

INTERNATIONAL LAW

Professor Turack
Time: 4 hours

INSTRUCTIONS

1. This is not an open book examination. You may use the Foreign Sovereign Immunities Act and Diplomatic Relations Act disseminated.
2. Write legibly in pen.
3. Answer the questions fully, based on your knowledge of course materials and any outside reading that you have done.
4. Question one and two are worth 40 points each. Question three is worth 15 points.

GOOD LUCK!

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Question No. 1

On February 4, 1988, General Kio Mino, Commander-in-Chief of the Guyana Defense Forces (GDF), and de facto leader of Guyana was indicted by the Venezuela prosecutor-general in Caracas, Venezuela. The twelve-count indictment charged that General Mino, as a principal, had violated the Travel Act, participated in a racketeering enterprise and conspired to import, distribute and/or manufacture cocaine for sale in Venezuela.

18 Venezuela Code, 5.2 (1987) states that whoever directly or indirectly, by aiding and abetting, commits a crime against Venezuela is punishable as a principal.

18 Venezuela Code, S.9 (1987) proscribes the use of interstate or foreign commerce through travel or otherwise, with intent to facilitate unlawful activity and states that such an act is punishable by a fine not exceeding V\$10,000 or imprisonment for not more than 5 years.

18 Venezuela Code, S.963 (1987) provides for punishment of individuals attempting or conspiring to commit an offense against Venezuela by manufacture, distribution and intended importation of a controlled substance into Venezuela.

The indictment specifically names General Kio Mino and 9 others that had

conspired to import and/or distribute marijuana for sale in Venezuela. Never before has Venezuela attempted to extend its laws to acts committed by the leader of an important strategic ally with whom Venezuela has openly conducted relations. The indictment states that all of the acts by General Kio Mino took place in Guyana and other countries but not in Venezuelan territory. Moreover the indictment charges further that the General smuggled one million pounds of marijuana into Venezuela from 1986 to 1988 and that he used his official position to "facilitate the manufacture and transportation of large quantities of cocaine destined for Venezuela and to launder narcotics proceeds."

Prior to the indictment, a number of reports appeared in the press in Venezuela relating tales of General Mino's alleged double-dealings and participation in illicit drug trade over the past number of years-activities apparently engaged in with the tacit approval of Venezuela. Thus, although certain officials of the Venezuelan Government may have had knowledge of General Mino's allegedly questionable business activities, those officials obviously were willing to overlook such activities in exchange for the General's support of Venezuela military and intelligence programs in Latin America.

The Guyana Constitution, article 24 (1986 ed.) states "The State may not extradite its nationals for political offenses." Furthermore, there is no extradition treaty between Guyana and Venezuela, but article 37 of the Guyana Constitution states "customary international law binds Guyana."

Only days before the indictment, Venezuelan embassy officials in Guyana described the General as "extremely cooperative" in helping Venezuela crack down on drug trafficking." Following the indictment a number of news articles appeared in the Caracas Times, a national newspaper, alleging that General Mino was heavily involved in money laundering, narcotics trafficking, secret dealings with Latin American guerilla groups, and providing intelligence information to Cuba and that such information had been ignored by the Venezuelan executive branch. It was further alleged that the General came to power by committing electoral fraud in 1986.

In June 1988, following anti-Venezuelan demonstrations in front of its embassy in Georgetown, capital of Guyana, Venezuela suspended all military and economic aid to Guyana. During the remainder of the summer and into the autumn of 1988, the General resisted all Venezuelan attempts to abdicate his position as Commander-in-Chief and make an "honorable exit." The more Venezuela pressed for the General's ouster, the more powerful he became. When Venezuela pressed the President Umberto of Guyana to fire General Mino, the General and the GDF caused President Umberto to flee the country and take asylum in Venezuela. Thereafter President Alfonse was installed as titular head of Guyana and a national election was called for January 4, 1989.

When it appeared that anti Mino-Alfonse candidate Sims would be elected in the Guyana national election, General Mino declared the election invalid due to Venezuelan interference and Mr. Sims was injured in a riot that followed. Mr. Sims remains in Guyana. In June 1989, Venezuela supported a coup to oust General Mino

from power and restore Umberto as President. The GDF supported General Mino and the Guyana nationals who supported to coup have been tried, convicted and executed. On September 1, 1989, the Central Intelligence Agency of Venezuela attempted an assassination of General Mino. The General has laid the matter before the United Nations charging Venezuela with being a terrorist State.

Outline the legal issues and arguments that pertain to international resolution of the dispute.

Question No. 2

During the evening of Friday, 13 February 1988, Ambassador Guido Kitaro, Chief of mission from the United Republic of Aristan, an affluent industrialized country, had just left a diplomatic reception. He drove along a main thoroughfare of Providence, the capital city of Majan -- a poor developing country, plagued by drug abuse, which had been dominated in turn by four colonial powers, including Aristan. He parked at a dimly lit corner where he met Marc Wilkey, a national of Majan. Mr. Wilkey was, in fact, Ambassador Kitaro's contact in what authorities of Majan knew to be an illicit drug trafficking ring. Unbeknownst to the authorities of Aristan, the drugs were smuggled into Majan from time to time by diplomatic pouch, with the assistance of one or more unknown confederates in Aristan's foreign ministry. The drug transactions -- always for large amounts of U.S. dollars and involving drugs ultimately sold to the local intelligentsia -- had invariably taken place without incident. In the past, Ambassador Kitaro would deliver a large suitcase filled with drugs to Mr. Wilkey, who would hand the ambassador an envelope stuffed with large denominations of U.S. dollars. This time, however, Mr. Wilkey told Ambassador Kitaro that he would not pay him and that, unless the ambassador gave him the drugs, he would expose him to public disgrace. Mr. Wilkey grabbed the drug-filled suitcase and began running along the thoroughfare. Ambassador Kitaro jumped in his car and -- in a panic -- ran down Mr. Wilkey and two bystanders before crashing into a wall. Mr. Wilkey was critically injured but the two bystanders, Mrs. Simpson and her 4-year-old daughter, Michele, were killed. Drugs in plastic bags which had fallen from the suitcase were spewn- about the scene.

Ambassador Kitaro was found in his car unconscious. When police and emergency workers arrived at the scene they interviewed bystanders who had witnessed the accident. Neither the police nor any other governmental official interviewed the ambassador regarding the incident. The police report filed after the investigation concluded that the ambassador was engaged in drug trafficking at a time when he was " obviously drunk" (although no objective test was offered or administered out of respect for his diplomatic immunity).

The incident triggered an outpouring of criticism form the local news media and certain politicians, who were frustrated over repeated abuse of diplomatic immunity A non-binding resolution was introduced and passed overwhelmingly in the Majan National Assembly calling for the immediate criminal trial of Ambassador Kitaro.

On Wednesday, 18 February, the ambassador called on Manfred van Dyke, the Minister of Foreign Affairs of Majan, and expressed, in addition to his previous profound personal regret, that of his Government. Ambassador Kitaro then handed Foreign Minister van Dyke a Diplomatic Note which stated that, in accordance with diplomatic protocol, he was being recalled by his Government and that his immunity would terminate as from 12:01 a.m. 21 February.

Prior to the ambassador's departure on 20 February, Majan's Minister of Justice, Charles Akulu, held a news conference to announce that he was preparing charges against the ambassador for murder, attempted murder, and drug trafficking and smuggling. "These acts are regarded by the law of Majan as among the most serious crimes and could result in the death penalty," Minister Akulu told a crowded news conference attended by the international press. Minister Akulu went on to say that while Majan recognized that the ambassador had diplomatic immunity so long as he was accredited to Majan, once his mission was terminated his immunity would cease; he could, thereafter, be prosecuted for acts which occurred while he had immunity.

Concerned by the apparent intention of the Government of Majan to indict its ambassador, the Government of Aristan dispatched on 22 February a Diplomatic Note to the Majani Ministry of Foreign Affairs, through its Embassy in Providence, the capital, which observed in relevant part:

The Government of the United Republic of Aristan calls to your attention Article 31, paragraph 1, of the Vienna Convention on diplomatic Relations, to which both the United Republic of Aristan and Majan are High contracting Parties. Article 31 provides that "[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State." At the time of this most regrettable incident, Ambassador Kitaro was accredited to Majan as the United Republic of Aristan's Ambassador Extraordinary and Plenipotentiary and, therefore, entitled to "immunity from the criminal law jurisdiction of Majan."

In the Case Concerning United States Diplomatic and Consular Staff in Tehran (U.S.A. v. Iran), an unanimous International Court of Justice condemned the violation of diplomatic immunity by Iran. The Court stated that it

considers it necessary here and now to stress that, if the intention to submit the hostages [diplomatic agents]- to any form of criminal trial or investigation were to be put into effect, that would constitute a grave breach by Iran of its obligations under Article 31, paragraph 1, of the 1961 Vienna Convention. This paragraph states in the most express terms: "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State."

While in no way condoning the incident, the Government of the United Republic of Aristan views with profound concern the actions of the Government of Majan through its Ministry of Justice. The Government of the United Republic of Aristan requests that assurances be given to its Embassy that Majan will honor its international obligation to the United Republic of Aristan under the Vienna Convention, and that any criminal investigation or indictment under Majan's municipal law be quashed.

In response, Majan's Ministry of Foreign Affairs replied as follows by Diplomatic Note:

The Ministry of Foreign Affairs concurs in the analysis of the status of Ambassador Kitaro's immunity at the time of the incident. Ambassador Kitaro has, however, been withdrawn and is no longer accredited to Majan as the United Republic of Aristan's Ambassador. Accordingly, his immunity in Majan is now governed by paragraph 2 of Article 39 of the Vienna Convention, which provides:

When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in the case of armed conflict. However, with respect to acts performed by such person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

The Vienna Convention thus makes clear that the immunities of former diplomats do not subsist in respect to acts that, during the period of performance of diplomatic functions, were not performed in the exercise of functions as a member of the mission.

Several days after his departure and the exchange of Notes, an arrest warrant was issued in Providence for the ambassador on the charges of murder, attempted murder, and drug trafficking and smuggling. Majan's law does not allow for trial in absentia.

Upon his return to Aristan, the ambassador received a hearing and was dismissed by Foreign Secretary Christina Bocalandro from Aristan's foreign service amid a flurry of press coverage. One week later, the ambassador departed for a holiday in the Parrot Islands. When the Government of Majan learned of the ambassador's presence in the Parrot Islands, it filed a demand for his extradition under a bilateral extradition treaty, the terms of which left no margin to question such a demand. The Parrot Islands thereupon arrested the ambassador and promptly extradited him to Majan, where he was

imprisoned.

Despite repeated protests by the Government of the United Republic of Aristan, the ambassador's trial was set to begin in due course. Prior to the trial, Aristan imposed upon Majan a series of harsh economic sanctions, straining Majan's economy. Moreover, because Aristan was a large economic power and an international financial center, it was able to exert pressure on Majan's neighbors -- slowing to a trickle the trade into and out of Majan. The economy of Majan quickly degenerated to the point of near-paralysis.

On the day the trial began, the Government of Aristan seized the assets that the International Monetary Union (IMU) assigned to Majan on an administered deposit account with the First Aristani National Bank, a private commercial institution in the capital city of Aristan. The seizure was lawful under Aristani law, which provides emergency economic powers to the Aristani Government.

The IMU is a regional monetary union in which Majan and 60 other sovereign States are members. The IMU provides for a centralized currency reserve, a single currency issued by a common central bank, a common interest rate structure, free transfer of funds within the union, and common banking legislation.

No agreements exist between the IMU and Aristan, although Aristan has always regarded the IMU as a regional organization. However, more than 80 countries, including the IMU's 61 member States, have bilateral treaties recognizing the IMU as a regional organization and according its assets complete immunity. Each bilateral treaty contains an identical article which refers to "administered accounts" in the following terms: "An 'administered account' is an account administered by the IMU for the exclusive benefit of a member in an account kept separate from the property and accounts of the organization, and which may not be drawn upon by the beneficiary but only by the IMU."

IMU President Hans Zoff immediately protested the seizure as a violation of the IMU's immunity under general international law. Under the IMU's Charter, any member State may represent the legal interests of the IMU before the International Court of Justice, provided that the IMU expressly agrees. IN this matter, President Zoff expressly agreed that the IMU would allow Majan exclusively to defend both its own and the IMU's interests.

Aristan's and Majan's municipal law includes two acts coincidental with two municipal laws of the United States, namely, The Diplomatic Relations Act and The Foreign Sovereign Immunities Act. Both parties agree to submit the matter before an international tribunal.

You may represent either party. What legal arguments would you make on behalf of your client while anticipating how you would negate the other State's legal arguments.

Question No. 3

Discuss the relevance in International law, using examples from any sources, any three of the following:

- (a) Common heritage of mankind;
- (b) concept of erga omnes obligations;
- (c) the P.L.O. as a government-in-exile;
- (d) equity as a source of international law,
- (e) travaux préparatoires;
- (f) monist versus dualist theory.