

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2010

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:

The Republics of Utopia and Malaga are two states on the northern tip of Africa. In 2002 the two states embarked on a diplomatic *tete-a-tete* with a view to concluding a series of treaties. The following facts transpired in respect of each treaty.

Business Treaty – Utopian officials invited Malagan officials to Utopia's five star hotel, the Utopian Sun for a 10-day brainstorming session. During that time, the Malagans were treated to the rarest of fine wine and fine cuisine, including non-stop entertainment in Utopia's red light district, the Valley of Heavenly Bliss. The Malagans, coming from an almost failed state with no resources were thoroughly entertained. As a result of the Utopian hospitality, the Malagan officials signed the Business Treaty which gave Utopian corporations exclusive rights over all natural resources in Malaga, as well as immunity from prosecution for environmental degradation.

Cooperation Treaty – a year later in March 2003 the two states met once again to deliberate on the conclusion of a treaty to promote cooperation in fighting organized cross-border crime. Again the Utopian Sun was the party base. The treaty's provisions were to the effect that Utopian nationals who are wanted for economic crimes in Malaga cannot be deported or extradited by Utopia to Malaga. The Minister of Foreign Affairs in Malaga attempted to enter a reservation to that provision, stating that only crimes committed in Utopia by Utopian nationals against Malagan nationals should be under the list of crimes for which deportation and extradition could not operate. When this reservation was declined, the Minister grumbled his objection to the Utopian proposal, but was curtly reminded that Utopian forces are spread all over the Malagan peninsula and its hinterland, where they provide security services to Utopian corporations. He was further reminded that one of these mining concerns was located in the village where his ailing parents and his entire clansmen resided. Knowing the violent dispositions of the Utopians, the Minister signed the cooperation treaty.

CEDAW – in 2005, both Malaga and Utopia decided to become parties to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and attempted to deposit instruments of accession. However, based on their religious beliefs, the two states entered reservations on the equality provisions, arguing that in their religion and custom, women cannot be equal to men.

In 2009, a new regime took over power in Malaga, and now seeks your opinion on the validity of these treaties and the validity of Malaga's actions pertaining to those treaties. Advise this new regime.

(25 Marks)

Question two:

- (a) For all international law to be binding on the government of Swaziland and to form part of our legal system, it must meet certain constitutional requirements. Discuss the veracity or otherwise of this statement. (15)
- (b) The polluter pays principles has ceased to be of any help in international law. It is now cheaper for some states to pollute than to invest in cleaner technologies to prevent pollution. Critically discuss. (10)

(25 Marks)

Question three:

The prohibition on the use of force by a state against another is now settled in international law. Both the United Nations and the African Union have regulatory mechanisms for such behaviour. However, such prohibition is not to be found solely in treaty law. Critically discuss this point with reference to illustrations.

(25 Marks)

Question four:

The Exclusive Economic Zone and Archipelagic Waters are fairly new zones under the law of the sea. The latter was conceived primarily because islands, unlike the large landmasses that continents are, require different spatial and maritime demarcation. Discuss these two zones in detail in relation to the rights and sovereignties that apply in each case.

(25 Marks)

Question five:

In 1719, the Republic of Azania acquired Penguin Island from State B via a treaty of peace after a war in which Azania was the victor. Penguin Island is a barren rocky place that is uninhabited. It is only desired by Azania for strategic reasons to forestall its fortification by another power. Upon concluding the agreement, Azania held Penguin Island but did not make direct use of it. Meanwhile international morality had so far progressed as to change the previous rule of international law and the new rule is that no territory may be acquired by a victor from a vanquished at the close of a war. In 1899, Azania discovered that a flag belonging to The Republic of Sandora had been flying on the island for almost one hundred years, and that there is a meteorological station belonging to Sandora. Owing to a dispute between Sandora and her neighbour, Zingoland, the armies of Zingoland lead an offensive into Sandora resulting in a week-long armed conflict. In a desperate attempt to end the conflict, and to

protect its citizens, Sandora offers Penguin Island to Zingoland by way of treaty. Advise each country as to whether it has good title over Penguin Island.

(25 Marks)