.⁹⁷

On the other hand, the wormhole has many of the characteristics of an international strait, which is a route between two parts of the high seas. Under the law of the sea, international straits are treated as international highways through which merchant vessels have a right to free and unlimited passage.⁹⁸ By analogy, the parties in *The Price* could have argued that Barzan's authority to control use of the wormhole was limited to prescribing regulations for safety and prevention of pollution.⁹⁹ Barzan did not have authority to auction off rights to the wormhole's exclusive use. Interestingly, the central plot of *STNG*'s spin-off series, *Star Trek: Deep Space Nine*, concerns a stable wormhole discovered in the Bajoran system. While the Federation station, Deep Space Nine, is moved to the mouth of the wormhole to help ensure the security of Bajor, neither Bajor nor the Federation seeks to control or even regulate use of the wormhole by alien races. *STNG*'s concept of wormholes can be particularly

94. Charter of the United Nations, June 26, 1945, art. VI, 59 Stat. 1031, 1038, T.S. No. 993, 3 Bevans 1153, 1156.

95. However, the United Nations has acted on two occasions to exclude a member from participating in the work of the organization. South Africa was excluded on the basis of a credentials challenge. See REPORT ON U.S. PARTICIPATION IN THE UNITED NATIONS FOR THE YEAR 1974 112 (1975). The Federal Republic of Yugoslavia (Serbia and Montenegro) was excluded under the theory that after the break up of Yugoslavia, Serbia and Montenegro could not automatically assume the former Yugoslavia's membership in the organization. See U.N. Security Council Resolution 777 (Sept. 19, 1992).

96. *STNG: The Price*, No. 55 (Nov. 13, 1989).

97. See RICHARD BAXTER, *THE LAW OF INTERNATIONAL WATERWAYS* 149-59 (1964).

98. See *Corfu Channel Case* (U.K. v. Alb.), 1949 I.C.J. 4, 28 (April 9, 1949). See also UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 14, art. 38, U.N. Doc. A/Conf. 62/122 (1982), reprinted in 21 I.L.M. 1261, 1277.

99. See UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 16-17, art. 42, U.N. Doc. A/Conf. 62/122 (1982), reprinted in 21 I.L.M. 1261, 1277-78.

useful when exploring in class the reasons for the distinctions between the international law of watercourses and international straits.

G. *Interstellar Environmental Law*

Recently, large-scale climatic changes, such as depletion of the stratospheric ozone layer protecting the earth from radiation and the possible melting of polar ice, have become the focus of attention. Similar issues have been raised in *STNG*. In *Force of Nature*,¹⁰⁰ the Enterprise discovers that persistent warp (faster than light) travel in certain regions of space is causing damage to the very fabric of space, and consequently causing gravitational shifts that change the climates of nearby planets. The episode concludes with the following colloquy between the Enterprise's officers:

Picard: Ah, we've received new directives from the Federation Council on this matter. Until we can find a way to counteract the warp field effect, the Council feels the best course is to slow the damage as much as possible. Therefore, areas of space found susceptible to warp fields will be restricted to essential travel only and effective immediately, all Federation vehicles will be restricted to a speed of Warp 5, except in cases of extreme emergency

Worf: The Klingons will observe these restrictions, but the Romulans will not.

Troi: And what about the Ferengi, and the Cardassians for that matter?

Picard: The Federation is sharing all our data with warp capable species. We can only hope that they realize it's in their own interest to take similar action.¹⁰¹

The above exchange tells us several things about the state of interstellar environmental law in the 24th century. First, it indicates that there is a "necessity" limitation to protection of the environment, i.e., notwithstanding the harm to the environment, "essential" travel is still permitted and speeds over Warp 5 are allowed in "cases of emergency." This concept is similar to 20th-century provisions of the law of war which permit destruction of the environment when "justified by military necessity."¹⁰² In contrast to interstellar law in the 24th century, however, the international law exception for environmental damage justified by necessity is limited to the context of armed conflict. During peacetime, states are required without exception to "ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution

100. *STNG: Force of Nature*, No. 158 (1994).

101. *Force of Nature*, *supra* note 100.

102. G.A. Res. 37, *Protection of the Environment in Times of Armed Conflict*, U.N. EAOR, 47th Sess., Supp. No. 49, 73d plan. mtg. 290, U.N. Doc. A/47/49 (1992).

to other States and their environment."¹⁰³ The question of which rule is better suited to the 24th-century environmental situation is likely to lead to a lively classroom discussion.¹⁰⁴

Second, the episode indicates that there is no 24th-century counterpart to today's customary law concerning the environment.¹⁰⁵ While the Federation can obtain the agreement of its allies to comply,¹⁰⁶ it must hope other worlds¹⁰⁷ will voluntarily follow the Federation's practice out of self-interest. Despite the existence of customary international law with vague admonitions about damaging the environment, today's international environmental law, too, has proceeded largely through negotiation of treaties. Recent examples include the 1990 Protocol on Substances that Deplete the Ozone Layer¹⁰⁸ and the 1992 Convention on Climate Change.¹⁰⁹ Like the Federation, the international community must hope key countries will ratify and comply with these instruments.

Perhaps the closest analogy to the hazard described in *Force of Nature* is the contemporary problem of orbiting space debris.¹¹⁰ Like the fictional hazard, orbiting debris is most hazardous in regions of space that are particularly suited to spacecraft operations.¹¹¹ In addition, regulation of space debris is extremely limited.¹¹² International control of debris, such as it is, is effected through

103. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA 86, art. 194(2), U.N. Doc. A/Conf. 62/122 (1982), reprinted in 21 I.L.M. 1261, 1308.

104. Given the importance of warp travel and the speculative nature of the damage to the fabric of space, the wartime rule is arguably more appropriate for the situation in *STNG*. On the other hand, considering the immense extent of possible damage, perhaps a stricter standard should be employed.

105. See *Trail Smelter Arbitration (U.S. v. Can.)*, 3 R.I.A.A. 1911 (1941) (considered the landmark decision on customary law concerning the environment).

106. For example, the Klingons.

107. For example, the Ferengi, Cardassians and Romulans.

108. Reprinted in BARRY E. CARTER & PHILIP B. TRIMBLE, *INTERNATIONAL LAW: SELECTED DOCUMENTS AND NEW DEVELOPMENTS* 690-705 (1994) (setting a timetable for the reduction of ozone-depleting CFCs). See Dale S. Bryk, Note, *The Montreal Protocol and Recent Developments to Protect the Ozone Layer* 15 HARV. ENVTL. L. REV. 275 (1991).

109. Reprinted in BARRY E. CARTER & PHILLIP R. TRIMBLE, *INTERNATIONAL LAW: SELECTED DOCUMENTS AND NEW DEVELOPMENTS* 734-47 (1994) (signed June 1992 at the Earth Summit in Rio where parties pledged to reduce growth in emission of earth-warming gasses).

110. See Lawrence Roberts, *Addressing the Problem of Orbital Debris: Combining International Regulatory and Liability Regimes*, 15 B.C. INT'L & COMP. L. REV. 51 (1992) (discussing more comprehensively the space debris problem).

111. The warp corridor might best be compared to Earth's Geosynchronous Orbit, a region of space located along the equatorial plane, 22,300 miles above the Earth's surface.

112. See, e.g., *Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*, Jan. 27, 1967, 18 U.S.T. 2410, 610 U.N.T.S. 205 [hereinafter *Outer Space Treaty*]. This treaty limits its protection of the space environment to the prevention of harmful contamination by those parties to the treaty conducting exploration or studies. *Outer Space Treaty*, *supra* at art. IX. Though more comprehensive in its prohibition than the *Outer Space Treaty*, the *Agreement Governing the Activities of States on the*

market incentives derived from international accords such as The Outer Space Treaty and the Convention on International Liability for Damage Caused by Space Objects.¹¹³

Just as the Federation Council has unilaterally promulgated environmentally friendly administrative regulations for the operation of its vessels, the United States has produced its own standards and operating procedures for the control of space debris. As early as 1981, the National Aeronautics and Space Administration (NASA) vented propellants and other pressurized gases from the spent upper stages of Delta launch vehicles in order to reduce the likelihood of an explosion in orbit.¹¹⁴ The first formal policy statement from the U.S. government on the subject of space debris appeared in 1987.¹¹⁵ Unwilling to merely lead by example, the United States has undertaken the task of prompting other space-faring nations to follow suit.¹¹⁶ It would seem, however, that the regulatory arm of the United Federation of Planets is less willing to exert its influence to encourage adherence to mutually beneficial environmental standards.

H. Terrorism

Several of *STNG*'s episodes deal with terrorism, particularly the offense of hostage-taking. For example, in *Samaritan Snare*,¹¹⁷ a Pakled ship uses a fake distress call to capture Enterprise Chief Engineer Geordi LaForge in an unsuccessful attempt to gain access to Federation weapons technology. *Too Short a Season*¹¹⁸ finds the Enterprise transporting Admiral Mark Jameson to planet Mordan IV to negotiate the release of Federation hostages. While at planet Rutia IV to deliver medical supplies following reports of local unrest on the planet in *The High Ground*,¹¹⁹ Enterprise Chief Medical Officer Beverly Crusher and Captain Picard are taken hostage by Ansata separatist movement members, who demand Federation intervention in their plight.

Moon and Other Celestial Bodies, opened for signature Dec. 5, 1979, G.A. Res. 68, U.N. GAOR, 34th Sess., Supp. No. 46, U.N. Doc. A/68 (1979), 18 I.L.M. 1434 (entered into force July 11, 1984), having been ratified by a mere seven nations, is considered a dead letter.

113. Convention on International Liability for Damage Caused by Space Objects, opened for signature Mar. 29, 1972, 24 U.S.T. 2389 (entered into force Oct. 3, 1973), reprinted in 3 UNITED STATES SPACE LAW II.A.4 (Stephen Gorove ed., 1986).

114. U.S. CONGRESS, OFFICE OF TECHNOLOGY ASSESSMENT, ORBITING DEBRIS: A SPACE ENVIRONMENTAL PROBLEM—BACKGROUND PAPER 5 (1990) [hereinafter ORBITING DEBRIS].

115. "[The U.S. Department of Defense] will seek to minimize the impact of space debris on its military operations. Design and operations of [Department of Defense] space tests, experiments and systems will strive to minimize or reduce accumulation of space debris consistent with mission requirements." Office of the Secretary of Defense, Department of Defense Space Policy Statement, Mar. 10, 1987, reprinted in ORBITING DEBRIS, *supra* note 114, at 33.

116. "The United States Government will encourage other space-faring nations to adopt policies and practices aimed at debris minimization." White House, President Bush's Space Policy, November 1989, Fact Sheet n.34, reprinted in ORBITING DEBRIS, *supra* note 114, at 33.

117. *STNG: Samaritan Snare*, No. 42 (May 15, 1989).

118. *STNG: Too Short a Season*, No. 15 (Feb. 8, 1988).

119. *STNG: The High Ground*, No. 59 (Jan. 29, 1990).

Hostage-taking has likewise been a persistent problem for today's international community. Efforts by the international community to combat such acts have led to the conclusion of the International Hostage Taking Convention.¹²⁰ The Convention obligates states to cooperate to resolve hostage-taking incidents and to prosecute alleged offenders found within their territory or to extradite them to another state for prosecution. Moreover, in 1985 the U.N. Security Council adopted a resolution condemning all acts of hostage-taking and abduction and declaring that all states are obligated to prevent such acts.¹²¹ Although the problem is pervasive in the 24th century, there seems to be no interstellar parallel in *STNG* to today's international law against terrorism.

In the 24th century, bargaining with terrorists for the release of hostages seems to be the standard operating procedure. Admiral Jameson in *Too Short a Season* reveals that his celebrated negotiations which led to the release of Federation hostages on Mordan IV some forty-five years ago was actually an arms-for-hostages deal with marked similarities to the events surrounding the Iran-Contra scandal. *The High Ground* shows the Enterprise crew trying unsuccessfully to bargain with the leader of a group of IRA-like terrorists, Kyril Finn, for the release of Doctor Crusher and Captain Picard. In *Ensign Ro*,¹²² Starfleet authorizes Picard to offer amnesty to Bajoran terrorists who have attacked a Federation settlement on planet Solarion IV in return for their promise to discontinue attacks on Federation outposts. Similarly, in *The Vengeance Factor*,¹²³ Picard negotiates a truce with the Acamarian outlaw group called the Gatherers, which was responsible for terrorist raids against Federation outposts near the Acamarian system. It is surprising that the worlds in *STNG* regularly bargain with terrorists and that the Federation would grant them amnesty for their crimes. This is perhaps an unwarranted departure from today's conventional wisdom that bargaining with terrorists only leads to more terrorism.¹²⁴

I. Extradition

Extradition is the surrender by one state to another of an individual accused or convicted of a crime within the jurisdiction of the requesting state.¹²⁵ Until the 19th century, extradition of fugitives was rare and was a matter of sovereign discretion rather than obligation. Faced with the growing internationalization of

120. International Convention Against the Taking of Hostages, U.N. GAOR, 105th mtg., U.N. Doc. A/Res/34/146 (1979).

121. S.C. Res 579, U.N. SCOR, 2637th mtg., U.N. Doc. S/Res/579 (1985).

122. *STNG: Ensign Ro*, No. 102 (Oct. 7, 1991).

123. *STNG: The Vengeance Factor*, No. 56 (Nov. 20, 1989).

124. See PATTERNS OF GLOBAL TERRORISM: 1988, at iii (U.S. Department of State, March 1989) ("The first element of our counterterrorism policy is that we do not make concessions of any kind to terrorists. We do not pay ransom, release convicted terrorists from prison, or change our policies to accommodate terrorist demands—such actions would only lead to more terrorism.").

125. Michael P. Scharf, *Foreign Courts on Trial: Why U.S. Courts Should Avoid Applying the Inquiry Provision of the Supplementary U.S. U.K. Extradition Treaty*, 25 STAN. J. INT'L L. 257, 257 n.2 (1988).

crime, states began to conclude bilateral extradition treaties requiring the extradition of fugitives when the terms of the treaties were met. Under U.S. law, a fugitive cannot be surrendered except pursuant to such a treaty¹²⁶ This is not the law of the Federation in *STNG*.

Six of *STNG*'s episodes involve questions of extradition. Not once, however, is the existence of a relevant extradition treaty mentioned. Nor does *STNG* concern itself with any of the grounds for denying extradition traditionally found in extradition treaties—e.g., that the act is not a crime under the law of both states; that the act is considered a political offense; that the requesting state seeks to try or punish the fugitive for crimes in addition to the crimes for which (s)he was extradited; that the requested state is not obligated to surrender its nationals; or that the requested state views the requesting state's proceedings as fundamentally unfair.¹²⁷ A survey of *STNG*'s extradition practice demonstrates that it is foreign from the modern-day conception.

In *The Hunted*,¹²⁸ Captain Picard agrees to turn over to Angosian authorities a prisoner escaped from a high-security penal colony, despite evidence that the prisoner's only crime is that he had been an Angosian soldier, and after the war the Angosian government perceived all its soldiers as a threat to society. In today's practice, extradition of the fugitive would be denied on grounds that the crime of being a former soldier is not a crime under Federation law (lack of double criminality) or that, under the circumstances, the act constitutes a political offense.

An opposite result is reached in *Transfigurations*.¹²⁹ In that episode, the Enterprise discovers the wreckage of a small space vehicle and rescues a survivor, referred to as "John Doe," who suffers from memory loss and appears to be undergoing a mysterious cellular mutation. A Zalkonian vessel arrives, and the vessel's captain demands the surrender of Doe for crimes against his people. Captain Picard refuses Doe's surrender when Doe is found to be metamorphizing into an energy-based being and Picard learns that the Zalkonian captain's mission is to prevent this evolution by hunting down all mutating Zalkonians. Here, though Picard cites only broad humanitarian grounds for his refusal to surrender Doe, the denial of the Zalkon request could have been justified under the principle of double criminality or the political offense exception.

In *A Matter of Perspective*,¹³⁰ Commander Riker is accused of murdering Dr. Nel Apgar, an intergalactically respected scientist. Local Tanugan authorities demand that the Enterprise surrender Riker for prosecution. Under Tanugan law, alleged offenders are presumed guilty. Although Captain Picard negotiates a stay of extradition pending an investigation, he never questions his obligation to turn Riker over to the Tanugans if the investigation does not prove Riker's innocence. Following today's extradition practice, Picard could have denied Riker's

126. *Factor v. Laubenheimer*, 290 U.S. 276, 287 (1933).

127. *INTERNATIONAL CRIMINAL LAW* 413-17 (M. Sherif Bassiouni ed., 1986).

128. *The Hunted*, *supra* note 87

129. *STNG: Transfigurations*, No. 72 (June 4, 1990).

130. *STNG: A Matter of Perspective*, No. 61 (Feb. 12, 1990).

extradition on the ground that the Federation is not bound to surrender its own nationals, that Riker has diplomatic immunity¹³¹ or that the Federation would view proceedings under the Tanagan presumption of guilt as incompatible with fundamental due process.¹³²

The Enterprise transports a Vulcan ambassador to the Romulan Neutral Zone for negotiations in *Data's Day*.¹³³ When it is revealed that the ambassador is really a Romulan spy who has been conducting covert operations in Federation territory, Picard does nothing to seek her return for prosecution. Although Picard is later chastised by his superiors in Starfleet for his inaction,¹³⁴ an extradition request in these circumstances may have been deemed futile for a variety of reasons. It is possible that no extradition relations existed between the Federation and the Romulans, since the two worlds had not communicated for the past fifty-three years, or that espionage is deemed a political offense for which extradition is regularly denied.

In *Heart of Glory*,¹³⁵ the Enterprise takes custody of three renegade Klingons who commandeered a Talarian ship and attacked and destroyed a Klingon cruiser. A Klingon ship approaches and demands that Picard surrender the Klingon renegades as soon as the two ships are in range. Picard agrees to hand them over despite Lieutenant Worf's protestations that "they will be tried and executed."¹³⁶ This was a particularly surprising result given that an earlier episode established that the Federation has outlawed the death penalty.¹³⁷ A year after *Heart of Glory* first aired, this very issue was litigated before the European Court of Human Rights in the *Soering* case.¹³⁸ In that case, a German national named Jens Soering sought to prevent his extradition from the United Kingdom to the United States, where he would face the death penalty for his crimes. The Court blocked Soering's extradition on the ground that it would expose him to a real risk of inhuman or degrading punishment in violation of the European Convention

131. During the episode, Riker was on a diplomatic mission for the Federation. *A Matter of Perspective*, *supra* note 130. As such, he should be accorded the immunities of diplomats, who are exempt from the municipal law of the host country. "The reason of the immunity of diplomatic agents is clear, namely: that Governments may not be hampered in their foreign relations by the arrest or forcible prevention of the exercise of a duty in the person of a governmental agent or representative. If such agent be offensive and his conduct is unacceptable to the accredited nation it is proper to request his recall; if the request be not honored he may be in extreme cases escorted to the boundary and thus removed from the country." *Exemption From Judicial Process*, 4 HACKWORTH DIGEST § 400 (1942).

132. See Note, *Executive Discretion in Extradition*, 62 COLUM. L. REV. 1313, 1325 (1962). See also *Ahmad v. Wigen*, 910 F.2d 1063, 1067 (2d Cir. 1990) ("So far as we know, the Secretary [of State] never has directed extradition in the face of proof that the extraditee would be subjected to procedures or punishment antipathetic to a federal court's sense of decency.").

133. *Data's Day*, *supra* note 41.

134. *STNG: The Drumhead*, No. 94 (Apr. 29, 1991).

135. *STNG: Heart of Glory*, No. 20 (Mar. 21, 1988).

136. *Id.* (Worf).

137. See *STNG: Justice*, No. 7 (Nov. 9, 1987).

138. *Soering Case*, 161 Eur. Ct. H.R. (ser. A) at 11 (1989), 11 Eur. H.R. Rep. 439 (1989), 28 I.L.M. 1063 (1989).

on Human Rights. After the Court's decision, the prosecutor amended the charges to remove the offense of capital murder, and the United Kingdom then extradited Soering for trial in the United States. Similarly, Picard could have insisted on an assurance that the death penalty would not be imposed before surrendering the renegades. That he did not is further evidence of the underdevelopment of extradition law in the 24th century. As is apparent from these episodes, the absence of rules governing the surrender of fugitives can lead to international conflict.

J. Extraterritorial Jurisdiction

Several episodes involving extradition indicate STNG's expansive concept of what is known as "nationality-based jurisdiction." In *The Drumhead*,¹³⁹ Klingon exobiologist J'Ddan is found responsible for the transmission of technical schematics from the Enterprise to the Romulans and is arrested and referred to Klingon authorities on charges of espionage. Under today's international law, the Klingons' basis of jurisdiction over J'Ddan would be under the nationality principle, i.e., that the Klingon government has authority to prosecute Klingon citizens for certain crimes committed outside Klingon territory.¹⁴⁰

The crime of treason (which would encompass J'Ddan's acts) is one of the few crimes for which the United States asserts criminal jurisdiction over its citizens for acts committed outside U.S. territory.¹⁴¹ In contrast, civil law countries, such as France and Germany, exercise jurisdiction over any crime committed by their citizens abroad. At least one alien society portrayed in *STNG*, the Ullians, was seen to exercise similarly expansive nationality-based jurisdiction over its citizens. In *Violations*,¹⁴² a Ullian found to have committed a form of rape involving memory invasion aboard the Enterprise is returned to Ullian authorities for prosecution. In contrast, the United States' nationality-based jurisdiction does not extend to rape. Thus, unlike the Ullians, under existing law the United States could not prosecute one of its citizens for committing a rape abroad.

The Federation presumably had concurrent jurisdiction in these two episodes since the crimes occurred aboard a Federation-registered Starship.¹⁴³ Under contemporary international law, the state of registry has jurisdiction over crimes committed aboard its vessels, aircraft and spacecraft.¹⁴⁴ The fact situations

139. *The Drumhead*, *supra* note 134.

140. See generally Geoffrey R. Watson, *Offenders Abroad: The Case for Nationality-Based Criminal Jurisdiction*, 17 *YALE J. INT'L L.* 41, 41-84 (1992).

141. *United States v. Zehe*, 601 F. Supp. 196, 197 (D. Mass. 1985).

142. *STNG: Violations*, No. 111 (Feb. 3, 1992).

143. In *STNG*, the Enterprise's registration number is N.C.C. 1701-D. The Federation would not have jurisdiction if, unlike the Ullians, it did not have a statute criminalizing memory invasion. Given the peculiar nature of the offense, it is possible that the Federation would treat it only as a tortious assault.

144. See UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, art. 97, U.N. Doc. A/Conf. 62/122 (1982), reprinted in 21 *I.L.M.* 1261; Convention on International Civil Aviation, opened for signature Dec. 7, 1944, art. 17, 61 Stat. 1180, 1185, T.I.A.S. No. 1590, 15 *U.N.T.S.* 295, 308;

presented in *The Drumhead* and *Violations*, therefore, can be used to explore international law issues of conflict of jurisdiction and choice of law—i.e., if both the Federation and the Klingons/Ullians had asserted jurisdiction, where would the case be tried and whose law would apply?¹⁴⁵

Interestingly, the possibility of asserting concurrent jurisdiction was never raised in *Heart of Glory*, discussed above in the context of extradition. The crimes for which the Klingon renegades in that episode were accused, seizing a space vessel and using it to attack another, could have been analogized to today's crimes of piracy and maritime terrorism, over which all nations have universal jurisdiction to prosecute offenders.¹⁴⁶ If the Federation could have asserted such jurisdiction, it could have conducted its own trial of the renegades, thereby ensuring that both the process and punishment comported with Federation notions of fairness.

K. Extraterritorial Apprehensions

In *Encounter at Farpoint*,¹⁴⁷ Picard asks Commander Riker if he would object to "a clearly illegal kidnapping"¹⁴⁸ of the leader of the Bandi, Groppler Zorn, who had refused to inform the Enterprise of the identity and nature of an attacking alien ship. Just as Picard orders that Groppler Zorn be "beamed aboard," a being claiming to be part of an all-knowing super race known as the Q, which has been monitoring the Enterprise's mission in order to judge the human race, materializes on board the Enterprise and tells Picard that he has condemned the human race by failing to follow even his own rules. This brief exchange touches upon one of the most controversial issues of modern international law—the right of authorities of one state to abduct a person from another state without the latter's consent. Picard's acknowledgment that the kidnapping would be "clearly illegal"¹⁴⁹ suggests that the Federation recognizes a principle analogous to the international law rule that unconsented abductions abroad are considered a violation of the territorial state's sovereignty.¹⁵⁰

Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies, Jan. 27, 1967, art. 8, 18 U.S.T. 2410, 2416, T.I.A.S. No. 6347, 610 U.N.T.S. 205, 209.

145. For an interesting comment on choice of law in space, see generally Helen Shin, Comment, *Oh I have slipped the surly bonds of earth: Multinational Space Stations and Choice of Law*, 78 CAL. L. REV. 1375 (1990).

146. See UNITED NATIONS CONVENTION ON THE LAW OF THE SEA art. 100-107, U.N. Doc. A/Conf. 62/122 (1982), reprinted in 21 I.L.M. 1261, 1277-78. See also Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, Rome, Mar. 10, 1988.

147. *STNG: Encounter at Farpoint*, No. 1 (Sept. 28, 1987).

148. *Id.* (Picard).

149. *Id.* (Picard).

150. In 1992, the U.S. Supreme Court ruled that U.S. courts could try a person apprehended in Mexico by U.S. agents without Mexico's consent. See *United States v. Alvarez-Machain*, 112 S. Ct. 2188, 2197 (1992). In response to the controversial decision, 21 Latin American countries proposed that the U.N. General Assembly request from the International Court of Justice an advisory opinion clarifying that states may not exercise criminal jurisdiction over persons abducted

There is growing debate over whether there should be an exception to the prohibition on unconsented extraterritorial law enforcement action for situations involving the right of self-defense. The right of self-defense might, for example, justify a hostage rescue attempt by the authorities of one state in the territory of another.¹⁵¹ It might also justify intervention to apprehend terrorists who constitute a continuing threat to the intervening state.¹⁵² The expanding notion of self-defense is, however, extremely vulnerable to abuse, and it is noteworthy that Picard does not invoke the notion to excuse his actions, though the kidnapping of Groppler Zorn could be seen as necessary to repel an alien attack.

L. *Asylum and Refugee Status*

A number of *STNG*'s episodes deal with requests by individuals for asylum aboard the Enterprise. For example, in *The Defector*,¹⁵³ Romulan Admiral Jarok flees across the Neutral Zone and requests asylum aboard the Enterprise. He is willing to trade military secrets for asylum and says he wishes to defect because of the blind aggression of the new Romulan command. In *The Mind's Eye*,¹⁵⁴ Klingon Special Emissary Kell, accused of being an accomplice to the Romulan plot to assassinate Kriosian Governor Vagh, requests asylum aboard the Enterprise rather than face "Klingon justice."¹⁵⁵ Picard says he will grant asylum only if Kell is cleared of the charges. In another episode,¹⁵⁶ Picard agrees to give asylum to sixty-year-old Kaelon scientist Timicin so that he does not have to face the Kaelon practice of "resolution" (voluntary suicide at age sixty). In *I, Borg*,¹⁵⁷ Picard offers asylum to a young Borg¹⁵⁸ who achieves individuality aboard the Enterprise. Picard grants asylum in *The Masterpiece Society*¹⁵⁹ to Hannah Bates and twenty-two other colonists of Moab IV who wish to leave their genetically engineered bubble-society after contact with the Enterprise crew

from another state without the latter's consent. See HENKIN ET AL., *supra* note 43, at 177. The General Assembly decided to defer the question while the United States and Mexico continued negotiations for a revised extradition treaty that would prohibit such abductions.

151. Compare Louis Henkin, *Use of Force: Law and U.S. Policy*, in RIGHT V MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 37, 41-42 (2d ed. 1991) with IAN BROWNLIE, INTERNATIONAL LAW AND THE USE OF FORCE BY STATES 301-08 (1963).

152. See Abraham Sofaer, *Terrorism, The Law, and National Defense*, 26 MIL. L. REV. 89, 90-122 (1989). Acting under this theory of self defense, in 1985, U.S. military planes intercepted an Egyptian aircraft over the Mediterranean Sea, compelling it to land so that alleged terrorists aboard the aircraft could be prosecuted for seizing the Achille Lauro cruise ship, taking hostages and murdering a U.S. citizen. See Oscar Schachter, *In Defense of International Rules on the Use of Force*, 53 U. CHI. L. REV. 113, 139-40 (1986).

153. *The Defector* *supra* note 41.

154. *The Mind's Eye*, *supra* note 74.

155. *Id.* (Kell).

156. *STNG: Half a Life*, No. 95 (May 6, 1991).

157. *STNG: I, Borg*, No. 123 (May 11, 1992).

158. The Borg are a hostile race with one collective mind and are committed to the forcible assimilation of all other races. See *STNG: Q Who*, No. 41 (May 8, 1989).

159. *STNG: The Masterpiece Society*, No. 112 (Feb. 10, 1992).

Picard tells the leader of the bubble-society, "If you force them to stay, you will be suppressing their human rights. I cannot ignore the request of humans who wish to be transported away from here. If they chose to leave, the Enterprise will not turn them away"¹⁶⁰

These situations suggest that Picard, as captain of the Enterprise, has wide discretion and authority over the granting of asylum to aliens. No rules are mentioned that restrict or counsel his decision. In contrast, the current-day practice of granting asylum is the subject of a number of international conventions which permit giving asylum only for political refugees and in cases of humanitarian concern.¹⁶¹ Moreover, according to the U.N. Universal Declaration of Human Rights, the right to asylum "may not be invoked in the case of prosecutions genuinely arising from non-political crimes."¹⁶²

The term "asylum" is generally used only with regard to the granting of sanctuary within a foreign state's embassy of an individual wanted by the authorities of the territorial state. While in orbit around a planet, the Enterprise can be likened to a diplomatic embassy, capable of granting asylum. Alternatively, the Enterprise can be viewed as an extension of Federation territory, and therefore, rules relating to refugee status, rather than asylum, should apply.¹⁶³ Under the Convention Relating to the Status of Refugees, states are prohibited from returning a refugee to a state where his or her life or freedom is threatened because of race, religion, nationality or political beliefs.¹⁶⁴ The Convention provides an exception for persons who have committed serious non-political offenses.¹⁶⁵

Of those requesting asylum in *STNG*, only Kaelon scientist Timicin and the young Borg Hugh would clearly qualify for asylum or refugee status under international law. Upon Timicin's return to Kaelon III, he would likely receive ill treatment because of his political opposition to the Kaelon tradition of "resolution." The young Borg faced forcible assimilation through a form of brainwashing to suppress his yearnings for individual expression. In contrast,

160. *Id.* (Picard).

161. See HENKIN ET AL., *supra* note 43, at 1203. In the Asylum Case (Colombia v. Peru), 1950 I.C.J. 266, the International Court of Justice observed:

A decision to grant diplomatic asylum involves a derogation from the sovereignty of that State. It withdraws the offender from the jurisdiction of the territorial State and constitutes an intervention in matters which are exclusively within the competence of that State. Such a derogation from territorial sovereignty cannot be recognized unless its legal basis is established in each particular case.

Id.

162. Universal Declaration of Human Rights, 6 A. Res. 217, art. 14, U.N. Doc. A/III (1948).

163. *But see* Sale v. Haitian Centers Council, Inc., 113 S. Ct. 3028 (1993) (ruling that the Refugee Convention did not apply extraterritorially and therefore did not prevent the United States from returning Haitian refugees interdicted by U.S. vessels on the high seas).

164. Convention Relating to the Status of Refugees, 606 U.N.T.S. 267 19 U.S.T. 6223, T.I.A.S. No. 6577 (Nov. 1, 1968).

165. *Id.*

Romulan Admiral Jarok and Klingon Special Emissary Kell would be excluded from asylum or refugee status because they have committed serious non-political offenses. Similarly, the twenty-three Moab IV colonists desire to leave not because they are facing persecution, but because they wish to travel throughout the galaxy. On the other hand, the Universal Declaration of Human Rights¹⁶⁶ states that "everyone has the right to leave any country, including his own, and to return to his country"¹⁶⁷ This provision might be read as suggesting that international law recognizes a right to asylum for persons whose right to travel abroad is being abridged.

M. War Crimes and Crimes Against Humanity

Several of *STNG*'s episodes serve as a useful starting point for a discussion of international humanitarian law—the law of war. The issue is explored in *I, Borg*,¹⁶⁸ when the Enterprise crew captures an injured Borg, nurses him back to health and debates whether to return him to the Borg collective with a computer virus that would destroy the entire Borg race. Dr. Crusher makes the point that "even in war there are rules; you don't just kill civilians indiscriminately"¹⁶⁹

Apparently, the Romulans do not feel bound by such rules. In *The Mind's Eye*,¹⁷⁰ the Romulans subject Enterprise Chief Engineer Geordi LaForge to "mental reprogramming" to induce him to assassinate the Governor of the Klingon Kriosian colony. This "brainwashing" would constitute a grave breach of the Geneva Convention if it occurred on 20th-century Earth.¹⁷¹ The Geneva Convention prohibits such acts during war or armed conflict, requires the state whose military authorities have committed such violations to bring the perpetrators to punishment and authorizes other states to try the perpetrators if they obtain custody over them. Surprisingly, the episode never references any 24th-century equivalent to the Geneva Convention which would prohibit mental reprogramming of captured enemy officers.

In contrast, such a treaty provision is mentioned in *Chain of Command, Part II*,¹⁷² in which the Cardassians capture and torture Captain Picard. Picard warns his captors that "torture is expressly prohibited by the Seldon's IV Convention governing the treatment of prisoners of war."¹⁷³ Since Picard was captured

166. G.A. Res. 217, U.N. Doc. A/III (1948).

167. *Id.* at art. 13, ¶ 2.

168. *I, Borg*, *supra* note 157.

169. *Id.* (Crusher). It is questionable, however, whether any members of the Borg society could be considered innocent civilians since the Borg share a single collective thought process. As a consequence, all members of the Borg Collective arguably share responsibility for that race's military conduct.

170. *The Mind's Eye*, *supra* note 74.

171. See 1949 Geneva Convention Relative to the Treatment of Prisoners of War, *supra* note 61.

172. *Chain of Command, Part II*, *supra* note 70.

173. *Id.* (Picard). THE STAR TREK ENCYCLOPEDIA describes this convention as an "interstellar

during a covert mission which the Federation would not acknowledge, the Cardassians claimed he was not entitled to the Convention's protection. The Geneva Convention would provide even less protection under the circumstances since it is applicable only during war or armed conflict¹⁷⁴ and applies only to persons wearing a distinctive uniform, not to spies.¹⁷⁵

While the Geneva Convention applies to war crimes, crimes against humanity committed both during war or peace are prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide.¹⁷⁶ The Genocide Convention defines "genocide" as murder, deportation and other acts committed with the intent to destroy a racial, national, ethnic or religious population in whole or in part.¹⁷⁷ Several episodes indicate that *STNG* does not have any analogue to the Genocide Convention.

In *The Survivors*,¹⁷⁸ a powerful being known as a Dowd admits to Captain Picard that, in a fit of anger, he wiped out an entire race of beings who were responsible for the death of his human wife. Picard responds, "We're not qualified to judge you; we have no law to fit your crime."¹⁷⁹

In *Haven*,¹⁸⁰ viewers learn that the people of the planet Tarella, having fled their war-devastated world, have been hunted to virtual extinction because they are carriers of deadly biological warfare agents. While the crew of the Enterprise expresses regret at the Tarellian tragedy, there is no mention during the episode that the systematic extermination of the Tarellians constituted a crime against humanity or violation of interstellar law. Rather, Picard bases his refusal to destroy the last Tarellian ship solely on the ground that "Federation policy requires that we assist life forms in need, which must include the Tarellians."¹⁸¹

In *The Vengeance Factor*,¹⁸² the Federation supports efforts by the leader of Acamar to offer amnesty to the Gatherers, ending nearly a century of interstellar piracy and terrorism. The leader of the Gatherers, Chorgan, is a member of the Lornack clan, which had been responsible for the massacre of the Tralesta clan eighty years earlier. There have been similar modern-day proposals to give amnesty to those responsible for atrocities in the former Yugoslavia in return for

treaty governing the treatment of prisoners of war. Both the United Federation of Planets and the Cardassian Union were signatories to the accord." OKUDA ET AL., *supra* note 18, at 295. Evidently, the Romulan Empire is not a party to the Convention and does not recognize it as the 24th-century equivalent of customary international law.

174. *See supra* note 61.

175. *See United States v. Yunis*, 924 F.2d 1086, 1097-98 (D.C. Cir. 1991).

176. 78 U.N.T.S. 277 (Dec. 9, 1948).

177. *Id.*

178. *STNG: The Survivors*, No. 50 (Oct. 9, 1989).

179. *Id.* (Picard).

180. *STNG: Haven*, No. 10 (Nov. 30, 1987).

181. *Id.* (Picard). In this respect, Federation policy is remarkably similar to the Outer Space Treaty, which provides: "In carrying on activities in outer space and on celestial bodies, the astronauts of one State Party shall render all possible assistance to the astronauts [in distress] of other State Parties." Outer Space Treaty, *supra*, at art. V ¶ 2.

182. *The Vengeance Factor supra* note 123.

their cooperation in the peace process. The United States has rejected such proposals as inconsistent with international law.¹⁸³ In particular, the granting of amnesty to those responsible for genocide would be incompatible with provisions of the Genocide Convention, which provides an absolute obligation to prosecute and punish the perpetrators of genocide.¹⁸⁴ Moreover, there is no statute of limitations for genocide.¹⁸⁵ *The Vengeance Factor*¹⁸⁶ avoids the issue by leaving it unclear whether Chorgan personally participated in the slaughter of the Tralesta clan or was merely a descendent of one of those responsible.

N. *The Principle of "Jus Cogens"*

Under contemporary international law, a treaty is void if it conflicts with certain peremptory norms recognized by the international community.¹⁸⁷ Slavery, which is criminal under international law, is one such norm.¹⁸⁸ Under this principle, known as "jus cogens" (or peremptory norms), an international agreement resulting in the enslaving of a population would not be valid.

In *Devil's Due*,¹⁸⁹ the Enterprise visits planet Ventax II, a world whose people are in the grip of widespread panic due to the anticipated arrival of Ardra, a legendary supernatural being. It seems the pollution-plagued, war-torn Ventaxians generations ago made a pact with Ardra: 1000 years of peace and health in return for their eternal slavery afterward. Picard tries to convince the Ventaxian leader, Jared, that his people are responsible for their own prosperity. But when Ardra begins to demonstrate her powers, Jared agrees to submit to her will, pursuant to the contract, until the crew of the Enterprise locates Ardra's hidden ship and power source and reveals her as a con-artist. Surprisingly, in contesting the validity of the contract, Picard does not argue the principle of "jus cogens."

From *Devil's Due*,¹⁹⁰ viewers can deduce either that interstellar law does not have a concept comparable to "jus cogens"¹⁹¹ or that slavery is not uniformly condemned by the interstellar community

183. See Madeleine K. Albright *War Crimes in Bosnia*, S.F. CHRON., Dec. 4, 1993, at A22 ("We have made it clear that we will not recognize—and do not believe the international community will recognize—any deal to immunize the accused from culpability.").

184. See Articles 4 and 5 of the Genocide Convention, *supra* note 61.

185. See Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Res. 2391(XXIII) Nov. 26, 1968 (entered into force Nov. 11, 1970).

186. *The Vengeance Factor*, *supra* note 123.

187. OPPENHEIM'S INTERNATIONAL LAW 7-8 (9th ed. 1992). See Vienna Convention on the Law of Treaties, U.N. Doc. A/Conf. 39/27, art. III (1969), reprinted in 63 AM. J. INT'L L. & POL'Y 875 (1969); Gordon Christie, *The World Court and Jus Cogens*, 81 AM. J. INT'L L. & POL'Y 93 (1987).

188. OPPENHEIM'S INTERNATIONAL LAW, *supra* note 187, at 7-8.

189. *STNG: Devil's Due*, No. 86 (Feb. 4, 1991).

190. *Id.*

191. This would be consistent with the absence of customary international law, as discussed above.

O. Self-Defense Justifications for Use of Force

Article 2(4) of the U.N. Charter provides that "[a]ll Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state."¹⁹² Article 51 of the Charter provides an exception for the use of force in collective or individual self-defense "if an armed attack occurs against a Member of the United Nations."¹⁹³ The interplay between the prohibition on the use of force and the exception for self-defense is at issue in several episodes of *STNG*.

In *Redemption*,¹⁹⁴ Starfleet sends an armada of twenty-three starships, including the *Enterprise*, to blockade a Romulan convoy suspected of being the source of supplies to forces trying to overthrow the ruling Klingon regime in a civil war. The parallels between *Redemption* and the situation leading to the 1984 International Court of Justice (ICJ) case between Nicaragua and the United States are unmistakable. Nicaragua brought proceedings before the World Court charging the United States with unlawful use of force against Nicaragua and its vessels. The United States argued that it was acting in collective self-defense (on behalf of El Salvador) in response to Nicaragua's support for El Salvadorian rebels. The ICJ found that Nicaragua's financing and arming the rebels did not rise to the level of "an armed attack" against El Salvador and, thus, that the United States did not have a right to use force against Nicaragua in self-defense on El Salvador's behalf.¹⁹⁵ If an analogue to the Nicaragua precedent were to apply in the 24th century, the Federation would not be justified in blockading Romulan ships since the provision of support to rebels does not constitute an armed attack that would justify the right to self-defense.

In *The Wounded*,¹⁹⁶ Starfleet orders the *Enterprise* to prevent a Federation Starship commanded by Captain Ben Maxwell from attacking Cardassian vessels. Starfleet issues the order despite learning that Captain Maxwell's actions were an attempt to prevent a suspected Cardassian military offensive against the Federation. This episode raises the issue of the legitimacy of anticipatory self-defense under international law. The question whether self-defense requires an actual armed attack or whether it is permissible in anticipation of an attack has given rise to much controversy among international lawyers. It has been argued that states faced with a perceived danger of immediate attack cannot be expected to await the attack like sitting ducks before they can lawfully respond.¹⁹⁷ This

192. Charter of the United Nations, June 26, 1945, art. II, 59 Stat. 1031, 1038, T.S. No. 993, 3 Bevans 1153, 1155.

193. *Id.* at art. 51 ("Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.").

194. *Redemption II*, *supra* note 32.

195. Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.), 1986 I.C.J. 14, 103-23.

196. *The Wounded*, *supra* note 42.

197. See Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1633-35 (1983).

justification was cited by Israel when in 1981 it bombed an Iraqi nuclear reactor. The action of Captain Maxwell seems equally premised on this rationale. Like Starfleet in *The Wounded*, however, the U.N. Security Council rejected the Israeli position and condemned the bombing as a violation of international law¹⁹⁸ The official statements of the Security Council members indicate that the right of anticipatory self-defense is limited to situations in which an attack is imminent.¹⁹⁹

STNG's attitude toward anticipatory self-defense is not consistent, however. In *The Defector*,²⁰⁰ the Enterprise picks up Romulan Admiral Alidar Jarok, who claims to have defected to warn of a potentially destabilizing new Romulan outpost at planet Nelvana III, inside the Neutral Zone. Because of the potential threat to the Federation, Picard orders the Enterprise into the Neutral Zone, in violation of the Treaty of Algeron,²⁰¹ to investigate Jarok's claim (which turns out to be false), nearly provoking a renewal of hostilities with the Romulans. Picard's preemptive actions in *The Defector* suggest a more expansive concept of anticipatory self-defense than his actions in *The Wounded*, perhaps warranted by the greater and more imminent threat posed by the existence of a Romulan outpost in the Neutral Zone.

P Non-interference in Domestic Affairs

Article 2(7) of the U.N. Charter provides that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State."²⁰² The I.C.J. has recognized the principle of non-intervention as part of customary international law.²⁰³ Interstellar law as portrayed in *STNG* recognizes a similar principle contained in Starfleet General Order Number One, known as the Prime Directive.

No less than thirteen episodes of *STNG* deal with the Prime Directive.²⁰⁴ Captain Picard defines the Prime Directive in *First Contact*²⁰⁵ as prohibiting members of the Federation from interfering in a culture's natural development.²⁰⁶ In *Half a Life*,²⁰⁷ Picard says the Prime Directive "forbids

198. *Id.*

199. *Id.*

200. *The Defector* *supra* note 41.

201. The Federation-Romulan Treaty prohibits ships of either side to enter the Neutral Zone.

202. See U.N. Charter, *supra* note 86.

203. See *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. U.S.)*, 1986 I.C.J. 14, 126.

204. *I, Borg*, *supra* note 157; *The Masterpiece Society*, *supra* note 159; *STNG: A Matter of Time*, No. 108 (Nov. 18, 1991); *Half a Life*, *supra* note 156; *The Drumhead*, *supra* note 134; *Devil's Due*, *supra* note 189; *STNG: First Contact*, No. 88 (Feb. 18, 1991); *The Hunted*, *supra* note 87; *STNG: Who Watches the Watchers?* No. 51 (Oct. 16, 1989); *STNG: Pen Pals*, No. 40 (May 1, 1989); *STNG: Symbiosis*, No. 21 (Apr. 18, 1988); *Too Short a Season*, *supra* note 118; *Justice*, *supra* note 137.

205. *First Contact*, *supra* note 204.

206. *Id.* (Picard). In this episode, the Enterprise crew is on a reconnaissance mission on the planet Malcona III, which is on the verge of warp travel, in preparation for the Federation revealing

us to interfere with the social order of any planet."²⁰⁸ He cites Prime Directive considerations in *The Hunted*²⁰⁹ as justification for declining Starfleet intervention in an uprising of soldiers who had been imprisoned by the Angosian government for fear of having warriors loose in normal society. In *Symbiosis*,²¹⁰ the Enterprise discovers two planets—one is addicted to the drug Felicium, and the other produces and supplies the drug at a tremendous price. Deferring to the Prime Directive, Captain Picard prohibits his medical officer from informing the planet of addicts that the drug no longer has any medicinal value and is instead simply a narcotic. In *The Outcast*,²¹¹ Picard, citing Prime Directive considerations, refuses to intervene with the J'naii, a race which has outlawed gender, to halt the prosecution of a J'naii who had engaged in an unlawful relationship with Commander Riker of the Enterprise. Evidently, the Prime Directive applies to worlds in alliance with the Federation as well as to foreign worlds. In *The Mind's Eye*,²¹² Picard states that the "Federation would not interfere in the internal affairs of the Klingon Empire."²¹³

Although the Prime Directive appears to have no exceptions, it is subject to frequent breach, apparently without penalty when accompanied by a compelling justification. In *The Drumhead*,²¹⁴ a Starfleet admiral states that Captain Picard has violated the Prime Directive on nine occasions. In *A Matter of Time*,²¹⁵ Picard says to the time traveler Rasmussen: "You know of the Prime Directive, which forbids us from interfering in the natural evolution of a society. I've disregarded it on more than one occasion because I thought it was the right thing to do."²¹⁶ Such an occasion occurred in *Pen Pals*,²¹⁷ an episode in which Lieutenant Commander Data responds to a radio distress call from a life form on planet Drema IV, even though such a response violated Prime Directive protection. After hearing the plea for help from what sounds like a very young and frightened child, Captain Picard determines that assistance to reverse geologic instability on the planet is appropriate even though such intervention further

itself to the inhabitants of the planet. When Commander Riker (in native disguise) is captured, Picard contacts Chancellor Durken, the leader of the world, to convince him of the Federation's good intentions. Picard tells Durken that, under the Prime Directive, the Enterprise is obliged to leave without further contact if that is the Chancellor's wish.

207. *Half a Life*, *supra* note 156.

208. *Id.* (Picard). At issue in this episode is the practice on planet Kaelon II of voluntary suicide of all citizens who reach age 60 as a form of population control and to minimize welfare costs. While Picard refuses to press for a change in Kaelon's seemingly barbaric practice, he was willing to grant Timicin, a 60-year-old scientist, asylum aboard the Enterprise.

209. *The Hunted*, *supra* note 87.

210. *Symbiosis*, *supra* note 204.

211. *The Outcast*, *supra* note 25.

212. *The Mind's Eye*, *supra* note 74.

213. *Id.* (Picard).

214. *The Drumhead*, *supra* note 134.

215. *A Matter of Time*, *supra* note 204.

216. *Id.* (Picard).

217. *Pen Pals*, *supra* note 204.

violates the Prime Directive. In *Justice*,²¹⁸ a member of the Enterprise on shore leave at planet Rubicun III²¹⁹ accidentally commits a minor transgression of local laws (he steps on a flower bed), but authorities impose the death sentence in accordance with planetary law. Captain Picard violates the Prime Directive by securing the crew member's release in contravention of local law.

The debate over whether Picard was justified in ignoring the Prime Directive in these situations mirrors the contemporary international law debate over the right of "humanitarian intervention."²²⁰ The rationale has been raised to justify intervention to prevent gross violations of human rights²²¹ or to protect nationals from imminent peril or injury in a foreign country,²²² although most governments believe the "scope for abusing such a right argues strongly against its creation."²²³ If there is a humanitarian exception to the Prime Directive, it has been no more consistently applied than our own concept of humanitarian intervention. In *Ensign Ro*,²²⁴ for example, viewers learn that the Federation has refused for years to intervene in the Cardassian subjugation of Bajor and in the commission of gross violations of the Bajoran people's human rights.

IV CONCLUSION

The preceding survey of international law issues appearing in *STNG* has shown that, with just a handful of exceptions, 24th-century interstellar law as portrayed in the series is remarkably similar to today's international law. Because of these

218. *Justice*, *supra* note 137.

219. This crew member is ensign Wesley Crusher, the son of the Enterprise's chief medical officer.

220. See Ian Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 218-19 (Moore ed., 1974); Richard B. Lillich, *A Reply to Dr. Brownlie and a Plea for Constructive Alternatives*, in *id.* at 247-48.

221. India relied on the rationale when it sent troops into East Pakistan to protect the Bengali population during the 1971 civil war with Pakistan. Similarly, Vietnam relied on the rationale in invading Cambodia in 1978, and Tanzania invoked the rationale to justify its 1979 invasion of Uganda. Despite considerable sympathy for the oppressed Bengalis, Cambodians and Ugandans, however, resolutions condemning these actions were passed by large majorities in the U.N. General Assembly. See HENKIN ET AL., *supra* note 43, at 930, 933.

222. The right to intervene to protect nationals was one of the grounds invoked by the United States for its invasions of Grenada in 1983 and Panama in 1989. See Christopher C. Joyner, *The United States Action in Grenada*, 78 AM. J.I.L. 131 (1984); *Use of Force, Protection of Nationals—Deployment of U.S. Forces in Panama* (U.S. Digest, Ch. 14, Section 1), reprinted in 84 AM. J.I.L. 545 (1990). It was also invoked for the intervention by Israel in Uganda to release Israeli hostages from a hijacked plane at Entebbe. See U.N. Doc. S/PV 1939, at 51-59 (July 1976), reprinted in 15 I.L.M. 1224 (1976).

223. United Kingdom Foreign Office Policy Document No. 148, reprinted in 57 Y.B. BRIT. INT'L L. 614 (1986). See generally Schachter, *supra* note 197 (discussing attitudes of other states toward humanitarian intervention).

224. *Ensign Ro*, *supra* note 122.

similarities, and the immense popularity of the series, *STNG* can be an effective pedagogical aid to teaching the fundamental principles of international law.²²⁵

In drawing upon the interstellar law of *STNG*, the teacher needs to be aware of the major differences between interstellar law and contemporary international law, namely: (1) interstellar law does not recognize the principle of customary international law; (2) there is no interstellar counterpart to the I.C.J., (3) interstellar law adheres to an outdated doctrine of absolute sovereign immunity; (4) interstellar law does not recognize the traditional grounds for refusing to extradite a fugitive; (5) the Federation lacks universal jurisdiction to prosecute persons responsible for terrorism or piracy; and (6) a Federation captain's authority to grant asylum is apparently unrestricted.

These distinctions are not the result of sloppy research on the part of *STNG*'s technical and production staff. Rather, most are the consequence of series creator Gene Roddenberry's particular conception of the future. Given Roddenberry's goal of a television series revolving around the adventures of a space-age Captain Horatio Hornblower,²²⁶ it is not surprising that much of the international structure would be based upon the law as it existed during the heyday of the fighting sail. In contrast to our contemporary world, in which international telephone communications are instantaneous and where travel from any one point on the globe to any other can be accomplished in under a day's time, the planets on *STNG* sometimes go for decades without communicating with one another, and the time to travel from one planet to another (even at warp speed) is measured in days, weeks or years—not hours.

In such a decentralized legal system, there would not be enough repetition of practice to develop customary law. Planets which rarely communicate with one another would be even less likely than today's states to submit disputes to uncertain, time consuming and troublesome litigation before a panel of potentially hostile judges. Since disputes between planets would largely be about territory and other sovereignty issues, rather than about commercial transactions, planets would insist on absolute immunity from liability in a foreign world's courts as a manifestation of the perfect equality and absolute independence of sovereigns. Given the difficulties and time consuming nature of interstellar travel, and the myriad of available destinations, the number of criminals fleeing to foreign worlds would be relatively small. Consequently, planets would be more likely to apply an analogue to pre-19th-century extradition law, which regarded surrender of fugitives a matter of sovereign discretion. Similarly, since conceptions of fairness and justice vary widely throughout the interstellar system, it would not be appropriate to restrict the discretion of the captain of a Starship over questions of asylum. Viewed within this context, even these deviations from contemporary international law can be used to encourage student thinking about the historic origins, rationale and development of the law of nations.

Of the departures from international law portrayed in *STNG*, only the absence of universal jurisdiction to try persons for piracy seems to defy any logical or

225. See Appendix (referencing *STNG* episodes to corresponding international legal issues).

226. WHITFIELD & RODDENBERRY, *supra* note 23, at 28.

historical explanation. Since the 14th century, pirates were regarded as international outlaws and the enemies of all mankind who could be arrested and taken in for trial by any state.²²⁷ In modern times, universal jurisdiction has been extended to cover war criminals, hostage-takers, aircraft hijackers and saboteurs. In the 24th century, piracy seems to be similarly heinous, pirates appear to be equally difficult to apprehend and there seems to be a universal interest in their prompt arrest and punishment. It is therefore puzzling that in episode after episode, the Federation fails to assert its jurisdiction to try space-age pirates or terrorists who come within the custody of the Enterprise.

That this is the only instance in which *STNG*'s portrayal of international law misses the mark is an extraordinary achievement considering that the makers of the series set out to create a high-quality television entertainment program, not a treatise or documentary on international law. It is their outstanding success in creating a realistic vision of the future that has made *STNG*, and the other series in the *Star Trek* family, "a permanent fixture in America's cultural landscape."²²⁸

227. Edwin D. Dickinson, *Is the Crime of Piracy Obsolete*, 38 HARV. L. REV. 334, 334-360 (1925).

228. Charles Paikert, *After 25 Years, Still Cruising at Warp Speed*, VARIETY, Dec. 2, 1991, at 49.

APPENDIX

Episode Title	Episode #	International Legal Issues
Attached	160	International Organizations (membership)
Chain of Command, Part II	137	Humanitarian Law (prisoners of war)
Code of Honor	3	Treaties (scope)
Contagion	36	Treaties (territorial boundaries)
Data's Day	84	Extradition; Treaties (territorial boundaries)
The Defector	57	Asylum; Self-Defense (anticipatory); Treaties (territorial boundaries)
Devil's Due	86	Jus Cogens
The Drumhead	94	Extradition; Extraterritorial Jurisdiction; Sovereignty (violation of non-intervention)
Encounter at Farpoint	1	Extraterritorial Apprehension
The Enemy	54	Treaties (territorial boundaries)
Ensign Ro	102	Sovereignty (non-intervention); Terrorism
The Ensigns of Command	49	Treaties (interpretation); Arbitration
First Contact	88	Sovereignty (non-intervention)
Force of Nature	158	International Environmental Law; Space Law
Future Imperfect	81	Treaties (territorial boundaries)
Half a Life	95	Asylum; Sovereignty (non-intervention)

Episode Title	Episode #	International Legal Issues
Haven	10	Genocide, Space Law
Heart of Glory	19	Extradition
The High Ground	160	Terrorism
The Host	96	Mediation
The Hunted	58	Extradition; International Organizations (membership); Sovereignty (non-intervention)
I, Borg	122	Asylum; Humanitarian Law (conduct of hostilities)
Journey's End	172	State Succession
Justice	7	Sovereignty (exception to non-intervention)
Lonely Among Us	6	International Organizations (membership)
Loud as a Whisper	30	Mediation
Lower Decks	167	Treaties (enforceability)
Manhunt	44	International Organizations
The Masterpiece Society	112	Asylum
A Matter of Perspective	61	Extradition
A Matter of Time	108	Sovereignty (exception to non-intervention)
The Mind's Eye	97	Asylum; Diplomatic Relations (privileges and immunities); Humanitarian Law (prisoners of war); Sovereignty (non-intervention)
The Neutral Zone	25	Treaties (territorial boundaries)
The Outcast	116	Sovereignty (non-intervention)

Episode Title	Episode #	International Legal Issues
The Outrageous Okona	29	Mediation
The Pegasus	164	Treaties (individual responsibility for breach)
Pen Pals	40	Sovereignty (violation of non-intervention)
Preemptive Strike	176	State Succession
The Price	55	Law of the Sea
Redemption II	99	Arbitration (choice of law); Peacekeeping; Self-Defense; Treaties (collective security)
Samaritan Snare	42	Terrorism
Sarek	70	Diplomatic Relations
Suddenly Human	77	Peace Treaty
Symbiosis	21	Sovereignty (non-intervention)
Too Short a Season	15	Terrorism
Transfigurations	72	Extradition
The Vengeance Factor	56	Humanitarian Law (amnesty); Terrorism
Violations	111	Extraterritorial Jurisdiction
The Wounded	85	Self-Defense (anticipatory); Peace Treaty

