



EXAMINATIONS OF JULY/AUGUST 2005

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 supremacy of customary international law as a source of international law can never be challenged by treaty law. Treaties not only rely upon custom for their binding character but, as the provisions of the 1969 *Vienna Convention on the Law of Treaties* make clear, it is hard for a state to be held accountable for its treaty violations. States have a wide array of 'defences' in the rules regarding invalidity, suspension and termination that can allow them to escape any treaty obligation."

Critically assess the above statements.

2. The newly-appointed Minister of Foreign Affairs of the State of Trinee sends the following declaration to the President of the International Court of Justice: "The Sovereign State of Trinee hereby accepts the jurisdiction of the International Court of Justice in all matters."

The neighbouring State of Guyna accepted the compulsory jurisdiction of the International Court of Justice in 1960. It did so with the simple declaration that "The State of Guyna accepts the jurisdiction of this honourable Court over all international legal matters."

Guyna nationals who own businesses in Trinee are required by law to pay a special Foreign Business Tax, which no other foreign nationals are required to pay. The Minister of Foreign Affairs of Guyna seizes the opportunity presented by the deposit of the Trinee declaration to launch a claim against Trinee before the International Court of Justice. This claim alleges that the Trinee tax is "illegal under both national and international law."

PLEASE TURN OVER

The Minister Foreign Affairs of the State of Trinee is reported in the newspapers to have responded saying that "the [Guyna] suit is ridiculous, since it clearly raises matters of Trinee law, which must be decided by the Courts of Trinee, not by the International Court of Justice. As a result Trinee will not bother to appear before the Court on this matter."

An outraged Guyna businessman, residing and conducting business in Trinee, files a suit in the Trinee High Court challenging the Trinee Foreign Business Tax as being contrary to customary international law.

You have been asked to write an opinion for the Minister of Foreign Affairs of Trinee on All of the above matters, advising him about the arguments he may present (1) before the Trinee High Court, and (2) before the International Court of Justice in order to reject that body's jurisdiction.

3. After a bloody terrorist bombing, the State of Domineeca passes a new Law to Execute Traitors and Revolutionaries. The law comes into force in March 2004. In November 2004 Mr. Unlucky, a national of the State of Domineeca, is arrested on suspicion of inciting revolutionary activities. At trial the only evidence led by the prosecution against Mr. Unlucky is his voluntary confession. Unfortunately, Mr. Unlucky is unable to testify in his defence because of injuries he suffered while in detention (including a broken jaw). At trial Mr. Unlucky's lawyers allege that his confession was procured through torture. However, Judge Harsh rejects all such reports as "speculative and unproven." Mr. Unlucky is convicted under the Law to Execute Traitors and Revolutionaries, and is sentenced to death.

Mr. Unlucky's lawyers file a claim before the Inter-American Commission on Human Rights. The Commission orders the State of Domineeca to stay Mr. Unlucky's execution so as to allow a full hearing of the matter before the Inter-American Court of Human Rights. The Attorney General of Domineeca agrees to the stay of execution. But when doing so he makes disparaging comments about the relevance of the Inter-American system of human rights. To the press the Attorney General adds that "in any event, the Court has no jurisdiction over this matter because the terrorist bombing changed our legal situation and frees us from our Inter-American treaty obligations."

You have been assigned the task of arguing the State of Domineeca's case before the Inter-American Court of Human Rights. The State of Domineeca has been a party to the *American Convention on Human Rights* since 2000, without reservation, and has accepted the jurisdiction of the Court. Set out the submissions of the State of Domineeca in this case.

PLEASE TURN OVER

4. "The history of international law shows its many weaknesses, particularly with respect to the evolution of laws against slavery and slave trading. Most developments in this area occurred, firstly, within the domestic laws of each state, and then only later — and very gradually — through treaties created to eradicate the practice. Even today, slavery is said to exist in many forms across the globe. Further, states that allow the practice to continue within their borders can escape the customary rules regarding slavery by arguing that they have persistently objected to the applicability of these rules to themselves."

Critically assess the above statement.

END OF PAPER

