

**UNIVERSITY OF SWAZILAND**

**FACULTY OF SOCIAL SCIENCE**

**DEPARTMENT OF LAW**

**FINAL EXAMINATION**

**MAY 2009**

**TITLE OF PAPER: PUBLIC INTERNATIONAL LAW**

**COURSE CODE: L406**

**TIME ALLOWED: THREE (3) HOURS**

**INSTRUCTIONS:**

- (a) ANSWER ANY FOUR (4) QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL MARK OF 25.**
- (c) THE CONTENT OF YOUR ANSWERS, CLARITY OF EXPRESSION AND LEGIBILITY OF YOUR HANDWRITING ARE ALL EXTREMELY ESSENTIAL.**

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**Question one:**

- (a) Swaziland is one of the jurisdictions that have shown aversion to the automatic application of international law in domestic courts. Contrast this proposition with what obtains in jurisdictions like South Africa, Namibia, and Angola. (15)
- (b) There have been complaints about the inability of international law to hold multinational corporations (MNCs) accountable for violation of international law (human rights in particular). This is so despite the fact that in recent years, MNCs have increasingly played a role in international relations. However, that notwithstanding, they are still not clothed with international legal personality. Elaborate. (10)

**(25 Marks)**

**Question two:**

The state of Swaziland claims that there is land belonging to it, spanning all the way from current Swaziland territory into Kwa-Zulu Natal, Mpumalanga and Gauteng provinces of South Africa. It claims further that it has historic ties to this land, and would one day wish to get this land back. To this end, Swaziland has set up a border restoration committee, whose mandate includes negotiating the re-vesting of the disputed land back into Swaziland's control. Advise this border commission on the prospects of getting back this disputed land from South Africa, applying principles of international law.

**(25 Marks)**

**Question three:**

Ruritania is a state in Africa. It gained independence in 1968 from the British. Its neighbour, South East Africa (SEA) is led by a white minority group, who pursue the policy of apartheid. Many freedom fighters from SEA flock to Ruritania to escape torture at the hands of the white supremacists. Mzi is one such freedom fighter. After blowing up a gas pipe installation in the northern province of SEA, she fled to Ruritania where she gained entry through an informal crossing point. The intelligence agents from SEA followed her all the way to Ruritania's capital, Mouri. In Mouri, Mzi was captured by these agents as soon as she stepped out for a drink one night. She was driven for over 300 kilometres to a remote village, where she was tortured and raped by the more than 5 agents, within the thick of the rustic Ruritanian forests. Also present were two members of the Ruritanian security forces, who participated in the torture, whilst accusing Mzi of bringing chaos to their peaceful country by rushing to hide there. Left for dead, Mzi was assisted by villagers from Kisumu village who nursed her back to health. She again sneaked back to Mouri, but this time headed for the American Embassy where she sought refuge. Ruritanian forces broke into the embassy and smuggled Mzi out, and handed her over to SEA agents. As a form of retaliation, the army commander of Ruritania issued orders for the villagers who assisted Mzi to be dealt with. A day later, the entire Kisumu village was burnt down, and

40 people were killed. Mzi is now on trial for terrorism in the SEA courts. She argues that her arrest violated international law, and therefore the court cannot have jurisdiction. The American government is incensed at the break-in into its premises, and wants to take action against the Government of Ruritania.

You are appointed counsel for Mzi (for her trial), the American Government and survivors of the Kisumu village.

- (a) Articulate your defence strategy for Mzi using international law principles; (Note SEA is a dualist state).
- (b) Advise the American Government on the possible avenues to follow for redress under international law; and
- (c) Finally, state the forum and procedure to follow under international law to seek redress for the survivors of Kisumu village.

**(25 Marks)**

**Question four:**

Balotsoland is a republic neighbouring the Kingdom of Biafra in the eastern tip of Africa. In 1965, both countries obtained independence from the same colonial master, the Siberian Empire. Territorial boundaries between the two states (Balotsoland and Biafra) are sketchy, owing to the fact that at some point, the Siberian Empire administered them as one entity. The ethnic differences between the Balotso and the Biafrans, however, remain brusquely pronounced. Relations between the two ethnic groups are littered with historical strains as a result of favouritism shown towards the Balotso by the former colonial masters. Further, the Biafrans are envied by the Balotso for their beauty, good body structure and excellent height. Most Balotso are short and plain. Both countries have ratified the Rome statute.

Because of the sketchy borders, several religious festivities and rituals of Biafrans are performed within Balotsoland in the fall of every year. Only a small population of the Balotso travel to Biafra annually for sacred rituals in the temple of their god Balo. A degree of tolerance between the two tribes does exist.

In 2000, during one of the many annual pilgrimages into Balotsoland, a group of Biafran youths gang-raped a young Balotso woman. This act attracted a lot of public violence, looting and destruction of property by the Balotso. Close to 5000 Biafrans were injured and 107 lost their lives.

Following the rampage, the Balotso prime minister, Madame Bensa was captured on national television accusing Biafra of sending infidels to violate their women. Madame Bensa went on to warn that Balotsoland will not take the offence lying down. She concluded by calling on all Balotso, who are proud and patriotic of their heritage, to *'purge the evil that has invaded our holy land'*.

In the weeks that followed, several Biafran women returning home from the pilgrimage were raped, robbed and murdered by both vigilante groups and state agents from Balotsoland. The immigration officials on the Balotsoland/Biafran border refused over 100 000 Biafran returnees permission to exit Balotsoland. Despondent, these devotees were scattered all over Balotsoland in search of informal crossings back to the land of their birth.

In the western Balotso village of Sorobe, which for centuries has been home to people from both Balotsoland and Biafra, the ethnic strains came to the fore. Close to 30 Biafrans were killed by the community police, because of the prime minister's speech.

In 2003, during an election rally, in an attempt to gain some political mileage, Madame Bensa began chanting the slogan *'You must cut the tall trees'*. She uttered these words after a short speech in commemoration of the death of the young woman who was raped by the Biafran devotees. She concluded her speech by saying that her heart still bled for the young victim, because the perpetrators of her suffering were still coming to Balotsoland every year, without shame. In conclusion, she called upon every Balotso who was proud of his or her nationality to restore the honour of the deceased. Before bowing out, she once again screamed, *'You must cut the tall trees, ... cut the tall trees'*.

Before the end of that particular day, community police had already incarcerated more than 2000 Biafrans on trumped up charges. Violence flared in several villages throughout Bolotsoland, resulting in the deaths of 400 000 Biafrans and the displacement of over 2 million. Several Biafran women and girls were turned into sex slaves. Meanwhile in Biafra, the youth organized themselves and retaliated on a group of Balotso immigrants in the temple of Balo, killing 15 of them.

- (i) Which forum would have jurisdiction over the violation of human rights in 2000 and what specific crimes of violations would be alleged. Which specific individuals would be indicted? (4)
- (ii) Which forum would be seized of the 2003 violations and who is competent to bring the matter before that forum? What crimes or violations would be alleged, and against whom? (6)

- (iii) Can the masterminds of the Sorobe village violations be brought before the International Criminal Court? (4)
- (iv) Can war crimes be brought against the Biafran youth gang that killed 15 Balotso? (4)
- (v) How would the principle of complementarity affect trial by the ICC? (4)
- (vi) Assuming both Balotsoland and Biafra had not ratified the Rome statute, what would your response to (ii) and (iii) above be? (3)

**(25 Marks)**

**Question five:**

Resolutions 678 (1990), 687 (1991) and 1441 (2002) were relied upon by the US and UK to justify their invasion of Iraq in March 2003. In fact the two states advanced the argument that since Iraq failed to comply with Resolution 1441, its breach worked to revive Resolution 678, hence the invasion. Critically analyze this argument.

**(25 Marks)**