Answer a) AND b)

1. Answer a) AND b)
   a)
   The region of Merland is populated by 4 different peoples: the Alphas, the Betas, the Gammas and the Deltas. Although these peoples have different cultures, religions and ways of life, they have been living in perfect harmony for many years.

   Until 2000 the state of Oneland was responsible for the administration of the territory of the region of Merland. In May 2000, however, the Council of Merland: a new entity, composed of the heads of the 4 peoples, proclaimed the region’s independence. The Council also decided to take over the tasks previously executed by Oneland, and created a series of different institutions to administer the territory of Merland. Additionally, the Council also created a Parliament where all 4 Merlandian peoples were equally represented.

   In 2002, the Council of Merland acquired the capacity to carry out almost all administrative tasks on its territory. However, Oneland retained the management of the Merlandian police forces. The latter were essentially composed of policemen from Oneland. At the end of 2003, Merland signed a treaty with Oneland on the withdrawal of the Onelandian police forces. The treaty established, among other things, that the police forces of Oneland would no longer exercise the support functions to the Merland police after April 30, 2004. This commitment was respected, and from May 1, 2004 onwards, the Council of Merland controlled its own police forces.
At the end of 2003, Merland also became a party to several international conventions and signed different bilateral treaties, primarily of a commercial nature with various states. At the end of 2004, the majority of the international community had recognised Merland as an independent State.

(i) Advise on whether Merland can be considered a state under international law (20 marks); and
(ii) If Merland can be considered a state under international law, from what point did it acquire the status of statehood? (5 marks).

b) ‘The issue of jurisdiction is considered in the two types of cases before the International Court of Justice (‘ICJ’): contentious cases and advisory opinions. Jurisdiction is often a crucial question for the Court in contentious cases, and the key principle is that the ICJ has jurisdiction only on the basis of consent.’

With reference to relevant authorities and provisions of the ICJ Statute, outline:
(i) who can bring claims before the ICJ (5 marks);
(ii) what type of subject matter the ICJ may hear (5 marks); and
(iii) how parties may signify their consent to the ICJ’s exercise of jurisdiction (15 marks).

Total: 50 marks

2. Answer a) AND b)
The States of Naggaroth, Sindar, Valinor and Arda are located in the south of the region of Gondolin and are all members of the United Nations. These 4 states are on good terms with each other but drug trafficking and other criminal activities are growing in the area. To address this problem, these states organise a meeting in Valinor in 2002 between their respective Ambassadors. The Ambassadors are all officially given full powers. After several days of intensive debate, ambassadors of all 4 states present the outcome of their discussions to the public titled “The Protocol Against Criminals” (PAC).

The negotiations were not straightforward, and Arda in particular opposed the conclusion of the PAC on several grounds. However, negotiations ended when Arda suddenly changing its position, and agreed to sign the Protocol. This decision resulted after the Ambassador of Arda received a fax from the Office of the President of Arda, instructing him that it would be appropriate to sign the PAC.

The PAC is concluded, and enters into force on the day of signature. The Protocol, which aims to improve co-operation especially in combating drug trafficking, but also other criminal activities such as smuggling of goods and persons, provides, inter alia,

Art. 56
In case of a dispute between the parties as to the application or interpretation of the present Protocol, two parties jointly may bring any case against any other of the parties to the International Court of Justice (ICJ).
Shortly after the conclusion of the PAC, secret documents from the Foreign Ministry of Sindar are leaked to the public, indicating that the fax instructing the Ambassador of Arda to sign the PAC, was in fact sent by the Ministry of Foreign Affairs of Sindar, and not from the Ministry of Foreign Affairs of Arda. The Ambassador of Arda issued a statement that at the time he had no reason to doubt the authenticity of the document, since it presented all the official seals, though these were somewhat blurred due to the poor quality of the fax print-out.

The President of Arda immediately writes to the President of Sindar indicating that Arda regards the PAC as being invalidated since ‘the foundation of mutual trust indispensable for the respect of every treaty had been eroded by the revelations of this scandalous practice.’ Sindar responds that the state does not regard the “miscommunication” as a ground of invalidity.

The government of Arda is outraged by this reaction and decides to have the dispute with Sindar referred to the International Court of Justice (ICJ). On March 12, 2010 Arda brings a case to the ICJ based both on the PAC and the Optional Clause declarations made by both countries. As soon as Sindar is informed about this, they immediately contest the ICJ’s jurisdiction.

Arda has made an optional clause declaration under Article 36 of the Statute of the ICJ without any reservation. Sindar has made an optional clause declaration under Article 36 of the Statute of the ICJ on condition of reciprocity and adding the following:

‘Sindar recognises the jurisdiction of the Court for all disputes except for disputes involving a multilateral treaty where not all parties are involved and present in the case before the Court.

a) Advise on whether Arda can invalidate the treaty (25 marks); and

b) Advise on whether the ICJ has jurisdiction to hear the dispute being sure to address all the relevant arguments made by the parties. (25 marks)

Total: 50 marks

3. Answer a) AND b)

a)
The State of Endo is worried about the situation in its neighbouring State, Preg. Preg’s newly elected government is issuing subtle threats against its neighbours, and has told its army ‘to be prepared to take action soon.’ Repeated offers and requests for negotiations by Endo to Preg to address these concerns have been turned down. However, nothing else happens and the situation is tense but peaceful for weeks.
During the night of 5 May 2010, Preg attacks Endo, not only by using ground forces, but also by launching hundreds of missiles. Endo had feared such an attack, but according to its President, has no legal possibility to prevent this. Nevertheless it had already put its own army on red alert, and therefore is able to respond very quickly. After giving the order to attack Preg's army as well as the installations launching the missiles from within Preg, the President of Endo calls the representative of Teny at the United Nations. Since Teny currently holds the Presidency of the United Nations Security Council.

The President of Endo informs him of the situation, and of Endo's actions and asks him to pass on the information to the Security Council, which is kept up to date in the following days. Endo's army succeeds in pushing the Pregian army back into its own territory within a few days. Furthermore, Endo's air force mounts a series of targeted airstrikes and manages to destroy most of Preg's missile installations.

After this incident, a controversy breaks out in Endo concerning Endo's military operation. In particular, the President is accused of violating international law.

Both Endo and Preg are members of the United Nations.

Advise the President of Endo on whether his actions were in conformity with international law (30 marks).

b) Using relevant authorities and provisions of the Statute of the International Court of Justice ("ICJ"), discuss the principles underpinning the four ways in which States may consent to the ICJ's exercise of jurisdiction in a given dispute. (20 marks)

Total: 50 marks

4. 'An untransformed treaty has no legal effect whatsoever before the domestic courts of the Commonwealth Caribbean.'
Using relevant authorities, critically assess the above statement. (50 marks)

Total: 50 marks

END OF PAPER