

# INTERNATIONAL LAW

## FINAL EXAMINATION

Professors Sompong Sucharitkul/Sophie Clavier

FALL 2005

Wednesday, December 14, 2005

### INSTRUCTIONS

- I. This is an *open-book* exam. You may use the assigned case book, the assigned documentary supplement, materials handed out in class, and your own notes compiled in preparation for class and taken during class. In addition, you may consult summaries and outlines if you prepared them as a result of your own intellectual efforts. You may not bring to the classroom or consult textbooks (apart from those described above), summaries or outlines prepared by others.
- II. You have *three (3) hours* to complete this exam, unless you have been given special leave to begin one hour earlier.
- III. You are required to answer *NO MORE THAN FOUR (4)* of the questions set.
- IV. You are cautioned that you have only *three (3) hours* to complete this exam. Undue consumption of time devoted to searching the materials brought to the classroom may leave insufficient time to complete your essays. Budget your time prudently.
- V. Write your *exam number* on your exam envelope, all used blue books, and at the top of this exam question packet. *Do not use your name, student ID number, or Social Security Number on any exam materials.*

VI. At The conclusion of the exam, return all test materials including blue books scratch paper and this exam packet to the envelope and submit it to the proctor.

## **CHOOSE UP TO FOUR (4)**

### **OF THE FOLLOWING NINE (9) QUESTIONS TO ANSWER**

1. Paragraph 163 of the Advisory Opinion of the International Court of Justice of 9 July 2004 on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,

*THE COURT,*

*(3) Replies in the following manner to the question put by the General Assembly:*

...

*B. By fourteen votes to one,*

*Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal and render ineffective forthwith all legislative and regulatory acts relating thereto,*

*AGAINST: Judge Buergenthal;*

*D. By thirteen votes to two,*

*All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;*

*AGAINST: Judges Kooijmans, Buergenthal;*

Do you agree with the replies in sub-paragraph (3) B and/or D? Comment on (3) B in the context of the law of State Responsibility and/or (3) D with special reference to an *obligatio erga omnes*.

2. Describe the methods and conditions for acquisition of title to territory under contemporary international law. Is it still possible today to acquire title by conquest or by the use or threat of force?

3. What are the preconditions and limits for the exercise of an inherent right of self defense under Article 51 of the UN Charter? Explain and illustrate other occasions for a legitimate use of force, if any.

4. As an associate in an international law firm, you are requested to give an opinion whether the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) is binding

(a) in the State of California, given the fact that the United States is a Party to that Convention;

(b) in Hong Kong, given the Fact that China, a Party to that Convention, has declared that the Convention is also applicable to the Special Administrative Region of Hong Kong;

(c) in Macau, given the fact that Portugal, a Party to the Convention, made a declaration purporting to extend its application to Macau before its reversion to China to take effect after the transformation of its status as a Special Administrative Region of China.

Give your reasoned legal opinion in regard to (a), (b) and (c).

5. As a legal advisor in the US Department of State for Foreign Affairs, you are regularly consulted on questions of international law. Where would you search for the applicable rules of international law in a given situation? Are they to be found in treaties or in customs, or in the combination of both and additionally also in other subsidiary or evidentiary sources?

6. How do you distinguish between the principle *Par in Parem imperium non habet* and the functional necessities of international civil servants such as experts on mission?

7. Explain by way of examples the different uses of the following:

(a)immunities and/or jurisdiction *ratione materiae*,

(b)immunities and/or jurisdiction *ratione personae*, and

(c)immunities and/or jurisdiction *ratione temporis*.

8. Discuss the relevance of recognition in contemporary international law for (a) a new State, (b) a new Government and (c) a new situation or status.

9. In your considered opinion, what is the most pressing legal problem of our time, requiring immediate and careful attention:

non-use of force,

legitimate self-defense, or

any other more urgent situation?

**END OF EXAM**