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**505 - International Law
Spring Semester 2008**

**UNM School of Law
Final Examination
Three Credits**

**Professor Moore
Friday, May 9, 2008 and
Saturday, May 10, 2008
9:00 – 11:00 a.m. (two hours)**

Examination Format

1. **Laptop** computer users: Start the Secureexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.

2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Professors' Instructions

1. This is a closed-book exam except students may bring into the exam a class outline that they have prepared or participated in preparing. Other texts and commercial outlines are not allowed.
2. This exam includes one fact pattern and **five 20-minute questions**, each of which is assigned 15 points, for a total of 75 points. Some of the questions have sub-parts.
3. You should spend at least 10 minutes reading the fact pattern, and approximately 20 minutes on each question. This will leave you 10 minutes to review your work and/or to answer the extra-credit question at the end of the exam.

4. Please read through to the end of each question before you begin to write your answer. Also remember that your exam will be evaluated for the precision and thoroughness of your answers. The conclusions you reach are less important than the strength and creativity of your analysis.
5. There is an annex to the exam appended after the questions, which you may wish to consult in preparing your answers. **BEST WISHES ON THIS EXAM!!!**

EXAMINATION

FACT PATTERN:

In late 2007 and early 2008, a spirited campaign season for upcoming presidential elections was underway in the African nation of Watuwote. Incumbent President Simon Wagame of the ruling party WANU (Watuwotean African National Union) has been in power continuously since Watuwotean independence from the United Kingdom in 1988. He was challenged by long-time opposition member Margaret Changa, of the Movement for Integrity and Democracy (MID). Wagame and Changa are members of the same ethnic group and both WANU and MID enjoy support among members of all four of the major tribes of Watuwote. Changa campaigned on a pro-democracy/rule of law platform, and the MID part slogan is “Changa for Change.” The president’s supporters stress the virtues of continuity, and WANU rallies feature Wagame speaking under banners proclaiming “WANU and Wagame for a Winning Game.”

On April 1, 2008, the polls opened at 6:00 AM and closed at 10:00 PM. Close to ninety percent of Watuwote’s eligible voters are believed to have participated. As of May 1, WANU-appointed election officials had still not announced the election results. Based upon projections from preliminary data released by individual polling stations, independent election monitors believe that Changa was the top vote-getter, with Wagame coming in a distant second.

Amid calls by the opposition for the official results to be released, WANU security forces have been systematically repressing actual and suspected members of MID, and citizens believed to have voted for Changa. MID members of Parliament have been arrested and detained without charge. The *Daily Planet*, Watuwote’s highest circulation newspaper, reported that at least three MID Parliamentarians were tortured in detention. Participants at MID rallies have been beaten and received death threats. Human rights groups, both local and international, are alarmed, and fear that the government may be preparing for more widespread and graver violence against ordinary Watuwoteans, either before or after the election results are announced.

On May 1, a Chinese flagship bearing a cargo of semi-automatic weapons, ammunition, rockets and mortars was docked at the port of Salaam in the country of Cape Africa. Members of the local dockworkers' union CADU, got wind that the weapons were destined to be trucked overland to Watuwote, Cape Africa's neighbor to the North, and refused to unload the cargo. Nearly 1000 Cape Africans live and work in Watuwote's struggling tourist industry, and a similar number of Watuwoteans work in Cape Africa's mining sector. An investigative journalist with the *Salaam Times* got access to the Chinese ship's bill of lading, which evidenced a sales agreement between a Chinese government-owned weapons manufacturer and the Watuwotean Defense Ministry, and she reported this information in a series of articles between May 1 and May 5.

In solidarity with their Watuwotean brothers and sisters, the CADU Legal Defense Fund filed for injunctive relief in the Federal District Court for the District of Salaam on May 5, seeking to block the government's issuance of the necessary transit permit, invoking a 2006 executive order promulgated by Cape African President Ana Humanitas, which bars the issuance of permits for goods destined for a country whose government commits widespread human rights violations.

The Salaam District Court granted a temporary injunction on May 10, and that same day the Cape African government, a close ally of Wagame, appealed to the Constitutional Court of Cape Africa, urging that the 2006 order is unenforceable, because implementing legislation was never enacted by the Parliament. The government also argues that Ms. Humanitas' executive order does not authorize individual causes of action. Finally, the government argues that the Constitutional Court lacks jurisdiction to hear the case.

The Cape African Constitution, similar to the U.S. Constitution, assigns broad legislative power to the Parliament, and, unlike the U.S. Constitution, accords the President special duties in the promotion of respect for international human rights norms throughout the African region. The Cape African Constitution also recognizes international treaties as federal law, and empowers the federal courts to hear cases alleging violations of international law. Finally, the Cape African Constitution codifies a last in time rule with regard to statutes and treaties.

Both Watuwote and Cape Africa have ratified the Genocide Convention, the 1949 Geneva Conventions and the Convention against Torture, but neither are parties to the Statute of the International Criminal Court.

QUESTIONS:

In light of the above facts, which you should read through at least twice before starting to write, please answer the following **five** questions. It is suggested that you allocate approximately 20 minutes to each question. There is one extra credit question at the end if you have time after reviewing your previous five answers.

1. Monism and dualism in the context of Cape Africa (20 minutes):

- (a) *Briefly* define the two terms (5 points).
- (b) Discuss how both concepts might or might not apply to Cape Africa's constitutional structure (10 points).

2. Principles of jurisdiction in the context of the CADU case (20 minutes):

- (a) *Briefly* list the five principles underlying the appropriate exercise of prescriptive or judicial jurisdiction by the courts of Cape Africa (5 points).
- (b) Identify and analyze the specific principle(s) that may justify the Constitutional Court's consideration of the CADU Case (8 points).
- (c) What discretionary principles might the Court invoke to avoid reaching the merits? (2 points)

3. The U.S. Supreme Court's 2006 decision in the *Hamdan* case (20 minutes):

- (a) Please *synthesize* the US Supreme Court holding with regard to the separation of powers in Hamdan's challenge to Bush's 2001 executive order creating the Military Commissions for the trial of terrorism suspects detained in Guantanamo Bay, Cuba (5 points).
- (b) Discuss the possible application of this decision to the Cape African Constitutional Court's consideration of the CADU case, and whether it can be distinguished (8 points).
- (c) Don't forget to identify the status of foreign case law as a source of international law (2 points).

4. The U.S. Second Circuit's 1980 decision in *Filartiga v. Pena-Irala* and the U.S. Supreme Court's decision in *Sosa v. Alvarez-Machain* (20 minutes):

- (a) Please *synthesize* the Second Circuit and US Supreme Court holdings in the two Alien Tort Claim Act cases, emphasizing the specific human rights violations that were alleged in both cases (5 points).
- (b) Please analogize or distinguish these decisions with regard to whether the Cape African Constitutional Court may appropriately consider the CADU case (10 points).

5.Relevant human rights treaties (20 minutes):

Assuming its rulings on the issues reflected in questions #2-4 above favor reaching the merits, consider whether the following five instruments may be relevant to the Court in determining whether human rights violations are occurring in Watuwote, such that a permit for the overland transit of the weapons shipment should be denied:

- (a) the Universal Declaration of Human Rights (4 points);
- (b) the Genocide Convention (2 points);
- (c) the 1949 Geneva Conventions (2 points);
- (d) the Convention against Torture (2 points); and
- (e) the Statute of the International Criminal Court (5 points).

For each instrument, consider whether the relevant definition(s) of human rights abuses set forth in its substantive provisions correspond to current conditions in Cape Africa. You may assume that the facts as reported by the *Daily Planet* are true. If Cape Africa has not ratified a given instrument, analyze whether it may nevertheless be binding or persuasive on the Court and why.

EXTRA CREDIT (up to 15 points):

What other action or actions can the international community take to remedy the potentially explosive situation in Watuwote? You may provide up to three examples, identifying specific mechanisms that may be pursued through the U.N. Charter, other treaty-based institutions or non-governmental organizations.

[ANNEX IS APPENDED]