



KENYATTA UNIVERSITY

UNIVERSITY EXAMINATIONS 2020/2021

FIRST SEMESTER EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LIL 300: PUBLIC INTERNATIONAL LAW

DATE: MONDAY 14TH JUNE 2021

TIME: 12.00 P.M. – 2.00 P.M.

INSTRUCTIONS:

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1. Answer ALL questions
2. Support your answer with relevant illustrations from case law, statutory provisions and any other references
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your assigned **REGISTRATION NUMBER**, both on the cover and every written page therein.
5. Do not scribble or draft answers on the inner or outer cover pages or your answer booklet.
6. Do not write anything except your **REGISTRATION NUMBER** on this question paper.
7. All Kenyatta university Examinations rules apply as if they were contained herein.

1. (a) Cabinet of the State of Buganda authorizes the Prime Minister to invade the neighboring State of Irwanda in an exercise of its right of anticipatory self-defense. This authorization is leaked to press. Mr. Omutata, a national of Buganda, challenges the legality of the Cabinet decision in a lawsuit before the High Court of Buganda. He argues that the Cabinet Members acted illegally and unconstitutionally in coming to such a decision. The powers of the Buganda Cabinet are specified in Article 64(3) of the Constitution, which provides:

"64.3. In conformity with the rules and principles of international law, the authority to make all decisions related to the external use of force by the State of Buganda is vested solely in Cabinet."

Mr. Omutata argues before the High Court that anticipatory self-defense is illegal under international law. In his support he invokes Articles 2(4) and 51 of the Charter of the United Nations, several UN General Assembly Resolutions, and decisions of the International Court of Justice.

Advise the Chief Justice of Buganda as to the merits of Mr. Omutata's arguments, being certain to explain the status of the legal authorities that Mr. Omutata invokes in his arguments. (20 Marks)

b) Suppose the states of Lwanga, Bafu, Nyerere, Flora, Edon and Funyula are parties to a multilateral treaty banning trade barriers with regards to all dairy products and the state of Bafu informs the other five states that it does not consider itself bound by the provision of the treaty regarding the compulsory settlement of treaty-related disputes by the International Court of Justice. The states of Lwanga, Nyerere and Flora do not respond to the statement. The state of Edon agrees with the statement. The state of Funyula objects to the statement. The treaty does not mention anything on reservations.

Discuss the legal effects of the statement made by the state of Bafu and the reactions thereto by the other five states. (10 Marks)

2. The newly-appointed Minister of Foreign Affairs of the State of Simba sends the following declaration to the President of the International Court of Justice: "The Sovereign State of Simba hereby accepts the jurisdiction of the International Court of Justice in all matters." The neighboring State of Ingwe accepted the compulsory jurisdiction of the International Court of Justice in 1960. It did so with the simple declaration that "The State of Ingwe accepts the jurisdiction of this honorable Court over all international legal matters."

Ingwe nationals who own businesses in Simba 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 Ingwe seizes the opportunity presented by the deposit of the Simba declaration to launch a claim against Simba before the International Court of Justice. This claim alleges that the Simba tax is "illegal under both national and international law."

The Minister Foreign Affairs of the State of Simba is reported in the newspapers to have responded saying that "the [Ingwe] suit is ridiculous, since it clearly raises matters of Simba law, which must be decided by the Courts of Simba, not by the International Court of Justice. As a result, Simba will not bother to appear before the Court on this matter." An outraged Ingwe businessman, residing and conducting business in Simba, files a suit in the Simba High Court challenging the Simba 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 Simba advising him about the arguments he may present (1) before the Simba High Court, and (2) before the International Court of Justice in order to reject its jurisdiction

(20 Marks)

3. A. In the Arrest Warrant case (*Democratic Republic of Congo v Belgium*) of 14 February 2002, the International Court of Justice found that the rules on immunity of high government officials prevent other states from prosecuting such officials for violations of *jus cogens* norms. Nevertheless, the Court also held that immunity from jurisdiction does not necessarily mean impunity for crimes committed.