



**Name:**

-----  
**consent of States is the pillar of the international legal order. Therefore, all States would have to participate in creating a new rule of customary international law.**

**a) The President of Cornistan speaks of a "sense of legal obligation". What does "sense of legal obligation" mean? How can a State express its sense of legal obligation? What is the second constitutive element of customary international law? (3 points)**

"Sense of legal obligation" describes the opinio iuris as the "subjective element" for the formation of customary international law. It is States' conviction that a behaviour is legally allowed or required (that they accept the practice as law) (1 point).

The opinion iuris can manifest in laws, protest notes, and court decisions, but it can also be expressed implicitly (e.g., by taking countermeasures) (1 point for (any) example).

The second constitutive element (the objective element) is the (state) practice, i.e. the conduct of states and other subjects of international law. (1 point)

**b) Please analyse Selenur's first argument and address the following points: What can a "persistent objector" achieve with its protest? What does a State have to do to be a persistent objector? Can Selenur be a persistent objector in this case? Why (not)? (4 points)**

A state that is a persistent objector can prevent itself from being bound by a new norm of customary law. (1 point)

A State must persistently object while forming a new norm of customary law. It must clearly express its opposition to the practice and maintain it (1 point; the conditions do not have to be listed in detail)

No, Selenur cannot rely on the persistent objector principle. (1 point)

**Name:**

-----  
Why not? Selenur's objections come too late. The rule of sovereign immunity is already part of customary international law, and Selenur cannot escape the binding effect of this norm through subsequent protests. (1 point; not too strict here because there is not a lot about the persistent objector in the script)

A protest is only timely if a State protests when the norm begins to crystallize. It is irrelevant that a State has been objecting since its foundation, but only whether it objects from the beginning during the formation of the new norm of customary international law.

**c) Analyse Selenur's second argument and address the following points: Do ALL States have to participate in creating a norm of customary international law? What else is the requirement of "generality of practice" in customary international law? (3 points)**

No, this argument is also wrong because "general practice" does not mean that all States must follow the practice (1 point). The requirement of "general practice" does not mean that all subjects of international law must be involved in the practice: Universality is not required. (1 point) "Generality" means the practice must be widespread and representative (1 point). The norm of customary international law then also applies to those States that were not involved in the practice.

States also do not have to actively participate in creating customary international law. An omission (for example, the omission of a protest) can also be relevant conduct, i.e., states can tacitly subscribe to the legal conviction expressed in a practice. (1 additional point)

( ... / 10 points)

**Name:**

-----  
**2. Ancient temples, aqueducts and amphitheaters are characteristic for the cityscape of State A's capital. The population is proud of this legacy and the government of State A attaches great importance to protecting these buildings. In order to enshrine the protection of these buildings in international law, the Foreign Minister of state A signed the UNESCO "Convention for the Protection of Ancient Monuments" in 2023. Among other things, this new treaty stipulates that the contracting parties must provide special protection for certain buildings. This shall prohibit both the demolition of these buildings and significant constructional changes.**

**a) What further steps are required for concluding a treaty after the signature? (4 Points)**

If no further internal act is necessary, the signature already establishes the consent to be bound by a treaty. However, where a treaty is subject to ratification, an internal act of approval (mostly by the legislative body) is required, followed by an international act (the formal declaration by the state to be bound by a treaty). Usually, the head of state ratifies a treaty after the approval by the Parliament (1 P).

Thereafter, the transmission of the instrument of ratification or accession to the depository designated in the treaty is required. Usually the depository is one (or more) of the Contracting Parties or the Secretary-General of the UN (1 P).

A treaty enters into force when all the negotiating states have consented to be bound or on a date specified in the treaty. This can be a specific date or after receipt of the required number of ratifications/accessions (1 P).

Finally, the registration with the UN is required. To prevent secret treaties, Art. 102 UN Charter states that all treaties shall be registered with the Secretary-General of the UN (1 P).

**Name:**

-----  
**After a change of government, however, these plans are set to come to an end, as the new head of government strongly disagrees with this policy. The strict requirements for cultural protection would rather impede real estate projects in the city center and hamper the expansion of the underground railway. In particular, the new head of government criticizes that the foreign minister would not be competent under international law to sign the convention on behalf of the state.**

**b) Who is authorized under international law to give the consent to be bound by a treaty? (1 Point)**

While Art. 7 VCLT requires that persons acting on behalf of the state must produce “full powers” to show that they represent the state, certain persons are exempt from this requirement because of their function. Art. 7 VCLT has the presumption that (1) Heads of States, (2) Heads of government and (3) Foreign Ministers have the right to perform all acts leading to the conclusion of a treaty (1 P).

**c) Nevertheless, the new head of government is determined to assert the invalidity of the treaty. Under which conditions can the validity of a treaty be challenged? (3 Points)**

A state may assert the invalidity of a treaty only on limited grounds, namely a lack of consent, material deficits or its incompatibility with ius cogens (1 P). A lack of consent exists where a treaty was concluded in manifest violation of a rule of fundamental importance regarding the competence to conclude treaties (1 P). Material deficits are fraud, coercion of a state, and corruption/coercion of a state representative (1 P).

**Name:**

-----

**The new head of government remains unimpressed after a briefing by state A's International Law Office and declares that the treaty would be void, since it violates domestic law.**

**d) How will the International Law Office respond to this statement? (2 Points)**

After the entry into force of a treaty for a state, the state must observe the treaty bona fide (pacta sunt servanda) (Art. 26 VCLT) (1 P). A state may not invoke domestic law to justify its failure to perform a treaty (Art. 27 VCLT) (1 P).

( ... / 10 points)

**Name:**

-----

**3. Friends Mike, Rachel and Harvey discuss current global events. They are concerned about the increasing outbreaks of violence and wonder how international law regulates the use of force between states.**

**Mike is a pessimist and therefore believes that, since a ban on violence is not enshrined anywhere, the prohibition of the use of force is not binding under international law. And anyway, he argues, a state can simply threaten a weaker state with the use of force and thus enforce its will.**

**a) Are Mike's statements correct, and why (not)? (2 points)**

Mike is wrong on two counts. First, the prohibition of the use of force is enshrined in Art 2(4) of the UNC (1P). It does not merely include the prohibition of waging war, but armed force as such. (1 ZP) Secondly, not only the use, but also the mere threat to use force is prohibited (1P).

**Rachel takes a more nuanced view and says that although there is a prohibition of the use of force, states may still use force if the UN General Assembly allows it, for example in self-defense. Furthermore, and this is particularly important to her as an enthusiastic officer in the Austrian Armed Forces, a state is allowed to defend itself against terrorists.**

**b) What are the exceptions to the ban on the use of force? Explain them briefly. Is Rachel right that the General Assembly can authorize the use of force? Is it true that states may defend themselves against terrorists? (6 points)**

International law recognizes two exceptions to the prohibition of the use of force: the use of force in exercise of the right to self-defence (1P) and use of force as a measure of the Security Council under the UN collective security system. (1P) The right to self-defense means the defense against an armed attack and can be

**Name:**

-----  
exercised individually or collectively (e.g. NATO). (1P) The UN's system of collective security, on the other hand, authorizes its members to take joint action against peace-brakers from within their own ranks. (1P) Therefore, Rachel is not correct, as the use of force in the collective security system can be authorized by the Security Council, but not by the GA. (1P). It is disputed whether the right to self-defense also includes the right to defend oneself against attacks by non-state actors, such as terrorists (1P). In practice, many states invoke it (1ZP, also in one example).

**Hippie Harvey is strictly against any form of violence, even if it does not reach the intensity of war. He therefore argues that any interference in the internal affairs of a state is forbidden. Rachel counters that it is not up to states to decide whether they adhere to international treaties and that in the event of a breach of treaty, external intervention is indeed permissible.**

**c) Which rule of international law are Harvey and Rachel arguing about? Which of the two has characterized it correctly, and why? (2 points)**

It is about the prohibition of intervention. This means that unlawful coercion and interference in the internal affairs of other states is prohibited. (1P) Rachel is right that intervening to induce other states to comply with their obligations under international law is permissible. (1P) (1 for detailed answers on the prohibition of intervention, Nicaragua case, etc.).

( ... / 10 points)