



EXAMINATIONS OF _____ APRIL/MAY 2005

CODE AND NAME OF COURSE: LA23B (LAW2320) - PUBLIC INTERNATIONAL LAW II

DATE AND TIME:

DURATION: 2 HOURS

INSTRUCTIONS TO CANDIDATES: This paper has 3 pages and 4 questions.

Answer TWO of the four questions.

1. "The judgement of the International Court of Justice in the 2002 case of the *Arrest Warrant of 11 April 2000* (Democratic Republic of the Congo v. Belgium) reveals two striking things about modern international law. Firstly, it shows that there is no such thing as universal criminal jurisdiction, and secondly, it shows that high ranking state officials are absolutely immune from criminal jurisdiction."

Critically discuss the above statement.

2. *The Enterprise* is a merchant ship registered under the laws of the State of St. Vincent. The Captain of *The Enterprise* is a national of the State of Sara Lone, the ship itself is owned by a UK company, and all of the sailors on board are nationals of the State of Guinea.

The Enterprise is spotted drifting 14 miles off of the coast of the State of Guinea by *The Interceptor*, a Guinea Coast Guard vessel. Because a large and sophisticated human trafficking operation has been recently uncovered in Guinea, the Guinea Coast Guard is on special alert to stop any ships that might be smuggling or slave trafficking from Guinea or surrounding states. *The Interceptor*, an unmarked coast guard surveillance vessel, approaches *The Enterprise* and radios its Captain that he must prepare for boarding. Without warning *The Enterprise* speeds away from Guinea shores. The Commander of *The Interceptor* gives chase and continues to try to contact *The Enterprise*, both by radio and by waving signal flags. There is no response from *The Enterprise*.

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The boats are nearly matched for speed. As a result, it is only when *The Enterprise* is approximately 12 miles from the shore of the third state of Sara Lone that *The Interceptor* is able to catch up to it. The Commander of *The Interceptor* immediately fires upon *The Enterprise*, crippling its engines and injuring a crew member. *The Enterprise* is boarded and searched. When nothing out of the ordinary is found, it is towed back to Ginnea. The Captain of *The Enterprise* is charged with "unlawfully resisting arrest" and detained in jail. When the matter is brought before the Ginnean High Court a week later, the Chief Justice summarily dismisses the case and tells the Captain he is free to go. As the Captain is leaving, the Chief Justice draws him aside and mentions that he "would not be wise to attempt to obtain compensation in any Ginnean Court."

The Captain of *The Enterprise* asks St. Vyncent to bring a claim on his behalf. St. Vyncent files a case against Ginnea before an *ad hoc* Arbitral Tribunal for "Ginnea's several violations of the *United Nations Convention on the Law of the Sea* with respect to the Captain of *The Enterprise*, our Vyncentian flag ship."

Advise St. Vyncent about the difficulties it may have in making this claim under international law as well as about the other international legal issues raised in the above facts.

3. A low-lying coral island in the middle of the Pacific Ocean, the Red Quay, comes into prominence when it is discovered to be the only site on the planet on which a small micro-organism, called "electronucleide" can flourish. This micro-organism is thought to be of tremendous value for its microchip technology potential.

Red Quay was reputed to have been discovered by the famous Spanish explorer Lieutenant Vasquez in 1675, who claimed the island on behalf of his Sovereign. He is reputed to have landed on the island to hunt birds. Red Quay was ceded from Spayne to the Principality of Lichtstein by the *Treaty of Tordessas* in 1748. In 1940 the Prince of Lichtstein, by royal decree, divested the Principality of all of her overseas territories. In 1965 a group of hippies from the Unified States settled on the island and named it "Red Quay." They live simple agrarian lives and are governed by democratically elected leaders. Occasionally merchant ships from Unified States bring the inhabitants of Red Quay supplies and mail.

Spies from a large private biotechnology firm from the State of Franz, Bioweapons Inc., find out about the location of electronucleide on Red Quay. A security force is deployed by Bioweapons Inc. to seize the island and donate it to Franz. When the security force arrives on Red Quay they are surprised by the locals, who disarm and capture them. The President of Red Quay orders his Chief of Police to torture the leader of the security force, a Franz national, to obtain information about their mission. The Chief does so, but inadvertently kills the leader of the security force during the interrogation process.

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Officials of the State of Franz find out about the death of their national and send a military vessel to arrest the President and Chief of Police of Red Quay. Franz asserts sovereignty over the territory, derived from the actions of its citizens, the employees of Bioweapons Inc. The Unified States also sends a military vessel, claiming sovereignty over the territory through occupation by its nationals. The President of Red Quay denies both claims and asserts that Red Quay is a sovereign, independent state, through exercise of the right of self-determination. Furthermore, the President claims sovereign immunity regarding his actions.

Critically assess the legality of the above actions and the merits of the various claims.

4. An underwater mining station is established on the seabed floor 199 nautical miles off of the coast of the Unified Kingdom (UK), at a depth of 2000 metres. The station is run by the Big Mining Consortium, a company registered and with its head office in the UK.

Nationals of a number of countries live and work in the underwater mining station, where conditions are very dangerous and tensions often run high. When food supplies are interrupted the miners complain openly to the Big Mining Consortium authorities. The station manager, Mr. Big, decides that he must put an immediate stop to the unrest. He orders his Chief of Security, Mr. Nuff, to arrest the lead agitator, Mr. Trubble, a national of the Unruly States (US). Mr. Nuff does so, and proceeds to interrogate Mr. Trubble about the other ringleaders by using such innovative techniques as throwing him in a shark pool. After losing one arm to the sharks Mr. Trubble is very cooperative. Mr. Trubble and the other agitators are rounded up and sent away from the mining station on the next supply boat.

Authorities in the UK find out about the incidents which took place on the underwater mining station and decide to arrest and prosecute both Messrs Big and Nuff. Mr. Big is a dual national of the UK and the third State of Porto. Mr. Nuff was a national of the US, but immediately after the shark pool incident he denounced his US nationality and tore up his passport. Under the laws of the US these acts have the legal effect of immediately revoking his nationality.

When the UK sends a naval vessel to the area of the underwater mining station to arrest Messrs Big and Nuff it is greeted by US and Porto naval vessels, which also wish to arrest Mr. Bigg and Mr. Nuff, respectively.

You are appointed the sole arbitrator and are empowered to decide these competing claims as well as to determine any other legal issues raised in the above facts. Do so.

END OF PAPER

