



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

MODULE : **PUBLIC INTERNATIONAL LAW**

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DURATION : 135 MINUTES

TOTAL MARKS : 60

EXAMINER : DR M BRADLEY

MODERATOR : DR M ROUX

NUMBER OF PAGES : 5 PAGES

INSTRUCTIONS : PAY ATTENTION TO THE MARK ALLOCATION OF EACH QUESTION AND PLAN YOUR ANSWER ACCORDINGLY.
: ANSWER ALL THE QUESTIONS. READ ALL QUESTIONS CAREFULLY AND ANSWER COMPREHENSIVELY.
: REFER TO ANY RELEVANT AUTHORITY TO SUBSTANTIATE YOUR ANSWER.
: PLEASE HAND IN YOUR QUESTION PAPER AND YOUR ANSWER SCRIPT WHEN YOU LEAVE THE VENUE.

QUESTION 1

Read the below statement by American President Donald Trump concerning the military action undertaken jointly on 14 April 2018 by the United States of America, France and the United Kingdom. The joint military action was in response to reports on chemical attacks carried out by the Syrian government against its civilians, as well as the reported chemical weapon storage facilities:

Syria air strikes: President Trump statement in full (retrievable at: <http://www.bbc.com/news/world-43766967>, last visited on 25 April 2018):

'My fellow Americans, a short time ago I ordered the United States armed forces to launch precision strikes on targets associated with the chemical weapons capabilities of Syrian dictator Bashar al-Assad. A combined operation with the armed forces of France and the United Kingdom is now under way. We thank them both.

Tonight, I want to speak with you about why we have taken this action. One year ago, Assad launched a savage chemical weapons attack against his own innocent people. The United States responded with 58 missile strikes that destroyed 20% of the Syrian air force.

Last Saturday, the Assad regime again deployed chemical weapons to slaughter innocent civilians - this time, in the town of Douma, near the Syrian capital of Damascus. This massacre was a significant escalation in a pattern of chemical weapons use by that very terrible regime.

The evil and the despicable attack left mothers and fathers, infants and children, thrashing in pain and gasping for air. These are not the actions of a man; they are crimes of a monster instead. Following the horrors of World War One a century ago, civilized nations joined together to ban chemical warfare. Chemical weapons are uniquely dangerous not only because they inflict gruesome suffering, but because even small amounts can unleash widespread devastation.

The purpose of our actions tonight is to establish a strong deterrent against the production, spread, and use of chemical weapons. Establishing this deterrent is a vital national security interest of the United States. The combined American, British, and French response to these atrocities will integrate all instruments of our national power - military, economic, and diplomatic. We are prepared to sustain this response until the Syrian regime stops its use of prohibited chemical agents.

I also have a message tonight for the two governments most responsible for supporting, equipping, and financing the criminal Assad regime. To Iran, and to Russia, I ask: what kind of a nation wants to be associated with the mass murder of innocent men, women, and children? The nations of the world can be judged by the friends they keep. No nation can succeed in the long run by promoting rogue states, brutal tyrants, and murderous dictators.

In 2013, President Putin and his government promised the world that they would guarantee the elimination of Syria's chemical weapons. Assad's recent attack - and today's response - are the direct result of Russia's failure to keep that promise. Russia must decide if it will continue down this dark path, or if it will join with civilized nations as a force for stability and peace. Hopefully, someday we'll get along with Russia, and maybe even Iran - but maybe not.

I will say this: The United States has a lot to offer, with the greatest and most powerful economy in the history of the world. In Syria, the United States - with a small force being used to eliminate what is left of Isis (the Islamic State group) - is doing what is necessary to protect the American people. Over the last year, nearly 100% of the territory once controlled by the so-called Isis caliphate in Syria and Iraq has been liberated and eliminated.

The United States has also rebuilt our friendships across the Middle East. We have asked our partners to take greater responsibility for securing their home region, including contributing large amounts of money for the resources, equipment, and all of the anti-Isis effort. Increased engagement from our friends, including Saudi Arabia, the United Arab Emirates, Qatar, Egypt, and others can ensure that Iran does not profit from the eradication of Isis. America does not seek an indefinite presence in Syria, under no circumstances. As other nations step up their contributions, we look forward to the day when we can bring our warriors home. And great warriors they are.

Looking around our very troubled world, Americans have no illusions. We cannot purge the world of evil, or act everywhere there is tyranny. No amount of American blood or treasure can produce lasting peace and security in the Middle East. It's a troubled place. We will try to make it better, but it is a troubled place. The United States will be a partner and a friend, but the fate of the region lies in the hands of its own people.

In the last century, we looked straight into the darkest places of the human soul. We saw the anguish that can be unleashed and the evil that can take hold. By the end of the World War One, more than one million people had been killed or injured by chemical weapons. We never want to see that ghastly spectre return.

So today, the nations of Britain, France, and the United States of America have marshalled their righteous power against barbarism and brutality.

Tonight, I ask all Americans to say a prayer for our noble warriors and our allies as they carry out their missions.

We pray that God will bring comfort to those suffering in Syria. We pray that God will guide the whole region toward a future of dignity and of peace.

And we pray that God will continue to watch over and bless the United States of America.

Thank you, and goodnight. Thank you.'

Answer the following questions by referring to relevant authority to substantiate your answers:

- 1.1 Explain if, in your opinion, the use of force by the United States of America, the United Kingdom and France on Syrian territory is justifiable under international law. You must specifically contemplate whether any exceptions to the use of force doctrine are fulfilled that will legalise the action in terms of international law. Refer to relevant authority to substantiate your answer, and refer to the necessary facts. (10)
- 1.2 Could the above military action be qualified under the 'collective security option'? Answer yes or no and motivate your answer. You are to specifically refer to the requirements inherent in the collective security option and state who or which body is equipped to approve the collective security option. (8)
- 1.3 Assume the above military action by the United States of America, the United Kingdom and France prove to be an internationally wrongful act. Which provision of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts would you identify to attribute these attacks to the aforementioned states? Motivate your answer. (2)
- 1.4 Could the United States of America, the United Kingdom and France justify their military action by explaining that the attacks constituted a lawful countermeasure under

international law? Answer yes or no, and motivate your answer by first defining a countermeasure, explaining when a countermeasure is lawful, and which procedural requirements the injured state must comply with prior to relying on a countermeasure.

(10)

[30]

QUESTION 2

Read the following excerpt carefully before answering the subsequent questions. You are to motivate your answers by referring to relevant authority and by applying the given facts to the applicable law. (You are to disregard the fact that the South African Department of International Relations and Cooperation finally decided to confer immunity upon Grace Mugabe as this decision was a political decision by the South African government and not based on its international law obligations.)

'International law or comity: exploring whether Grace Mugabe can successfully claim immunity for crimes committed on foreign soil', Belinda Chinowawa, *Blog of the European Journal of International Law*, 4 September 2017

'On 14 August 2017 various news sites [reported](#) that Grace Mugabe, the wife of President Robert Mugabe of Zimbabwe had assaulted a young woman. A [court hearing](#) to obtain a statement from Mrs Mugabe was scheduled for the 15th but she failed to appear. On the evening of the 16th the Government of Zimbabwe directed a *note verbale* to the South African government invoking diplomatic immunity on her behalf and stating that Mrs Mugabe's itinerary in South Africa included amongst private matters her attendance and participation at the scheduled [SADC Heads of States/Governments Summit and other Bi-lateral Diplomatic Meetings](#).

The question which has gripped lawyers and laymen alike is whether or not Mrs Mugabe can successfully claim any kind of immunity under international law to shield herself from arrest and prosecution. Media reports asserted that Mrs Mugabe claimed "diplomatic" immunity". However, as the spouse of a sitting Head of State, ordinarily resident in Zimbabwe, Mrs Mugabe cannot be considered a diplomatic agent and is not entitled to the protections afforded under the [Vienna Convention on Diplomatic Relations](#) (VCDR). Customary international law also confers [personal immunity](#) on some state officials. This personal immunity is [extensive in scope](#), and wide enough to cover both official and private acts by heads of state, heads of government and foreign ministers as [the Arrest Warrant Case](#) points out. As Mrs Mugabe does not fall within any of the categories above, she cannot claim personal immunity. In addition, customary international law accords, [functional immunity](#) in relation to acts performed in an official capacity. This immunity covers the official acts of **all** state officials and of those who act on behalf of the state. It is determined by reference to the nature of the acts in question rather than the particular office of the official who performed them. However, the alleged assault by Mrs Mugabe was not undertaken in the performance of any official duty and functional immunity is unavailable in relation to that act...' (retrievable at: <https://www.ejiltalk.org/international-law-or-comity-exploring-whether-grace-mugabe-can-successfully-claim-immunity-for-crimes-committed-on-foreign-soil/>, last visited on 25 April 2018)

Answer the following questions and substantiate your answers by referring to relevant authority:

- 2.1 Explain the way in which diplomatic status in terms of the *Vienna Convention on Diplomatic Relations* could offer protection against arrest for Grace Mugabe in South Africa. Further, what is the extent of immunity enjoyed by a diplomatic agent? (7)

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- 2.2 If Grace Mugabe was afforded consular status by Zimbabwe under *The Vienna Convention on Consular Relations*, would consular immunity protect her against arrest in South Africa? What is the extent of immunity enjoyed by a consular agent? (6)
- 2.3 Which states would be entitled to exercise jurisdiction over the assault by Grace Mugabe (a Zimbabwean Citizen) against a young South African Citizen on South African soil? You are to refer to the relevant case law in your answer and refer to the relevant jurisdictional basis. (6)
- 2.4 Briefly consider whether or not the International Criminal Court would have jurisdiction over the Grace Mugabe incident.. You are to refer to the type of crimes over which the International Criminal Court has jurisdiction, and explain whether or not it makes a difference that Zimbabwe is not a member state of the International Criminal Court. (6)
- [25]**

QUESTION 3

Define and distinguish between the concepts of extradition, deportation and disguised extradition. (5)

[5]

TOTAL: **[60]**
