



PROGRAM : LL.B
BA (LAW)
BCOM (LAW)
BA (INTERNATIONAL RELATIONS)

MODULE : PUBLIC INTERNATIONAL LAW

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DATE : WINTER EXAMINATION
: 8 JUNE 2020

DURATION : 180 MINUTES

TOTAL MARKS : 60

EXAMINERS : DR M ROUX
: PROF MR PHOOKO

MODERATOR : DR F MNYONGANI (UKZN)

NUMBER OF PAGES : 3 PAGES

INSTRUCTIONS TO CANDIDATES:

- The exam paper will be placed on Blackboard, and you must then download it.
- Your answers to the questions must be typed in or written out on a separate document.
- You must then submit your answer script either on Blackboard, or you may e-mail it to mrroux@uj.ac.za OR rphooko@uj.ac.za.
- Your script may be typed or written out and photographed; we are sensitive to technological issues students may experience, and are therefore flexible in this regard.
- Please indicate very clearly which questions you are answering.
- Plan your answers carefully: the mark allocation for a specific question will give you an idea as to the level of detail expected in your answer.
- The exam will be open-book: you may therefore use prescribed study material to substantiate your answers. When quoting directly from a source, place it in quotation marks.
- You may NOT get assistance from fellow students or communicate answers to one another. Please take note that the Law Faculty takes a zero-tolerance approach to plagiarism, sharing of exam answers, or unauthorised assistance by anyone else in writing the exam.
- Your answers will be tested for plagiarism in general and in respect of the answers of other students.

QUESTION 1

Following a declaration of independence from Britain, South Africa embarked on a new process to mark its territorial borders. In a process of doing so, South Africa took a portion of land belonging to Botswana. Consequently, a legal dispute arose concerning the border between the two countries. At one point the situation escalates and Botswana threatens to enforce its rights through bombing parts of South Africa. As a response, South Africa decides to bomb military strategic targets in Botswana.

Discuss the legality attack of Botswana on South Africa in the light of public international law. Your answer **should NOT** exceed one page. [10]

QUESTION 2

The International Court of Justice (ICJ) does not have compulsory jurisdiction. Explain the circumstances under which the ICJ has jurisdiction to settle an inter-state dispute. [5]

QUESTION 3

Tsakane Simbo is a graduate of the Faculty of Law, University of Johannesburg. She has been appointed as a Minister to the Department of International Relations and Cooperation's for the past three months. After the end of the national lockdown due to COVID-19, she decided to take a vacation in Mauritius. Whilst there, she met the Minister of Justice from Mauritius. The two ministers decided to conclude a verbal agreement about an exchange programme for law students. Tsakane posted on her Twitter page indicating that the said agreement will be implemented within one day of her return to South Africa.

In light of the above, answer the following question: is the verbal agreement valid? Substantiate your answer. Your answer **should NOT** exceed one page. [10]

QUESTION 4

The prohibition of genocide is considered to be a jus cogens norm. Explain at least two legal effects of the fact that the prohibition of genocide is a jus cogens norm. [5]

QUESTION 5

The minority Muslim Rohingya people in Myanmar, a distinct ethnic, racial and religious group, has been persecuted and discriminated against for decades by the government of Myanmar. In August 2017, Myanmar's armed forces and police began a campaign of mass killings, sexual violence, and torture against the Rohingya people. Various organs of the United Nations have issued reports stating that these human rights violations amount to genocide and crimes against humanity. The Office of the Prosecutor of the International Criminal Court is currently investigating the atrocities, and in 2019 the Republic of The Gambia instituted proceedings against Myanmar at the International Court of Justice for violating the Genocide Convention. The Myanmar government disputes the reports, and strongly denies all allegations of genocide and crimes against humanity against Rohingya, stating that it is defending itself against militant groups.

Answer the following questions based on this set of facts:

- 5.1. Which diplomatic means of peaceful settlement would be the most effective and appropriate to investigate the disputed facts? (2)
- 5.2. Which non-forcible enforcement measure would be the most appropriate for the General Assembly of the United Nations to implement against Myanmar? (3)

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- 5.3. Assume a draft resolution is presented at the Security Council that proposes the authorisation of the use of force against Myanmar's armed forces and police to prevent further violence against the Rohingya people, and to restore peace and security in Myanmar. Fourteen member states of the Security Council vote in the affirmative, but China exercises its veto right by voting against the adoption of the resolution. Explain the effect of China's veto right on the proposed draft resolution. (4)
- 5.4. Briefly explain whether self-defence would be an appropriate enforcement measure in order to prevent genocide and crimes against humanity. (4)

[13]**QUESTION 6**

Answer the following questions:

- 6.1. Identify the principle of jurisdiction that would be the most appropriate for South Africa to rely on to charge a person that planned a terrorist attack in Nigeria, but which was carried it out in Johannesburg. Substantiate your answer. (2)
- 6.2. Differentiate between the principles of (active) nationality and passive personality. Provide examples for the principles to illustrate their differences. (4)

[6]**QUESTION 7**

Answer the following questions:

- 7.1. The President of the Democratic Republic of the Congo, Félix Tshisekedi, is on an official state visit in South Africa.
- Assume President Tshisekedi stays at the Michelangelo hotel in Sandton, but refuses to pay his bill of R1 million. Can the Michelangelo institute action at the South Gauteng High Court to claim the outstanding bill? Substantiate your answer. (2)
 - Assume there is strong evidence indicating that a policy of genocide has been followed by the Congolese government against one of its ethnic minorities. Can President Tshisekedi be charged with genocide at a South African court? Substantiate your answer. (2)
- 7.2. John Doe, a Namibian national, detonates a bomb at the American embassy in Windhoek, killing 50 people. John flees to South Africa. Assume the United States of America requests South Africa to extradite John for his prosecution.
- Briefly explain which extradition procedure is followed between South Africa and the USA. (3)
 - Can South Africa extradite John to the USA if he faces the death penalty if found guilty? (2)
 - John hides in the Zimbabwean embassy in Pretoria. Explain whether the South African Police Force could enter the premises of the Zimbabwean diplomatic mission to arrest X. (2)

[11]

TOTAL EXAM:**[60]**
