



EXAMINATIONS OF — DECEMBER 2004

CODE AND NAME OF COURSE: LA23A (LAW2310) - PUBLIC INTERNATIONAL LAW I

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 4 questions.

Answer TWO of the four questions.

1. "The rules regarding the persistent and subsequent objector reveal a critical weakness at the heart of international law. If a state can avoid being bound by any rule of customary international law, including a rule that achieves *jus cogens* standing, then international law cannot really be described as 'law'."

Critically assess the above statement, using examples from case law and state practice.

2. The results of the Presidential election are announced in the State of Affkan, which recently emerged from a long civil war. The winner, President Azai, immediately announces a number of constitutional changes, including the banning of all future elections in Affkan.

The State of Affkan has signed, but not yet ratified, the *Regional Convention on Protection of Democratic Governance*. The *Convention* entered into force ten years ago. It has twenty-five parties, representing the vast majority of states in the region. Article 4 of the *Convention* provides that "In the event of a non-democratic transition in a Member State, every other Member State shall utilise all available means at its disposal to restore democracy in the affected Member State." The *Convention* requires ratification, excludes reservations and does not contemplate withdrawal.

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The University of the West Indies

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The Prime Minister of the neighbouring State of Eyeraq, which has just experienced its own democratic transition, announces his intention to invade the State of Affkan in order to restore democracy. Before invading, however, out of an abundance of caution, the Prime Minister requests that the General Assembly of the United Nations ask for an advisory opinion from the International Court of Justice on the matter. The Prime Minister wishes to clarify the rights and obligations of the states of the region under both the *Convention* and customary international law.

You are a legal adviser to the State of Eyeraq. Draft the submissions of Eyeraq for the hearings before the International Court of Justice.

3. Mr. Lucky, a noted Caribbean entertainer, travels from his home state, Beleeze, to the State of Barbarous for a charity show. He is detained at Immigration upon his arrival because he has forgotten his passport. The only evidence of identity that Mr. Lucky has on his person is his recently awarded certificate of "TARCOM Nationality."

Mr. Lucky immediately telephones his lawyers in the State of Barbarous, who launch a challenge against the Immigration Authority's refusal to admit him into the country. Mr. Lucky is released on bail and the matter is heard before the Barbarous Supreme Court. In their submissions Mr. Lucky's lawyers make the following arguments on his behalf: (1) that TARCOM, the regional organisation of the Caribbean, is a new type of sovereign state and thereby has the competence to confer valid nationality under international law; (2) in the alternative, that the TARCOM *Treaty* provides for free movement of all TARCOM nationals, of which Mr. Lucky is one by means of his Beleezean nationality.

All of the above Caribbean states are parties to the TARCOM *Treaty* without reservation. The Treaty does provide for freedom of movement of nationals of TARCOM Member States. However it has not yet been incorporated into the laws of the State of Barbarous. The current Barbarous Immigration Act requires immigration officials to admit a foreign national only upon presentation by that person of "clear and proper evidence of nationality."

You are the Clerk to the Chief Justice of Barbarous. Write a memo advising her of all of the legal issues raised by the above, as well as about how to respond to the arguments presented by Mr. Lucky's lawyers.

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4. The Caribbean States of St. Loosea and St. Vyncent are signatories to the' *Malou Convention on the Prohibition of Transboundary Waste*. The *Convention* has fifteen signatories and has been in force for five years. Disputes under the *Convention* may be referred to the International Court of Justice.

In November 2004 a fearful tropical storm lashes both islands, causing St. Loosea's septic and waste disposal systems to overflow into the ocean. This waste drifts all of the way to St. Vyncent, killing schools of fish and bleaching coral. On November 30, 2004, St. Vyncent files a claim against St. Loosea before the International Court of Justice. St. Vyncent formally accepted the jurisdiction of the International Court of Justice in 1990 when it filed a declaration containing the following paragraph:

"St. Vyncent fully accepts the jurisdiction of this Honourable Court for all matters subsequent to the filing of this declaration with the exception of those matters which are not suitable for judicial resolution."

St. Loosea has not formally accepted the Court's jurisdiction: However, the Prime Minister of St. Loosea is so incensed at this development that he sends a letter dated December 2, 2004, to the President of the International Court of Justice. This letter states, *inter alia*, that

"Our Sovereign State has done no wrong in this matter. We are prepared to, and in fact by this letter undertake to, defend ourselves against this scurrilous suit before all relevant bodies."

The President of the Court thanks the Prime Minister for his letter and immediately sends him the schedule of dates for submissions and hearings in the matter. The St. Loosean Ministry of Foreign Affairs becomes concerned and requests a legal opinion from you on the above matters.

You must critically address St. Loosea's position, looking specifically at (1) whether the court has jurisdiction to hear the case, and (2) whether there are any defences at international law available to St. Loosea which may be used to respond to St. Vyncent's claim.

END OF PAPER

