

**NATIONAL UNIVERSITY OF LESOTHO**  
**FACULTY OF LAW**  
**LL.B FINAL EXAMINATIONS**  
**L382 - INTERNATIONAL LAW**

**MAY 2020**

**MARKS: 100**

**TIME: 3 HOURS**

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**INSTRUCTIONS**

1. This paper contains six questions.
2. You are required to answer any **FOUR (4)** questions.
3. All questions carry equal marks.

## QUESTION 1

(a) With the aid of decided cases, discuss the elements that must be present in international practice to warrant the assertion that there exists a rule of customary international law. **10 Marks**

(b) Using examples where relevant, explain the following terms:

(i) *Jus cogens* **3 Marks**

(ii) Obligations *erga omnes* **3 Marks**

(iii) *Pacta sunt servanda* **3 Marks**

(iv) Equity **3 Marks**

(v) *Lex posterior derogate priori* **3 Marks**

**[25 MARKS]**

## QUESTION 2

In his article titled ‘Territorial Disputes at the International Court of Justice’, Sumner contends that:

In international law and relations, ownership of territory is significant because sovereignty over land defines what constitutes a state. Additionally, as Machiavelli suggested, territorial acquisition is one of the goals of most states. The benefits of having territory, though, are only as great as a state’s borders are clear, because a state’s boundaries must be well defined for the modern state to function. In many cases, however, these boundaries are subject to competing international territorial claims. (Brian T. Sumner, ‘Territorial Disputes at the International Court of Justice’ (2004) 53(6) Duke Law Journal 1779)

Discuss the above statement with reference to the various modes of acquisition of territory in international law and principles of law pertinent to the concept of territory in international law.

[25 MARKS]

### QUESTION 3

On 1 January 2015, a trade agreement between Lesotho, South Africa, Namibia, Botswana and Zimbabwe entered into force. The agreement provides that it shall be binding upon the signatories upon ratification. The agreement is not registered with the Secretariat of the United Nations. The important provisions of the agreement are as follows:

- (a) *Article 1*: Citizens of the contracting parties have the right to enter into the territories of all contracting parties without being required a visa or any other permit.
- (b) *Article 3(1)*: Citizens of the contracting parties have a right to work in all the states who are parties to the agreement without being required to apply for a work permit.
- (c) *Article 16*: Goods shall be traded between the contracting nations without any obstacles/ hindrances to such trade.
- (d) *Article 27*: The contracting parties must adopt a uniform security policy so as to guard against the disturbance of peace and security in the area.
- (e) *Article 64*: South Africa, as the richest contracting party, shall provide economic assistance to all the other nations so that their economies can also reach the same level of development.

On 18 June 2015 Lesotho, Botswana, Namibia and Zimbabwe negotiated and concluded an amendment to Article 27 so that it included the obligation to harmonize even foreign security policy. South Africa was not invited to join the

negotiations. Namibia, after being part of the discussions, decided against the proposed amendment.

Lesotho signed the treaty but has not ratified it. Mozambique acceded to the treaty six months after it has come into force.

Advise the countries in the following situations:

(a) A Zimbabwean farmer who wants to work in Lesotho is required a work permit. Advice Zimbabwe. **5 Marks**

(b) Namibia complains that Zambia requires Namibians to apply for a visa to enter Zambia. **5 Marks**

(c) South Africa refuses to comply with obligations imposed by *Article 64* because it says its agreement to that provision was secured by the corruption of its representative. It wants to be part of all other provisions of the treaty save that one. **5 Marks**

(d) Mozambique refuses to adopt a common foreign security policy with the other contracting parties. It argues that it wants to accede to the treaty as it appeared in its original form. **5 Marks**

(e) South Africa and Namibia also refuse to adopt a common foreign security policy. Are they both justified in their refusal? **5 Marks**

**[25 MARKS]**

## QUESTION 4

Discuss the following concepts:

- |                           |                |
|---------------------------|----------------|
| (a) Declaratory Theory    | <b>5 Marks</b> |
| (b) Constitutive Theory   | <b>5 Marks</b> |
| (c) De facto Recognition  | <b>5 Marks</b> |
| (d) De jure Recognition   | <b>5 Marks</b> |
| (e) Premature Recognition | <b>5 Marks</b> |

**[25 MARKS]**

## QUESTION 5

According to Ferreira and Ferreira-Snyman, the undeniable fact is that international law is today applied in municipal courts with more frequency than in the past, whatever the jurisprudential basis for the said application may be. The undeniable fact is that in so doing, courts seldom question the theoretical explanation for their recourse to international law. (Gerrit Ferreira and Anél Ferreira-Snyman, 'The Incorporation of Public International Law into Municipal Law and Regional Law against the Background of the Dichotomy between Monism and Dualism' (2014) 17(4) P.E.R/PELJ 1471 <http://dx.doi.org/10.4314/pelj.v17i4.08>)

With reference to the Constitution of the Republic of South Africa, 1996 and with the aid of decided cases, critically discuss the above views.

**[25 MARKS]**

## QUESTION 6

On 17 February 2008, Kosovo adopted a declaration of independence from Serbia in a meeting of the Assembly of Kosovo. On 26 March 2008, the

Government of Serbia announced its plan to call on the International Court of Justice to rule on the declaration by Kosovo. On 15 August 2008, the Serbian Foreign Minister, Vuk Jeremić, officially filed a request at the United Nations seeking an opinion from the International Court of Justice.

The resolution was worded as follows:

*The General Assembly,*

*Mindful* of the purposes and principles of the United Nations,

*Bearing in mind* its functions and powers under the Charter of the United Nations,

*Recalling* that on 17 February 2008 the Provisional Institutions of Self-Government of Kosovo declared independence from Serbia,

*Aware* that this act has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order,

*Decides*, in accordance with Article 96 of the Charter of the United Nations to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court to render an advisory opinion on the following question:

“Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?”

You are a legal officer at the International Court of Justice and you are requested to write an opinion in response to the question posed by Serbia to the Court. In your response, highlight the principles of law that Kosovo must be mindful of in relation to statehood and self-determination under international law.

**[25 MARKS]**

