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MAIN EXAMINATION

SEPTEMBER –DECEMBER 2021

FACULTY OF LAW

REGULAR PROGRAMME

CLS 322: LITIGATION IN INTERNATIONAL COURTS

Date: DECEMBER 2021

Duration: 2 Hours

INSTRUCTIONS: Answer Question ONE and any TWO Questions

Q1.

Answer the following questions with reference to the case Maritime Delimitation in the Indian Ocean, (Somalia v. Kenya)

Sub-Question A

By a letter dated 11 March 2021 and received in the Registry on 12 March 2021, the Agent of Kenya informed the Court that his Government would not be participating in the hearings in the case and indicated the reasons for that decision.

Discuss the legal consequences of non-participation to the proceedings before the International Court of Justice. **(10 Marks)**

Sub-Question B

Before the proceedings began as the Court included upon the Bench no judge of Kenyan nationality, Kenya was requested to exercise its right conferred by Article 31, paragraph 2, of the Statute to choose a judge ad hoc to sit in the case.

According to Article 31, paragraph 3, if the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

Discuss the concept of Ad-hoc judges at the International Court of Justice. **(10 Marks)**

Sub-Question C

On 7 October 2015, within the time-limit set by Article 79, paragraph 1, of the Rules of Court of 14 April 1978 (as amended on 1 February 2001), Kenya raised preliminary objections to the jurisdiction of the Court and to the admissibility of the Application.

Amongst other things Kenya submitted that at a time it made its declaration it made a reservation excluding from the Court's compulsory jurisdiction disputes in regard to which the Parties to the dispute have agreed or shall agree to have recourse to some other method or methods of settlement.

Kenya submitted that Somalia's case clearly relates to a dispute over which Kenya has not accepted the Court's jurisdiction as it requested the Court to decline its jurisdiction over the case.

Discuss the implication of such reservation and its application to the current case.

(10 Marks)

Q2. In the matter of an arbitration before the Permanent Court of Arbitration optional rules for arbitrating disputes between two parties of which only one is a State between the Government of Sudan and the Sudan People's Liberation Movement/Army on delimiting Abyei area. Much that the parties agreed to submit the matter before the arbitration, it turned out the agreement left some ambiguity as it didn't provide conclusive answer on a question related to the jurisdiction of the court.

Considering that the jurisdiction of the Court is based on the agreement between parties how could the dispute arising from a disagreement on the jurisdiction of the Court be settled?

(20 Marks)

Q3. Discuss the legal nature of the award of the Permanent Court of Arbitration.

(20 Marks)

Q4. According to Article 25(3) of the Rome Statute a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if

that person for the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.

Explain the threshold required for a criminal conduct to cease being an act of participation and becoming commission of the crime itself.

(20 Marks)

Q5. The International Tribunal of the Law of the Sea founds its jurisdiction upon the consent of the State party to its creating treaty. How is the consent to the jurisdiction of the International Tribunal of the Law of the Sea established? **(20 Marks)**

DTE DEC 2021

END