



KENYATTA UNIVERSITY
EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LIL 301: INTERNATIONAL DISPUTE RESOLUTION

2ND SEMESTER 2020/2021

TIME: 2 Hours

INSTRUCTIONS:

1. Answer **ALL (3) THREE** 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.

QUESTION 1

Several years ago, the two states of Maverick and Elevation, both members of the United Nations and the regional organization, Union of Eastern States, concluded a customs union treaty which inter alia, provides that nationals of either state do not need a visa to travel to the other state. This system worked well until June 2017 when Elevation suddenly declared that every foreigner, including nationals of Maverick, needed a visa to enter the territory of Elevation.

Maverick initially thought that the inclusion of its nationals in the declaration was a mistake made by the Elevation government spokesman, until several of its nationals were denied entry into Elevation for not having visas. Maverick wrote a diplomatic protest to Elevation, politely indicating that there was a customs union treaty between them stating that their respective

nationals did not need visas to go to the other state. Elevation replied that in the contemporary insecure world, every State had to protect itself against terrorists sneaking into its territory and that imposing visa requirements was one of the ways of ensuring its national security. Further, it added that immigration issues were part of the reserved domain of every State and hence protected by the principles of equal sovereignty of States and non-interference in domestic affairs.

Maverick did not accept Elevation's explanation because Elevation is an important job market for its nationals, Maverick sought to negotiate with Elevation which however revealed itself as not being very co-operative and the talks ended.

Maverick, not being satisfied with the situation, decided to bring the dispute to international court of justice in June 2018. After having been notified of the institution of the case, Elevation contested jurisdiction of the court, citing the reservation it attached to its optional clause declaration of May 15th 1961. In that declaration, Elevation stated that it "excludes from the jurisdiction of International Court of Justice all matters falling essentially within the domestic jurisdiction of Elevation as determined by the Government of Elevation".

On its part, Maverick made an optional clause declaration under Article 36(2) of the statute of the International Court of Justice in May 1971, but attached no reservation which is relevant to this case.

You are the Chief Legal Advisor of the Minister for Foreign Affairs of Maverick. Prepare a legal opinion for the Minister, citing relevant authorities indicating whether and why the Court is competent to hear the case.

(30 Marks)

QUESTION 2

"Although arbitration produces a binding decision, there is usually no guarantee that the unsuccessful party will carry out its obligation to recognize the award. In addition, there is no machinery, akin to that under judicial settlement by the International Court of Justice, which the successful party can invoke to enforce the award against an uncooperative party" *Hnm 2021*.

In light of the above assertion,

- a) Discuss the utility of arbitration as a diplomatic means of dispute resolution **(10 Marks)**
- b) Analyze the problem of enforcement of arbitral awards. **(10 Marks)**

QUESTION THREE

Citing relevant examples and case law, distinguish the legal aspects of the following international dispute resolution mechanisms:

a) Mediation and negotiation

[10 marks]

b) Inquiry and conciliation

[10 marks]