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

MAY 2018

MARKS: 100

TIME: 3 HOURS

INSTRUCTIONS:

1. Answer any **FOUR (4)** questions.
 2. All questions carry equal marks.
 3. Answer clearly and refer to relevant authorities wherever possible.
 4. Allocate 45 minutes to each question.
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QUESTION 1

- (a) With reference to the case of *Senate Gabasheane Masupha v The Senior Resident Magistrate for Subordinate Court of Berea & Others* C OF A (CIV) 29/2013 discuss the challenges of applying international law in the domestic courts of Lesotho.

15 Marks

- (b) Discuss the key elements of the dualist and monist approaches to the relationship between international law and domestic law.

10 Marks**[25 MARKS]****QUESTION 2**

- (a) Under what circumstances can a state be denied the right to enter reservation(s) to a treaty that it seeks to ratify?

10 Marks

- (b) In what ways can third party states derive benefit from a treaty that they have not ratified?

10 Marks

- (c) What is the principle of *rebus sic stantibus* and why is it important in treaty law?

5 Marks**[25 MARKS]****QUESTION 3**

There is an uprising in the Kingdom of Roxy. The youth have revolted against the regime of their monarch, Queen Elsabeta Mango, and they wish to force her to relinquish power. The youth, joined by professionals and the entire

population are demonstrating in the streets of Tam Tam, Kudu's capital, daily. The demonstrations have been going on for days and Queen Elsabeta got tired of it. As a result, she sent special military forces to the streets to whip the "cockroaches" back to their homes. Following the military action several demonstrators died and some sustained serious injuries. Five neighbouring states, fearing that the situation in Roxy might deteriorate further, formed themselves into a "coalition of the willing" and sent a joint military force into Roxy to "protect the rights of the civilian population". The coalition forces have however gone to the Queen's palace and placed her and her Royal family under house arrest. The coalition forces have announced that they will not leave Roxy unless there is a peaceful democratic election and a proper government is instituted through a democratic process.

You are a senior official of Queen Elsabeta Mango's government tasked with preparing a case to be filed against the "coalition of the willing" countries at the International Court of Justice (ICJ). Write a concise memorandum outlining the violations of international law against the Kingdom of Roxy over which the ICJ may exercise jurisdiction.

[25 MARKS]

QUESTION 4

- (a) Discuss using concrete examples, the attributes that an entity should have for it to acquire the status of a state under international law.

15 Marks

- (b) Discuss the substantive as well as the procedural requirements for states to become members of the United Nations.

10 Marks
[25 MARKS]

QUESTION 5

In January 2018, the son of Maka, the Minister of Justice of the Republic of Sushi, who was studying at Tilali a National University was abducted and tortured by unknown people. Tilali and Sushi are two neighbouring countries. For a long time the two countries have had a long boundary feud that dates back to the 1960s when the two countries got their independence from Britain. According to a tabloid newspaper in Sushi, the abduction was carried out by government special forces, apparently to avenge what the Tilali government viewed as “Sushi’s reckless claim to its territory”. The students at the University in Sushi mounted a huge demonstration against Tilali that spilled over to the streets of Rui, Sushi’s capital. They blocked the streets, burned cars and looted shops. They also invaded the Embassy of Tilali in Rui, held all workers hostage and destroyed property.

Tilali views the action by students on its embassy in Rui as a provocation and have alleged that the government of Sushi was using students to carry out its illegal acts. They have vowed to act against Sushi in the most decisive way.

You have been approached by Tilali’s Minister of International Affairs to advise them on whether the act of the students constitute an internationally wrongful act for which Sushi should be held responsible under international law. Write a legal opinion advising the Minister and government accordingly.

[25 MARKS]

QUESTION 6

Two years ago, the Democratic Republic of Chissoko, a newly independent country in central Africa, held its presidential and parliamentary elections. Immediately after the election results were announced, and the incumbent president, Strongman Witu Wit, was declared president, there was widespread

revolt in which hundreds of people were killed and thousands displaced. The revolt was as a result of the wide perception that Witu Wit had manipulated the results against the opposition leader, Grand Machar. Due to international pressure, the two leaders agreed to a power-sharing arrangement, and that brought the violence to a stop. Also, the leaders agreed that the perpetrators of the violence were to be brought to book, either in a specially constituted local tribunal, or be referred to the International Criminal Court (ICC), at The Hague. Efforts to establish a local tribunal failed, and the matter was then referred to ICC. The ICC conducted investigations and as a result, indicted several key Ministers from President Witu Wit's party. These ministers have been summoned to appear at ICC to answer charges for war crimes and crimes against humanity, and in accordance with the ICC Statute

You have been approached by Strongman Witu Wit's Minister of Justice to advise their government on this matter. According to the Minister of Justice, the President does not want the matter to proceed at The Hague, because Chissoko is a "sovereign state" and should be trusted to deal with its own problems. He has indicated to you that the government is ready to rally his party members in support of a local tribunal. Having regard to the Rome Statute on International Criminal Court, write an opinion outlining the options available to the Republic of Chissoko in its bid to stop the ICC process.

[25 MARKS]