



The University of the South Pacific
Emalus Campus

Examinations
Semester 2 2003

SCHOOL OF LAW

COURSE NAME: Public International Law

COURSE NO: LA 312

TIME ALLOWED: Three (3) hours

READING TIME: Ten (10) minutes

NUMBER OF PAGES: Five (5)

NUMBER OF QUESTIONS ON PAPER: Four (4)

NUMBER OF QUESTIONS TO BE ANSWERED: Four (4)

MARK ALLOCATED FOR EACH QUESTION: Equal

TOTAL MARKS: Fifty percent (50%) of the course

MATERIALS PERMITTED IN EXAMINATION ROOM:

NONE

SPECIAL INSTRUCTIONS

1. Answer all FOUR questions. All four questions are of equal marks. If a question is divided into sub-parts, all parts of the question must be answered. Use your time and efforts according to the marks allotted to each sub-question. Do not spend more than 50 minutes on each (main) question. Try to answer all parts of the question. In attempting the problem and essay question and problem question it is recommended (though not required) that you write a brief outline of your answers. In answering the questions refer to and apply relevant international conventions and case law if necessary.
2. This examination constitutes 50% of the course. You must obtain a minimum of 20 marks (out of 50) in this examination to pass the course.

Question One

Briefly answer the following questions

Write *at least* three sentences and no more than a *maximum* of about ten sentences. A correct answer of about five sentences is generally sufficient for each sub-question.

- (1) What is customary international law? What are the two main elements or criteria for a "general practice" among countries to develop into customary international law? What is *jus cogens*? What is the main difference between customary international law and *jus cogens* as far as its binding nature of these two terms are concerned? (6 marks)
- (2) What is the "Estrada doctrine" concerning recognition of new governments? Has this doctrine been uniformly and consistently practiced by the countries which adopted this particular doctrine in cases of revolutionary or forcible changes of governments? Briefly explain and give examples in your answer. (4 marks)
- (3) What do you understand by the term "universal jurisdiction"? What are the crimes in classical international law that attracts universal jurisdiction? List two or three other crimes which some scholars have argued that should be subjected to contemporary international law in the present era. (4 marks)
- (4) What is the difference between (a) ratification of a treaty (b) coming into force of a treaty (c) reservation of certain provisions in a multilateral treaty? Why is it that it is much more common to see reservations to multilateral treaties than to a bilateral treaty? Does all multilateral treaties allow for reservations to be made? (6 marks)
- (5) In regard to the relationship between the United Nations General Assembly and the United Nations Security Council what do you understand by the phrase "Uniting for Peace Resolution"? Give brief examples in your answer. (4 marks)

(25 marks)

Question Two

Briefly define, if necessary compare and contrast the following: Write at least three sentences for each sub-question and no more than a *maximum* of ten sentences. Generally speaking *correct* answers of about five to seven sentences for each sub-question is sufficient.

- (a) *New International Economic Order* (NIEO) (adopted by the General Assembly of the United Nations in May 1974) and the "*Decolonisation Resolution*" (adopted by the General Assembly of the United Nations in December 1960) (5 marks)
- (b) Compulsory Jurisdiction of the International Court of Justice and Veto Power in the United Nations Security Council (5 marks)
- (c) The Nuremberg trials' landmark judgment in 1946 that individuals can be "subjects of international law" in the field of duties and the provisions concerning remedies for human rights violations in the *Optional Protocol to the 1966 International Covenant on Civil and Political Rights* (5 marks)
- (d) Diplomatic Immunity and Sovereign Immunity (5 marks)
- (e) Constitutive theory of recognition and Collective self-defence (5 marks)

(25 marks)

1
PM of
Poland
not to step
down

2
Mao
Miami

3
Israel
bombing
Syria

Question Three

Choose at least ONE but no more than TWO *recent* international events, crises or new stories which had occurred in the past several weeks or a few months and critically comment on them from the view point of an international law student. Beware that you should not merely narrate the news that you read in newspaper or saw on the television -though a brief explanation of the news story, events you would be commenting on is necessary. You must critically comment on them from the view point of international law and making use of a few or some of the main topics that have been taught and that you have learned in the course You need NOT discuss the news items/ events from the perspective of all topics but you do need to "utilize" at least a few of the main international legal principles that were taught in the course in analyzing and commenting on these topics.

Though the quality and not quantity of your arguments will be the major criteria in marking this "essay" question the discussion should (roughly in length) between (a minimum) of twenty-to twenty-five sentences and a maximum of fifty to fifty-five sentences would be expected.

Question 4

Assume the following facts:

Part A

Phathone is a somewhat deranged (mentally unstable) citizen of the (fictitious) country of Makala. Phathone (who had recently been released from three years in prison in Makala for the offence of "sodomy") hijacked the plane from Makala and forced the plane to land it in an airport in Zinale. In hijacking the plane, Phathone used a "soap-box" and threatened that it was a bomb. No passengers or crew were harmed. Immediately on arrival in Makala he surrendered to the authorities in Makala. Within hours of his surrender Phathone was tried for hijacking and in a trial lasting an hour Phathone was acquitted of the offence of hijacking "on reason of temporary insanity". Immediately after his acquittal Phathone applied for "refugee status" in Zinale on the grounds that he as a "homosexual" who has been "severely persecuted" in Makala. Again, within hours the authorities in Zinale granted him refugee status.

Referring to international law principles concerning jurisdiction and international refugee law briefly comment on the trial, acquittal and granting of refugee status to Phathone by the authorities in Zinale. (Both Makala and Zinale are parties to the 1951 *Convention on the Status of Refugee and Displaced Persons*). In your answer briefly address the issue on what grounds was Phathone apparently granted "refugee status".

(Suggested answers :About five to seven sentences with CORRECT analysis and conclusions)

(7 marks)

AND

PART B

Assume the following facts:

Rozzy is a female journalist and citizen of Makala. Rozzy wrote an article in a Makala newspaper that the President of Zinale is a "buffoon, a monkey which danced to the tunes of multinational Corporations". Zinale has a "*Les Majeste*" ("insulting the President") law which

passive
protective
fairly

asylum
seeker

make it a crime to “insult the President punishable for up to ten years in prison”. Rozzy was among the passengers in the plane hijacked by Phathone from Makala to Zinale. When Rozzy was discovered to be among the passengers in the hijacked plane Zinale authorities arrested Rozzy though they allowed all the other passengers and crew of the hijacked plane to return to Makala. Rozzy was tried in a Court in Zinale and her article was produced to prove that Rozzy has indeed committed the offence of “Les Majeste” under the laws of Makala. Rozzy was sentenced to seven years imprisonment. What international law grounds of jurisdiction could the authorities in Zinale have claimed in putting on trial Rozzy who is a non-national of Zina? Also briefly (in two or three sentences) comment on the jurisdictional aspects and the outcome of the trial from the view point of international law.

(Suggested answer : About five to seven sentences with CORRECT legal analysis and conclusion)

(6 marks)

AND

Part C

Assume the following facts:

As a result of the acquittal of Phathone and the severe punishment meted out to Rozzy by the Zinale authorities a few hundred citizens of Makala demonstrated in front of the Zinale Embassy in Makala. A few dozen of the demonstrators broke down the Embassy gate and entered the Embassy compound. Since only five police were posted in front of the Embassy the demonstrators easily overcame the police and held 12 Zinale Embassy staff members as hostages. The demonstrators demanded the immediate release of Rozzy and also the immediate extradition of Phathone “the sodomizer, hijacker” to Makala and stated that they would not release the 12 Embassy staff members until their demands were met by Zinale. The Makala government did nothing to attempt to release the hostages. The Foreign Minister of Makala told a news conference that although the Makala government was not responsible for the “take over of the Embassy” the hostage-holders’ actions and demands were justifiable as the takeover was (according to the Minister) a “legitimate retaliation” in international law.

Comment on the legal issues pertaining to the “takeover” of the Zinale Embassy and the Makala Foreign Minister’s statements.

(7 marks)

(Suggested answer: About five to seven sentences with CORRECT legal analysis and conclusions.)

AND

PART D

Two weeks after the take over of the Zinale Embassy the hostages have not been released. The Zinale government wants to take the Makalan government to the International Court of Justice in relation to the takeover of its Embassy in Zinale. Both countries are parties to the 1961 *Vienna Convention on Diplomatic Relations*. Under the prevailing practice concerning the jurisdiction of the ICJ would Zinale be able to bring the case against Makala? Briefly explain your answer.

(Suggested answer about three to five sentences with CORRECT legal analysis and conclusion)

(5 marks)

AND

PART E

The Makala Foreign Minister also stated that the Embassy seizure was made in responsive to the "matter of Phathone and Rozzy" as stated in Part A and that the Makala government reserves to "attack and occupy" Zinale if the demands made to release Rozzy and Phathone were not met. The Makala Foreign Minister stated that such an attack by Makala against Zinale would be "fully justified under the doctrine of self-defence" and "the customary international law doctrine of humanitarian intervention". Comment on the statement made by the Foreign Minister from the view point of international law

(7 marks)

(Suggested answer: About five to seven sentences With CORRECT legal analysis and conclusions)

In answering all of the above questions briefly refer to and apply relevant international conventions and case laws.

(25 marks)