



THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF DECEMBER 2005

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

DATE AND TIME:

DURATION: 2 HOURS

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

Answer TWO of the four questions.

1. "All of the sources of international law require active consent on the part of states."

Critically discuss the above quotation, being certain to refer to the relevant provisions of the 1969 *Vienna Convention on the Law of Treaties*.

2. An ultra-radical group of Natalian citizens called the "Caliphate" has long resented the influence of the Unified States (US) in Natalia. On December 1, 2005, Colonel Macabro, the Chief of the Armed Forces of Natalia and a member of the Caliphate, orders his comrades to kidnap and expel US nationals from Natalia. A small group of Caliphate members kidnap US nationals and, acting without direct authorisation of Colonel Macabro, brutally beat and then execute two US nationals. They release a video showing the execution.

The press in Natalia airs the video and the US government demands that Natalia put an end to these actions, disband the Caliphate as an illegal terrorist organisation, and arrest and punish its members. The President of Natalia issues an official statement condemning the actions of the Caliphate and announcing that Colonel Macabro has been dismissed from his post for acting outside of his authority.

However the President also indicates that Colonel Macabro's actions, although not desirable, were legal under both the laws of Natalia and the existing rules of international law. The President explains that the Natalian military code allows violent interrogation of prisoners, even if they should die as a consequence. The relations between Natalia and the US deteriorate to the point that all diplomatic ties are severed.

PLEASE TURN OVER

The government of the US believes that the Government of Natalia, despite the condemnation by the President, supports Colonel Macabro and the Caliphate. The US harshly condemns the so-called "interrogation" practices of the Natalian military as clearly violating customary international law.

As a result the US Joint Chiefs of Staff prepares secret contingency plans to deal with the situation in Natalia. They consider several options, including:

- Aiding Natalian insurgents to overthrow the current Government of Natalia;
- Imposing an oil embargo upon Natalia;
- Directly intervening and occupying Natalia with US military forces in order to stop the Natalian Government from violating "peremptory norms" of international law. Such occupation would continue until a new democratically elected government is established in Natalia.

You are a State Department lawyer for the US. The US President has asked you to critically assess the legality of the above actions, as well as to write an opinion advising the US of the legally permissible options available to it as raised by the above facts.

3. The Government of Natalia finds out that the US is considering military action in relation to the situation described in Question 2. In order to pre-empt such action, Natalia files a suit against the US before the International Court of Justice, requesting a provisional measures order from the Court prohibiting use of force by the US.

Both Natalia and the US have made declarations under Article 36 (2) of the Statute of the International Court of Justice. The US Declaration reads:

"The US recognises as compulsory *ipso facto* and without special agreement on condition of reciprocity, the jurisdiction of the International Court of Justice in conformity with Article 36 (2) of the Statute of the Court, for a period of 20 years as from 2 February 1990."

The Natalian Declaration, deposited with the Court and the UN Secretariat ten (10) days before the filing of the suit, reads:

"The Government of Natalia recognizes as compulsory *ipso facto* and without special agreement, on condition of reciprocity, the jurisdiction of the International Court of Justice, in conformity with Article 36(2) of the Statute of the Court, for a period of two years from the date of the filing of this declaration, for all disputes with one exception: Natalia will not appear as a defendant in cases involving armed conflicts."

Natalia argues, as an alternative basis for jurisdiction, that the *Treaty of Friendship*, which has been in force between the two states since 1917, prohibits use of force in their relations. Article 5 of the *Treaty of Friendship* provides:

“5. Our two Sovereignties henceforth agree to refrain from using force to settle our disputes. This solemn undertaking permits of no exception because there is no Higher Body to authorise legal use of force.”

Article 6 of the *Treaty of Friendship* provides that “Any disputes regarding the interpretation of this *Treaty* shall be settled before any existing international legal tribunal.”

You are a State Department lawyer for the US. Your President has requested your advice as to whether the US should even bother to appear before the Court, “since the suit has no merit.” In the alternative, the President has asked you to explore any mechanisms by which the International Court of Justice could be convinced not to take jurisdiction over the dispute.

4. After a civil war ending in 2004, the State of Purple splits into two parts: the Republic of Blue and the State of Red. Both parts have well defined borders, permanent populations and elected governments.

The State of Red, however, claims to be the legal continuation of the State of Purple. It assumes all of the obligations of the State of Purple and takes its seat in all international organisations without any objections. Only one state, the third State of Yellow, recognises the legal existence of the Republic of Blue.

The National Power Company of the Republic of Blue (NPC), a state owned and managed company, enters into a contract with the Giant Turbine Company, a privately owned company of the State of Green (GTC). Both companies are incorporated in, and have their head offices located within, their respective states. GTC enters into a contract with NPC to deliver one of its Super Big Turbines to NPC. After delivery, NPC discovers that the turbine is faulty, and demands that it be replaced or repaired without charge. GTC agrees to either replace or repair it, but insists upon payment of a service charge equivalent to 50% of the purchase price.

NPC files a lawsuit against GTC in the High Court of the State of Green on November 1st, 2005 alleging breach of contract and demanding either compensation or free repair of the product. In its arguments NPC alleges that compensation and/or repair is guaranteed under international law both as a result of being a general principle of law, and also as a result of the *Interim Trade Accord* entered into by the State of Green and the Republic of Blue. In Article 2 of this *Accord* both States “undertake to protect and treat fairly, on a reciprocal basis, our natural and juridical nationals.”

In its response to the suit, GTC argues that the High Court cannot hear the case because the Republic of Blue has not been officially recognised by the State of Green. In the last Executive Report of the State of Green (published in 2003), the Executive officially recognised the State of Purple. In the alternative, GTC argues that international law is not part of the domestic law of the State of Green and cannot be referred to before the High Court.

The *Interim Trade Accord* has not been incorporated by legislation into the laws of Green. The State of Green has rules governing the relationship between international law and municipal law which are similar to those of Commonwealth Caribbean jurisdictions.

Write a legal memo to the Chief Justice of the Green High Court critically addressing the legality of the above actions and addressing the issue of whether the High Court can take jurisdiction over the matter. Do not address any issues of state immunity or diplomatic protection.

END OF PAPER