

## **EXAM – Public International Law**

**NOVA School of Law – Year 2**

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**Please READ carefully the rules:**

Choose TWO of the three essay topics indicated below AND answer to the problem questions. In total, you have **3 questions to address** (2 essay questions and a problem question). This is an **open-book exam**.

You have **three hours** for the exam. You should dedicate maximum one hour per topic. You are expected to be familiar enough with the materials to be able to do address each essay topic and the problem question in a clear and concise manner, with a good understanding of the most important relevant aspects of PIL, on which you should develop an **argument/analysis of your own**. That means that **purely descriptive answers will not receive the passing grade**.

Your ideas must be framed in a clear and concise manner. That means that short sentences must be privileged over long ones and that. That also means that you are expected to **avoid large quotes from other sources** and always privilege explaining the ideas taken from other sources with your own words (while properly referencing the sources in brackets).

Do not copy-paste entire sentences from the PowerPoint slides, that will be considered as plagiarism.

### **I. Essay Topics**

#### **CHOOSE TWO OF THE FOLLOWING ESSAY TOPICS**

(each question carries 33,3% of the grade):

1. Should the UN Security Council rely on a wide interpretation of the article 39 of the UN Charter? You are expected to give examples when answering this question, while reflecting on the interests at stake.
2. Can and should International Organisations be held responsible for internationally wrongful acts? You are expected to give examples, while reflecting on why such responsibility would be important.

3. Should the principle of self-determination extend beyond the context of decolonisation? You are expected to give examples, while considering the position of UN organs (such as the International Court of Justice, the UN General Assembly and the UN Security Council).

## II. Problem Question (carries 33,3% of the grade)

The Republic of Alpha and the Kingdom of Betia are two neighbouring countries located at the Andian Sea. Both countries share a large Bay Area called the Bay of Andia. As most of the regular Andian coast consists of steep cliffs, it is the Bay Area which both countries have traditionally been using for trade and fishing.

In 1967 the two countries concluded the Bay Area Usage Treaty (BAUT) which stipulates in its Preamble:

***The Bay of Andia is of vital historic, economic and cultural importance for both the Republic of Alpha and the Kingdom of Betia. Both States agree to share the Bay Area to their mutual benefit and in a non-exclusive manner.***

It furthermore states in Article 23:

***Marine livestock resources within the Bay Area are for mutually benefiting exploitation of both States. Each State may engage in fishing activities on its respective side of the Bay.***

Alpha has a large harbour city "Aman", right at the entrance of the Bay. From there railways and roads connect to the heartland of Alpha where most of its economic activities take place. The rest of the Bay Area on the Alphan side consists of small fishing communities which live traditional lifestyles as they have been for hundreds of years.

Betia's side of the Bay is densely populated with several harbour cities some of which developed in recent years into global financial and technological centres, leading to an ever-increasing standard of living of the local population. Traditionally Betians, just like Alphians, engaged in small-scale local community fishing. This was certainly the case in 1967 when the BAUT was concluded. However, with economic development and higher standards of living the demand for fish rose exponentially. Over time the fisheries sector developed from a high number of local family fishing businesses to a few big players.

Out of this process "BETAfish" emerged as the leading corporation with a large fleet. It accounts for almost 90 % of Betia's fishing activities in the Bay Area. 40% of its stocks are held by the Betian state, which pursues an active investment

policy in order to keep the state pension system sustainable. At the same time when BETAfish became the market leader in the fishing sector, the Bay Area experienced a significant decline in fish, particularly with regard to those species most suitable for fishing and most commonly used in both, the Alphan and the Betian cuisine. The local Greenpeace section in Betia stated that the reason for this decline was entirely due to Betia's ever increasing demand for fish, and particularly in BETAfish's practices of engaging in large-scale industrial fishing. Based on research conducted by an Alphan university, Greenpeace stated that since the 1960s fishing on the Betian side has quadrupled and because fish cross between the Alphan and Betian side of the Bay Area frequently, certain species are now in danger of extinction in the Bay Area. The Betian government tried to respond to these problems by introducing quotas which were supposed to set annual limits on certain species. However, these quotas were quite high, and many environmentalist groups thought that they were insufficient to protect the most endangered species. Many also thought that Betia's interests as a BETAfish shareholder played a role in not taking a more protective approach.

Whereas, the situation was tricky on the Betian side, it was devastating for coastal Alphans. Being dependent on traditional fishing to maintain their livelihoods the plummeting fish stocks in the Bay of Andia posed a large problem for the local communities. The catch was no longer sufficient to raise a family. Many coastal residents became unemployed and young people were not able to learn any trade at all. The Alphan government tried to help where possible and set-up a financial support system, which was to ensure that at least necessities such as food and shelter were secured.

However, the political situation in the coastal region deteriorated further. A militant political group "ProCoast" or "ProCo" emerged determined to protect "the coastal way of life" against the "Alphan elites" and the "Betian capitalist aggressors". What started out with mass protests in the Alphan capital soon became violent and several armed attacks linked to ProCo were committed in Alpha. Alpha tried to respond to these attacks believed to be 'terrorist', but its police forces, notoriously underfinanced, were not able to penetrate ProCo and stop their activities. The Alphan government was furthermore not willing to send the armed forces (which would have been able to more effectively combat ProCo) to the coast as this would have probably led to a kind of war that had little support throughout the Alphan population. Instead, the Alphan government shut its mainland off from the coast and increased security dramatically in its capital.

ProCo was losing Alphan targets due to the shut-down and decided to focus on Betia instead, and in particular on BETAfish, which it considered the true cause for most of the problems in Alpha's coastal regions. To attack BETAfish, ProCo was able to secure access to underwater mines and placed those in the Betian side of the Bay Area. Soon after one of the mines hit a BETAfish vessel killing 10 fishermen and causing economic damages of over 10 million dollars. The Betian government was outraged by the incident. In a meeting with representatives of the Alphan government it demanded Alpha to take further

actions against "these terrorists". However, the Alphian Minister of Interior stated that the situation was tricky and that Alphaia was at the time not able to effectively combat ProCo. Subsequently, Betia increased security efforts in the Bay Area with double the amount of coast guards patrolling, but they were unable to detect the small boats of ProCo, which were usually steered by former fishermen that knew the Bay Area inside out. Three more Betian vessels were hit by mines, in all three cases without any casualties, though the economic damage was significant in all cases.

Finally, the Betian government had enough and decided to fly targeted air strikes against three coastal villages, where, according to intelligence information, the heads of ProCo were supposed to be hiding. The airstrikes were successful and killed the leader of ProCo as well as his assistant, but also several civilians. People in the coastal regions were shocked by this amount of violence and partially blamed ProCo, which they thought had gone too far. To consolidate and regain strength ProCo refrained, for the time being, from attacking any more Betian vessels. Despite Betia "partially solving" some of the problems in the coastal region, Alphian officials were outraged. Shortly after the attack the Alphian Prime Minister appeared on national television condemning the airstrikes as an aggressive act on Alphaia's national sovereignty and territorial integrity.

In the aftermath, Alphaia filed an application to the International Court of Justice (ICJ) claiming that Betia violated several international legal obligations: First, the overfishing of the Andian Bay by BETAfish meant that Betia violated Article 23 of the BAUT. Furthermore, by conducting the airstrikes Betia also violated Article 2(4) of the UN Charter (**Alphaia and Betia are UN member states**). Betia on the other hand stated that the activities of ProCo in the Bay of Andia were attributable to Alphaia and that the airstrikes constituted a legitimate form of self-defence according to Article 51 of the UN Charter.

You are a clerk at the International Court of Justice. The judge you are working for asks you to look into the main arguments raised by Alphaia and Betia.

Good luck!