



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

MODULE : **PUBLIC INTERNATIONAL LAW**

CODE : **INL41AO/ITR0011**

DATE : SPECIAL EXAMINATION
2018

DURATION : 135 MINUTES

TOTAL MARKS : 60

EXAMINER : DR M BRADLEY

MODERATOR : DR M ROUX

NUMBER OF PAGES : 4 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 passage from the news report below carefully and answer the subsequent questions by referring to relevant authority as well as applying the relevant law to the facts provided:

'Syria air strikes: US and allies attack 'chemical weapons sites'

The US, UK and France have bombed three government sites in Syria in an early morning operation targeting chemical weapons facilities, they say. The move is a response to a suspected chemical attack on the town of Douma last week which killed dozens.

Russian President Vladimir Putin said he condemned the Western strikes "in the most serious way". Russia, Syria's main ally, had threatened military retaliation if any Russian forces had been hit.

"The nations of Britain, France, and the United States of America have marshalled their righteous power against barbarism and brutality," US President Donald Trump said in an address from the White House at about 21:00 local time (01:00 GMT).

"The purpose of our actions tonight is to establish a strong deterrent against the production, spread, and use of chemical weapons," he said.

The wave of strikes is the most significant attack against President Bashar al-Assad's government by Western powers in seven years of Syria's civil war.'

Where was hit?

At a Pentagon briefing shortly after Mr Trump's announcement, General Joseph Dunford listed three targets that had been struck:

- A scientific research facility in Damascus, allegedly connected to the production of chemical and biological weapons
- A chemical weapons storage facility west of Homs
- A chemical weapons equipment storage site and an important command post, also near Homs.

(available at <http://www.bbc.com/news/world-middle-east-43762251> last accessed on 22 April 2018)

Answer the following questions:

- 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)

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QUESTION 2

Read the following passage carefully and answer the subsequent questions by referring to the relevant authority. You are to apply the law to the facts provided in this passage.

'Prosecuting 'The Beatles' before the ICC: A Gateway for the Opening of an Investigation in Syria?'

Calls have been mounting for Alexandra Kotey and El Shafee Elsheikh, two fighters captured by the Syrian Kurds, to be tried in the UK, the US, or at the International Criminal Court (ICC) in The Hague. Kotey and Elsheikh were part of a group of four Islamic State militants known as 'the Beatles' (because of their British accents). Although not particularly high ranking within ISIS, the Beatles are infamous for their role in the imprisonment, torture and killing of Western hostages. There is reason to believe that they are responsible for war crimes and crimes against humanity.

(retrievable at: <https://www.ejiltalk.org/> (last accessed on 25 April 2018).

Answer the following questions:

- 2.1. Explain, with reference to the relevant case law, which states would be able to exercise criminal jurisdiction over Alexandra Kotey and El Shafee Elsheikh. For purposes of this question, you are to assume that these two fighters have British nationality. You are to identify all possibilities. (8)
- 2.2. Could the International Criminal Court exercise jurisdiction over Alexandra Kotey and El Shafee Elsheikh? Substantiate your answer with reference to the relevant jurisdictional clauses of the Rome Statute of the International Criminal Court. (7)
- 2.3. Should the request for extradition by the United States of America, a state where the death penalty is still allowed for, of the two Syrian Fighters be granted? You are to firstly define the meaning of 'extradition' in international law, and thereafter explain if there would be a breach of international law should the United States' request be granted. (5)

[20]

QUESTION 3

Read the following passage carefully and answer the subsequent questions by referring to the relevant authority. You are to apply the law to the facts provided in this passage.

Immunity of Consular Officials – The Arrest by the US of an Indian Deputy Consul-General

A serious diplomatic row is brewing between India and the United States regarding the arrest and treatment of an Indian consular official accredited to the United States. The brief background to the story is that last week, US Federal authorities arrested Devyani Khobragade, who is the Indian Deputy Consul-General in New York, on charges of visa fraud. Ms Khobragade is accused of submitting false documents to US authorities in order to obtain a work visa for her housekeeper/maid. She is also accused of paying the maid less than the minimum wage prescribed by US law. The dispute over her arrest has become particularly acrimonious because it is alleged that not only was Ms Khobragade arrested at her daughter's school, that she was handcuffed (which is denied by US authorities) and then subjected to a strip-search (which seems to be admitted). Although US Secretary of State Kerry has called the Indian authorities to express regret over the incident, India has demanded an apology from the US and has taken "retaliatory" measures. Those measures include the removal of some privileges previously accorded to US diplomats, a refusal by Indian officials to meet with a US Congressional delegation in India, and perhaps most seriously, the removal of security barricades that were in front of the US embassy in Delhi.

(retrievable at <https://www.ejiltalk.org/?s=consular+immunity>, last accessed on 25 April 2018)

Answer the following questions:

- 3.1 Ms Kohbragade enjoys consular status in terms of the *Vienna Convention on Consular Relations*. Comment whether the United States acted in accordance with their duties under this treaty when United States agents arrested Ms Kohbragade and strip searched her body. Refer to relevant authority to substantiate your answer. (5)
- 3.2 Would your answer provided in question 3.1 differ if Ms Kohbragade was an ambassador and therefore received protection in terms of the *Vienna Convention on Diplomatic Relations*. Answer yes or no, and motivate your answer by referring to the relevant facts stated in the passage above as well as referring to the applicable authority. (5)

[10]

TOTAL:

[60]
