**LG134 The Role of International Law in International Relations**

**Open Book Exam 2020-2021**

**Instructions**

**Answer the question using the ILAC system where you**

**identify the Issues, Identify the relevant laws, Apply the relevant**

**laws to the issues and facts of the problem and Write a Conclusion**

**Students should reference any materials relied upon in their**

**answers. A reference can appear in the text or a footnote. You should**

**use quotation marks where you use a direct quote.**

**The maximum word count is 1,500 words. References are not included in the word count. However, footnotes should only include references and**

**not substantive text.**

**YOU SHOULD REFER TO APPROPRIATE INTERNATIONAL TREATIES,**

**PRINCIPLES, CASES & EXAMPLES IN YOUR ANSWERS**

Niallo and Zayn are neighbouring coastal states in Europe. The

population of Niallo are strict adherents of Lutheranism and the

population of Zayn are strict adherents of the Roman Catholic faith. Both

states are members of the Council of Europe and the United Nations. Both

states signed and ratified the Genocide Convention 1948, the European

Convention on Human Rights 1950, and the Charter of the United Nations

1950.

The Liamo Sea separates Niallo and Zayn. There are four islands in the

Liamo Sea, which Niallo claims to have discovered during the 18th

century. A large number of Niallan citizens took up residence on the

islands because of the fertile soil and large fishing stocks. In the 1890s, the

Niallan government established an administration on the largest Island,

Harryo. There were tensions between Niallo and Zayn over the Liamo

islands during the 19th century when Zayn citizens and traders settled on

the three remaining uninhabited Islands. In 1937, Zayn military and naval

forces invaded Harryo and took control of Harryo. Niallo complained to

the League of Nations about Zayn’s illegal occupation of Harryo. Zayn

rejects Niallo’s claim and counterclaims that Zayn occupied the Liamo

Islands for eighty years during the 16th century. Some Niallans leave

Harryo to return to the Niallo mainland whilst other Niallans remain on

Harryo. The population of Harryo comprises 77% Niallan citizens and

23% Zayn citizens. Zayn decides that Niallan citizens remaining on the

Liamo Islands should be reclassified as citizens of Zayn. Niallo claim that

this is a breach of Niallo’s state sovereignty. The Niallans on Harryo claim

that they are a distinct ethnic group entitled to recognition as such. Zayn

supported Germany during World War II and ceded the Liamo Islands as

part of a peace treaty with Russia in 1945. In 1957, Russia ceded the Liamo

Islands back to Zayn. Niallo protested at this cession maintaining its claim

to sovereignty over the Liamo Islands. In 1962, Zayn granted significant

internal autonomy to the Niallan Ethnic Movement (NEM) in Harryo.

Niallans are granted control over the practice of their religious faith,

education, cultural and family affairs.

In 2012, Louiso is elected as Prime Minister of Niallo who is an ultra

Niallan nationalist and believes that the Liamo Islands belong to Niallo.

Niallo declares the establishment of an Air Defence Identification Zone

(ADIZ) in the Liamo Sea. Zayn claims that Niallo’s ADIZ encroaches on

Harryo’s airspace. In addition, Niallo informs states that it will adopt

defensive military measures if any aircraft fails to provide flight

information on request. Niallo claims that it has a right under customary

international law to declare such an ADIZ. 19 states with ADIZs refute

Niallo’s claim. These states issue a declaration that it is customary law

that a state’s ADIZ cannot encroach on the territorial airspace of another

state and that an ADIZ is for flight information and identification

purposes. However, China has a similar ADIZ and supports Niallo’s

claim.

Tensions between ethnic Niallans and Zayn nationalists on Harryo are

raised by Niallo’s declaration of an ADIZ. There are clashes between these

two groups. There is widespread destruction of property belonging to

ethnic Niallans. A number of Lutheran churches are destroyed by fire.

Zayn parliament passes a law suspending NEM autonomy on Harryo

because of this civil unrest. This Zayn law imposed a 20-person limit on

gatherings of ethnic Niallans including for religious services. The NEM

claim that Zayn is failing to protect Niallans from abuse and that it has a

right of self-defence under international law. There is a series of armed

attacks by NEM on Zayn military bases on Harryo killing and injuring

over 150 Zayn soldiers. Zayn derogates from the European Convention

on Human Rights under Article 15 in relation to all of the Liamo islands.

There are reports that Niallo supplied weapons to NEM members who

also target Zayn citizens. There are reports of mass killings of Zayn

citizens by NEM. Zayn claims that NEM is trying to ethnically cleanse

Harryo of Zayn citizens. Zayn releases satellite images that it claims

indicates mass graves and decoded communications from the Niallan

Defence Ministry where the NEM are instructed to eliminate any Zayn

citizens of Harryo. Niallo denies these claims and counterclaims that the

Zayn Intelligence Agency forged the material. The Zayn military and air

force launch strikes against NEM members. Zayn defence forces capture

a number of men on Harryo who are members of the Niallan Secret

Service (NSS). Zayn believes that NSS members are responsible for

providing NEM members with weapons and tactical training and

encouraging genocide. There are reports that Zayn security forces

attacked, killed and injured ethnic Niallans. Zayn security forces impose

a curfew on Harryo and establish ‘re-education camps’ for ethnic

Niallans. Zayn security forces round up and detain thousands of ethnic

Niallans in these re-education camps. There are reports that there is

insufficient food and medical care in these camps. There are also reports

that ethnic Niallan children under 12 months are taken from their parents

and placed for adoption with Zayn families. During a press conference,

Louiso produces satellite photographs indicating what he claims to be

mass graves on Harryo containing ethnic Niallans who were summarily

executed or died in the re-education camps controlled by Zayn security

forces. Louiso produces a number of emails from the office of the Zayn

Prime Minister where he asks the military commander responsible for

Zayn security forces on Harryo to ‘liquidate’ ethnic Niallans.

Louiso claims that these NSS members went rogue and denies any state

responsibility for these NSS members. Zayn places NSS and NEM

members on trial for genocide Some are acquitted for insufficient

evidence of *dolus specialis* for genocide, whilst others are convicted. Zayn

courts sentence those responsible for genocide to death. Niallo institutes

proceedings against Zayn before the International Court of Justice for

breaches of the Genocide Convention. Zayn refuses to participate in these

proceedings because Zayn claims to have withdrawn from the Genocide

Convention.

A number of Niallan citizens protest outside the Zayn embassy in Niallo

in response to the events of Harryo. Niallan citizens hurl fireworks, rocks,

Molotov cocktails and bottles at the Zayn embassy compound. The

Niallan soldiers guarding the embassy make no attempt to prevent this

attack on the Zayn embassy. The Zayn embassy catches fire. The Zayn

government issues an immediate demand to the Niallan government to

honour its international legal responsibilities to protect the Zayn

embassy. Five Zayn diplomats die in the fire at the embassy. The Zayn

embassy is protected by a detachment of Zayn marines. Zayn marines fire

at the baying Niallan mob because they believe that the mob intends to

kill every member of the embassy staff. 38 Niallan citizens are killed and

over 40 are injured. A number of Niallan soldiers and Zayn marines are

killed during a fire fight when Niallan soldiers storm the Zayn embassy

compound. The remaining Zayn marines are arrested and charged with

shooting Niallan citizens. Zayn claims that Niallo was responsible for

organising the protest outside the Zayn embassy and failing to provide

adequate security to protect the embassy compound. Niallo refutes

Zayn’s claim.

The United Nations Secretary General (UNSG) calls for calm. Niallo and

Zayn agree with the UNSG’s proposal to permit a team of Irish police

officers to travel to Niallo and investigate the riot at the Zayn embassy

compound. The Irish Times publishes a draft report of the Irish police

officers indicating that some of those responsible for starting the riot

outside the Zayn Embassy were undercover Niallan soldiers and other

rioters had been paid by the Niallan government to participate in the riot.

Niallo claims that this draft report is a tissue of lies.

Zayn demands that Niallo release the Zayn marines because they are

protected by state immunity. Niallo refuses to release the marines because

state immunity does not extend to gross violation of human rights. Niallo

states that it intends to prosecute the Zayn marines for the murder and

injuries to Niallan citizens. Zayn claims that the marines are entitled to

state immunity and must not be prosecuted in a Niallan court. Zayn

claims that Niallo was responsible for riot at the Zayn embassy and its

aftermath by relying on the draft report of the Irish police officers. Zayn

decides to sue Niallo in the International Court of Justice for breaches of

the diplomatic conventions and state immunity. Niallo counterclaims that

Zayn breached international law when Zayn marines killed Niallan

citizens outside the Zayn embassy.

The Zayn defence forces round up thousands of ethnic Niallans on

Harryo and the other islands. There are reports that Zayn defence forces

physically abuse ethnic Niallans during detention. Louiso claims that

Zayn has breached the principle of self-determination by suspending

autonomy of the islands and used disproportionate force in its attacks on

NEM members. The United Nations Special Rapporteur for Ethnic

Groups issues a report that there is evidence that Zayn defence forces are

abusing the rights of ethnic Niallans on Harryo. There are reports of

indefinite detention, inability to engage in peaceful protest, forced labour

and the arbitrary removal of ethnic Niallan children from their parents.

Zayn claims that these measures are necessary in order to restore law and

order on Harryo. Niallo claims that the Zayn’s actions constitute a threat

to international peace and security. Three non-permanent members of the

United Nations Security Council sponsor a draft resolution that demands

that Zayn restore the rights and freedoms of the ethnic Niallans on

Harryo. The draft resolution reminds Zayn of its responsibility to protect

all citizens on the island of Harryo. The draft resolution is dropped when

Russia, a permanent member of the United Nations Security Council,

indicates that Russia will veto the resolution as it considers Zayn is an

ally. Niallo claims that there is a customary principle of international law

permitting a State to take military action against another State that is

abusing the rights of an ethnic minority. Niallo substantiates the existence

of this customary principle by pointing to NATO’s military intervention

in Kosovo in 1999 and Libya in 2011. Niallo claims that this principle is of

*jus cogens* standing.

The Niallan navy engage in manoeuvres close to Harryo. Zayn deploys

its air force to monitor the movements of the Niallan navy. The Niallan

navy and Zayn air force clash. Niallan paratroopers and marines land on

Harryo under the cover of darkness. Niallan and Zayn forces engage in

sea, air and land battles. Niallan forces beat Zayn forces and capture

Harryo. Louiso claims that the use of military force was lawful, necessary

and proportionate. Niallo claims that it is entitled to sovereignty over

Harryo because of the responsibility to protect doctrine, the principle of

self-determination for ethnic Niallans resident on the Island and Niallo’s

claim to sovereignty dating from the 18th century. 152 states in the United

Nations General Assembly vote for a resolution condemning the invasion

of Harryo and refusing to recognise Niallo claim of sovereignty over

Harryo. Niallan military forces are accused of harassing Zayn citizens on

Harryo. Niallo places Zayn citizens from Harryo onto barges, which are

set adrift in international waters.

Question

You are a legal adviser to the Commissioner of Human Rights for the

Council of Europe.

(a) Explain the relationship between state sovereignty and international

human rights law. [10%]

(b) You are asked to identify and discuss the potential violation of rights

of the European Convention on Human Rights and Fundamental

Freedoms 1950 arising from the facts of this case study. [90%]