

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B FINAL EXAMINATIONS**  
**L382- INTERNATIONAL LAW**

**TIME: 3 HOURS**

**MAY 2015**

**MARKS: 100**

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**INSTRUCTIONS**

- \* **This paper contains six questions.**
- \* **You are required to answer any FOUR questions.**
- \* **All questions carry equal marks.**

### **Question 1**

In the light of the threat posed by international terrorism, critically assess the legality of claims by states to extend their jurisdiction beyond their territorial limits so as to ‘smoke out’ such terrorists before they attack them.

[25]

### **Question 2**

*‘But sovereignty itself, with its retinue of legal rights and duties, is founded upon the fact of territory....without territory, a legal person cannot be a state.’*

In view of the above quote, discuss the significance of territory in international law.

[25]

### **Question 3**

In January 2014, a civil war broke out between government forces in the State of Elepo and rebel forces who wanted to overthrow the dictatorial regime headed by General Ferdinand. In November 2014, the rebel forces succeeded in their revolution and the General and his Ministers had to flee the country to seek refuge in neighbouring states. The rebels allocate new Ministerial posts and changed every member of the judiciary.

The army in Elepo still supports General Ferdinand and members of the army have stolen weapons and have gone into hiding from where they launch attacks against the new government. The police in Elepo support the new government but struggle to maintain order due to insufficient human and financial resources. However, their numbers are supplemented by forces pledged by other sympathetic States. The rebels control the capital city and large metropolises, but rural areas, which are a significant chunk of the country, still support the former regime and engage in acts of sabotage against the rebel government.

You are a legal advisor in the Ministry of Foreign Affairs of the Republic of Giz. Use principles of international law to advise your government on whether or not it should recognise the rebel government.

[25]

#### **Question 4**

Leo, a foreign affairs writer, was invited to attend an official dinner at the premises of the embassy of Lesotho in the capital city of China. At the dinner, Leo was physically assaulted by Sempe, who is the Head of Lesotho's diplomatic mission accredited to China. The assault caused Leo serious personal injury. Leo has commenced delictual proceedings in the Supreme Court of China against Sempe and the Kingdom of Lesotho to recover damages for personal injury.

Give a legal opinion as to the jurisdiction of the court over the respective defendants.

[25]

### **Question 5**

Scott, a Lesotho national, was arrested in July 2012 on allegations of murder, cannibalism and trading in human body parts. He confessed to the murders and his matter was set to proceed before the High Court of Lesotho but he managed to escape from the Maseru Central Prison on the 13<sup>th</sup> October 2012. A warrant of arrest was issued and an application was made to Interpol in Pretoria for assistance in the suspect's apprehension as there was a strong possibility that he had fled to South Africa. Scott was arrested on the 07<sup>th</sup> April 2014 in Amaoti, Inanda KwaZulu-Natal.

The Government of Lesotho is adamant that he should return to Lesotho to stand trial. However, the South African government has expressed its concern on the following issues:

- Whether Scott would receive a fair trial
- The possible imposition of the death sentence since Lesotho still retains the death penalty as a form of punishment
- The appalling conditions of prisons in Lesotho as well as the treatment of prisoners

Therefore, the government of South Africa has expressed its reluctance to hand over Scott to the government of Lesotho.

Discuss the principles of international law that govern extradition which Lesotho should take into consideration in its application for Scott's return to Lesotho.

[25]

### **Question 6**

Use the provisions of the Vienna Convention on the Law of Treaties to address the following disputes. You must refer to decided cases to justify your application of the treaty provisions.

a. Tanzania claims that it was persuaded by China to enter into a treaty based on a threat that China would cut aid and trade benefits if Tanzania did not join the treaty. Now Tanzania believes that it was not in its best interest to have joined the treaty due to the heavy financial and other burdens involved in its implementation. It wants to know what options it has to escape the treaty on the grounds of China's conduct.

[5]

b. Norway, Denmark, Sweden, Belgium and the Netherlands entered into a treaty in 2000. Article 100 of the treaty provides that treaty clauses may be amended if accepted by at least 2/3 of the membership. The treaty is silent on its modification. In 2008, Norway and Denmark proposed an amendment to Article 27 of the treaty. The amendment was not supported by the other members. Norway and Denmark decided to modify Article 27 as between themselves. In

2014, in a dispute between Denmark and Belgium, Denmark brings up obligations in the modified version of Article 27. It alleges that this version is the later version and therefore the one that is applicable (*lex posterior*). Belgium alleges that the treaty could not be modified because the treaty is silent on the issue of modification.

- (i) Consider the veracity of Denmark's allegation [5]
- (ii) Consider the veracity of Belgium's allegation [5]

c. Timbuktu, a region in Mali, West Africa, breaks away from the State. Mr. Arnold is proclaimed as the President of the new State of Timbuktu. This state is not recognised by any State because it does not have defined boundaries and cannot conduct diplomatic relations. Various officials have descended into Mali to try to mediate in the dispute and restore order to the State. At a dinner in Bamako, the capital city of Mali, Mr. Arnold discusses the deteriorating health sector in Timbuktu with the American President. The President promises to send aid to help build hospitals and clinics in the region. Subsequently, Mr. Arnold alleges that the promise constituted a treaty between the State of Timbuktu and the US. Critically discuss.

[10]