



KENYATTA UNIVERSITY

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS

LIL 407: LAW OF INTERNATIONAL ORGANIZATIONS

2ND SEMESTER 2020/2021

TIME: 2 HOURS

INSTRUCTIONS:

1. Answer ALL Questions
2. Support your answer with relevant case law, conventions and any other relevant references where necessary
3. Write neatly and legibly
4. Your answer sheet must bear your student registration number

Question one

The Organization of Elasian States (OES), is an continental organization that brings together all thirteen (13) States in the Elasian Continent and established by the Treaty of Elasia. The Treaty of Elasia expressly provides that the primary purpose of OES is promoting regional trade and investments. The OES have five (5) organs: the Summit; the Congress; the Parliament; the Court of Justice; and the Secretariat. The Summit is the highest organ that is charged with passing binding resolutions, making policy decisions and approving all OES expenditure budgets. The Summit is composed of all the thirteen heads of State and Government of the OES Member States. The Congress is charged with all matters on maintenance and peace security in the Elasian Continent and must approve deployment of all peacekeeping missions. It is composed of seven members nominated by their national States and approved by the Summit. The parliament is the legislative arm of OES, and receives express written instructions from the Summit on the legislative agenda.

The Court of Justice is composed on 13 judges all nationals of each of the Member States and has the primary obligation of interpreting the Treaty of Elasia- the founding/constituent Treaty of OES. The Secretariat is run by a Secretary General who is in charge of the day to day operations of OES and of implementing the policy decisions of the Summit and the Congress. The Secretariat operates from the State of Kana, which hosts the headquarters of OES and also the seat of Parliament.

Since 2010, Partner States on the northern part of Elasia bordering the Kalahari Desert have experienced intermittent cross border wars among the pastoralist and agricultural communities in the neighboring countries. These wars have been linked to competition for pastures and water due to increasing desertification.

In September 2015, the Secretary General of OES wrote to the Speaker of the OES Parliament and informed him that the Secretariat was convening a meeting of all Ministers of Environment from OES Member States to initiate the process of drafting a continental legislation on climate change. Having notified the Speaker of Parliament, the Secretary General then wrote to all Ministers inviting them to a meeting to deliberate on legislative proposals for the proposed legislation. In addition, the Secretary General charged the meeting expenses including travel and accommodation to the Partner States as part of their assessed contributions in 2016.

Upon learning of the planned meeting, three (3) Member States protested against the directives of the Secretary General and declined to send representatives. However, six (6) Member States sent representatives to the meeting which received legislative proposals from the Ministers. Two (2) Member States also declined to send representatives and indicated that they would be withdrawing from the OES due to repeated mismanagement of its affairs by the Secretary General.

In December 2015, the Chairman of the Summit convened an urgent Summit meeting which passed a resolution for immediate termination of the contract of the Secretary General for general mismanagement of the OES. The Summit also resolved not to approve the budget for payment of the meeting expenses. In addition, the President of the State of Kana indicated that he would send police officers to eject the Secretary General from the OES premises.

The following day the Secretary General was physically roughed up by police officers from the State of Kana, documents in her office and laptops confiscated and she was physically ejected from the OES headquarters. The Secretary General later filed a case in the Kana Constitutional and Human Rights Court against violation of her rights by the Summit.

Using case law and relevant authorities:

- i. Analyse four (4) concepts in law of international organizations arising from this scenario. (24 Marks)
- ii. The Treaty of Elasia contains no provisions on withdrawal of membership, discuss the position of the 3 Member States. (6 Marks)

Question Two

- i. Realist theorists argue that States form and join international organizations to pursue their own interests.

Analyse this claim with reference to the United Nations (UN). (5 Marks)

- ii. The Charter of the United Nations vests the primary responsibility for maintenance of international peace and security on the Security Council. The Security Council is authorized under Chapter VII to address aggression, breaches of peace and threats to peace. In Article 25 every Member State is required to participate in the implementation of Chapter VII measures. Article 103 operates to render the obligations of Member-States under the Charter, specifically the binding decisions of the UN Security Council, superior to conflicting obligations which may arise under other international agreements.

With the use of case law and Charter provisions, discuss whether the Security Council is *legibus solutus* (unbound by law). (15 Marks)

Question Three

- a) Discuss international legal personality in relation to the African Union. (10 Marks)
- b) Analyse Kenya's legal position in relation to immunity of international organizations and access to justice. (10 Marks)