1. In 2010 Anteaga, Barbadiosa, Canayda and Domineeeca ratify the Treaty to Combat Terrorism by Any Means Necessary. This Treaty creates a Counter-Terrorism Unit, which is to be covert in nature, and eventually self-funding. Each state is required by the Treaty to dedicate 20 elite military officers to work permanently for the Counter-Terrorism Unit. The latter’s mission is to disable terrorist operations wherever they may be located, and its personnel are required to use whatever means necessary to do so, including torture. The Treaty permits reservations.

Anteaga, Barbadiosa and Canayda ratify the Treaty without reservations. When ratifying the Treaty State Domineeeca appends the following statement to its ratification: “Domineeeca understands that this Treaty does not require its elite military officers to engage in torture.” Canayda objects to this reservation as going against the object and purpose of the Treaty. Barbadiosa objects to the reservation but does not object to the Treaty coming into force between the two states. Anteaga says nothing. The Treaty is now in force.

A wave of terrorist attacks occurs in Domineeeca. The terrorists announce that more attacks will take place in five days. The terrorists are identified as Barbadiosa nationals and some of them are caught by the Counter-Terrorism Unit in Barbadiosa. The Unit’s special torturers, who are elite troops from Canayda and Barbadiosa, are at a special training conference and so the terrorists are not tortured. More terrorist attacks follow in Domineeeca.

Domineeeca brings a claim against both Barbadiosa and Canayda. Domineeeca alleges firstly, that both states breached the Treaty when their elite troops did not torture the terrorists. Secondly, it alleges that both states violated a rule of jus cogens character by not preventing further acts of terrorism.

Advise on the legal merits of Domineeeca’s claim against Barbadiosa and Canayda, including any defences they may have. (50 marks)
2. After a civil war the State of Purple is divided into two parts: the new Republic of Blue and the State of Red. Both parts have well defined borders, permanent populations and elected governments. The State of Red, however, claims to be the legal continuation of the State of Purple. It assumes all of the obligations of the State of Purple and takes its seat upon all international organisations. Only one state, the third State of Yellow, recognises the legal existence of the new Republic of Blue.

The National Power Company of the Republic of Blue (NPC), a state owned and managed company, enters into a contract with the Giant Turbine Company, a privately owned company of the State of Green (GTC). Both companies are incorporated in, and have their head offices located within, their respective states. GTC enters into a contract with NPC to deliver one of its Super Big Turbines to the Republic of Blue. After delivery, NPC discovers that the turbine is faulty, and demands that it be replaced or repaired without charge. GTC agrees to either replace or repair it, but insists upon payment of a service charge equivalent to 50% of the purchase price.

NPC is furious and files a lawsuit against GTC in the High Court of the State of Green, alleging breach of contract and demanding either compensation or free repair of the product. In its arguments NPC alleges that compensation and/or repair is guaranteed under international law both as a result of being a general principle of law, and also as a result of the Interim Trade Accord entered into by the State of Green and the Republic of Blue. In Article 2 of this Accord both States “undertake to protect and treat fairly, on a reciprocal basis, our natural and juridical nationals.”

In its response to the suit, GTC argues that the High Court cannot hear the case because the Republic of Blue has not officially recognised by the State of Green. The last Executive Report of the State of Green (published in 2012), the Executive officially recognised the State of Purple. In the alternative, GTC argues that international law is not part of the domestic law of the State of Green and cannot be referred to before the High Court.

The Interim Trade Accord has not been incorporated into the laws of Green. Assume that the State of Green has a legal system similar to the states of the Commonwealth Caribbean.

Advise on the legal issues raised, including whether the High Court can take jurisdiction over the matter. Do not address any issues of state immunity.

3. The Member States of the Pan-Caribbean League ratify the 2013 Pact to Restore Democratic Government. Article 10 of this Pact provides:

“10. Any Member State that experiences a non-democratic change in Government hereby expressly authorises any other Member State to use all necessary means, including force, to restore its democracy.”

The Pact provides for reservations.

When depositing its instrument of ratification, the State of St. Katts, a Member of the Pan-Caribbean League, appends the following reservation:

“The State of St. Katts reserves the right to exclude the applicability of Article 10 to itself should circumstances so require.”
Three Members of the Pan-Caribbean League object to the reservation of St. Katts as being contrary to the object and purpose of the Pact. The State of Trinee, also a Member of the Pan-Caribbean League, objects to the reservation but allows the Pact to enter into force between the two states. The Pact comes into force.

Democratic elections are held in St. Katts. The opposition party wins by a landslide. On the first day in power the new Government passes a statute which suspends the Constitution, abolishes Parliament, and empowers the Prime Minister to rule by decree. A number of members of the previous Government, including the former Prime Minister, are arrested and imprisoned for "harbouring treasonous thoughts."

The President of the neighbouring State of Trinee decides to rescue his old friend and colleague, the previous Prime Minister of St. Katts, from prison. He announces his intention to send Trinee military forces to St. Katts to remove the new Government, free those recently detained, and restore the previous regime. He invokes the Pact in support of his position.

Advise the President of Trinee on the legality of his proposed action.

4. The President of the Unified States (US), the most economically and militarily powerful state in the world, issues a decree stating that henceforth her state will refuse to recognise the statehood of any new international entity that supports terrorist groups. Furthermore, she decrees that all existing states that support such groups will cease to be recognised as states by the US.

A peace agreement is reached in the Middle East between the sovereign State of Isra and the Palis people. Territorial borders are demarcated between the two entities and the people of Palis unilaterally declare the birth of the new, independent State of Palis. Twenty existing states recognise Palis as an independent state. The President of the US refuses to recognise the Palis entity as a state, because several Palis leaders are said to have continuing links to terrorist organisations. Further, the US threatens trade sanctions against any other state that recognises the "so-called State of Palis." No further states recognise it.

After several US newspapers release compelling evidence that several of the present leaders of the State of Isra also have authorised terrorist operations, the President of the US unilaterally revokes US recognition of that state. Debates rage in the General Assembly of the United Nations about the status of both entities. The State of Isra provides significant evidence of its continuing statehood including the existence of a number of treaties between itself and other UN Member States, its own UN Membership, and several General Assembly resolutions that mention it by name.

The delegation of the 'State of Palis' to the UN argues that the right of the Palis people to self-determination must be recognised because it is a jus cogens right. They also argue that their statehood status is recognized by several renowned international legal academics and a recent General Assembly resolution, as well as by the continuing recognition of some twenty states.

Advise on the legality of the US’ actions and the strength of Palis’ and Isra’s claims to statehood.