

## **ESSAYS**

***Suggested time: 55-60 minutes  
Maximum score: 150 points***

### **ESSAY A**

You are a legal adviser to a State with little or no relevant legislation in place to govern international business transactions. The State aims at a faster international economic integration and considers therefore taking measures for development and promotion of cross-border business transactions, including transactions concluded exclusively between private persons and transactions between private and public entities.

1. Which areas of international commercial law would be of your primary concern?
2. Which international legal standards elaborated in the United Nations system would you recommend for adoption or enactment by that State in each of the areas identified by you under question 1 above and why?
3. Which measures would you consider necessary as a result of adoption or enactment of those standards to ensure their effective implementation and smooth operation in the legal system of that State? Please analyze the impact of each such measure in the specific context of the referred standards.
4. Which measures would you consider necessary to ensure uniform application and interpretation of those standards (in particular, in the light of the provisions found in some of those standards stating that in their interpretation, regard is to be had to their international character and to the need to promote uniformity in their application and the observance of good faith in international trade)? Please provide examples of any tools available at the international level that may help at the country level in this context.
5. Would you recommend participation by that State in any specific international organization? Please name any relevant organization and state the reasons for your choice.

***Begin writing your answer to Essay A on page 15 of the answer booklet.***

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### **ESSAY B**

The UN Mission in Tropicana ("UNMIT") was established pursuant to Security Council resolution XXXX with a mandate to monitor the ceasefire agreement between the Government of Tropicana and armed rebels. Tropicana is a member state of the United Nations. Article 16 of the Agreement between the United Nations and the Government of Tropicana concerning the status of UNMIT provides:

"The privileges and immunities of UNMIT, as a subsidiary organ of the United Nations, shall be the same as those enjoyed by the United Nations under the Charter as well as under the Convention on the privileges and Immunities of the United Nations of 13 February 1946, to both of which Tropicana is a party."

Due to the conflict, the infrastructure in Tropicana, including the electrical grid, has been totally destroyed and UNMIT has to rely on generators to provide electrical power.

In March 2009, UNMIT entered into a contract with Shipping Co. for the transport of thirty (30) new generators from the United Nations warehouse in Brindisi, Italy to Tropicana ("Contract"). The new generators were needed to replace UNMIT's existing generators which, although functional, were becoming worn and inefficient.

The Contract provided that Shipping Co would pick up the generators from the United Nations warehouse located 10 kilometres from the port of Brindisi, Italy and deliver them to Port Tropic, located on the eastern coast of Tropicana. Following their delivery in Port Tropic, the generators would be transported by UNMIT, by road, to the UNMIT Headquarters compound located approximately 150 kilometres from the port.

The Contract price was \$700,000. Article 5 of the Contract provided the following itinerary:

"Cargo collection from United Nations warehouse: 1 June 2009  
Loading Port Brindisi: 2-3 June 2009  
Departure Port Brindisi: 4 June 2009  
Arrival Port Tropic: 29 July 2009  
Unloading Port Tropic: 30-31 July 2009

*Delivery beyond the required delivery date (RDD) of 31 July 2009 may be subject to liquidated damages as defined in Article 20 of the Contract."*

The other relevant provisions of the Contract are set out below.

Shipping Co. collected the generators from the United Nations warehouse on 1 June 2009 and transported them, by road, to Brindisi Port. The generators were loaded onto Shipping Co.'s vessel on 2 and 3 June 2009. On 18 June 2009, following various delays due to mechanical problems with the vessel, the vessel carrying the generators departed Port Brindisi.

On 20 June 2009, Shipping Co. notified UNMIT that the vessel would arrive in Port Tropic on 14 August 2009 and provided UNMIT with a copy of the cargo manifest and bill of lading.

On 14 August 2009, the vessel arrived at Port Tropic. The unloading of the vessel was delayed for 2 days due to delays in obtaining customs clearance for the cargo. UNMIT obtained the customs clearance on 16 August 2009 and the generators were off-loaded from the vessel on 17-18 August 2009.

On 19 August 2009, a convoy of UNMIT trucks arrived at Port Tropic to pick up the generators and transport them to their final destination at the UNMIT Headquarters compound. The generators were loaded onto the UNMIT trucks using Port Tropic lifting equipment. As the UNMIT convoy attempted to exit the port area, the convoy was stopped by Tropic police and customs authorities who demanded payment of (i) \$50,000 customs fees for the importation of the generators into Tropicana and (ii) \$25,000 for the use of the Port Tropic lifting equipment. Following negotiations with the UNMIT convoy leader, the Tropic police and customs authorities agreed to allow the convoy to proceed on the understanding that an invoice for the above amounts would be submitted to UNMIT for its consideration. The Tropic authorities submitted the invoice to UNMIT on 25 August 2009. On the same day, UNMIT also received an invoice for

\$710,000 from Shipping Co. in respect of (i) the transport services provided under the Contract and (ii) additional berthing charges incurred by Shipping Co. due to the 2 day delay in unloading the vessel in Port Tropic.

In your capacity as the UNMIT Legal Adviser, the Head of Mission has asked you to advise on the two invoices received.

**Provisions in the Contract (the term "Contractor" below refers to Shipping Co.)**

"19. The Contractor shall be responsible for any delays due to reasons except for *force majeure* or other occurrence of equal force and effect, including, but not limited to war, civil disturbances or other hostilities, hurricanes, storms or other weather disturbances."

"20. In the event that the Contractor fails to meet the required delivery date specified in Article 5 (for reasons other than *force majeure* as defined in paragraph 19 above) the United Nations shall be entitled to deduct from the Contractor's invoice an amount equal to 5% of the Contract price for each and every day of delay up to fifty percent (50%) of the total Contract price. A maximum grace period of five (5) calendar days will be permitted. No liquidated damages will be applied if the Contractor completes the movement within the grace period, however if the movement is not completed within the grace period, liquidated damages will apply from the day immediately following the required delivery date. In the event the Contractor demonstrates that delay in delivery is due to delay in provision of export/import clearance documentation to be provided by the United Nations the grace period shall be extended accordingly."

"23. Within 24 hours of the vessel's departure from the load port, the Contractor shall provide copies of the cargo manifest and bill of lading to the United Nations designated representative in UNMIT to allow sufficient time for UNMIT to obtain advance customs clearance for the cargo at the port of destination."

***Begin writing your answer to Essay B on page 21 of the answer booklet.***

**Suggested time: 55-60 minutes**  
**Maximum score: 150 points**

### **ESSAY C**

"The strait of Polipa, bordered by the State of Andonia, is one of the world's busiest straits used for international navigation. To get to their fishing grounds, distant-water fishing vessels flagged in the State of Bellotia have to pass through the territorial sea and exclusive economic zone of Andonia and the archipelagic waters of the Republic of Calcali. Moreover, a neighbour of Andonia, the State of Dordora, which is a landlocked State, transports hazardous waste from its territory to reprocessing plants in the Kingdom of Epitam by ships flagged in the State of Flitona. These ships pass through the exclusive economic zones of Andonia and Calcali. As a result of such intense activity through the strait, pirates have started operating in the region.

You should note that Andonia, Bellotia, the Republic of Calcali, and the Kingdom of Epitam are States Parties to the 1982 United Nations Convention on the Law of the Sea. Dordora and Flitona are not Parties to the Convention. Please note that the words "ships" and "vessels" are synonymous.

Please answer the following questions:

1. What are the rights and duties of Bellotia to ensure that its fishing vessels can exercise freedom of fishing, and their rights of innocent passage and transit passage?
2. What are the rights and duties of Andonia, the Republic of Calcali, Dordora, and the Kingdom of Epitam to ensure that the vessels of Flitona can exercise their freedom of navigation, and their rights of archipelagic sea lane passage and transit passage?
3. What are the rights and duties of Andonia, the Republic of Calcali and the Kingdom of Epitam to protect themselves from the risks of pollution from the vessels?
4. Assuming that the ships of Bellotia and Flitona have fallen victim to piracy, what international legal principles and international instruments would you invoke?

**Begin writing your answer to Essay C on page 27 of the answer booklet.**

**Suggested time: 55-60 minutes**  
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### **ESSAY D**

State A is a federal State comprising 15 constituent entities. The economy of the country is mainly based on agriculture and livestock, except in the very rich Province of Industria where numerous high-tech companies, specialized in the production of steel, are located. According to the Federal Constitution, the annual contribution by each constituent entity to the federal budget is based on that entity's gross internal product. From 1970 to 2006 the Province of Industria covered 95% of the federal expenses. Starting from 2000, discussions took place between that province and the federal authorities regarding possible amendments to the financial rules contained in the Federal Constitution and the establishment of a monitoring body in order to guarantee a more equitable utilization of the federal resources. As those discussions did not lead to concrete results, the government of the Province of Industria decided, in January 2007, to withhold Industria's contribution to the federal budget. In spite of numerous appeals by the Federal Government, no contribution to the federal budget was paid by that Province ever since.

In June 2008, the Federal Government established the "Tax-Enforcement Contingent (TEC)" – an *ad hoc* unit comprising 100 officers of the Federal Police – and deployed it to the Province of Industria. The Federal Minister of Interior, Mr. Cruel Horror, instructed the Commander-in-Chief of the "TEC" to conduct a two-week operation aimed at "teaching a lesson to ethnic Industrian elites" in order to secure the payment of the financial contributions due by that Province. The "TEC" conducted its operation from 15 to 30 June 2008: it mainly targeted influential ethnic Industrials and killed 400 people.

In reaction to what it considered "a barbaric and racist operation", the Government of the Province of Industria mandated a contract killer to assassinate the federal Prime Minister and the federal Minister of Interior on the occasion of the annual celebration of the federal police, which was scheduled for 15 August 2008. While the Prime Minister was killed, the Minister of Interior, Mr. Cruel Horror, was seriously injured but survived.

On 15 August 2008, while the official funeral service for the Prime Minister was being held in the federal capital, all the members of the local government and of the local parliament of the Province of Industria met on Production Square, in the heart of the provincial capital, and adopted the following "Solemn Declaration":

*"We, the democratically-elected representatives of the people of Industria, in the exercise of our people's right to self-determination, with a view to protecting the integrity, dignity and safety of our people and to freeing it from the long-standing economic subjugation by State A, solemnly declare Industria to be an independent and sovereign State."*

On 16 August 2008, the President of the neighboring State B declared:

*"Should State A raise any obstacle to the effective implementation by Industria of its declaration of independence of 15 August 2008, State B would take all necessary measures – including through the use of military force – to protect the legitimate right of the people of Industria to self-determination".*

The Constitution of Industria was adopted on 20 August 2008, granting Industrian nationality only to ethnic Industrians. The former provincial authorities were efficiently reorganized during the following weeks. Since the declaration of independence, the Industrian authorities have been able to maintain an effective control over the population and the territory of Industria, without interference from the federal authorities of State A.

Since September 2008, more than 50 States from various regions of the world have recognized Industria as a sovereign State and have established diplomatic relations with it. In December 2008, Industria was also admitted as a new member State to the Council of Steel-Producing States, a regional international organization comprising 15 member States. However, the Federal Government of State A has constantly maintained its position that the declaration of 15 August 2008 was illegal – in particular because it violated the territorial integrity of State A –, that the States having supported the declaration in one way or another did so in violation of the sovereignty and territorial integrity of State A, and that Industria continues to be a province of State A.

In July 2010, Mr. Cruel Horror, who had in the meantime become the Minister for External Commerce of State A, was enjoying a short vacation in Ocean Paradise, a luxurious resort area located in State B. Having been informed of the presence of Mr. Horror in that area, the Prosecutor of the District of Ocean Paradise ordered his immediate arrest, which was carried out on 13 July 2010. The charges brought against Mr. Horror concern his role with regard to the "TEC" operation of June 2008. In a press conference, the Prosecutor indicated that 10 nationals of State B had been killed in that operation; he

also observed that, in any event, State B was under an international obligation to prosecute Mr. Horror, given the seriousness of the offences for which he was responsible.

In your capacity as legal adviser of the foreign ministry of your country (a third state), you have been asked to analyze, from the perspective of public international law:

1. the legal implications of the "Solemn Declaration" of 15 August 2008 and of the reactions thereto; and
2. the legal issues raised by the arrest of Mr. Cruel Horror.

***Begin writing your answer to Essay D on page 65 of the answer booklet.***

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### **ESSAY E**

State A is interested in becoming a party to a specific multilateral treaty deposited with the Secretary-General of the United Nations. The treaty contains an article (Article X) which was strongly supported by State B and other States during the negotiation phase. The treaty has now been adopted but has not yet entered into force. The provisions of the treaty in question are silent with respect to reservations and amendments.

You have been newly appointed as legal adviser to State A. In that capacity, you have recently advised that the implementation of Article X of the treaty would contravene the national law of State A. You have also learned that States C, D & E may have similar concerns to State A regarding the same provision of the treaty.

You have been asked to provide advice regarding possible courses of action for State A. Please discuss in light of the relevant provisions of public international law.

***Begin writing your answer to Essay E on page 71 of the answer booklet.***