

THE OPEN UNIVERSITY OF SRI LANKA

LL.B DEGREE PROGRAMME – LEVEL 5

FINAL EXAMINATION 2009

PUBLIC INTERNATIONAL LAW – LWU 3315/ 4335

DURATION-3 HOURS



Date: 03rd April 2008

Time: 9.30 a.m. -12.30 p.m.

Illegible handwriting will be penalized

Answer FIVE (5) questions only

1. The Democratic Republic of Slovia sent its largest ship, 'Silver Sky' to the Democratic Republic of Angria which is in the middle of a civil war with an anti-government rebel group. The government of Angria permitted the ship to carry a consignment of toys and food for displaced children in the conflict zone. While the ship was in transit, Angria's intelligence service received information to the effect that there were guns, explosives and several members of the rebel group among the crew.

When the ship came into the territorial waters of Angria, its navy boarded and searched the ship for about 20 minutes. Thereafter they blew it up. The government of Slovia condemned Angria's action and declared war against Angria. The government of Slovia also justified its declaration of war by accusing Angria of buying arms from the State of Utasia soon after destroying the ship.

Slovia's president Wimsasu Bradler invited the neighbouring states of Maluna and Kamuna to join in the war stating that there can be a possible armed attack against them too by Angria. Slovia attacked Angria with the support of these two countries.

Thereafter Raluna, a state adjoining Maluna found that 20 of its nationals were trapped in Angria and sent their troops to Angria to rescue them. While Raluna's troops were fighting inside Angria, they found that one of the men identified as a national of Raluna was in fact a member of the anti-Angrian rebel group named Thaluba. Raluna's troops rescued him and agreed to give him support for his movement.

Angria is now facing an intense war. The President of Angria, seeks your advice. Advise him.

2. (a) "Though the Montevideo Convention is commonly accepted as reflecting, in general terms, the requirements of statehood at customary international law, there are some other relevant factors that have been accepted by the international community."

Do you agree with the above statement? Give reasons for your answer.

- (b) State Green, a developing country and State Blue a developed country are friendly neighboring States. Green is facing a civil war waged by a minority ethnic group. This war has been going on for more than 11 years. Now Blue has offered to send a special envoy to discuss measures to deal with Green's growing humanitarian crisis caused by the civil war. Despite several discussions between the two countries, Green's cabinet refuses to accept the special envoy. After hearing Green's decision, the members of the minority ethnic group in Blue started nation wide protests against their government. The President of Green announced that it will handle the civil war in its own way and will not tolerate any interference with Green's sovereignty.

Discuss.

3. (a) "Every sovereign state is bound to respect the independence of every other sovereign state, and the court of one country will not sit in judgment on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves."

Underhill v Hernandez (1897) 168 U.S. 250 at p.252.

Discuss.

- (b) Mr. James Malkenon was appointed as an ambassador of the Republic of Romalana to the state of Saibo in 2007. In 2008 June while he was driving his car in the capital city of Romalana he knocked down and injured six people and killed a twelve year old girl. He was found to have a blood – alcohol level of 0.17, but was released from custody since he was a diplomat.

Rinawa, a member of the Romalana Embassy was attending a press conference at Golden House, the Presidential residence. Rinawa stole a sensitive file from Golden House. He was videoed by the Saibo private media which was at the press conference. Next day, Saibo's Secret Service Department (SSSD) arrested Rinawa and questioned him. Though he first denied the allegation, he later confessed after he was shown the video which had been taken. Later, the SSSD recovered the file which was hidden in the embassy, with the help of a private servant of the ambassador who had hidden the file. When the SSSD was examining the file, they found some deeds inside it relating to private lands adjoining the embassy in the name of the ambassador. These deeds were forgeries.

Discuss the legal issues involved in the above two cases.

4. Lautenan and Kabuliana are neighboring states. Many Lautenan people have been working in Kabuliana for more than 3 decades. Recent statistics show that the unemployment rates in Kabuliana have increased by 30%. The people of Kabuliana are now protesting about the jobs which are being taken by the people of Lautenan

and this issue is causing unrest in the country, particularly among young people. There have been riots on several occasions.

The Kabuliana President has called in the army to bring the situation under control. However, the soldiers have sided with the rioters and have also attacked properties of Lautenan citizens, killing 10 of them. A group of Kabuliana government officials who are supporting the rioters have attacked Lautenan's religious missions in Kabuliana while the army has looked on without intervening.

The government of Lautenan is contemplating action against Kabuliana in the International Court of Justice alleging that Kabuliana is internationally responsible for the damage to Lautenan citizens. Lautenan has also claimed compensation for its citizens. However Kabuliana rejected all these allegations and argues that it is not liable for the *ultra vires* acts of its organs.

- (a) Advise Lautenan.
- (b) What are the remedies available to the state Lautenan?

5. Write notes on any TWO of the following:

- (a) Judicial Methods of dispute Settlements;
- (b) Secondary sources of international law;
- (c) Traditional modes of acquisition of Sovereignty over territory; and
- (d) Organs of the United Nations.

6. (a) "Although the traditional view held that the individual was not a subject under international law and the individual had no legal personality separate from his connection to a state, this was changed due to the fact that the individual is frequently the ultimate object of international law."

Do you agree with the above statement? Give reasons for your answer.

(b) The state of Laluka and the Republic of Indonia have been at war for nearly nine years over territorial claims. The United Nations attempting to settle the conflict between these countries, has appointed a mediator, named Peter Crisis and 3 other experts. Peter Crisis drew up a peace plan. Prior to its implementation he was assassinated by Laluka terrorists. Meanwhile the State media of Laluka has accused one of the mediation officials of being involved in a secret agreement to sell arms to Indonia. Further, police complaints have been filed against the other two United Nations officials of child abuse in the war affected areas of Laluka.

The United Nations is seeking reparation from the government of Laluka on its own behalf and on behalf of the Peter Crisis's family. However, Laluka refuses to take responsibility on the basis that it is not a member state of the United Nations. Moreover, Laluka is claiming compensation for the illegal activities of the United Nations officials.

Advise the respective parties of their rights and obligations under international law.

7. (a) "Jurisdiction is a vital and indeed a central feature of state sovereignty, for it is an exercise of authority which may alter or create or terminate legal relationships and obligations."

Malcolm N. Shaw, *International law*, 5th Edition (2003), at p.572.

Discuss the above statement in the light of the traditional bases of Jurisdiction.

- (b) Peter Samed, a well known rebel in the state of Umana was granted asylum by the state of Risthoma consequent to an unsuccessful insurrection against Umana's government.

State Umana sought extradition of Peter Samed from the State of Risthoma under the 2005 Bilateral Treaty on Extradition, which clearly codified the double criminality rule. As such rebellion against either state, is an offence punishable by death. Risthoma contends that Umana has no claim for extradition of Peter Samed for two reasons: (i) It has not made a prima facie case against the asylee; and (ii) The alleged offence is clearly a political one.

Umana is contemplating action against Risthoma before the International Court of Justice.

Analyze the relevant international legal principles in the above case. Compare your findings with respect to Sri Lankan law on extradition.

8. Though there are some well identified and accepted theories in international law when states adopt international laws into its domestic laws, the clear cut theoretical separations becoming practically incompatible with the modern developments of the world.

Discuss.

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