

UNIVERSITY OF SWAZILAND
FACULTY OF SOCIAL SCIENCES
DEPARTMENT OF LAW
FINAL EXAMINATION PAPER (MAIN)
YEAR: 2017/2018

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

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 Ezulwini 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 flag in their respective municipal offices. The President of Malawi who witnessed the signing of the Agreement urged the state parties to the Agreement to perform it in good faith.

In 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 TWO

Can China really take over Taiwan?

Chinese air force fighters have begun escorting bombers around Taiwan in "encirclement drills" and spokesmen for the Communist government have warned Taiwan to get used to it. On Wednesday, China's president Xi Jinping, dressed in military fatigues, convened a military mobilization meeting — the first ever for the entire Chinese armed forces and commanded China's military to become "battle ready." Chinese officials are threatening that relations with Taiwan will turn "grave" because Taiwan's government refuses to acknowledge that the island is part of China. A leading Chinese analyst predicts that China has accelerated its timetable to 2020 for taking over the island by military means.

"Meanwhile, the Trump administration has vowed to strengthen the United States' relations with Taiwan and has floated the idea of U.S. naval visits to the islands, prompting Li Kexin, a minister at the Chinese Embassy in Washington, to threaten that "the day a U.S. navy vessel arrives in Kaohsiung is the day that our People's Liberation Army (PLA) unifies Taiwan with military force."

"The ratcheting up of tension across the Taiwan Strait is a reminder that the island democracy, which Beijing claims is a province of China, remains a center of gravity in East Asia. But it also raises a question: can China really take over Taiwan?"

[John Pomfret *The Washington Post* Accessed 23 March 2018.]

(a) In the context of the above article and with reference to legal authority, critically examine the legality or illegality of China's proposed action against Taiwan.

[15 Marks]

(b) The government of Botswana concludes a contract with a South African company, Footwear, for the supply of boots for the Botswana Defence Force. The boots are supplied and Botswana refuses to pay. Footwear sues Botswana in a South African court, and Botswana raises sovereign immunity to block the action. Discuss the validity or invalidity of Botswana's defence.

[10 Marks]

[25 Marks]

QUESTION THREE

(a) A war erupted in 2010 between the Republic of Raspara and the Kingdom of Azania. The war between these states ended in 2012. The Kingdom of Azania is still holding between 45000-50000 Raspara prisoners of war. The Kingdom of Azania has denied the International Committee of the Red Cross access to most of the prisoners of war. About 10000 of the prisoners of war have been tried in the courts of Azania and convicted of various offences. The Kingdom of Azania is refusing to repatriate the prisoners of war.

You have been asked to advise the Kingdom of Azania on what is required of it by the applicable international humanitarian law in the circumstances. Render the advice.

[10 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. [15 Marks]
[25 Marks]**

QUESTION FOUR

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. 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.

Critically examine the validity or invalidity of the Katangese's secessionist claim.

[25 Marks]

QUESTION FIVE

Critically discuss any five enforcement measures of public international law which may be invoked without the authorisation of the United Nations.

[25 Mark]

=====END OF EXAMINATION PAPER=====