

Name First Name Student Number

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Introduction to International Law
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Points: 1. / 10 2. / 10 3. / 10 = / 30

1. Developments in the field of artificial intelligence (AI) are increasing rapidly every year. However, in addition to the opportunities offered by AI, calls for an international regulation are emerging. Therefore, several states decide to negotiate an agreement on the development and the use of AI. In particular, the agreement shall regulate the potential risks associated with AI. The negotiating states A, B, C and D are aware of the relevance of the topic and after just a few months of intensive negotiations they adopt a final text. To finally create legal certainty in this area, companies and civil society hope for a quick ratification of the treaty. Although the four countries are amongst the pioneers of AI developments, the treaty shall be open to accession by other states as well.

According to Art XV of the treaty, it shall enter into force on the first day of the month following the date of deposit of the fourth instrument of ratification. For each state acceding to the treaty thereafter, the treaty shall enter into force on the first day of the month that follows the fifteenth day of the deposit of the instrument of accession.

After signing the treaty in a ceremony on 2 February 2024, the instruments of ratification are deposited by B on 10 February 2024, by C on 20 March 2024 and by D on 15 April 2024. However, a change of government takes place in state A in February 2024. According to the new digitalization minister, the agreement would constitute a restriction of free competition in

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**AI development. State A thus declares to the other states that it will not ratify the treaty.**

**However, several other states intend to accede to the treaty. State E and F see the regulation of AI development as an opportunity to compete with the previous AI pioneering states under fair conditions. State E submits its instrument of ratification on 10 June 2024, State F on 12 September 2024.**

**a) When does the treaty enter into force for each of the states (Distinguish between the objective and the subjective entry into force)? (4 points)**

A distinction must be made between the objective and subjective entry into force of treaties. For the objective entry into force, Art XV of the Treaty stipulates the first day of the month following the deposit of the fourth instrument of ratification. State E deposits the fourth instrument of ratification on 10 June 2024. The treaty therefore objectively enters into force on 1 July 2024 (1 point). For states B, C, D and E, this also means the subjective entry into force (1 point). State F deposits the instrument of ratification on 12 September 2024. The first day of the month after the 15th day of deposit is 1 October 2024. The subjective entry into force for F therefore takes place on 1 October 2024 (1 point). The objective entry into force can take place before the subjective entry into force, but never vice versa (1 point).

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**b) Is state A bound by the treaty? (2 points)**

Even before the entry into force, the prohibition to defeat the object and purpose of the treaty in Art 18 VCLT applies for a signatory state until this state makes clear that it does not want to be bound by the treaty (1 Point). State A declares to the other states that it will not ratify the treaty (1 Point).

**The successful conclusion of the agreement is soon followed by disillusionment. The contracting states disagree on the interpretation of the treaty's provisions on the prohibited use of AI in certain areas. According to state C, this is in any case at the discretion of each state.**

**c) What are the methods of treaty interpretation in international law? (2 points)**

According to the VCLT, treaties are primarily to be interpreted according to the objective method (0,5 Points). The wording is to be interpreted according to the ordinary meaning of the text (word interpretation, 0,5 Points), in the textual context (contextual interpretation 0,5 Points) and taking into consideration the object and purpose of the treaty (teleological interpretation 0,5 Points).

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**d) In particular, state C refers to the negotiation protocols. However, states E and F oppose this since they were not involved in the negotiations due to their later accession. Which method of interpretation does C refer to, under what circumstances would it be relevant and what are underlying problems? (2 points)**

State C refers to the historical or subjective method of treaty interpretation (1 Point). Recourse to the preparatory work on the treaty (*travaux préparatoires*) is only allowed under specific circumstances. In this sense, draft treaties or minutes of treaty negotiations may only be relied on to confirm a meaning obtained by applying the objective method, or if the interpretation according to the objective method leaves the meaning of the treaty ambiguous or obscure or leads to a result that is manifestly absurd or unreasonable (1 Point). The main problem here is that several states did not participate in the negotiations but only acceded to the treaty later. These states could not have been aware of the intentions of the other parties at the time the treaty was concluded and could not have expressed their will (1 additional Point).

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**2. Stardust, a company based in State Y, specialises in the production of small satellites designed to give its customers access to the Internet at low prices. The service is offered to interested customers, who buy receivers for about 500 euros. In order for the service to work, a large number of small satellites are required in orbit. In 2021, about 1000 satellites were put into orbit, and in 2022 a further 1500 satellites. State X does not agree with the service being available over its territory, as it wants to protect its population from foreign propaganda. It sends a note of protest to State Y and demands that it prohibit the activities of Stardust because it violates the territorial sovereignty of State X. State Y replies to the protest note by pointing out that it has been recognised under customary international law since 1957 that the Earth's orbit is not part of the territory of the state below. As part of outer space, the Earth's orbit is subject to free and unrestricted use by states and private individuals. State X then turns to the UN Security Council and applies for a decision to ban the activities of the Stardust company due to grossly negligent pollution of outer space by the numerous satellites.**

**a) How do you assess the view of State Y that outer space has not been part of the territory of the state below since 1957 on the basis of customary international law? (3 points)**

CIL has two elements: state practice and opinio iuris. (1 P.)

Since 1957 (Sputnik 1), state practice has consisted of states regularly sending satellites into orbit. The legal opinion that this is permitted can be recognised by the fact that all states consider this to be lawful in the sense of international law and, in particular, that the states below them have not protested against it.

(Script p. 28; slide 16 VGR) (2 p.)

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**b) How can it be permitted under customary international law that outer space is utilised by private individuals for commercial purposes? (2 points)**

CIL has two elements: state practice and opinio iuris.

If use by private individuals for commercial purposes (e.g. television satellites) has taken place and has not been prohibited, it is permitted. The opinio iuris was thus expressed by refraining from prohibition or protest (cf. Lotus case). (Script p. 28).

**c) Discuss whether the UN Security Council is competent to make a decision in this case and ban the company's activities. Or can Security Council decisions only be directed against states? (3 points)**

The SC has the main responsibility for world peace and international security. (1 p.) (Script p. 45)

Question whether this is a question of world peace and international security, argue in favour and against. Possible pros and cons.

Pro is more likely to be correct (because the SC has a large margin of discretion). (1 P.)

In principle, the decisions of the SC are directed against states. However, "targeted sanctions" are also possible. (1 P.) (Script p. 57)

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**d) Could it play a role in the decision making of the UN Security Council whether State Y and State X themselves are represented? (2 points)**

A major role!

Especially if they are permanent SC members (veto right).

Furthermore, 9 out of 15 votes are required. (Script p. 47)

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**3. Following its independence, the new president of the State of Cumri declares at a press conference that Cumri will comply with its international human rights obligations. A journalist asks him why Cumri, if it intends to adhere to international human rights, does not wish to become a party to the 1966 International Covenant on Civil and Political Rights (ICCPR). The president explains that there is no need for such action as the Universal Declaration of Human Rights UDHR is at any rate binding on Cumri.**

**a) Assess the president's statement as to its accuracy under international law! (2 points)**

UNGA Resolution non binding (1 point) but probably customary international law (1 point)

**The president elaborates further that even if Cumri were a party to the ICCPR, it would only be obliged to refrain from interfering with individual rights but that there was no requirement for States generally to take positive action for the protection of human rights and fundamental freedoms. In any case, the president declared that Cumri could always and at any time restrict any individual human right in a given case.**



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**b) What are states' obligations under international human rights law with regard to individual human rights? (3 points)**

Respect, protect fulfil with brief explanation (1 point each)

**c) May a State restrict human rights? (5 points)**

Absolute (prohibition of torture, prohibition of slavery, freedom of thought/belief/conscience), relative (most others), non-derogable rights (right to life, prohibition of torture, prohibition of slavery, prohibition of retroactivity of criminal law) + brief explanation; conditions for restriction: (5 points overall)

( ... / 10 Punkte)