**Elements for Answer**

NB: This is just a guide for the most straightforward issues that are raised in the exam. Some students interpret the facts differently and chose to look at different questions, which, if well analysed and argued, is fine.

**Question 1: Are the allegations made by the RO and the FM with regard to the 1981 Agreement well founded in international law? Please comment on all the legal claims made by the two States.**

**Legal claims made by RO**

1. **Validity of the 1981 Agreement: conclusion in violation of national law.**
* Relevance / irrelevance of national law
* Article 46 of VCLT
* Was the violation ‘manifest’?
* Did the violation concern a rule of fundamental importance? (yes, constitution
1. **Influence by FM over R0**
* Extent of involvement in coup unclear, but in any event: coup in 1979, agreement in 1981, i.e. no direct link
* Economic influence afterwards: Article 51 VCLT refers to coercion of state as violation of use of force in UNC – does not cover armed violence
1. **Termination: Fundamental change of circumstance: Article 62: narrow**
* Narrowly interpreted ground, can be argued both ways, looking at:
* circumstance existing at time of conclusion
* unforeseen
* essential basis
* radical transformation of obligations
* But: FCC cannot be invoked for treaties establishing boundaries – the 1981 agreement delimits maritime boundaries

**Question 2: Is the international responsibility of the FM engaged by the kidnapping of the villagers in 1998? Please explain on what basis the international responsibility of the FM is engaged (or not). If yes, what are the legal consequences of that responsibility?**

1. **Applicable law**
* Customary international law on state responsibility
* For state responsibility to arise, you need to have a IWA: conduct attributable to the state and a violation of an international law rule
1. **Attribution of acts of RPO: acts by private actors**
* acts of private actors
* Possibility of effective control under Article 8: questionable: provision of weapons, trucks and material does not amount to effective control (cf Nicaragua)
1. **Trigger effect**
* Provision of weapons etc by low level military personnel
* Article 4 (state organ) and Article 7 (ultra vires)
* Violation of duty to prevent kidnapping or operation of armed group from one’es territory (NB: many possibilities).

**Question 3: Is the use of force by the RO lawful under international law? Please comment on all the legal claims made by the RO**

**1) General regime governing the use of force**

* Prohibition to use force: Article 2.4. UNC – i.e. force is outlawed
* Two possible exceptions: self-defence and SC authorization

**2) Self defence against non-state actors**

* Article 51 UNC
* Is it an armed attack?
* Not every use of force is an armed attack
* Think about scale and effect
* Question of armed attack from a NSA?
* Q of attribution, if no attribution:
* Controversial
* Development in practice since 9-11:
* Response must be necessary and proportionate: aim to repel the armed attack
* Here response seems excessive

**3) Subsidiary arguments: humanitarian intervention and implicitly authorized by SC**

**Question 4: Please explain whether and on which basis the ICJ has jurisdiction to decide the disputes between RO and FM If you conclude that the ICJ has jurisdiction for one, but not both disputes, please explain why and on which jurisdictional basis.**

1. **ICJ jurisdiction: open to states that are a party to the ICJ Statute and must be a dispute**
2. **Question of consent**
* Need for consent in one way or the other
1. **Optional declaration:**
* argument that OD needs to be transmitted first; not valid – nature of OD system – as a standing invitation, does not need to be transmitted
* multilateral treaty reservation: would exclude looking at UNC, but questions relating to the use force are also governed by CIL
* RO can invoke FM reservation; excludes dispute re 1981 due to time limit in reservation.
* Conclusion: on the basis of OD, the ICJ has jurisdiction over the use of force issue
1. **Article 25 of the 1981 agreements**
* Even when a treaty is allegedly invalid, terminated or suspended, and there is a dispute over that, the jurisdictional clause still applies as this is a dispute concerning the interpretation or application of the treaty.
* So the ICJ has jurisdiction on this basis as well – but on this basis, only over the dispute within the scope of application of the 1981 agreement