

**Suggested time: 50 minutes**  
**Maximum score: 150 points**

**ESSAY A**

Terra a State party to the United Nations Convention on the Law of the Sea, 1982 (Convention) adopted the Territorial Waters Act 2002 which declared, inter alia that:

(1) Passage of foreign vessels in cases where they are engaged in any of the following activities shall not be considered innocent, and shall be subject to relevant civil and criminal laws and regulations:

- (a) Any act of propaganda aimed at affecting the national security, defence or economic interests of Terra;
- (b) Any act of pollution of the marine environment contrary to the rules and regulations of Terra.

(2) Passage of warships, submarines, nuclear-powered ships or any other floating objects of vessels carrying nuclear or other dangerous or noxious substances harmful to the environment or foreign fishing vessels through the territorial sea is subject to prior authorization.

And in addition, upon ratifying the Convention Terra made a declaration asserting that:

"The provisions of the Convention do not authorise other States to carry out in the exclusive economic zone, military exercises or manoeuvres, in particular those that involve the use of weapons or explosives without the consent of the coastal States."

In your capacity as legal adviser to Minima, a State party to the Convention with the Law of the Sea, you are asked to analyze the conformity of these provisions of the Territorial Waters Act. Minima had also been planning a series of 'war games' both on the high seas and in Terra's EEZ, thus, you have also been asked to comment on the legality and effect of Terra's declaration.

***Begin writing your answer to Essay A on page 13 of the answer booklet.***

**Suggested time: 55 minutes**  
**Maximum score: 150 points**

### **ESSAY B**

The Charter of the United Nations makes it quite clear that under Article 51 the right of a state to use force is limited to situations where it is itself the victim of an armed attack, or where another member of the United Nations is the victim of an armed attack and it has been asked by that victim state to assist it in the exercise of its self-defence. That's the essence of the text of Article 51 and when coupled with Article 2(4) of the Charter, which prohibits states from using force unilaterally, it states the parameters as conceived in 1945.

Does Article 51 of the Charter of the United Nations cover pre-emptive self-defence? Please discuss.

**Begin writing your answer to Essay B on page 19 of the answer booklet.**

**Suggested time: 60 minutes**  
**Maximum score: 150 points**

### **ESSAY C**

#### Facts

The UN Mission in Freedonia ("UNMIF"), established pursuant to a UN Security Council resolution to end civil strife in the eastern part of Freedonia, a member state of the United Nations, purchased one hundred (100) Armored Personnel Carrier (APC) vehicles from Takamati, a vehicle manufacturer incorporated under the laws of Granaya, also a member state of the UN, at the price of US \$50,000 per vehicle.

In order to promote development in Freedonia, UNMIF decided that the APC vehicles should be delivered in pieces, to be assembled in Freedonia by a subcontractor of Takamati whose factory was located in the western part of Freedonia ("Takamati Subcontractor"). The contract which was entered into between UNMIF and Takamati ("Contract") provided for delivery of the pieces of the APC vehicles to the port of Freedomville, located in the western part of Freedonia. The Contract also provided for the payment of the one half of the total purchase price of the APC vehicles (i.e., \$1,250,000) upon delivery of the pieces for the first 50 APC vehicles to the port of Freedomville. The other relevant provisions of the Contract are set out in the attachment.

The shipments of the pieces for first 50 APC vehicles arrived in Freedomville, and were forwarded to the factory of the Takamati Subcontractor for final assembly. UNMIF paid the one half of the total purchase price to Takamati in accordance with the Contract. The shipments of the pieces for the other 50 APC vehicles also arrived one month later, and were waiting for inland transportation to the factory of the Takamati Subcontractor.

During the relevant time of the Contract, the people of Freedonia were protesting against the President of Freedonia, King Freedom, a repressive ruler. The opposition party led a mass protest to which the President responded by using military force, causing wide-spread rioting and looting throughout the western part of Freedonia, and damaging the APC vehicles ordered by UNMIF. As a result, Takamati Subcontractor's factory was destroyed by the riots and looting, and the pieces for the 50 APC vehicles in the factory waiting for final assembly were also looted, resulting in the total residual value of \$300,000. The pieces for the other 50 APC vehicles, waiting for inland transportation at the port of Freedomville, were unharmed but the pieces could not be moved out of the port due to the unrest. As a result of the exposure to heat and humidity, the pieces soon rusted, resulting in the total residual value of \$500,000.

After several months of discussions and unsuccessful negotiations between Takamati and UNMIF, Takamati commenced a legal action against the United Nations in a court in Granaya, for recovery of the other half of the total purchase price, arguing that delivery under the Contract had been made pursuant to the terms of the Contract. A notice of the legal action has been delivered by mail to the UN Headquarters in New York. Granaya and Freedonia are both parties to the 1946 Convention on the Privileges and Immunities of the United Nations, without any reservation made thereto.

#### Question

You are a legal adviser in the UN Office of Legal Affairs and you have been asked to prepare a legal analysis for the UN Legal Counsel, concerning the dispute with Takamati, addressing the following two issues: (i) what should the United Nations do about the legal action commenced by Takamati in the Granayan court?; and (ii) what are the UN's potential liabilities to Takamati under the Contract?

#### **Provisions in the Contract (the term "Contractor" below refers to Takamati)**

**Delivery.** The Contractor shall: (i) transport, the pieces for the 100 APC vehicles to the port of Freedomville, Freedonia, in two separate shipments, each containing the pieces for 50 APC Vehicles, and (ii) immediately forward the pieces from the port of Freedomville to the premises of the Contractor's Subcontractor in Freedonia for final assembly. Within 15 calendar days of the arrival of the second shipment of the pieces for the APC vehicles at the port of Freedomville, the Contractor shall deliver the 100 APC vehicles, fully assembled, to UNMIF at its Headquarters located in Freedomville in Freedonia.

**Payment.** Upon delivery of the pieces for the first 50 APC vehicles to the port of Freedomville, the United Nations shall pay the Contractor the one half of the total purchase price of the 100 APC vehicles, at US \$50,000 per vehicle. The remainder of the total purchase price shall be paid by the United Nations upon its acceptance of the delivery of the 100 APC vehicles, fully assembled, in accordance with the provisions on "Delivery" of this Contract.

**Sub-contracting.** In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of the United Nations for all sub-contractors. The approval of the United Nations of a sub-contractor shall not relieve the Contractor of any of its obligations under this

Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

**Insurance.** The Contractor shall provide and thereafter maintain insurance against the United Nations' risk of loss of or damage to the APC vehicles until the 100 APC vehicles are delivered to the United Nations, fully assembled, in accordance with the provisions on "Delivery" of this Contract. The Contractor shall also provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

**Force majeure.**

1. In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the United Nations, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the United Nations of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Article, the United Nations shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

2. If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the United Nations shall have the right to suspend or terminate this Contract with seven (7) days prior notice in writing to the Contractor.

3. Force majeure as used in this Article means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.

**Settlement of disputes.** Any dispute, controversy or claim between the Parties arising out of this Contract or the breach, termination or invalidity thereof, unless settled amicably by the Parties within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

**Privileges and immunities.** Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs.

***Begin writing your answer to Essay C on page 25 of the answer booklet.***

***Suggested time: 60 minutes***  
***Maximum score: 150 points***

**ESSAY D**

A multilateral treaty has been concluded among States of a particular region pertaining to the development of economic and financial cooperation. The treaty stipulates that no reservations are allowed thereto. The depositary of the treaty is the Secretary-General of the United Nations. State A, signatory of the treaty, transmits its instrument of ratification accompanied by a declaration stating that all provisions of the treaty are in conformity with this State's constitution and to the effect that no unconstitutional provisions could be implemented. The Secretary-General duly circulates this declaration to the other parties. State B objects saying that it constitutes a prohibited reservation and not a simple declaration.

State A replies that it is a declaration and claims that the depositary accepted and circulated it.

Discuss:

- 1) The nature of State A's declaration and the consequences or effects of the circulation by the depositary of its declaration;
- 2) The position and the functions of the depositary with regard to the circulation of the declaration;
- 3) Implications of this dispute under treaty law and especially the Vienna Convention on the Law of Treaties.

***Begin writing your answer to Essay D on page 31 of the answer booklet.***