

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION
JULY 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.**

DO NOT OPEN THIS PAPER UNTIL SO PERMITTED BY THE INVIGILATOR.

Question 1

Extracted from: *The Swazi Independent Newspaper*, Friday 21 February 1991.

'Swaziland demands land back' – By Correspondent

*'Let us march on Pretoria, let us demand our land back!' were the words of Julius Malemo, a popular figure in the Swazi Motherland Movement (SMM), which is canvassing for votes in the forthcoming elections in tiny landlocked Swaziland. The landmark elections are set to bring to an end almost two decades of absolute rule by the monarch. Malemo continued to bellow out radical statements, about the land of his forefathers, 'Comrades, when we take over, we will march on the seat of apartheid and take what rightfully belongs to us. The Olifants River belongs to Swaziland, iNgwavuma belongs to Swaziland and so does the Transvaal. To hell with the Organisation of African Unity, we want our land back. We are prepared to kill for our land'. The crowd of over 25 000 was dancing and shouting, singing military songs, in full military gear, as Malemo continued to outline a plan on how the land will be returned to them, by force if necessary. He mentioned that international law has proved to be unSwazi, and as such they do not want to waste their time as SMM, following international law. Besides, the settlers violated the very same international law when annexing their land. Echoes of *Viva Motherland viva, viva comrades viva*', were reverberating throughout the packed Freedom Square Arena, much to the excitement of the crowd.*

Advise Malemo and the SMM on what their legal rights are should they successfully form a government.

(25 Marks)

Question 2

There are several disqualifying criteria that can act as a bar to an application for extradition. However, with new developments in international law, such as terrorism, the list seems to be shrinking. This new *addendum* has been criticized for limiting fundamental rights and attempting to subordinate international law to domestic law. Swaziland has not been spared in this regard. Critically discuss.

(25 Marks)

Question 3

The crime of aggression currently has no precise definition, yet it appears in the Rome Statute amongst the types of conduct for which the Court will have jurisdiction. As a result, the International Criminal Court cannot exercise jurisdiction until this crime is clearly defined. Discuss this in relation to the Court's jurisdiction *ratione temporis* and the possibility of founding this crime in customary international law.

(25 Marks)

Question 4

You are sitting in a bus, when a first-year law student learns that you are a student of international law. She begins to talk to you about the International Court of Justice (ICJ), and how it, as the principal organ of the United Nations (UN), has described itself as an organ of international law; yet it is neither a legislative body nor an academic institution. She goes on to mention that it dispenses with justice within the limits that have been assigned to it, drawn from its founding instrument. There are however, extraneous repositories, such as Article 38(2), to which the court turns to fairly adjudicate upon a particular matter. Advise her.

(25 Marks)

Question 5

In May 2009, the Government of Sidon, through the office of the Prime Minister issued a press statement in which it condemned the bombing of cabinet offices in Sidon's capital Malibu. A pro-democracy group, Free Sidon was quick to claim responsibility for the bombings, adding through an internet blog posting that unless the 'fat cats' in Sidon bow to pressure, they will be smoked out. Following the bombing the Government embarked on a crackdown on criminal activities that saw various residences and factory shells believed to harbour insurgent elements being raided. In June 2009, Mangaliso Dlamini, a youth activist within Free Sidon and largely believed to have been trained by the Taliban, was woken up by Special Forces that descended on his two-roomed stick and mud hut in the middle of the night. Mangaliso's entire family was quickly rounded up, while being pummeled by the blood hungry state agents. They were quickly bundled into the back of an anti-riot truck and driven towards the city centre. When the vehicle passed by the American Embassy in Malibu, Mangaliso's Taliban training paid off, as he managed to overpower one of the state agents and detonate his grenade, blowing up both the officer and the side wall of the vehicle. In that instant Mangaliso bolted from the vehicle, sped across the busy highway and jumped over the 2 meter high security fence of the American Embassy. His cousin, who also survived the explosion was hot on his heels, but was unfortunately apprehended at the entrance to the Embassy whilst Mangaliso was trying to pull him over. He was pulled back by the Special Forces to the burning anti-riot truck. Upon seeing that Mangaliso had made it into the embassy and was now bragging through the metal fence, one of the Special Forces agents fatally shot Mangaliso in the head. Critically discuss the international law issues that arise from this factual matrix and the remedies available to any aggrieved party.

(25 Marks)