During his third year of law school, Amos sent in his application for employment to the Office of the Legal Adviser of the State Department (“L”). He received an offer from L, and his initial position assigned him to serve as a junior legal adviser in the Office of the Under Secretary for Political Affairs (“P”). He learned to provide an initial evaluation of the routine legal questions that came in to P, and the people in that office had come to have a certain confidence in him when the Arab Spring arrived. After that, life became much more hectic.

LIBYA

Most of the inquiries that Amos received originated outside of the State Department from parties concerned with or impacted by the changing international scene. Several questions related to Libya had come to him.

Question 1. Ike, an attorney representing Dilbert Oil, called Amos. Dilbert had negotiated a lucrative arrangement to sell $150 million worth of oil extraction and refining equipment to the Qadafi government prior to the overthrow of that regime. The successor opposition regime, the Transitional National Council (“TNC”), had informed Dilbert Oil “all Qadafi agreements were under review for revision and renegotiation.” Ike told Amos that Dilbert Oil expected the State Department to take some action against the new regime. Amos replied:

a) The new Libyan regime cannot be bound by contracts made by the Qadafi regime
b) Dilbert Oil has no remedy other than to seek redress in a Libyan court,
c) The Libyan government has absolute sovereign immunity from any legal action.
d) The Foreign Sovereign Immunities Act delineates the possible remedies.

Question 2. Ike replied to Amos that he had no idea what he could do if the Department of State would not take action on behalf of Dilbert Oil. Ike lamented that he could not possibly bring any contract litigation against the new government of Libya. Amos told Ike that:

a) The Foreign Sovereign Immunities Act offers no remedy in this case because of the act of state doctrine.
b) The Foreign Sovereign Immunities Act offers no remedy in this case because of Libya’s tort.
c) The Foreign Sovereign Immunities Act offers no remedy because the performance of the contract would not occur in the United States
d) The Foreign Sovereign Immunities Act may offer a remedy even though the performance of the contract would not occur in the United States.

Question 3. Helen called later that morning. Helen was a lawyer working with Human Rights Advocates, a nongovernmental organization (“NGO”) with a large public membership. She had received calls from HRA members about African migrant workers in Libya. Opposition militias that fought for the TNC had detained and imprisoned African workers on suspicion that they were Qadafi mercenaries. Some Africans had been badly beaten and some killed. Helen wanted the State Department to bring action against the TNC in the International Court of Justice; Helen thought the claims should involve charges of genocide. Amos told Helen that:

a) The TNC was the proper entity to be brought before the International Court of Justice
b) The TNC was not the proper entity to be brought before the International Court of Justice
c) The United States could not bring a case before the court because it was not a party to the Court’s statute.
d) The United States could bring a case before the court because it was a compulsory party to the Court's statute

Question 4. Helen then came to Amos’ office with her friend Geoffrey, a legislative assistant to Senator Hidebound, a conservative Southerner. Geoffrey informed Amos that the senator had seen news reports that an opposition militia group had captured and executed two dozen members of Qadafi’s army. Sen. Hidebound had learned that Rashid, the leader of that militia who had been appointed by the TNC as Libyan ambassador to Washington, would be arriving in Washington on the weekend. The senator wanted to have charges under the War Crimes Act brought against Rashid. Amos said to Helen and Geoffrey that:

a) The United States could certainly bring federal war crimes charges against Rashid on his arrival
b) The United States could not bring federal war crimes charges against Rashid on his arrival
c) Rashid would be protected by his diplomatic immunity from federal war crimes charges
d) The killing of Qadafi fighters was a justified response to Qadafi’s repression

Question 5. Geoffrey also said that the Senator wanted the US to advocate charging Rashid with war crimes before the International Criminal Court (“ICC”). The Senator wanted the State Department to approach the Prosecutor of the ICC to encourage him to prepare the appropriate charges. Amos called to consult with his friend Barbara, another lawyer in L, who was working with the International Organizations Bureau (“IO”). Barbara hesitated for a moment, and then she replied:

a) The United States was cooperating with the ICC even though it was not a party to the Rome Treaty.
b) The United States had never supported the ICC
c) The United States is an active party to the Rome Treaty
d) Only states may appear as parties in ICC cases.

UAV ATTACKS

Amos went to meet Chris, another lawyer from L assigned to the Bureau of Political-Military affairs (“PM”). Chris said that PM was overwhelmed with issues resulting from the use of drones or unmanned aerial vehicles (“UAVs”) in the war on terror. These questions were complicated because, while some UAVs were being used in countries where US military operations that had been authorized by Congress, others were being used outside of these authorized areas against other perceived terrorist threats

Question 6. In one situation, Chris was asked about the legal justification for using a UAV to attack a farm in an adjacent country outside of the congressionally authorized zone of combat. The plan to attack the farm was based on significant “actionable” intelligence that the farm was the being used to prepare an imminent attack on the local US embassy. Although Chris had provided his opinion, he asked Amos what he thought about the legal justifiability of such an attack. Amos said that:

a) The War Powers Resolution mandates prior congressional authorization for any use of force,
b) The president has plenary power to use force at his discretion
c) The Constitution mandates prior congressional authorization for any use of force
d) The War Powers Resolution mandates congressional notification of force deployment to areas of imminent hostilities
Question 7. In a second situation, planners were about to approve an attack on a compound just across the international border outside of the theatre of combat. The compound was recently identified as the hiding place for a radical Islamist propagandist who had given dozens of internet sermons calling for the killing of all American civilian and military personnel in the Middle East. This case was made more complicated by the fact that the propagandist was born in Dearborn, Michigan, making him a US Citizen. Chris said that:

a) Because the propagandist called for violence against US citizens, he became an enemy combatant
b) If the propagandist only advocated violence against US citizens, extrajudicial killing may not be justified.
c) If the propagandist engaged in violence against civilians, he would become an unlawful combatant
d) If the propagandist only called for violence against the US military, he could be a lawful combatant

Question 8. Chris noted that a particular issue was raised by the execution of a US special operations forces ground raid on an al Shabab camp in Somalia. The operation resulted in the capture of one of the planners of the devastating attacks on the US embassies in Dar es Salaam, Tanzania and Nairobi, Kenya. Although the raid had been successful, one member of Congress complained that the President had violated the War Powers Resolution ("WPR") in authorizing the raid without prior congressional approval. Amos responded that:

a) The President had violated the WPR by failing to acquire prior approval by Congress
b) The President was not legally required to seek the approval of Congress for the raid
c) The President had violated the WPR by failing to provide prior notification to Congress
d) The President had not violated the WPR by failing to provide prior notification to Congress

Question 9. Amos had received a call from Felicia, a congressional legislative assistant for Mary Pulaski, a member of the House who wanted to strengthen congressional control over the power to declare war under the Constitution. Felicia said her boss wanted to introduce legislation that would prohibit any drone attack without specific prior legislative approval unless the attack was part a congressionally authorized military operation. Amos had some thoughts of his own, but he wanted to hear what Chris thought. Chris replied that:

a) Rep. Pulaski’s legislation would violate the constitutional separation of powers
b) Rep. Pulaski’s legislation would effectively implement the war powers of the Congress
c) Rep. Pulaski’s legislation would implement the power of Congress to make rules for the armed forces
d) Rep. Pulaski’s legislation would have no constitutional foundation

Question 10. Amos continued that Felicia had raised another idea that she might suggest to her boss: a funding cut-off. Felicia proposed legislation that would prohibit any expenditure of funds for UAV attacks without specific prior legislative approval of that attack unless the attack was part a congressionally authorized military operation. Chris was quite attentive to this idea. Amos said his thoughts were:

a) Cong. Pulaski’s legislation would violate the constitutional separation of powers
b) Cong. Pulaski’s legislation would implement the congressional power of the purse
c) Cong. Pulaski’s legislation would implement the congressional war power
d) Cong. Pulaski’s legislation would have no constitutional foundation
When Syrian citizens got news of peaceful protests in Tunisia and Egypt against authoritarian regimes, they began to stage nonviolent street demonstrations themselves to express their opposition to the policies of the dictatorial Assad regime. As the size of these demonstrations began to reflect widespread dissatisfaction with the regime, the security police and the military began to engage in brutal and violent repression of peaceful civilian marchers. Over the last five months, a number of questions involving the Syrian situation had been directed to Amos. When he returned after lunch to his office, he confronted several immediate issues that needed to be addressed.

Question 11. Amos received another call from Helen concerning demands that she was getting from the members of HRA regarding the violent repression in Syria. Some members wanted to bring litigation against Syria for violations of the Universal Declaration of Human Rights, the United Nations Charter and the Genocide Convention. Helen wanted to file cases in federal court. Amos thought for a moment and said:

a) Each of those treaties could provide a federal cause of action against Syria.

b) None of those agreements could provide a federal cause of action against Syria.

c) Elements of some of the agreements had evolved into principles of customary human rights law.

d) None of these agreements provided enforceable legal norms.

Question 12. During that call, Helen informed Amos that she had befriended a group of Syrian refugees who had fled to the United States after the Assad regime had begun its violent response. In fact, one of those refugees had watched his home in Da'ra crushed by a Syrian tank while his family was still inside. According to that refugee, the commander of the military unit that assaulted Da'ra was currently traveling with a Syrian delegation to the New York headquarters of the United Nations and was planning to visit a niece who was in school in Connecticut. The refugee wanted to bring some action against the commander while he was in the US. Commenting on some potential legal remedies for the refugee, Helen said one possibility might be an action under the Torture Victims Protection Act: Amos listened to Helen’s story about the refugee and his family. When she had finished, he said that:

a) The Syrian commander would be protected by diplomatic immunity

b) The Torture Victims Protection Act only applied when the victims were US citizens

c) The Torture Victims Protection Act only applied when the perpetrator was a US citizen

d) The Torture Victims Protection Act only applied when the perpetrator acts under color of any non-US law

Question 13. Helen then asked Amos what he thought about the possibility of a suit based on the Alien Tort Statute. Amos replied that:

a) The Alien Tort Statute only provides jurisdiction to federal courts

b) The Alien Tort Statute only applies to cases involving piracy, violation of diplomatic rights, and violations of safe conduct

c) The Alien Tort Statute may allow widely accepted and highly specific international causes actions

d) The Alien Tort Statute only allows suits against foreign defendants

After Helen left, Amos called his friend Evan, a Foreign Service officer working in the State Department’s Office of Near Eastern Affairs (“NEA”). Amos mentioned his conversations about Syria and he asked about the current state of affairs. Evan said that there were some diplomatic moves under way, but the main efforts that the US and its allies were undertaking involved economic sanctions. He said that he was least equipped to answer some of the questions he was getting about the developing federal economic measures.
Question 14. Evan had received a call from the mayor of Dearborn, Michigan. The mayor made plea that the citizens of his city wanted to show their commitment to democracy in the Middle East. The mayor wanted to organize a campaign by local communities across the country to pass laws prohibiting any economic transactions, which might benefit Syria and the Assad regime. Amos had serious doubts about that idea, and he said:

a) The Dearborn plan could be lawful if it pursued similar objectives to the federal sanction program’s goals  
b) The Dearborn plan was unconstitutional and would be preempted by the current federal sanctions  
c) The Dearborn plan could be effective if adopted at the state level  
d) The Dearborn plan would violate the Sherman Act

Question 15. Evan said that one interesting idea had come out of Senator Hidebound’s office. Geoffrey, the Senator’s legislative assistant, had mentioned to Evan that the opponents of the Assad regime had formed a coalition in nearby Turkey, and that they wanted to form a government-in-exile. One of the Senator’s constituents had just come back from Turkey, and the Senator had enthusiastically adopted an idea that he and the constituent had discussed. Senator Hidebound had instructed Geoffrey to draft legislation that would grant US recognition to the opposition government-in-exile as the rightful government of Syria. Smiling at the mention of Geoffrey’s name, Amos replied:

a) The Senator’s idea is a very promising one that the President should consider  
b) The Senator’s idea is well within the powers of the Senate Foreign Relations Committee  
c) The Senator’s idea should be implemented after the new government is recognized by the UN  
d) The Senator’s idea would seriously violate the constitutionally-mandated separation of powers