

MEMORANDUM: WINTER EXAMINATION (6 JUNE 2020)

PUBLIC INTERNATIONAL LAW (INL41AO)

TOTAL MARKS: 60

EXAMINERS: DR M ROUX AND PROF MR PHOOKO

MODERATOR: DR F MNYONGANI (UKZN)

QUESTION ONE

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

- This question deals about the use of force.
- Article 2(4) of the UN Charter prohibits states to use (or to threat with the use of) force against other states.
- Article 33 of the UN Charter requires disputes to be to be first be addressed through negotiation, mediation or other peaceful means
 - a) There are only two exceptions to the prohibition. Firstly, a state is allowed to use force against another state when the state is authorized by the UN Security Council (article 39 jo. 42 UN Charter).
 - b) Secondly, a state is allowed to use force against another state in light of self-defence (article 51 UN Charter).
- In this case there is no authorization by the UN Security Council.
- Furthermore, a self-defense claim can only be justified if it meets the criteria of article 51 UN Charter and the criteria of customary law namely:
 - a) There needs to be an armed attack,
 - b) the response should be proportional and necessary and
 - c) the Security Council should be informed.
- Students need to evaluate the criteria and realize the problem is that Botswana has not attacked South Africa but merely threatened to attack it (South Africa).
- This concerns the debatable concerning anticipatory self-defense. It will depend on the argumentation of the students how many points they will receive for this line of argument.

QUESTION TWO

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]

The answer is to be found in Article 36 (paras. 1 & 2) ICJ Statute.

- The following states can be parties to a dispute:
 - a) States Members of the United Nations and
 - b) other States which have become parties to the Statute of the Court or which have accepted its jurisdiction under certain conditions.

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