

UNIVERSITY OF SWAZILAND

FACULTY OF SOCIAL SCIENCE

254

DEPARTMENT OF LAW

FINAL EXAMINATION

MAY 2012

TITLE OF PAPER: PUBLIC INTERNATIONAL LAW

COURSE CODE: L406

TIME ALLOWED: THREE (3) HOURS

INSTRUCTIONS:

- (a) ANSWER ANY FOUR QUESTIONS.**
- (b) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.**
- (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 One

The leader of Africa's last absolute monarch, Mkuvuki III is loathed by many in his tiny coastal state of Kuvukiland, which is rich with gold and platinum. Mkuvuki has been accused of violating fundamental rights with impunity, and the courts of Kuvukiland cannot touch him. Since ascending to power in 1994, Mkuvuki's reign has been plagued with protests, as more and more Kuvuki residents demand political changes. Whilst on his annual shopping holiday in The Netherlands a year ago, Mkuvuki III attended a gala dinner, where he met a beautiful Croatian woman, Genevive and instantly fell in love with her. Known for his charm, Mkuvuki wasted no time in wooing Ms Genevive to his presidential suite, which was to become their love nest for the three weeks that Mkuvuki spent in the Netherlands. Mkuvuki left The Netherlands, with the media feeding onto the developing story of the romance between the two lovebirds, and every media house was abuzz with the royal wedding scheduled for the next 7 months. The Dutch papers were littered with public sightings of the couple, including one where Genevive was in attendance with Mkuvuki at a United Nations Conference held in the Hague. However, 14 months later, Mkuvuki has not made good his promise to marry young Genevive, and the aviation charter company that supplied him with a Learjet to undertake the trip has not been paid. It has also emerged that the bill at the Royal Amsterdam Hotel has been partially settled, as Mkuvuki cannot pay due to a falling economy. The KuvuTech Company, a parastatal set up by the government of Kuvukiland to promote tourism and technology in the tiny state was responsible for Mkuvuki's accommodation.

Advise:

- (a) Advise Ms Genevive if she can sue Mkuvuki for breach of promise to marry. **(10)**
- (b) Advise the aviation company on whether it can sue Mkuvuki for the charter fees. **(7)**
- (c) Advise the hotel if it can recover its money from Mkuvuki. **(8)**

(25 Marks)

Question Two

The state of Zinga is a member of both the United Nations and the African Union. It is so heavily steeped in culture, that its governance is measured against cultural standards. By the end of 2011, the state of Zinga had signed and ratified all the major human rights instruments of both the AU and the UN, as well as the Vienna Convention on the Law of Treaties. The Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) remained unsigned because of their clash with Zingari culture on the status of women and children. However, with the coming into office of King Zingari II, the Supreme Council of State (a quasi-judicial traditional authority) announced that owing to the foreign nature of the international instruments, as well as their divisive nature and the supremacy of Zingari culture and traditions, the Government of Zinga would no longer uphold even those instruments that it signed and ratified. The Supreme Council therefore mandated the Attorney General and the Minister of Foreign Affairs to embark on an exercise that will allow the Government of Zinga to enter reservations on the provisions of equality in CEDAW and the rights of children to be heard in any transactions involving them.

In a critical assessment of this situation, advise the Government of Zinga on whether this statement alone absolves it of its responsibilities under these international instruments in general, and whether the intended reservations are permissible.

(25 Marks)

Question Three

For years the state of Swaziland has been calling for the return of its land from the Republic of South Africa. In February 2009, a group of pro-Swazi residents in the Barberton area began to put pressure on the South African Government, for the return of their land to the control of Swaziland. The South African Government responded by ignoring those agitating for a return of Barberton to Swaziland. Towards the end of 2009, demonstrations were held at the Department of International Relations and Cooperation (DIRCO) in Pretoria, where demonstrators called for the quick facilitation of the handover.

Spotted amongst the demonstrators, were members of the Swaziland intelligence branch. By January 2010, the demonstrations were growing and spreading to other parts of South Africa, particularly in the Mpumalanga region. By June 2010, Swaziland's elite fighter group, The Butterflies were rumoured to be encamped around the border with South Africa, with spies deployed to Pretoria. By October 2010, the South African Government deployed a battalion from its navy to quell looting and public disorder in the Mpumalanga Province, where the pro-Swaziland movement was gaining strength. In that skirmish, 86 protestors were killed, with 400 wounded.

By December 2010, the violence had escalated, with over 3000 casualties. The pro-Swaziland movement had now received arms and financial assistance from a wealthy prince in Swaziland, who sympathised with their cause. The Government of Swaziland, however, denied involvement in the financing and arming of the pro-Swaziland movement. By January 2011, undercover agents of the Swazi government, who now had easy access to Mpumalanga, were giving military advice to the demonstrators, on where and how to launch an offensive to weaken the South African military. The group's self-appointed leader, Chief Tikon was captured in the media warning the Government of South Africa not to dare undermine them, for theirs was a struggle for liberation. In March 2011, South Africa responded by launching an offensive on the small town of Nhlanguano, entering through the southern border near Piet Retief, an attack which saw the death of 40 civilians and 9 police officers.

The Swaziland Government has now approached you for advice on the following:

- (a) Whether an armed conflict existed in February 2009? (3)
- (b) Whether an armed conflict existed in June 2009? (2)
- (c) How the occurrences between June 2010 and the end of the conflict could be classified? (10)
- (d) Whether the South African Government can be sued for the death of the 40 civilians during the Nhlanguano Offensive? (5)
- (e) What branch of law applies to this factual matrix? (1)
- (f) Whether the return of the land in this fashion will confer title on Swaziland under international law? (4)

(25 Marks)

Question Four

In 2010, members of the United Nations met in Kampala, Uganda as part of the review conference of the Statute of the International Criminal Court. At this conference, states agreed on a working definition of the crime of aggression. Whilst some commentators saw this as a positive development in international criminal law, others have criticised it for the weak provisions that came out of the conference. Taking either stance, critically assess the gains made at the Kampala Conference for purposes of international criminal law.

(25 Marks)

Question Five

Masipile Life Services is a one stop house for insurance, retirement and investment services. Its sole director, a socialite by the name of Frankie Vallie is known for his taste in cars and fashionable clothes and designer man-bags. He is also suspected of having clandestine dealings with the pro-democracy movement in Swaziland. Amongst the things Frankie is suspected to have done was the funding of various political meetings in Johannesburg and Mpumalanga, where members of Swaziland's banned political parties either planned or launched the Free Swaziland campaign. As a result, Frankie's privacy has been violated numerous times by state agents who bugged his phones and intercepted his emails. Frankie's wife, Mandisa, who also sits on the advisory board of the company and acts as its financial advisor, is a card carrying member of the banned political party, Vuka Swaziland. Mandisa is known for her commitment to pro-democracy activities, and never misses any protest action or political rally. In the beginning of 2012, Frankie's Masipile company was placed under investigation by the Registrar of Insurance for suspected fraud and embezzlement of funds. In terms of the investigation report, Frankie's company embezzled retirement funds to the tune of R175 000 000, leaving a large number of elderly subscribers moneyless. The state further alleges that the missing money was pumped by Frankie into the movement's activities, which resulted in the bombing of a bridge near Lozitha and the bombing of a government owned hydro-electricity generating facility in the south of Swaziland. The state also alleges that in a raid conducted at Frankie's house, it found records of illicit romantic rendezvous indicating that Frankie had extra-marital relationships with persons of the same sex. Frankie's affinity for amorous relations with persons of the same sex is regarded by the state as unSwazi and offends the Swaziland criminal laws.

Upon hearing that the police were looking for them, in relation to the missing funds, Frankie's wife escaped and is now hiding in the United Arab Emirates, where Frankie managed to start a new life assurance company. Frankie is rumoured to be in hiding in Hillbrow, Johannesburg. The Government of Swaziland now seeks the return of these two people to Swaziland, in relation to their involvement in the embezzlement of retirement funds. Additional to the financial crimes, Frankie and his wife will also be charged under Swaziland's anti-terrorism law, as well as under its sodomy laws. Advise the Government on the prospects of success in that endeavour.

(25 Marks)