

THE OPEN UNIVERSITY OF SRI LANKA
FACULTY OF HUMANITIES AND SOCIAL SCIENCES
DEPARTMENT OF LEGAL STUDIES
LLB DEGREE PROGRAMME - LEVEL 5
FINAL EXAMINATION - 2020/2021 (OPEN BOOK)
PUBLIC INTERNATIONAL LAW- LLU5712/LWU3315
DURATION – THREE (03) HOURS



.....
Date: 11th September 2021

Time: 9.30 am-12.30pm
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Total number of questions five (05).
Answer four (04) questions only.
Illegible handwriting will be penalized.

1. “...One of the most important changes in the last few decades is the massive horizontal expansion of the international society composed of nation- States due to the sweeping wave of the decolonization process. Another major development is the phenomenal growth of international organizations as permanent institutions for the cooperation of States. A third important change is in the subject matter of international law which is at present becoming actively concerned with various vital topics affecting the promotion of human welfare rather than the mere prevention of national warfare.”

DR P.R.Menon, “*The Legal Personality of International Organizations*” (1992) 4 Sri Lanka J Int’l L 79

Do you agree with the above statement?

Critically analyze the legal validity of the above statement in light of the contemporary challenges of international legal personality.

Support your answer with judicial decisions and legal authorities.

(25 Marks)

2. Likistan and Tajistan are two neighboring countries. Likistan declared war on Tajistan in response to a naval blockade made by Tajistan. Military forces of Likistan occupied some of its territories in the Northern Province of Tajistan and perpetrated many atrocities against the population of that territory, including massacres of civilians and the deportation of large numbers of civilians for use as forced labour. They have also destructed the properties of the civilians beating them outside their houses.

After few months, an agreement was concluded between Likistan and Tajistan and it concerned the 'settlement of certain property-related economic questions'.

The following is a part of that Agreement.

Article 1 - Likistan shall paid compensation to Tajistan for "outstanding questions of an economic nature".

Article 2- The Likistan Government shall indemnify natural or legal persons of Tajistan for any possible judicial proceedings or other legal action in relation to the above-mentioned claims.

Meantime, Mr. Ferry, a national of Tajistan who had been arrested and later deported to Likistan, where he was detained and forced to work in a munitions factory until the end of the war, instituted proceedings against Likistan against those acts in a Court of Tajistan. The Court held that Tajistan Court has jurisdiction over the claims of compensation brought against Likistan by Mr. Ferry on the ground that state immunity does not apply in circumstances in which the act complained of constitutes an international crime. Moreover, relatives of the victims of the massacre who claimed compensation for loss of life and property commenced proceedings against Likistan in a Court of Tajistan.

Discuss the legal issues involved in the above scenario under Public International Law.

(25 Marks)

3. Indiano and Lankano are neighbouring countries, and there is a strait between them called Rio Bay. Indiano decided to export diesel to State Superiano and signed a contract with Superiano to sell 270,000 tons of diesel oil. The ordered diesel oil was planned to be delivered to Superiano by a registered ship from Indiano called 'New Santa.' While passing through Rio Bay, near the territorial waters of Lankano, on its way to Superiano from Indiano, the 'New Santa' partially exploded due to a fire. Immediately after the accident, ships and helicopters from Lankano assisted in firefighting. The firefighting team of Lankano was successful in controlling the spread of the fire and rescuing the ship in the early stages. Indiano agreed to transport the remaining diesel oil from Rio Bay. However, the initial stage of the fire resulted in 1700 tons of chemicals being leaked into the marine environment of Lankano. Furthermore, the rescue efforts of Lankano had resulted in a significant financial loss for the State.

According to a preliminary report based on an investigation into the fire, the cause of the fire explosion was found to be insufficient testing of the condition of 'New Santa.' Lankano stated that the government of Indiano should be held accountable for the consequences of the 'New Santa' disaster. However, Indiano issued a statement stating that 'New Santa' is owned by a private company known as the 'Aqua Shipping Group of Companies,' and that it is not responsible for the fire or its consequences. According to official records, Indiano owns a 65 percent stake in the 'Aqua Shipping Group of Companies,' and its business activities are governed by Indiano.

Discuss the legal issues involved in this situation specifically focusing on whether Indiano can be held responsible for the damage caused to Lankano.

Support your answer with relevant authorities.

(25 Marks)

4. State Superiano is a Democratic Socialist Republic that accepts international law and upholds international treaty obligations in accordance with its Constitution. The Superiano parliament is about to pass legislation that will reduce the salaries of all female university employees by 1.85 percent. Ramona, an academic and doctor working at the State Medical University of Superiano claimed that the proposed law could not be implemented because it violated the Constitution of Superiano and also its international obligations. According to her findings, she believes that the following international treaty provisions will be violated in the implementation of the proposed law.

- Article 26 of the International Covenant on Civil and Political Rights (ICCPR):
All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Article 7 a (i) of the International Covenant on Economic, Social and Cultural Rights (ICESCR):
Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

- Article 3 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):
States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Consider yourself an academic affiliated with the State Law School of Superiano, working in the area of Public International Law. Ramona seeks your advice on the applicability of the above mentioned international treaty provisions in the domestic courts of Superiano to support her argument.

Assume that the Constitution of Superiano and its international obligations are similar to Sri Lanka. Your advice should highlight relevant provisions of international legal frameworks, judicial decisions and contemporary examples.

(25 Marks)

5. Magarita and Gemma are neighbouring States with a 20-year-old unresolved dispute over the ownership of a religious monument called "Temple Thimora" located on the border of the two states. Based on historical claims, both Magarita and Gemma claim ownership of the temple Thimora. However, the temple is currently under the control of Gemma. Both countries are equally powerful and are members of the United Nations.

Magarita recently issued an official statement stating that if Gemma does not hand over ownership of Temple Thimora, it will bomb State Gemma's religious and cultural monuments. A week after the press release, on New Year's Day of Gemma, there were bomb attacks on some of its religious and cultural monuments. Several buildings were destroyed as a result, and 157 civilians were killed. The President of Gemma issued a statement declaring that bomb attacks by Magarita are a grave violation of international obligations as a UN member state, and that the international community should respond seriously to the illegality of this attack. Gemma anticipates another attack by Magarita on its independence day which will be celebrated next month.

Advise Gemma on the above situation. Support your answer with relevant legal authorities.

(25 Marks)

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