PUBLIC INTERNATIONAL LAW

June 2003 Exam

The examination constitutes 100 % of the final mark for this course.

Students are required to answer any FIVE of the following questions.

1. What are the sources of public international law? Give at least two examples of each source mentioned. **[10]**

2. Write a note on the treaty making process in South Africa under the final Constitution. During the course of your note you should canvass such issues as: whose function it is to conclude treaties on behalf of the Republic of South Africa; what role, if any, Parliament has in the treaty making process; and how treaty-provisions get incorporated into South African municipal law. **[10]**

3. According to Article 1 of the Montevideo *Convention on the Rights and Duties of States* (1933), what are four qualifications that need to be met for a state to enjoy international legal personality? In considering each qualification, your answer should make reference to the examples of particular states and, where relevant, to decided case law. **[10]**

4. Professor John Dugard, commenting on the legal effect of acts of unrecognized states and governments, submits that:

> For the purposes of municipal law recognition is constitutive: it creates the state or government. In the absence of recognition no effect will be given to the legislative, executive, or judicial acts of a foreign sovereign. The orthodox view is well illustrated by the leading case on the subject, *Luther v Sagor* (J Dugard, *International Law: A South African Perspective* 2ed (2000) at 106).

Write a note on what the orthodox view is, and then explain when municipal courts have generally regarded themselves as being competent to deviate from this orthodox position (in other words, when a municipal court may justify relaxing the fairly strict rule expounded in *Luther v Sagor*). **[10]**

5. In contemplating the cause for, and implications of, the Rwandan genocide, Nigeria's prize-winning writer and political satirist, Wole Soyinka has commented: 'We should sit down with square-rule and compass and redesign the boundaries of African nations.' To what extent, if at all, would international law be sympathetic of such an exercise? **[10]**

6. Shortly after obtaining independence from the United Kingdom, in 1963, the Kenyan government established a number of parastatal companies to exploit the many natural resources of that country. The profits of these companies were to be used, ultimately, to finance development projects in the interests of the Kenyan people. One of these companies, the Kenyan Coffee Company, proved particularly successful and soon expanded its operations to include not only the harvesting of coffee beans but also the export of ground coffee to foreign countries. In 1996, following a particularly severe drought in Kenya, combined with wide spread labour unrest, the Kenyan Coffee Company was unable to meet its contractual obligations to its British client, Coffee Distributors International. As a result, the latter entity instituted legal action against the former in the English courts for breach of contract. The Kenyan Coffee Company pleaded sovereign immunity. Do you think this plea would have proved successful? Would your answer be any different if the year were 1966? In answering this question you should make reference to the relevant case law on the matter. **[10]**

7. Write a note on the significance of 'nationality' in the context of indirect state responsibility. During the course of your note you will need to explain how it is that a person's nationality is determined for the purposes of international law. You will also need to consider how the test for nationality differs in respect of natural as opposed to juristic persons. Cite relevant authority in support of your submissions. **[10]**

8. The consensual nature of international law extends even to the jurisdiction of the International Court of Justice – consent is the basis of the court's jurisdiction. Details of this are found in article 36 of the ICJ Statute, which reads as follows:

> 1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
> 2. The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
>   a) the interpretation of a treaty;
>   b) any question of international law;
>   c) the existence of any fact which, if established, would constitute a breach of an international obligation;
>   d) the nature or extent of the reparation to be made for the breach of an international obligation.
> 3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
> 4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.
> 5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.
> 6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

The ICJ, acting under the authority of article 36(6) has developed quite a resourceful body of jurisprudence – devoted essentially to the question of how article 36 ought to be interpreted in order to give the court jurisdiction to hear disputes between states in contentious proceedings. Write a note on some of the rules that have emerged over time. **[10]**

[TOTAL MARKS FOR THIS PAPER: 50]