

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2015/2016

TITLE OF PAPER : PUBLIC INTERNATIONAL LAW
COURSE CODE : L 406
TIME ALLOWED : THREE (3) HOURS

INSTRUCTIONS:

- (i) ANSWER ANY FOUR (4) QUESTIONS.
- (ii) EACH QUESTION CARRIES 25 MARKS.
- (iii) IN ANSWERING ANY QUESTION, NOTE THAT THE QUALITY OF THE CONTENT, CLARITY OF EXPRESSION AND LEGIBILITY OF HANDWRITING ARE 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

In the context of any of the basis for persecution or a well-founded fear of persecution outlined in the Convention Relating to the Status of Refugees of 1951 (the 1951 Convention) that you deem relevant and on account of the following newspaper item, assess whether the Swazi political activists in the Republic of South Africa are eligible for a grant of asylum.

Democratic Front lends its voice in activists' plight

Mbabane – Coordinator of the Swaziland United Democratic Front, WD, said they fully support the three Swazi political activists in South Africa as they fight to stay in that country.

D said Swaziland had a political problem which has time and again led to a number of political activists being forced out of the country a number of times. D condemned the action of the South African government to deny them asylum.

"It is an unfortunate position that can be taken by that country because they, themselves, are fresh from exile. They are our neighbours and up to date with what is going on in Swaziland. They have an embassy here which I assume updates them daily on what is going on in the country." D said.

He further condemned the recent judgment delivered at the High Court where a journalist and a lawyer were found guilty of contempt of court. He said if the comrades were taken back to Swaziland, their situation would be dangerous.

He said they would risk being tortured and their rights being undermined in a big way. He said the SA Government should continue to accommodate them.

"I think it is against international law for South Africa to deny them asylum. They are fresh from asylum themselves. We find that very unfortunate on their part" D said.

[Sibongile Sukati, "Democratic Front lends its voice in activists' plight", Times of Swaziland, Wednesday, July 30, 2014, page 5]

[25 Marks]

QUESTION TWO

(a) XYZ, a painting contractor from Qatar enters into a contract with the government of Swaziland to paint the Embassy of the Kingdom of Swaziland to Qatar. The contractor completes the job satisfactorily. When the contractor claims payment in terms of the contract, the government of the Kingdom of Swaziland, which is experiencing a cash flow problem at the time, refuses to pay. When XYZ sues the Government of Swaziland for payment, the Government claims immunity from the jurisdiction of the municipal courts of Qatar because the contract is an act performed by the Swazi state. You are a judge of recognised competence in international law. Give a ruling in this matter.

[10 Marks]

(b) In 1986, the states of Adova and Plateau engaged in a war over the mineral-rich Province of Arizona, which was part of the territory of Adova when both states gained independence from the British in 1925. After the termination of hostilities in 1992, Adova, the vanquished state, purported to cede the Province of Arizona to the Republic of Plateau despite protests from the people who inhabit the ceded Province. The people of Arizona have asked you to render advice on the legality of the Republic of Plateau's title to the Province, which the state claims to have acquired by means of cession. Render the advice.

[15 Marks]

[25 Marks]

QUESTION THREE

(a) The National Commissioner of the Swaziland Royal Police Service dispatched troops to suppress activists from Denmark who were demonstrating outside the Vice Chancellor's Office over the decision of the University of Swaziland not to register political science student who had not paid a deposit for their tuition fees. The troops, on arriving at the scene, opened fire on the demonstrators, as a consequence of which seven Danes were killed. The Government of Swaziland has denied liability on the ground that the troops acted contrary to the instructions of their superiors. Advise the Government of Denmark.

[15 Marks]

(b) The Zambian Government has received reports that about 15 Zambian female prisoners who are held in Swaziland prisons are denied basic necessities and that warders demand sex in exchange for soap or bread. When the Zambian consul visited the prisons, the prisoners complained about poor medical treatment and that they survived on rotten beans and fish. The prison authorities informed the Zambian consul that these conditions applied to all prisoners and were not exclusive to Zambian nationals. Render a legal opinion to the Government of Zambia on this matter.

[10 Marks]

[25 Marks]

QUESTION FOUR

(a) International law prohibits the use of force in international relations. Discuss two instances in which states have resorted to the use of force without the authorisation of the United Nations.

[10 Marks]

(b) Discuss custom as a source of public international law. **[7 Marks]**

(c) Define obligations *erga omnes*. **[5 Marks]**

(d) Define 'boot strap' refugees. **[3Marks]**

[25 Marks]

QUESTION FIVE

The Kingdom of Amazon got its independence in 2002. Three principal ethnic groups, the Rasp Arians, the Arizonians and the Katangese, populate the Kingdom. The ethnic groups have distinct languages, religions and cultures, although they are physically indistinguishable. About 50% of the population comprises Rasp Arians, 20% Arizonians, 10% Katangese and 20% 'mixed' or 'other'. Most Katangese have historically lived in the Upland Plateau, a geographically self-contained district making up approximately 30% of the total area of the country. The Katangese generally think of the Upland Plateau as the centre of their ethnic culture and their most important religious and historic sites are located there.

Over the years since independence, the Katangese in the Upland Plateau have been denied the right to vote for their representatives in the Government of the Kingdom. The Katangese have on several occasions been arrested, detained and subjected to harsh prison conditions for planning peaceful demonstrations. In the last three years, the central government has not included the Upland Plateau in the national budget. The Katangese's attempts to seek redress in the Courts, which are mostly composed of judges who are Rasp Arians, have failed. The Katangese now seek to secede from the Kingdom of Amazon and create a new state. They have been advised that their purported secession would be in violation of the principle of territorial integrity.

Discuss the basis for and validity of the Katangese's secessionist claim.

[25 Marks]

END OF PAPER