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UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCE
DEPARTMENT OF LAW
SUPPLEMENTARY EXAMINATION PAPER
YEAR 2013/2014

TITLE OF PAPER : PUBLIC INTERNATIONAL LAW

COURSE CODE : L406

TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

- (i) ANSWER ANY FOUR (4) QUESTIONS.**
- (ii) EACH QUESTION CARRIES A TOTAL OF 25 MARKS.**
- (iii) IN ANSWERING THE QUESTIONS, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE ABSOLUTELY ESSENTIAL.**
- (iv) REFER TO LEGAL AUTHORITY TO SUBSTANTIATE YOUR ANSWERS.**

DO NOT OPEN THIS PAPER UNTIL TOLD TO DO SO BY THE INVIGILATOR.

QUESTION ONE

Maravia is an island of rugged mountainous terrain in the Pacific Ocean. It is some 1000kilometres long and 100 miles wide. The British "discovered" the island in 1588 when they landed on the western part of the same, and named the spot Port Safe. They easily defeated the natives and hoisted the British flag there. Meanwhile, the natives ran east-wards and carefully concealed their presence while praying their gods for a solution.

The British left in 1708, but kept visiting the place every once in a while until 1800, when there was an outbreak of the epidemic of bubonic plague. They then kept away for a long time. During this time, however, the French landed on the eastern side of the island. The natives welcomed the French as they looked friendly and gave them (natives) gifts of spices, silver and porcelain, and also provided medical help in treatment of the plague. In return, the natives told them, "You are free to make use of the land of Maravia in whatever way, and for as long as you want." The French then hoisted their flag there and started putting up buildings and installations.

When the British next visited Port Safe in 1880, they found the French had pulled down their flag, and literally taken over the whole island. There were skirmishes, and the French were driven back to the eastern end of the island, from where they have on occasion, kept fighting the British. Since then, though the British have remained at Port Safe and the French have remained in the east, the quarrel between the two has remained. But, interestingly, the natives' hostility towards the British has waned considerably. Now both the French and British want a permanent solution.

They have chosen you as arbitrator. The French insist that the island was ceded to them by the natives, and that the British claim based on conquest is contrary to peremptory norms of international law today.

Write a legal opinion supported by authority.

[25 Marks]

QUESTION TWO

Critically discuss collective recognition and collective non-recognition of an entity as a state.

[25 Marks]

QUESTION THREE

The Deputy President of the Republic of South Africa, the Minister of Sports and Culture of Mozambique, the Minister of Housing and Urban Development of Swaziland and the Minister of International Relations of Namibia met during the King's Golf Cup at Zulwini and signed an Agreement. The heading of the Agreement, in gold and red Gothic script, reads 'Treaty of Friendship and Cooperation'. The Agreement provides, among other things, that the mayors of the municipalities of Pretoria, South Africa, Maputo, Mozambique, Windhoek, Namibia and

Mbabane, Swaziland, will cooperate in promoting cultural contact and will, on public holidays, hoist one another's flags from their respective municipal offices. The President of Malawi who witnessed the signing of the Agreement urged the parties to perform it in good faith.

In the light of the definition of a treaty as set out in Article 2(1) of the Vienna Convention on the Law of Treaties, 1969 and on the basis of these facts, assess whether this 'Treaty of Friendship and Cooperation' would qualify as a treaty and evaluate the binding nature of this treaty.

[25 Marks]

QUESTION FOUR

(a) Briefly explain five enforcements measures of Public International Law which involve self-help. [10 Marks]

(b) Mr. Fumo, a Swazi national, was held without trial in Rwanda for several months, in a small cell, together with twenty five other prisoners, both male and female. Ventilation was poor, sanitary and ablution arrangements primitive, food scarce and coarse and he was denied any physical exercise. When Swaziland approached Rwanda to complain about the treatment of Mr. Fumo, Rwanda responded that as a prisoner Mr. Fumo was treated the same way as his fellow Rwandan prisoners.

The Government of Swaziland has approached you, an international law expert, for legal opinion on this matter. Write the opinion. [10 Marks]

(c) Write a brief note on immunity as an exception to jurisdiction, and pay particular attention to diplomatic immunity. [5 Marks]

[25 Marks]

QUESTION FIVE

As far as human rights are concerned, the AU Assembly of Heads of State and Government fulfills numerous executive functions. Discuss.

[25 Marks]