



KENYATTA UNIVERSITY
UNIVERSITY EXAMINATIONS 2019/2020
SECOND SEMESTER EXAMINATION FOR DEGREE OF BACHELOR OF LAWS
LIL 304: INTERNATIONAL LAW OF THE SEA

DATE: TUESDAY, 17TH NOVEMBER, 2020

TIME: 8.00 A.M. - 10.00 A.M.

INSTRUCTIONS:

1. Answer **ALL** Questions
2. Support your answer with relevant illustrations from case law, statutory provisions and any other reference.
3. Your writing must be **NEAT** and **LEGIBLE**.
4. Your answer booklet must bear your signed **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 ONE

In August 2017, a collision occurred on the high seas between two merchant vessels, the *M.V Miano*, flying the Kenyan flag and the *M.V Census* flying the Japanese flag, but under the mastering of a retired Nigerian admiral. As a result of the collision 15 members of the crew on the *M.V Mian* were killed and the vessel itself was extensively damaged. The circumstances of the collision were such that *M.V Census* was wholly to blame.

In June 2018, while voluntarily in port at Mombasa, the Kenyan authorities arrested the master of *M.V Census*, prosecuted and sentenced him to five years imprisonment on charges of manslaughter arising from the collision. The Republic of Nigeria protested to the Kenyan authorities against the exercise of penal jurisdiction, but Kenya maintained that its action was justified under both conventional and customary international law.

The Republic of Nigeria has filed an application at the international court of justice challenging the legality of the Kenyan actions and asking for the court's declaration that the same were in violation of international law, and that Kenya should be ordered to release unconditionally, the master of *M.V Census* and make reparation for the injuries suffered.

Meanwhile, Japan as the flag state of the *M.V. Census* has applied to intervene on the side of Nigeria in the claim against Kenya.

Prepare a concise brief with reference to relevant decisions and rules, pointing out the five major legal issues arising under the UN Convention on the Law of the Sea (UNCLOS).

[30 marks]

QUESTION TWO

Mussevenne is a land locked state that is neighbouring the Republic of Kenyattan, a Coastal State whose territory extends to the Indian Ocean. Over the last fifteen years, the two States which are both parties to the 1982 UN Convention on the Law of the Sea (UNCLOS), have been disputing over their respective rights to use the ocean and its resources.

Kenyattan maintains that it has exclusive sovereign rights over the exploration and exploitation of the living and non living resources of the Indian Ocean including those in its Exclusive Economic Zone (EEZ) and that Mussevenne's rights extend only to the resources of the deep sea bed and the high seas. Kenyattan also argues that as a Coastal State its privileged position and the rights ensuing therefrom for the use of the Indian Ocean cannot be compromised, further Mussevenne has to be contented with its geographical position and the consequences incidental thereto.

You are the senior legal officer in the ministry of foreign affairs in the Republic of Kenyattans. The Minister has asked you for a legal opinion on the situation so that she may brief a cabinet meeting that has been called by the president to discuss this situation.

Prepare an articulate opinion for the minister bringing to the fore:

- I. The extent of the exclusivity of the Republic of Kenyattans Exclusive Economic Zone as envisaged in the UNCLOS. [5 marks]
- II. The privileges the Republic of Kenyattans is entitled to enjoy from the EEZ and the obligations arising from the same. [10 marks]
- III. Explain the nature of the rights of the Republic of Mussevenne's arising under the UNCLOS regime. [5 marks]

QUESTION THREE

“According to Patricia Birnie and Allan Boyle, Pollution from ships is, in general, either operational which is a function in the way the ships operate; or accidental, e.g. arising from collisions. They add that neither problem should be exaggerated and that the major sources of marine pollution emanate from land based causes, not from floating sea borne vessels.”

Paul Stookes, *A Practical Approach to Environmental Law*, 2nd Edition, Oxford University Press, 2009.pg 354

In light of the above excerpt, discuss the international legal and policy responses to challenges of the preservation and conservation of marine biodiversity.

[20 marks]