FOREIGN RELATIONS LAW EXAM

(Three hours)

There are twenty questions in this exam. PLEASE ALLOCATE YOUR TIME APPROPRIATELY!

Each of these questions provides four options as to the possible answer; one of the four possible answers must be selected for each question. FOR EACH QUESTION, SELECT THE BEST (I.E., LEAST INCORRECT) ANSWER; RECORD EACH ANSWER WITH THE NUMBER OF THE QUESTION. The maximum raw value of each choice is 10 points. Selection of the best answer on each question will receive 10 points; second-best, 7 points; third-best, 3 points; worst answer, 1 point. If you wish you, may write a brief explanation of your answer, indicating the relevant question for that explanation. If well-crafted, these explanations may allow up to 5 additional points to be added to any response. The maximum raw score to be allocated to each question will be 15 points.

AGAIN, ALLOCATE YOUR TIME APPROPRIATELY!

Good luck!
1. Alex wanted to know if Bill had seen the newspaper account this morning regarding private border patrols and their captures of illegal immigrants. Alex explained that a group of private citizens had grown tired of waiting for the US government to provide border security, so they had taken upon themselves to protect the borders. After describing the strong popular support in Arizona for better border enforcement, Alex wanted to know what support his office could expect from the US Attorney in supporting this "citizens' campaign." After asking a few questions, Bill replied:

   a) **Arizona may choose how its citizens assist the state in enforcing its laws.**
   b) **The United States welcomes any assistance of Arizona citizens in protecting the borders.**
   c) **Congress has constitutional responsibility for immigration and naturalization.**
   d) **Those Arizona citizens are unlawfully interfering in federal law enforcement.**

2. Alex also noted that large numbers of employers were requiring applicants who were "Mexican-looking" for identification demonstrating their residence and eligibility for employment. Alex reminded [Bill] that Arizona had adopted state statutes that prohibited the hiring of anyone who could not provide valid proof of US residence or citizenship. Bill thought for a few moments, and then he replied:

   a) **Arizona employers may not unlawfully discriminate on the basis of ethnicity.**
   b) **Arizona may not impose burdens beyond those required under the federal rules for legal aliens.**
   c) **Arizona employers have the unfettered right to establish criteria for selecting employees.**
   d) **Arizona may establish reasonable criteria for protecting the state’s labor market.**

3. In addition, Alex informed Bill that members of the Arizona Legislature were considering passage of the statute that would require anyone seeking any form of state or county assistance to provide valid proof of US citizenship before any service could be rendered. The statute would prohibit the provision of any state services, including emergency services, to any noncitizen. Bill expressed the opinion that:

   a) **Arizona may risk unconstitutional denial of equal protection of the laws.**
   b) **Arizona has complete authority to determine how its funds are expended and services provided.**
   c) **Arizona may limit provision of some services to the state’s citizens.**
   d) **The United States has sole authority to determine US citizenship.**

4. Alex said that one additional matter had come to his attention. When one of the private border patrols had stopped a group of "illegals" a few hundred yards from the border, one of them had escaped. When John Jones, one of the pursuers, followed the escaping "illegal" about 50 yards across the border into Mexico to catch him, the pursuer brought the "illegal" back across the border into Arizona "to pay for his criminal activity." Mexican officials had found out about the events, and they filed a request in federal court seeking the extradition of John Jones for trial for kidnapping in Mexico. Alex asked if the US Attorney’s office would assist Arizona in opposing this ridiculous request. After a few moments of silence, Bill responded
a) Mexico has no basis for imposing its criminal law on a US citizen.

b) Mexico has no basis for imposing its criminal law on a person outside of its territory.

c) Under the treaty between the US and Mexico, a federal court will hear the Mexican claim.

d) Mexico may properly seek extradition of Jones for trial in Mexico.

*While Bill was talking to Alex, he noticed that his second line was blinking. After he completed the call, he answered his second line to find Dalia, an old friend and law school classmate. Dalia had political opinions that were quite different from Bill’s, but their friendship had weathered many stormy discussions. She was now working for Human Rights Advocates, an organization that included supporters of a number of left-leaning social causes, including opposition to "the President's war" in Afghanistan.*

5. Dahlia had received the call from an opponent to the war who argued that the president had no constitutional power to order American troops to engage in fighting in Afghanistan. He wanted to bring litigation against the administration challenging the legality of the war, and he wanted to know how to bring the action. Bill responded very carefully, saying he could not offer his legal opinion formally, but his impression was that:

a) The protester could bring a federal action challenging funding for the Afghan war.

b) The protester could bring a federal action prohibiting war without congressional declaration.

c) The war protester will have difficulty challenging the president's authorization to use force.

d) The war protester may have difficulty showing his standing to bring any litigation.

6. Bill told Dahlia that he had also become aware of the depth of opposition to the war when Francine, a mutual classmate to Bill and Dahlia, called from the Washington office of the local member of the House of Representatives. Francine had informed Bill that her boss intended to bring litigation in District of Columbia District Court challenging the legality of the war. Bill had told Francine that:

a) Any member of Congress could bring litigation in federal court challenging the president's action.

b) The congressman may have difficulty showing his standing to bring any litigation.

c) Under the Constitution, the president has sole authority to conduct foreign relations.

d) Under the Constitution, the Congress has the power to declare war.

7. Dahlia said that she had been contacted by Gregory, a criminal defense attorney, who had a client in need of advice. Gregory's client was a member of the Arizona National Guard who had refused an order to report for service in Afghanistan. Gregory's client argued that since Congress had not declared war, he could not be assigned to combat in Afghanistan. Dahlia had told Gregory that she was not sure of the law in this area; she wanted Bill's opinion on this matter as well. Again, Bill said that it would be improper for him to provide advice on this matter, but he seemed to recall that:

a) Any citizen could bring litigation in federal court challenging the president's action.
b) The National Guard member may have difficulty showing his standing to bring any litigation.
c) Under the Constitution, the president has sole authority to conduct warmaking.
d) Under the Constitution, the Congress makes rules for the National Guard when in federal service.

8. Gregory had also told Dahlia that he had heard a speech by a state legislator who opposed "the President's war" and the administration's policy. The legislator announced during a speech that the state of Arizona would be statutorily prohibited from paying the salary of any member of the Arizona National Guard who complied with orders to serve in Afghanistan. Dahlia told Bill that she had responded to Gregory by saying that:
   a) Under the Constitution, the Congress makes rules for the National Guard when in federal service.
   b) The state legislature may not pass any measure challenging the president's action in foreign affairs.
   c) The state legislature may adopt any legislation regulating the state's National Guard units.
   d) Under the Constitution, the president has sole authority to conduct warmaking.

*While Bill was having his conversations with Alex and Dahlia, another classmate was facing war-related issues in her new office in Washington, DC. Christine had taken a different course; she had joined the U.S. Navy's Judge Advocate General's Office as her first job after law school. As a freshly-minted lieutenant junior grade, Christine had received some interesting new assignments.

9. In her initial task, Christine was directed to write a memo describing the prospects for several lawsuits filed by Jason, a lawyer representing, among others, several detainees at the Guantánamo Naval Base in Cuba. Christine had some initial ideas, but she called her friend Hugh, a lawyer in the State Department's Legal Adviser's Office, to test her first reactions. Jason's first complaint cited the Alien Tort Statute (ATS) as foundation for his claim against the United States for wrongful imprisonment in violation of international law. She told Hugh that she thought:
   a) The ATS clearly offers support for bringing the claim.
   b) Any ATS claim may be limited by the defense of sovereign immunity.
   c) The ATS offers no separate substantive basis for cause of action in this case.
   d) The ATS only applies to claims arising within the territory of the United States

10. In another complaint, Jason had filed an action pursuing a writ for habeas corpus. A second Guantánamo detainee claimed that he had not had sufficient opportunity to challenge the legal and factual basis for his detention, and that he should be released as a result. Remembering a recent case, Hugh remarked that:
   a) Jason's client had no possible basis for pursuing the writ of habeas corpus.
b) Jason’s client could bring a claim under Common Article 3 of the Geneva Conventions.

c) Jason’s client must be granted the opportunity to challenge the basis for his detention.

d) Jason’s client could not bring any constitutional claim outside of US territory.

11. Hugh told Christine that Jason had filed a couple of other interesting actions that had landed on his desk in the Legal Adviser’s Office. Jason represented a Pakistani civilian whose entire family had been killed in an explosion allegedly resulting from a missile attack by an unmanned aerial vehicle (“UAV”). Jason filed an action claiming under the Alien Tort Statute that the killing resulted from the use of force in violation of international law. He explained to Christine that his preliminary thoughts were to argue that:

a) The ATS may offer support for federal jurisdiction over the claim.

b) Any ATS claim may be limited by the defense of sovereign immunity.

c) The ATS does offer the substantive basis for a cause of action in this case.

d) The ATS may support claims in this case arising under the War Crimes Act.

12. Jason’s second suit raised more complex questions, explain Hugh, since it was brought by Iraqi plaintiffs under the same Alien Tort Statute for damages resulting from the killing of seventeen Iraqi civilians in Nisoor Square in Baghdad on September 16, 2007. Armed guards escorting diplomats of the Department of State had fired on bystanders in the square. The suit was filed against the State Department, the firm of Blackwater USA, and its owner Eric Prince, since the Blackwater firm had provided the armed escorts under State Department contract. Christine agreed that the lawsuit raised difficult questions, and she commented that:

a) The ATS may offer support for federal jurisdiction over the claim.

b) The ATS offers no substantive basis for a cause of action in this case.

c) Any ATS claim may be limited by the defense of sovereign immunity.

d) The ATS may support claims in this case arising under the War Crimes Act.

*Shortly after Hugh ended the call with Christine, the receptionist called to tell him that his afternoon meeting would start in the conference room in 10 minutes. When he went to the conference room Hugh met Eric, the foreign affairs legislative assistant (LA) for Sen. Yancey, and Francine, the armed services LA for Congresswoman Zenko. They wanted to discuss the administration’s plan for implementing the New Strategic Arms Reduction Treaty (START) with Russia that had been signed on April 9 2010. While the heads of state of both Russia and the United States had signed the agreement, both legislatures were hesitating in approving the agreement.

13. To begin the meeting, Hugh pointed out that there were several approaches that might be pursued by the administration to demonstrate commitment to the agreement. A New York Times editorial writer had written that the President could implement New START as a sole executive agreement without considering congressional approval. The author had noted that President Nixon and Leonid Brezhnev had signed and later implemented an interim strategic nuclear arms control agreement in 1972. Hugh suggested that:
a) The Constitution clearly requires the president to bring this treaty to the Senate for approval.

b) The Supreme Court recognizes the president's authority to enter sole executive agreements.

c) The State Department prefers formal treaties with Senate approval for controversial agreements.

d) Sole executive agreements must be offered to both houses of Congress for approval.

14. Francine interjected that Congresswoman Zenko was interested in offering legislation that would provide approval for New START. She knew that several members of the House of Representatives had favored this approach. Hugh replied that:

a) Congressional executive agreements fall under Art. 6, Sec. 2 of the Constitution.

b) The State Department prefers formal treaties with Senate approval for controversial agreements.

c) Congresswoman Zenko's idea has both positive and negative dimensions.

d) The House of Representatives can have no role in implementing international agreements

15. Eric interrupted that Senator Yancey had some serious reservations and strong convictions about New START and the manner in which the administration should proceed. Eric argued that there were some very serious constitutional considerations that had to be considered. He pointed out that Senator Yancey knew many ways in which Senate approval can become very complicated. Hugh responded that:

a) The Constitution requires the president to bring all agreements to the Senate for approval.

b) The administration will seek to address the Senator's valid concerns whenever possible.

c) Congressional executive agreements have no legal force under Art. 6, Sec. 2 of the Constitution.

d) Adoption of a treaty by the United States reflects a solemn international commitment.

*As discussion of the arms control treaty slackened, Eric cut in; he raised an issue that he contended was more pressing. He had been receiving numerous phone calls in the Senator's office from constituents who were disquieted by news from the Korean Peninsula. Some elderly Korean War veterans were outraged by North Korea's shelling of the South Korean island of Yeonpyeong. Francine said that she had gotten similar phone calls from her Congresswoman's constituents. He made a quick phone call to a nearby office asking for Isaac, a Foreign Service Officer with a JD who had recently served in the US Mission in Seoul, South Korea. Hugh asked Isaac to step in for the meeting, and the discussion continued upon Isaac's arrival.

16. Eric informed the group that Sen. Yancey had some particular ideas he wanted to pursue. According to Eric, Sen. Yancey wanted to offer legislation requiring the expulsion of all North Korean officials from the United States. Isaac pointed out that there is no North Korean embassy in Washington, and the only North Korean officials in the United States were diplomats at their mission to the United Nations. He reminded Eric that the US had an agreement with the United Nations protecting diplomats serving at the UN. Hugh said that:

a) The US could always prevent foreign diplomats from attending activities at the United Nations.
b) The Headquarters Agreement obliged the US to allow Member State access to the UN in New York.

c) The US had adopted effective legislation requiring closure of certain diplomatic offices.

d) Federal courts interpret statutes to avoid conflict with international law whenever possible.

17. Eric informed the group that he had heard the demonstrators outside of the North Korean Mission had been held back by the New York police when they had tried to enter the building. Eric argued that that activity impeded with the rights of those demonstrators to express their outrage at the North Korean shelling. Hugh replied to Eric, saying that:

   a) The demonstrators possessed a First Amendment rights to petition the North Korean mission.
   b) The Headquarters Agreement prohibited all demonstrations in proximity with UN missions.
   c) The New York Police Department was responsible for protection of UN diplomats.
   d) The city of New York could impose reasonable regulations on speech outside UN missions.

18. Eric had also been informed by Sen. Yancey that one of his constituents, Billy Bob Boone, had been so incensed by the words of Iranian President Mahmoud Ahmadinejad and the actions of the Iranian government against democracy demonstrators that he intended to serve a legal complaint on Pres. Ahmadinejad when he arrived to speak to the UN General Assembly. Boone had made secret contact with relatives of individuals killed in the demonstrations, and they had agreed to allow claims to be brought on their behalf. You made one comment in response:

   a) Actions may well be filed by plaintiffs under the ATS.
   b) US courts may not take jurisdiction since the wrongs to place in Iran.
   c) Pres. Ahmadinejad would be protected from all claimed human rights violations by head-of-state immunity.
   d) The state of Iran would be immune from any claims that these plaintiffs might present.

*Eric and Francine left the conference room shortly afterwards, but Isaac and Hugh stayed for a few more moments. Isaac wanted to raise another issue that had arisen, and he thought that Hugh’s expertise might help. He reminded Hugh that China and Japan had recently had a confrontation in disputed waters off Senkaku-shotō in the South China Sea. The Japanese Coast Guard had arrested a Chinese fishing captain and his vessel, but Japan had later released him after intense Chinese economic and diplomatic pressure had been applied. Isaac told Hugh that another problem had arisen as a result of action by a fanatical Japanese right-wing nationalist, and the United States was unwittingly involved.

Isaac explained that the Japanese fanatic had kidnapped a Chinese consul in Kyoto and held him prisoner for three days, sending e-mail messages demanding the Japanese honor be restored or he would "take vengeance on the foreign devil from China." At the end of the three days, the fanatic sent the text message containing the consular official’s location, and the Kyoto Police found him unharmed. The Japanese fanatic next appeared in Los Angeles, having eluded the Kyoto Police. Isaac told [Hugh that things had moved] downhill from there.
19. The Chinese ambassador made a demarche to the State Department demanding that action be taken to punish the fanatic. The ambassador handed the Secretary of State a diplomatic note demanding that the Japanese fanatic be extradited to China in order to try him for his crime against the People’s Republic of China. The State Department was considering what instructions to send to the US attorney in Los Angeles. After considering the question for a moment, Hugh responded that:

- a) China had no credible basis for asserting jurisdiction over the Japanese kidnapper.
- b) China should have made the request to Japan since the crime took place in Kyoto.
- c) The US may only extradite foreign national if the state of nationality consents.
- d) China has a credible argument for jurisdiction under the passive personality theory.

20. Isaac continued by saying that the story was not over, and that the complications might be just beginning. He said that the Japanese ambassador had appeared at the State Department two hours later with a similar diplomatic note. The Japanese note also requested extradition of the Japanese fanatic for trial in Japan for kidnapping. After shaking his head and looking at the floor, Hugh said to Isaac:

- a) The US cannot extradite the individual since this was a political crime.
- b) The US cannot extradite the individual unless he expressly consents to extradition.
- c) After review for adequacy in State and Justice, the request for extradition should be sent to the US attorney in Los Angeles for the filing of a complaint and an arrest warrant.
- d) The extradition of individuals accused of crime is greatly facilitated by the existence of an extradition treaty.