

**UNIVERSITY OF FORT HARE
NELSON R MANDELA SCHOOL OF LAW
(East London)**

**Public International Law
LEP 412E**

**DEGREE EXAMINATIONS
2023**

Time: The duration of the Assessment is limited to 3 hours – 180 minutes

Marks: 100

This paper consists of four (4) Questions with sub-questions

**Internal Examiner
Dr. N Ndlovu (UFH)**

**External Examiner
Prof R Wandrag (UWC)**

Instructions

- a. Read questions carefully and answer all the questions as per the instructions provided;
- b. Organise your time efficiently to ensure that you finish within the time allocated;
- c. Public International Law is a final year LLB Module. The LLB Standard require that you demonstrate the ability to identify and define the relevant issue(s) presented in the question; select and analyse the most relevant (international, regional and domestic) sources to solve the legal problems, to generate appropriate responses and present reasoned solutions thereto. The essay-type questions (questions 2-4) thus require a reasoned legal opinion from you supported by relevant and reliable authority. There may exist alternative solutions to the issues, which necessitate critical judgment and the determination and presentation of a reasoned choice between the potential alternative solutions. You must use appropriate conventions and terminology of legal discourse within this specialist area.
- d. It is in your best interest to write clearly, neatly and legibly.**
- e. The allocation of marks for questions should guide you as to what detail is required. Avoid repetition and the inclusion of irrelevant and immaterial information. Essay questions receive an impression mark. Do not repeat the question in your answer.
- f. **NB: No marks will be awarded should you 'copy and paste' and answer from any source.** This may also lead to disciplinary action against you.

Question 1 (Specific Instructions - Multiple Choice Questions)

(10)

- a. Each question has four (4) possible answers. Select only one option per question by writing the number of the answer selected next to the question number in your answer book i.e. 1.1 - a;
- b. Each question has a mark allocation of one (1) mark;
- c. Questions, where multiple selections are made, will be marked as incorrect.

Question 1 (Multiple Choice Questions)

(10)

1. **If a treaty's objectives are in conflict with a peremptory norm that came to effect after the conclusion of such a treaty, such existing treaty will be rendered:**
 - Voidable
 - Void
 - Valid
 - Parties will negotiate.

2. **What are the theories of jurisdiction asserted by states as lawful under international law?**
 - The principle of territoriality, the nationality principle, *opinio iuris*, jurisdiction and law of the sea.
 - Prescriptive, enforcement, adjudicative.
 - The principle of territoriality, the nationality principle, passive personality, the protective principle, the effects principle, universal jurisdiction.
 - All of the above.

3. **One of the pivotal obligations that are placed on UN Member States is to settle their international disputes through peaceful means and ensuring that there is no endangering international peace and security. Which Article in international law governs the above provision.**
 - Article 71 (1) of the VCLT
 - Article 53 of the VCLT
 - Article 2(3) of the UN Charter
 - Article 9 of the Hague Convention

4. **Formal agreements, including multilateral treaties, normally require ratification in addition to signature. Ratification signifies that:**

- The State representative must be allowed an opportunity to re-evaluate the treaty but the State will be bound to it from signature;
- The treaty must be applied provisionally from signature until ratification;
- The State subsequently to endorse the earlier signature;
- The State may provisionally act in opposition to the object and purpose of the treaty until ratification.

5. The jurisdictional competency of a State is primarily:

- Universal;
- Passive;
- Subjective;
- Territorial.

6. "Full powers" in the drafting and negotiation of treaties provides evidence that the person producing it:

- Has the required authority to act on behalf of the State;
- Is authorised to draft a treaty but may not participate in the negotiation thereof;
- Could be regarded as a person in a position of power resulting from the office that he/she holds;
- Is ex-officio a member of the State's parliament.

7. A State may exercise jurisdiction where a:

- Crime is commenced within its territory and completed in another State;
- Commenced within another State but completed within its territory;
- Committed by a foreign national outside of its territory which offence harms a national of the State;
- All of the above.

8. The extinction of Statehood may take place as a consequence of:

- Absorption;

- Annexation;
- The dismemberment of an existing State;
- All of the above.

9. A derivative subject of international law is:

- A State;
- An international organisation;
- A natural person;
- An insurgent.

10. International legal personality entitles a subject in international law to:

- Take part in war;
- Contribute to the formation of international customary law;
- Be a party to a case before the International Criminal Court;
- None of the above.

QUESTION 2

(30)

Rushan, a State in Eastern Europe acceded to the UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85. This Convention, in its Preamble states that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Article 1 of the Convention specifically provides that “the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

Rushan acceded to the Convention subject to a reservation that 'enhanced interrogation techniques' may be required, should it be deemed to be in the national interest.

Required: You are required to evaluate the status of torture and reservations to treaties in your answer. In your answer, you must specifically deal with the following issues under separate headings:

- Explain what peremptory norms are in International Law. Further, explain what *jus cogens* means and does torture qualify as a *jus cogen*.
- Does a *jus cogens* norm create an obligation *erga omnes*?
- Provide at least two examples, excluding torture, of recognised *jus cogens* norms.
- What is a reservation and/or declaration to a treaty and why are reservations and declarations possible? Evaluate the difference between permissible reservations and declarations, incompatible and impermissible reservations, and declarations. Can Rushan be regarded as being a party to the Torture Convention while still maintaining its reservation? Refer to relevant treaty law, case law, and/or advisory opinions and other applicable authority in your answer.
- Explain South Africa's legal position in relation to articles 13 and 14 of the International Covenant on Economic, Social, and Cultural Rights, 1966.

QUESTION 3

(20)

On February 6, 2019, the twenty-nine-member (now 31) states of the North Atlantic Treaty Organization (NATO) signed the Accession Protocol to allow the Republic of North Macedonia to join NATO. The Accession Protocol will allow North Macedonia to take part in NATO activities as an invitee, and each NATO member will now have to ratify the protocol according to domestic procedures to finalize the process. This follows an agreement last month with Greece wherein the parties agreed on the name change of the territory of the Republic of North Macedonia. The Republic of North Macedonia has a population of 2.1 million, a comparative land area of slightly larger than the Eastern Cape and a gross domestic product of \$31.02 billion. The capital of North Macedonia is Skopje. There are various ethnic

groups and religious groups present in the republic. North Macedonia is landlocked and its statehood has been challenged or denied by officials in its larger neighbours, including Serbia (until the creation of Yugoslavia), Greece, and Bulgaria. North Macedonia incorporates a unicameral, 120-member legislature with a prime minister as head of government.

Required: Critically evaluate whether the Republic of North Macedonia now possibly qualifies as a State under international law. Specifically, refer to the general requirements set by international law for a territory to be recognized as a State. Make use of and refer to the sources of international law as defined in the ICJ Statute and the requirements of statehood.

QUESTION 4

State A and State B are neighbouring States that have been at loggerheads for years. The government of State B is intimidated by State A's continued "gunboat diplomacy". The latter is clearly manifested in the continued presence of armed forces at the border, which, in State B's opinion is way beyond State A's reasonable defense requirements. The continued deployment of troops and acquisition of chemical weapons unnerve State B. State A's actions are perceived as hostile and State B decides it is time to launch a pre-emptive strike. State B bombards the area at the border and its surroundings. Roads, bridges, and towns are destroyed. Many of State A's civilians, including a number of women, children and old people, are killed. Although State B distributes pamphlets urging members of the civilian population to leave, they do not have enough time to evacuate their homes and many consequently perish during the attacks.

Required: With reference to applicable international (humanitarian) law principles and sources, evaluate State A's conduct and State B's actions setting out in particular their violations under international law. **(40) marks**

[100]