

THE UNIVERSITY OF THE WEST INDIES

EXAMINATIONS OF DECEMBER 2006

CODE AND NAME OF COURSE: 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. H.L.A. Hart, in the *Concept of Law*, questions whether international law is really law because it has few rules regarding how international law can be made or changed. This weakness is illustrated by the uncertainty surrounding how a customary rule of international law emerges and when that rule has changed. Not only is it difficult to identify customary rules but, as with other rules of international law, there are also few mechanisms to make states obey them.

Critically discuss the above propositions.

2. The State of Khan consists of an eastern and western province, with the State of Indo between the two parts. The eastern province declares itself to be an independent sovereign state called 'Ramesh', "through the exercise of the right of self-determination under international law".

The State of Khan takes military measures to suppress what it regards to be a rebellion. Subsequently, rebel guerrilla forces launch an offensive against the State of Khan. There is evidence to suggest that the guerrilla forces received military and financial assistance from the State of Indo, which has been accepting thousands of refugees from the State of Ramesh.

No state other than the State of Indo has recognised the State of Ramesh. The State of Ramesh is economically dependent on the State of Indo. In addition, the newly formed government of Ramesh consults advisers from the State of Indo regarding its policies.

PLEASE TURN OVER

The State of Khan refuses to recognise the State of Ramesh and plans to cut off aid to any neighbouring state that will enter into diplomatic or economic relations with the new state. It also intends to launch a military attack on the State of Indo.

Advise the State of Khan on whether it must recognise the new state and on the legality of executing the plans mentioned in the paragraph above.

3. Thousands of citizens of the State of Zim have fled their country following the severe economic crisis brought on by the policies of the Government which has been in power since 1996. In 2002, the Government started to take measures against citizens living overseas who are critical of its regime in the foreign press and provide financial assistance to the Opposition party. In that year, it passed an "Act to Amend the Citizenship of Zim Act" which provides in section 3:

"A citizen of Zim shall cease to be a citizen of Zim if he or she has been absent from Zim for a period of two years."

In 2006, the Government of Zim withdrew the passport of Mr Speak, a citizen who had been absent from the country for three years. He was not afforded an opportunity to explain his absence before losing his citizenship.

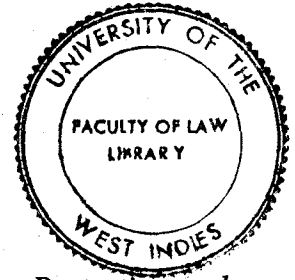
The State of Zim is a party to the *Charter of the Organization of American States* and the *American Convention on Human Rights*. Zim has a UK style constitutional system similar to that of most Commonwealth Caribbean States, including a Bill of Rights. It has not passed any legislation directly incorporating the *American Convention* into its domestic law.

Art. 20(1) of the *American Convention on Human Rights* provides "no one shall be arbitrarily deprived of his nationality..."

You have recently read the writings of several international legal scholars who argue that there is a customary rule of international law against arbitrary deprivation of nationality.

Advise Mr Speak who wishes to challenge his loss of citizenship before the Supreme Court of Zim. In addition, assess his options under international law.

PLEASE TURN OVER



4. The State of Aries and the State of Venus conclude a bilateral *Treaty for the Protection and Conservation of Sea Turtles*, which is now in force. As a result of human exploitation and the destruction of their habitats, species of sea turtles are endangered. Article 7 of the *Treaty* provides that each state “must guarantee that the population of sea turtles does not fall below 4000.”

Due to a surge in the demand for shrimp, there is a dramatic increase in the harvesting of shrimp in the waters of Aries. Fishermen in Aries use nets that harvest large amounts of shrimp but which also produce the unfortunate result of capturing sea turtles. Although the Government passed legislation requiring fishermen to use ‘turtle excluder devices’ when harvesting shrimp, the population of sea turtles continues to decline. On July 16, 2006, the Government’s environment watchdog reports that the number of sea turtles in Aries has fallen to 2000.

On August 1, 2006, the State of Venus brings a claim against the State of Aries before the International Court of Justice for violating Article 7 of the *Treaty*. In 1996, Venus accepted the compulsory jurisdiction of the Court by filing the following declaration:

“The State of Venus accepts the compulsory jurisdiction of the Court for all disputes arising after the date of this acceptance, with the exclusion of any dispute regarding matters which fall solely within our sovereign, domestic jurisdiction.”

The State of Aries has not accepted the Court’s compulsory jurisdiction. However, on August 10, 2006, the Foreign Minister of the State of Aries writes a letter to the Secretary General of the United Nations and copies it to the Registrar of the International Court of Justice. This letter requests financial assistance from the United Nations for Aries’ continuing conservation measures. The letter also states: “Although we are willing to accept the jurisdiction of the Court over the case recently filed against us by the State of Venus, we would prefer that this dispute be resolved through other processes, such as through negotiation or mediation.”

You have been asked to defend the State of Aries before the International Court of Justice in the instant case. You have documentary evidence that during the negotiations leading up to the conclusion of the *Treaty* between the two states, the Foreign Minister of Venus had intimated to the Foreign Minister of Aries that “if you do not sign this treaty, we may have to consider placing a quota on the number of work permits we grant to your nationals.”

Advise the State of Aries as to the arguments it should lead in the present case, including arguments on jurisdiction.

END OF PAPER