

NOVA Law School
Diplomatic and Consular Law

Exam¹

13 January 2020

Part I. For each question please choose the correct answer. Please briefly explain your answer to each question (max. 5 lines). (Each question is graded for a total of 2 points).

1. A high commander of a rebel group that has committed acts amounting to crimes against humanity in the territory of a State Party to the Rome Statute:
- a) Enjoys immunity before the International Criminal Court.
 - b) Does not enjoy immunity before the International Criminal Court in application of Article 27 of the Rome Statute that establishes the irrelevance of official capacity.
 - c) Does not enjoy immunity before the International Criminal Court.
 - d) Enjoys immunity since he is not a state official.
2. The Chargés d'Affaires is:
- a) The head of the mission.
 - b) A member of the mission.
 - c) A diplomatic agent.
 - d) All of the above.

¹ Please note that this document or its content cannot be shared or made available to third parties by any means.

3. The UN Convention on Jurisdictional Immunities of States and Their Property provides that:

- a) States and their property enjoy absolute immunity (absolute approach).
- b) State officials enjoy immunity from foreign criminal jurisdiction only in some cases (restrictive approach).
- c) The premises of an Embassy are inviolable.
- d) None of the above.

4. The United Nations experts on mission:

- ✓ a) Enjoy absolute immunity from jurisdiction.
- ✓ b) Enjoy immunity from legal process in respect of all acts performed by them in their official capacity (functional immunity).
- ✗ c) Enjoy the privileges and immunities accorded to them by the Secretary-General on a case-by-case basis.
- ✗ d) Enjoy the privileges and immunities accorded to diplomatic envoys.

Part II. Please read carefully the two cases below and answer the four questions. Please elaborate your answers. (Each question is graded for a total of 3 points)

Case 1

The President of the Republic of Sand is on an official visit to the Kingdom of Excalibur. On the second day of the visit, the President has hosted a formal dinner at the Embassy of Sand in Excalibur. The Queen of Excalibur and 42 other high officials of Excalibur were invited.

During the dinner, the President of Sand (a compulsive smoker) went to the bathroom to discreetly smoke a cigarette, since according to the laws of Excalibur it is forbidden to smoke in buildings with more than 10 people inside. After smoking, the President threw the remaining cigarette to the trash can. However, the cigarette was still lit and set the trash can on fire, starting a fire of large proportions that spread to the entire Embassy building.

When the fire alarm system was activated, the chief of the local fire department immediately called the Embassy and asked to speak with the Ambassador of Sand to request authorization to enter the premises and extinguish the fire. Since the Ambassador was not to be found, the President of Sand gave herself the authorization for the firefighters to enter the premises. However, the chief of the fire department said it could not enter without the express authorization of the Ambassador himself. Accordingly, the firefighters did not enter the premises and left the Embassy to burn.

At the end, 11 people, including the Queen, were injured (mostly due to the inhalation of smoke) and the building was entirely consumed by the fire. Since there were no neighboring buildings, no other injury or damage occurred. The investigation, including the analysis of CCTV images, – allowed by Sand – concluded that the fire was provoked due to the negligent act of the President of the Republic of Sand.

The Kingdom of Excalibur authorities are furious with the careless act of the President of Sand, in clear contravention of Excalibur laws, that provoked injuries to the Queen and other high officials.

The Republic of Sand authorities are outraged with the denial of the fire department of Excalibur to intervene and extinguish the fire, which would have mitigated the damages, even after the authorization was given by the President of Sand,.

(The Republic of Sand and the Kingdom of Excalibur are Parties to the Vienna Convention on Diplomatic Relations and have accepted the jurisdiction of the International Court of Justice).

Questions:

a) The Kingdom of Excalibur initiated criminal proceedings in its own courts against the President of Sand for setting the fire in the Embassy of Sand and for causing injuries in 11 individuals, by negligence.

You are the legal adviser of the President of the Republic of Sand and she asks for your advice on whether she enjoys immunity from the criminal jurisdiction of the courts of Excalibur in this case. What would be your answer?

b) The Minister of Foreign Affairs of the Republic of Sand wishes to submit a case before the International Court of Justice against the Kingdom of Excalibur for the refusal of the fire department to extinguish the fire. Before instituting proceedings, he asks for your advice on the chances Sand has of winning the case in Court. What would you say?

Case 2

Since last year, an internal armed conflict is ravaging the Republic of Caos, opposing the legitimate governmental authorities and a rebel group - the Separatists from Caos (SeCa). The UN Refugee Agency (UNHCR) is operating in the Republic of Caos to provide assistance to the thousands of forcibly internal displaced people resulting from the conflict.

At the beginning of this year, the UN Secretary-General published a report on the situation in the country and accused governmental authorities of committing war crimes during the conflict. The Government of Caos has since then been increasingly hostile against the UN.

Yesterday, a meeting was held at the office of UNHCR in Caos between UNHCR officials, representatives of members of the United Nations and two representatives of SeCa to try to create conditions for internal displaced people to return to their homes in territory controlled by the rebel group. However, during the meeting, governmental security forces stormed the office and arrested (i) the Head of the UNHCR office with the rank of Under-Secretary-General; (ii) a low-ranking UNHCR official; (iii) the representative of the State of Mind; and (iv) two representatives of SeCa. All have been accused of conspiring against the security of Caos and remain detained awaiting trial. The security authorities have also apprehended laptops with UNHCR official documents that they plan to use in court as evidences of conspiracy against the security of Caos.

(The Republic of Caos and the State of Mind are Members of the United Nations and Parties to the 1946 Convention on the Privileges and Immunities of the United Nations. The United Nations and the Republic of Caos have not concluded any bilateral international Agreement applicable to this case.)

Questions:

The Secretary-General of the United Nations is very concerned with the situation. You are a legal officer of the United Nations and you were asked to provide your opinion on the conduct of the Caos authorities, regarding the following:

- a) Do the five persons arrested and detained enjoy immunity? In case any of them enjoy immunity, would you advise the Secretary-General to waive it?
- b) Has there been any violation of the Charter of the United Nations or of the 1946 Convention regarding the property of the UNHCR? Yes?