A Guide to the Philip C. Jessup International Law Moot Court Competition

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The Hong Kong Student Law Gazette is a Hong Kong law student publication. It is published twice each academic year reaching out to Hong Kong law students, primarily through campus-wide distribution and the annual Hong Kong Law Fair. The Gazette aims to showcase the opinions of Hong Kong's law students, contribute to legal scholarship and foster dialogue between law students and the legal community.

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Disclaimer

None of the parties involved in the publication of this Guide represent the International Law Students Association or the China National Round Administrator of the Jessup Moot. Though the status of the law, if mentioned in any part of this Manual, is stated to the best of the co-authors' knowledge as of the date of publication, they are the mere opinion of the co-authors and should not be relied upon by readers without having had conducted their own research.

Publisher's Note

This Guide has been updated as of 25 October 2014. It was initially distributed to participants of the Jessup China Regional Rounds in February 2014, and has since been revised and updated for an international audience.

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Preface

This Guide is drafted with an international audience in mind. Though some of the input derives from our experience from CIICJ's China Jessup Training Tour (December 2013), our personal experiences having competed in other jurisdictions and the International Round, also inform this Guide. It is said that the Jessup Moot is addictive, we cannot help but concur! Yet, in all seriousness, the benefits do outweigh the detriments. A love for international law, you would develop. Lifelong friendships, you would forge. Sharper legal instincts, you would hone. At the end of the day, mooting is meant to be a fun and intriguing learning experience.

This Guide is a revision of the '55 things you should know about the Philip C. Jessup International Law Moot Court Competition' which we published last year. Much of the emphasis was placed on Oral Advocacy. Yet, we are acutely aware that an oralist is only as good as the quality and depth of his/her research. Hence, we decided to expand the booklet into this 3-Chapter Guide, covering:

Chapter 1: Legal Research and Memorial Drafting;
Chapter 2: Oral Advocacy; and
Chapter 3: Competition Strategy.

For participants from China, we have a special word of encouragement for you. In the past decade, much has been written on China's role in this century. As legal practitioners to be, you might ask yourselves how China can safeguard her interests abroad and how that necessarily entails reforms at home. We hope that the Jessup Moot would encourage you to think about the challenges and opportunities that China would be presented with in this new age.

Last but not least, we would like to thank all our advisors for their time and effort in reviewing this Guide; Suzy Su for her editorial support, Kat Tai Tam for his advice and all our colleagues at CIICJ, in particular Yuqing Liu, for their kind assistance; and all who have lent us their support in one way or another in making this publication possible.

If you have any questions or suggestions, please feel free to contact us at moot@ciicj.org.

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February 2014

Introduction

Appreciating the relationship between you and the bench

You assist. The Bench decides

Judges are the ones to decide who wins the case in the real world or how good you are in the Moot Court. The relationship between you and the judge is not one of equality but one of 'subservience' or 'deference and respect'. You are there to assist the court rather than teach or debate with them. This is best manifested in the oral submissions, though it is equally applicable to memorial drafting.

If the judges adamantly do not buy your argument after several attempts, there is no need to try and coax them into it any further. Just move on to your alternative submissions. Or if the judges want to hear your subsequent arguments first and flip your entire order of presentation around, just follow their approach. It is their concerns that you are trying to address here – not yours. If they ask you questions before you even begin your submissions, answer their questions first with the matter from your submissions.

Refrain from teaching the law

It is fairly common for advocates to start lecturing the judges on international law in both their memorials and oral submissions. The trick is in correctly understanding your relationship with the judge: you are there to assist them, not tell them what to do. So when you are trying to inform the judges, either in your memorial or oral submissions of something they seem to not know about, make it sound as if, 'you are helping them recall some long lost memory, matters they once knew but just forgotten over time.'

During oral submissions, one example of 'lecturing' is: when explaining a State can bring a claim of diplomatic protection, oralists use different legal theories to explain in great detail why states can bring diplomatic protection on behalf of its citizens. This is unnecessary as the centre of the issue is whether the criterion of diplomatic protection has been satisfied, rather than the legal foundation of diplomatic protection.

Chapter One: Written Advocacy

Legal Research and Memorial Drafting

'Cases are won at chambers' – Lord Bowen to his pupil, H.H. Asquith(Prime Minister of the United Kingdom, 1908 - 1916)

To be a good oralist, one should first aim to be a good researcher. In general, nothing impresses the Bench more than the quality of your submissions and the depth of your research. Much emphasis is often placed on the delivery and eloquence of an oralist, skills which will be addressed in Chapter Two. In reality, cases are often won by written rather than oral advocacy, though the latter becomes particularly important when the Court is undecided. Even then, it is the quality of your research and legal arguments that will be of greatest assistance to your client's case.

This chapter aims to assist you in legal research and memorial drafting. It will cover:

I. Warming up before the competition begins;
II. Gathering your research materials;
III. Spotting the right issues;
IV. Making a reasonable and reasoned argument; and
V. Drafting a good memorial: simplicity without simplification.

In drafting your memorial, you may wish to seek Faculty Members, Jessup Moot alumni and practitioners' general advice, bearing in mind that the memorial must be the team's own work.

I. WARMING UP BEFORE THE COMPETITION BEGINS

1. Study the Best Memorials (e.g. Baxter and Dillard Awardees) from the past 5 to 10 years

Pick a Best Memorial that you like the most and adopt their format (numbering, paragraph indentation etc) as your template, and attempt to imitate their style of drafting at least in your first draft. You will develop your own style of drafting but in the meantime learn the best practices first. This will also give you an idea of what your Memorial should look like at the end of the day.

You will soon realise that though the teams may differ in terms of formatting and style, they share some common characteristics which we will discuss in Section V of this Chapter.

2. If you have not studied Public International Law before, carefully review 'Introduction to International Law' on ILSA's website

Robert Beckman and Dagmar Butte have put together an 'Introduction to International Law' for participants of the Jessup Moot. [1] Public International Law is a vast subject but for the purposes of the Jessup Moot, this Introduction has listed out the key areas of law and principles that you need to know.

3. Choose a comprehensive public international law textbook

After reading the Introduction, delve deeper by reading a public international law textbook. This textbook should:

(1) endeavour to provide a balanced perspective of the Issues and attempt to state the law as it stands, in addition to what they think the law ought to be; and

(2) this text should make extensive reference to primary sources and other secondary sources, acting as a useful launch pad for further research on specific questions related to the *Compromis*.

Shaw's International Law (6th edition), amongst other textbooks, is highly recommended. If you would like to delve even deeper, you can consider

[1] http://www.ilsa.org/jessup/intlawintro.pdf (Last accessed on 10 September 2014)

further reading materials including leading treatises, such as Brownlie's Public International Law (8th edition, Crawford ed.)

4. Choose a Jessup *Compromis* from previous years and think through the Issues as if you were competing in that year

This is a warm up exercise for the actual Moot, so that you have a head-start in the research skills needed when the competition starts.

Choose any particular year and with Beckman and Butte's Introduction in hand, try to identify the Issues in the *Compromis*. Ask yourself what sources of international law are involved: custom, treaty, general principles of all civilised states? Then, ask yourself what possible violations are there. It also helps to get a general sense of who is the villain, victim and if there is a hero, in the *Compromis*.

If you need a recommendation, we suggest the 2010 Jessup *Compromis* on the fictitious Windscale Islands. The 2010 *Compromis* deals with 'classic' areas of law, such as Title to Territory and has maintained the 'tradition' of keeping the last Issue of the Moot an economic one, which in that instance was a bilateral investment treaty.

For an 'emerging law' issue which is another typical feature of other Jessup Moots, see the 2011 Jessup *Compromis* for the law against terrorism, legality of drone strikes etc.

To conclude the exercise, you should refer to the Best Memorials from both sides for that year to see if you were on the right track and how you could have done better. It helps to check whether your instincts were in the right places.

5. Pay special attention to ILSA's notice on next year's topic

ILSA typically releases the topic of next year's *Compromis* a year before, so pay special attention to those issues and make an intelligent guess of the types of laws or even current affairs that are involved. For instance, OECD was the sponsor of the 2011 Jessup Moot and you might be able to make an intelligent guess of what the issues might be in light of current affairs/recent controversies – laws against bribery.

II. GATHERING YOUR RESEARCH MATERIALS

6. The First Batch of Materials is generic

The First Batch may be a general list of materials which may not shed much light on the relevant issues in dispute. It will provide a list of the laws that are involved and you should ensure that you refer to them in your research and pleadings. Sometimes, there is the occasional journal article or case that may encompass one or two of the issues in the pleadings.

7. The Second Batch of Materials is crucial

The Second Batch includes the key cases provided and journal articles which will provide some hints as to both sides of the case/argument.

If you conducted extensive research before the Batch is released, it will serve as a good indicator as to whether you are proceeding in the right direction. If your research is fairly preliminary, it will be a good place to begin. Check the submissions against the sources cited by the Memorials and continue until the secondary materials start to refer to one another. You will notice that the references (footnotes) will begin to repeat one another.

8. Your research must go beyond textbooks

Below is a non-exhaustive list of resources/databases to assist you in conducting further research:

8.1 Research guides

For a more systematic guide to research in international law, bearing in mind that these materials appear to be designed for the application of international law in US litigation, please refer to:

(a) Duke University's International Legal Research Tutorial; [2] (highly recommended)

(b) Harvard University's Foreign and International Law Resources;[3]

(c) New York University's International Law Research Guide;[4]

(d) FindLaw International Resources;[5]

(e) Cornell Legal Information Institute;[6]

(f) University of Toronto Guide to Legal Research.[7]

[2] https://law.duke.edu/ilrt/ (Last accessed on 10 September 2014)
[3] http://guides.library.harvard.edu/content.php?pid=318375&sid=2605638 (Last accessed on 12 October 2014)
[4] http://nyulaw.libguides.com/international-law (Last accessed on 10 September 2014)
[5] http://www.findlaw.com/12international/index.html (Last accessed on 10 September 2014)
[6] http://www.law.cornell.edu/wex/international_law (Last accessed on 10 September 2014)

8.2 Primary sources of international law

(g) United Nations Treaties Series;[8]

(h) Avalon (Yale Law School);[9]

(i) International Court of Justice;[10]

(j) HUDOC – European Court of Human Rights;[11]

(k) United Nations.[12]

8.3 Secondary sources of international law

(l) United Nations Audiovisual Library of International Law;[13]

(m) Peace Palace Library Research Guide;[14]

(n) Oxford Journals;[15]

(o) Oxford Reports on International Law;[16]

(p) Yearbooks of International Law.[17]

You should also use online search engines/databases, including but not limited to Westlaw, LexisNexis, HeinOnline, JSTOR etc to find the latest journal articles or other publications.

9. Treaties should be accompanied by its preparatory documents and subsequent commentaries

You might wish to download:

(1) preparatory documents (*travaux préparatoires*), if available;

(2) commentaries by the drafting agency, if any (such as the Human Rights Committee for the ICCPR and the ILC for the Articles on State Responsibility for Internationally Wrongful Acts etc);

(3) any prior or subsequent treaties that attempt to amend the treaty; and

(4) any notable cases that have applied the treaties.

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[7] http://www.law-lib.utoronto.ca/resguide/rschguid.htm (Last accessed on 10 September 2014)
[8] http://treaties.un.org/Pages/Home.aspx?lang=en (Last accessed on 10 September 2014)
[9] http://avalon.law.yale.edu/default.asp (Last accessed on 10 September 2014)
[10] http://www.icj-cij.org/docket/index.php?p1=3 (Last accessed on 10 September 2014)
[11] http://www.echr.coe.int/Pages/home.aspx?p=caselaw&c= (Last accessed on 10 September 2014)
[12] http://www.un.org/en/documents (Last accessed on 10 September 2014)
[13] http://www.un.org/law/avl/ (Last accessed on 12 October 2014)
[14] http://www.peacepalacelibrary.nl/research-guides/ (Last accessed on 10 September 2014)
[15] http://www.oxfordjournals.org/en (Last accessed on 10 September 2014)
[16] www.oxfordlawreports.com (Last accessed on 10 September 2014)
[17] http://legal.un.org/ilc/publications/yearbooks/yearbooks.htm (Last accessed on 10 September 2014)

10. Reading a Case in stages

To read a case in full means that you read all the dissenting and/or separating opinions, if any, in the case. Though it is a good practice to read every judgment in full, you may find it daunting as they tend to be long and the issues are many and complex.

You can do it in stages:

(1) During the early stages of your research, it is sufficient to refer to Case Digests such as that published by DJ Harris, amongst others, to get a general sense of the legal rules that have been extracted from the judgments. Additionally, most courts provide case summaries and international law blogs such as EJIL: Talk! and ASIL Insights, which can also be useful starting points.

(2) Once you encounter roadblocks in your arguments, in particular when either the rule obviously does not assist you, compelling you to take a closer look at the case to distinguish it from yours, or when it seems to assist you too easily, just in case you are missing some key caveats in the rule, you should proceed to read the case in full.

11. Which Non-ICJ decisions can you consider citing?

A useful case you have found may not be from the ICJ. This does not necessarily make it less persuasive than an ICJ decision. You should refer to the ICJ Statute for the sources of international law. Decisions by certain reputable judicial organs, include but are not limited to the:

(1) Domestic Courts such as the US Supreme Court, the UK Supreme Court (formerly the House of Lords), Canadian Supreme Court, Australian High Court;

(2) Regional Courts such as the European Court of Human Rights, the Inter-American Court of Human Rights; and

(3) Institutionalised or ad hoc arbitral tribunals involving State parties, such as the US- Iranian Tribunal and the International Centre for the Settlement of Investment Disputes,

are generally considered highly persuasive, of course, subject to the material similarities between those decisions and the present dispute before the ICJ.

12. Use domestic decisions with caution

Domestic decisions often involve a lot of domestic law that might affect its candidacy as an authority before the ICJ. Every jurisdiction has its rules on how international law can be applied in domestic settings which are articulated in its Constitution or is found in legal tradition such as the common law. You must first investigate how international law is applied domestically.

Also, you must be able to identify the source of the Court's holding: was it on the basis of international law or domestic law?

E.g. The *International Tin Council* before the UK House of Lords (now the Supreme Court) involved a statutory intervention in granting the International Organisation a separate legal personality from its Member States, by an Order in Council. The Court held that but for such Order, as an international legal persona, it would have enjoyed no such status under the laws of the UK.

13. Which Journal Articles/ Publicists should you refer to?

Bear in mind that these are subsidiary sources of law, and should only be used in support of primary sources of law. To put it bluntly, if the publicist is a key authority to begin with, his/her published works, be it in peer-reviewed journals or other texts, can be a good source of reference. Or regardless of who the publicist is, if the work has been published in key peer-reviewed international law journals, including but not limited to the American Journal of International Law, British Yearbook of International Law, and/or European Journal of International Law, it would serve as a good source of reference too.

III. SPOTTING THE RIGHT ISSUES

Identifying the issues in the *Compromis* is probably the most important task in the entire Moot.

Here, we would like to put forward a few suggestions on how this can be done:

14. Read the prayer for relief before reading the *Compromis*

Before reading the exposition in the *Compromis*, read the prayer for relief and make an intelligent guess of what the issues are and what the arguments may be before reviewing the exposition. If you were just to read through the *Compromis* like a prose, it is unlikely that you would be able to spot where issues lie. Make reading the *Compromis* as interactive an exercise as possible.

15. Take a preliminary stand and begin drafting

It does not matter how premature the arguments are and you can even take a common sense approach at this phase. In fact, you should ensure that your final argument is not too offensive to common sense either.

> E.g. If the issue concerns title to territory and the disputed territory was attained through force, one can make a preliminary 'moral' argument such as, the territory ought to be returned to the rightful State ('owner') but for the use of force. If the State gives us her title over the territory, then the title should be capable of being transferred to others.
>
> After this you might come across various literature which would discuss whether State's can resort to force to acquire territory, and if so, at which point in history.

As and when you encounter difficulties in drafting, you should commence research in that direction with a clear intent to forward your arguments whilst keeping an eye for opposing arguments (and their legal authorities).

This approach ensures that you do not end up boiling the sea.

16. Identify the key words in the pleadings, in particular 'legal terms of art'

Terms such as 'attribution', 'hot pursuit', 'aggression' are terms of art. They carry specific legal definitions and cannot be interpreted literally, nor should they be used loosely in your written submissions.

17. Compare the wording of the same issues between the Applicant and Respondent

Have you ever wondered why the choice of words in the Applicant and Respondent's prayer for relief are markedly different at times? Obviously the prayers must be different but sometimes, even the terminologies are different.

It may shed some light on where the issues lie:

> E.g.(1), the Applicant may use the expression 'conduct' whilst the Respondent may use the expression 'acts and omission', this may be a hint for you to look deeper into a positive duty to prevent a particular act rather than just a positive act on the part of the State.
>
> E.g.(2), in describing the change in a government, the Applicant may use the expression 'incident' which appears neutral whilst the Respondent may use the expression 'uprising/usurpation', hinting at a possible illegal removal of those in authority etc.

18. If there are 2 sub-issues in one Issue, bear in mind that the 2 issues may or may not be independent to each other

Bear in mind that though legal arguments (or the legal basis on which your arguments are made) may overlap, the *Compromis* may provide you with hints as to whether there are grounds for it to be independent:

> E.g. A violent killing in a town occurred and the 'ensuing' prosecution of the perpetrators. Strictly speaking the word 'ensuing' is unnecessary to complete the sentence but it may be there to suggest that the grounds for prosecution are directly correlated with the killings and the Moot Author may be inviting you to explore that relationship, though there may also be independent grounds on which the arrest may be established, in the alternative.

Punctuation and connecting words, including 'and', 'or' are crucial as they may be a hint as to whether the issues are cumulative or in the alternative.

19. Transform the Content Page of your textbook into a checklist of possible issues

To ensure that you do not miss other related issues, pick a comprehensive public international law textbook as discussed above, transform the content page into a checklist of potential issues and bear those issues in mind as you review the *Compromis*.

Below is a non-exhaustive checklist of the usual Issues for your reference:

(1) Standing

Who has the right to plead before the Court?

Is this a State, what if it is a sub-national unit, how can you assist them in gaining standing before the Court?

E.g. Diplomatic protection relates to the nationality of the party, be they individuals or companies or shareholders of a nationality that may be different from that of the company. Are there any other means apart from diplomatic protection?

Who has the right to represent the State? Does it matter whether they are democratically elected (a question of legitimacy) or is there an issue of effective control by a State over the territory of another (a question of fact) or is this even governed by the ICJ Statute to begin with?

Does the rule regarding exhaustion of local remedies apply? If the rule does apply, have the individuals, organisations, or companies who appear to have suffered harm actually exhausted local remedies?

(2) Subject matter jurisdiction

What matters are beyond the jurisdiction of the Court: Is the party asking the Court to rule on domestic law? Is the party asking the Court to in effect overrule a domestic or regional Court judgment and whether that is permissible? Are there 'political questions' in international law?

Is the party asking the Court to rule on the legal interest of an absent party and under what circumstances is that permissible, if at all? Is the party asking the Court to rule on the actions of the Security Council and does the Court have the jurisdiction to do so? In other words what is the legal relationship, if any, between the Security Council and the ICJ?

(3) Relief

What sort of relief is the aggrieved party seeking and is it within the powers of the Court to grant? Can the Court grant punitive damages?

(4) Do you have to argue a custom?

This is a Moot and it is an opportunity to test arguments that would unlikely succeed before the ICJ at this moment. Emerging law (*lex ferenda*) would be the most likely candidate, such as the Responsibility to Protect doctrine at the moment.

(5) Do you have to argue a custom/general principle from a long time ago, such as Grotius, due to the inter-temporal doctrine?

The inter-temporal rule requires you to apply the law at the time of the conduct which might require you to look at international law treatise from a

long time ago when there were no tribunals (hence, no judgments), no journal articles and only State practice that has been studied and published by eminent publicists.

Alternatively, you might be able to trace the roots of a custom to domestic doctrines from a long time ago. For instance, *uti possidetis juris* may have had origins in Roman property law.

Do not assume that the law has not evolved over time.

(6) If there is a treaty in the *Compromis*, does it conflict with existing treaties or customs?

If this occurs, you might want to consider:

Whether treaty can be amended by custom or can it only be amended by a subsequent treaty? Is there a *jus cogens* norm that can trump the treaty provision? Can you wiggle your way out of it by interpreting treaty in a way that does not offend custom?

Does a subsequent treaty displace the disputed treaty in question and to what extent does it do so? Is it possible to displace one provision whilst maintaining the validity of the other provisions?

(7) Are there some material treaty provisions that require further defining?

Words such as 'reasonable', 'effective', 'necessary', 'significant', typically require a definition in the form of a range/spectrum.

(8) Can you match the facts in the *Compromis* with a real world problem?

Sometimes it is evident from where the Moot Author drew his/her inspiration. For instance, the 2010 *Compromis* is reminiscent of one of the disputes between the UK and Argentina over the Falkland Islands. Ability to identify these similarities will assist you in finding more materials with which to work.

IV. HOW TO MAKE A REASONABLE AND REASONED LEGAL ARGUMENT

After having identified the Issues, you will have to formulate a reasonable argument for your client. The Jessup Moot is in essence debating in the legal context, so one should not attempt to find THE answer but rather attempt to make an argument that one is not embarrassed to make.

You are looking for the materials and sources to support your argument; your team will contend which is the most articulated response to the *legal* question faced by your client. The response must be intelligible and intelligent, but it should not be neutral or ambivalent to the parties to the dispute. The team's task is to assert your client's position as persuasively as the advocate can, within the limits of the existing facts and law, without pushing the Bench.

20. What is an unreasonable argument?

It is often difficult to determine if an argument is reasonable, but it is much easier to identify an argument that is unreasonable. It would result in you having no or little engagement with your opponent which is highly unlikely to be the Moot Author's intention.

Classic examples of unreasonable arguments include:

E.g. (1). If you assert that your client owes no international obligation to other States whatsoever owing to the doctrine of non-interference. The issue is more likely to be that in exercising your right you might have obligations not to infringe upon other parties' rights. Please bear in mind that international law has made significant progress from the days of sheer non-interference of State sovereignty to one of greater recognition of the right of individuals (e.g. ICCPR) and the trans-boundary effect of State conduct; and

E.g. (2). If you begin to challenge the probative value of the evidence when the *Compromis* does not provide you with an alternative set of facts to challenge it. The admission of evidence is clearly a very important aspect of any trial but the Jessup Moot is designed to be more akin to an 'appellate proceeding' (though there are no lower courts) where the probative value of evidence can hardly be tried. For instance, if there is a NGO report or newspaper report, you might wish to consider the weight in which the Court can give these reports, from the perspective of neutrality, expertise and whether contrary reports have been given. You may also wish to research on whether the Court has considered/admitted such reports in previous cases;

E.g. (3). Simply because it is a NGO rather than an official government report does not render it illegitimate. More weight should be given to whether it was biased and thorough etc.

21. Be careful with extreme arguments

Extreme arguments are those arguments which are hard for judges (or anyone) to believe. For example, the definition of refugees under customary international law now includes climate refugees. There is no absolutely right or wrong argument in Jessup, but for a good argument you need to find some legal support. Extreme arguments are usually those difficult to find enough support. If you have to adopt an extreme argument, that is fine as a strategy. But make sure it does not come first in the whole oral submission; make sure you are well prepared for a long round of questions; and make sure you can quickly move to an alternative argument.

22. To misrepresent the facts is fatal

Misstating a legal principle may be forgivable, but if you misstate a fact in the *Compromis*, your integrity becomes questionable. For judges, it is a fundamental premise that a lawyer before them, who is an officer of the Court, is telling the truth and his/her words can be relied upon.

Therefore, it is advisable that you stick to the original wording in the moot problem. If you have a strong argument, you do not need to exaggerate the facts. If you have a weak argument, exaggerating facts only reveals the lack of support you can find for a weak argument.

For ease of reference, it may be helpful to create a timeline of all major events in the *Compromis*, with references to the original paragraph in which the events occur.

23. How to establish or negate custom?

In most circumstances, you do not have to conduct a global survey.

Case law may have confirmed whether particular principles have attained the status of custom, and you may rely on those if available. Or the ILC's Draft Articles may be helpful if designed to codify customary international law, though caution has to be exercised as it may be recommending laws not yet adopted – check by reviewing the preparatory documents.

If there is no existing case law that has conveniently concluded the status of the custom for you, you will have to establish it from scratch:

(1) Virtually uniform state practice (Regional or Multilateral Treaties, General Assembly Resolutions, Regional Organisations Resolutions, Domestic Legislations of the States) whose interests have been affected (*Anglo-Norwegian Fisheries*). This means that not each and every State in the world has to agree (e.g. Geneva Conventions and Additional Protocols I & II; Chemical Weapons Convention).

(2) States which have seemingly remained silent: Acquiescence to the formation of a custom is permissible if the circumstances arose which

demanded a State's response but it remained silent, particularly when making an explicit response is not exceedingly onerous.

(3) States that have evinced their disapproval by words or conduct: First, you have to determine if the disapproval came before or after the custom was formed. If you can prove that it came after the custom crystallised, then the State is violating international law. Second, if this State is a persistent objector, it does not bar the formation of custom, though it would not be bound by the custom.

(4) *Opinio Juris*: evidence that the State's conduct was carried out in a belief that it was in compliance with international law rather than other reasons. You might be able to infer *opinio juris* from State Practice.

24. How to favourably interpret a treaty provision that is prima facie unfavourable?

There will be occasions when your client ought to have done/behaved better, and you have to assist her in avoiding liability. Or there might be occasions when your client is 'innocent' but the law, *prima facie*, is not in her favour. When treaty obligations are concerned, you would have to deploy the 4 rules of treaty interpretation under the Vienna Convention on the Law of Treaties.

Here, we list some suggestions as to how you can help your client get out of a difficult situation:

(1) Preamble (object and purpose) to assist you in interpreting the terms, in particular vague terms, in such a way that does not defeat its purpose and acts to forward it. Often it is up to your creativity to rationalise a particular interpretation based on what you understand to be the treaty's purpose which can be deduced from the pre-contractual negotiations too;

(2) If the terms are vague, you should seek out the different ways to interpret them, for instance, other courts (be it international, regional or domestic) that have decided cases that involved materially similar provisions decided on the basis of international law (that may have been incorporated in domestic law);

(3) Preparatory documents that might shed light on the intention of the parties when drafting the document. For instance, if the ILC drafted a set of Articles, you might be able to identify whether it was (i) codifying customary international law; or (ii) proposing recommendations to develop international law, which implies that it was not custom or at best was an emerging custom. If there were a number of parties, you might be able to eliminate certain interpretations if they resorted to voting in order to decide which frame of words to adopt, such as if your proposed interpretation was voted down;

(4) The commentaries by the drafting agency, if any (such as the Human Rights Committee for the ICCPR and the ILC for the Articles on State

Responsibility for Internationally Wrongful Acts etc). Whether commentaries are to be given the same weight as the treaty itself might be a subject of debate on its own. In theory, it is highly persuasive but this might be a rebuttable presumption as at times, the commentaries appear to be making new law rather than interpreting 'old' law;

(5) Any prior or subsequent treaties that attempt to amend the treaty;

(6) Relevant customary international law: the treaty provisions should be read in a way that is consistent with customary international law.

25. How to handle an unfavourable judgment?

No previous judgments, be it ICJ, regional or domestic, are binding on the current proceedings in a Jessup Moot. Of course, asking any Court to 'overrule' itself or another highly reputable Court is a difficult task.

Here, are some suggestions as to how you can reduce its adverse impact on your client:

(1) Acknowledge the unfavourable judgment. Being evasive rarely helps.

(2) Distinguish on the facts **(1)**: The ideal scenario is when both parties do not dispute the law but merely its application to the facts. It is rare for two cases to be entirely identical, so try to identify a material fact on which the decision was based that is different from the current proceedings.

(3) Distinguish on the facts **(2)**: Even if it appears that the Court ruled that a particular doctrine is custom which is unfavourable to you, try to identify qualifications or caveats in that holding e.g. if a particular factual matrix does not arise, that custom will not apply etc. In other words, complicate the rule.

(4) If the above two measures do not work, it is possible that the ICJ applied the law wrongly; this is an exciting but onerous task. Try not to resort to this unless you have found substantial materials that have challenged the Court's ruling. Bear in mind that most judges are conservative.

26. Using a dissenting opinion in your favour

Your task is to prove that a particular dissenting opinion is in fact law. Your main difficulty is in explaining why, if it truly were law, it is not in the majority opinion.

You can try:

(1) the dissenting/separate opinion has since been confirmed in numerous domestic and regional courts;

(2) take a closer reading of the dissenting and majority opinion, and see if the dissent is based on fact or law. If it is fact, it is possible that the factual circumstances barring the application of that rule do not arise in the present factual matrix.

27. Exercise caution when using Jessup 'frequent flyers'

Lotus and *Corfu Channel* are Jessup favourites and are cited with such frequency and generality that one worries that, over the years, the principles for which they are alleged to support have lost their original meaning and the context they arose from. Bear in mind that aspects of *Lotus* have been heavily criticised and partially reversed.

28. Pure factual analysis

When the law can no longer be disputed, the fun begins as advocates attempt to interpret the facts in their favour within reasonable limits. Below is a toolkit to analyse events and personalities to better fit the facts to arguments in your client's favour.

E.g. (1) Turning Point/Watershed Moment: an event that caused a sudden change in the course of events, in terms of direction, timing, and parties involved. Pinpoint a change in circumstances which (i) may absolve your client of liability (e.g. a *force majeure* event to a commercial contract); or (ii) may demonstrate that a source of law may become inapplicable to the facts at hand (e.g. the explicit termination of a contract while one party continued paying or performing obligations arising from the contract);

E.g. (2) Role of Factors: Reactant vs. Catalyst, Latent Factor vs. Trigger, Tangential vs. Systemic, 'But For' Test in proving assessing causation. Though 'what if' is a difficult question to ask in history, it is nonetheless the way tort law assesses 'causation'. The more fundamental/important the causative factor, the more you can infer that a particular factor or event was important in causing the damage or leading to the event that you want to prove;

E.g. (3) Compare and Contrast. For example, in determining whether discrimination has occurred, remember that the test is not whether one party has been ill-treated but whether there is a difference in treatment. It is a (common sense) rebuttable presumption that an individual, particularly a government, would behave in the same way if the same fact pattern arises on a number of occasions, holding all other factors constant (ceteris paribus). If it happens that there is a difference in one particular occasion, you can compare and contrast the events and deduce the reason for the change.

29. Pick your strongest argument

This depends on the:

(1) strength (quality) of the authorities, such as was it in the majority or dissenting opinion of the ICJ case? Dissenting opinions if subsequently confirmed by the Court itself or other courts would be strong too;

(2) fact pattern, such as whether there are more factors in favour of you and whether it fits well with the authorities. You can do a 'matching' exercise, inviting the judges to come to the same conclusion as the decided case;

(3) independence of one submission from other submissions, in other words a submission would not collapse simply because an earlier submission failed;

(4) 'hierarchy' of norms, whereby in general treaties, if available, should be pleaded before customs (with the exception of *jus cogens*) or general principles, not as a matter of hierarchy but as a logical process from the specific to the general.

30. Find a compromise

Locate points in your arguments where you can compromise. For example, instead of maintaining a hard line where you receive 100% of what you seek, find ways that you can take a softer approach, conceding some arguments, but still 'win' the Claim.

31. With that said, this is 'just' a competition

Bear in mind that you have a word limit and a limited time to make your submissions. The Jessup Moot is a competition, rather than an actual dispute before the ICJ. Sometimes, Moot authors want to test out submissions that are unlikely to succeed before the ICJ at the present day, such as legal doctrines that are at best emerging laws.

In real litigation, you may wish to sandwich your weakest arguments in between two strong arguments. In a Moot, you may wish to put the weakest argument at the end, hoping that you will not get to it owing to time constraint. However, advanced rounds judges are often aware of what your weakest arguments are and compel you to address them at the outset, so be prepared to defend your weakest argument if you do not abandon them.

V. DRAFTING A GOOD MEMORIAL: SIMPLICITY WITHOUT SIMPLIFICATION

Having good drafting skills is a key trait of any competent lawyer, in particular, litigators. In this section, we will discuss relevant drafting tips in stages, beginning with planning and ending with proof-reading, and taking into account the typical structure of most memorials.

32. Do not be satisfied with the 'first bad draft'

Practice makes perfect. The more you draft the better you will get. Hence, you can consider drafting a timeline for the team, indicating the number of drafts the team is prepared to produce before the deadline for memorial submission. In general, after each draft, circulate it amongst your teammates for their comments and only return to it after a day or two, so that you can revisit your submissions with a 'fresher' pair of eyes.

33. Content Page and Index of Authorities

This is the first thing that the judges will read to get an overview of your submissions, so do not underestimate its importance. It is a matter of first impressions. You rarely have to prepare these two documents manually as most computer software contain programmes that can generate this automatically after you have tagged the right headings and text.

34. Statement of Facts

The Applicant and Respondent should refrain from using the same Statement of Facts. This Statement is supposed to be a news report which does not lie but is presented in your client's favour. It must be appealing to judges' common sense. Remember that litigation is not just about getting the law right; it is about telling a compelling story.

35. Summary of Pleadings

This should not just be the sub-headings of your memorial. The key is outlining the relationship between your submissions, such as whether they are cumulative or in the alternative, and the logical progression from one argument to the other. This is your roadmap during your oral submissions.

36. Roadmaps or no Roadmaps

There are teams that adopt a pronounced roadmap at the outset (e.g. Baxter Award for the Best Respondent Memorial in 2010) and there are others that adopt a more fluid prose in which the headings and the exposition clearly set

out the logical progression in the arguments (e.g. Baxter Award for the Best Applicant Memorial in 2010).[18]

This is not a matter of right or wrong, but merely a matter of style. You should develop a style of drafting that you are the most persuasive in.

37. Deploying IRAC in memorials

Ideally, each submission should adopt the structure of **I**ssue, **R**ule, **A**pplication and **C**onclusion as it ensures that you derived your conclusion methodologically. You might have come across other drafting formulas that would place **F**acts before IRAC. It is possible to introduce and address the Facts when you are at Application, considering that your memorials already contain a Statement of Facts at the outset. Remember that this is not a hard and fast rule.

37.1 Issue

You can identify the Issue from matching your preliminary understanding of the *Compromis* with your legal research.

Instead of drafting an open question, stipulate the position you are asserting. In the process of forwarding your position, you would naturally discuss it in the context of the broader question but remember that you are not discussing with the Bench rather you are submitting your client's case.

> E.g. (1) instead of drafting 'What constitutes an act of aggression?', a preferable statement is 'The Respondent committed an act of aggression by XYZ'.
>
> E.g. (2) instead of drafting 'Whether the legality of a government is determined by its democratic legitimacy or its effective control over the country?', a preferable statement is 'The Respondent submits that the legality of a government is a question of control (fact) rather than legitimacy'.

37.2 Rule

You can derive the Rule from your legal research.

Frame the rule as objectively as possible. It should not contain any facts in it. Pick your legal authority carefully, bearing in mind Article 38 of the ICJ Statute. If it is a case, strictly speaking you need not write 'in the Lotus case', simply 'in Lotus', will do.

Sometimes, a particular publicist might have conveniently summarised or deduced a rule from a series of judgments. You can rely on the publicist but you should stipulate which sources of international law she/he relied on.

37.3 Application

[18] The Best Memorials are published in the Philip C. Jessup Moot Annual Compendium which can be accessed via HeinOnline

Remember that Application should be an independent exercise, not to be combined with the Issue.

To indicate that you are about to apply the Rule to the Issue, you can begin the sentence with 'In this instance'. If the Rule consists of several elements and only one element has not been satisfied, you can begin the sentence with 'Notwithstanding the fact that'.

37.4 Conclusion

Although it may seem that after Application, it should be obvious what the conclusion is, you should still wrap up the paragraph with a one line conclusion, indicating to the reader that you have reached the end of this submission.

E.g. Indicate it as such by starting with 'In conclusion', 'therefore', 'hence', 'consequently' etc.

38. Short and punchy sentences

Your sentences should not have redundant words or frivolous language. The more concise and to the point your wording is, the easier to understand and follow your memorial will be. The sub-headings should naturally lead to the next argument, so that the reader can see the logical flow of your submissions simply by reading the sub-headings alone.

39. Plain English and Active Voice

Write in the active voice as much as possible (i.e. 'I did this', rather than 'This was done by me'). Refrain from using old-fashioned vernacular or Latin expressions when there is an English equivalent, unless it is used in the *Compromis*, such as '*uti possidetis juris*' in the 2010 *Compromis* or well-established legal expressions such as *de facto* and *de jure* or legal maxims such as *pacta sunt servanda*. Avoid verbiage. Cut unnecessary words. Keep sentences as simple as they are needed.

You do not have to use *inter alia*, *vis a vis*, thereinafter etc.

40. Use conjunctions only when you really mean it

We often overuse conjunctions such as moreover, in addition, therefore etc.

Firstly, these words are not necessary if the reader can follow your logic from the content of your sentence. Secondly, if you do use conjunctions, they should convey the precise meaning of your submission.

E.g. 'Evidence from these entities who cannot testify in court will cast serious doubt on the credibility of these evidences. In particular, the evidence on the whereabouts of the 58 Apharna nationals is conflicting and inconsistent.'

The second sentence does not further explain the first sentence. 'In particular' here should be changed to 'In addition'.

41. Using abbreviations

Remember, judges are reading your memo with a pair of relatively fresh eyes and may not be familiar with the terms you use. When abbreviations appear the first time, you need to set out the full name and then the abbreviation, e.g. National Liberation Force ('NLF'). Also, as a general rule, ensure that your abbreviation use is consistent; use the same abbreviations throughout your Memorial.

It may even be helpful to create a list of abbreviations, containing every abbreviation used and the full meaning of each.

42. Footnotes: Quality over Quantity

ILSA does not require a specific format apart from it having to be consistent and intelligent (based on the 2014 Rules). Yet it is advisable to follow a well-recognised format such as Bluebook or OSCOLA (Oxford Citation Style) to ensure consistency and accommodate most readers who will be familiar with these styles of citation.

Do not be tempted to believe that longer footnotes will be equated to better Memorials. The key is applying the sources of law under Article 38 of the ICJ, bearing in mind the differences between primary and subsidiary sources.

For instance, when case law is concerned, identify the best authority (when the rule was first confirmed by a highly reputable Court). If the legal principle was from long ago, add a more contemporary case that has affirmed the same principle that you are seeking to apply. You do not have to put in 10 cases to prove the same point. One or two fitting cases are more persuasive authorities than 10 cases involving vastly divergent facts.

Chapter Two: Oral Advocacy

Structuring your submissions and Answering questions

Oral arguments are the single most exciting part of any mooting experience, especially in the Jessup. Because the judges – and, in the international rounds, the opponents too – come from very different cultural backgrounds and legal training, every match is a new experience.

Oral arguments are also the hardest for which to prepare. You may get a 'hot bench' and be bombarded by questions that make it almost impossible to finish your points. You may have a 'cold bench' that remains silent almost throughout your entire presentation. You will encounter questions you did not expect. And judges respond to the same answers very differently, requiring you to observe, and immediately adjust and adapt.

This chapter aims to assist you in excelling in oral advocacy. It will cover:

I. How to prepare for oral arguments;
II. An Advocate's demeanour;
III. Structuring your Oral Submissions;
IV. Responding to your Opponent's Arguments;
V. Answering the Judges' Questions; and
VI. How to Pace yourself.

Oral advocacy is indeed a form of art. It may seem that it requires some inherent gift, but it can certainly be trained.

I. PREPARING FOR ORAL ARGUMENTS

43. BE PREPARED

The single most important thing for excelling at oral arguments is to BE PREPARED.

For example, you should be prepared to:

(1) present on every specific point in five, three, one, and half minutes;

(2) give a high-level summary of the facts;

(3) cite specific paragraphs of the *Compromis* on minor factual details;

(4) summarize the facts and major holdings of every single case you plan to cite;

(5) address authorities that are unfavourable to your position;

(6) present your issues in random orders; and

(7) submit the points your co-agent could not finish, again, in various forms that take five, three, one, and half minutes.

44. Prepare different versions of the same script

You cannot just read from the written memorials. Your presentations need to be specifically drafted for the oral argument, with short, simple, easy to follow sentences. Needless to say, you cannot have a single, long script. Instead, you need to have various versions of scripts for each pleading, each sub-pleading and each authority that you want to cite.

For example, for a case that you want to cite, you need at least three scripts that respectively have:

(1) A narrative of the major facts; a summary of major holdings; name of the tribunal and year of the decision; the point that supports your case; why the Court should take this case as an authority; why authorities relating to this case that are unfavourable to your case, such as a dissenting opinion or another authority holding otherwise, do not apply.

(2) Holding of the case that supports your case; why the Court should take this case as an authority.

(3) Something between the first and second points above.

Draft your scripts, read them out loud (to yourself and to other members of your team) and revise them. Do this multiple times.

All you can bring to the podium should be a one-page outline for the issues you need to cover and perhaps some other notes prepared for specific points and authorities.

45. Know the Competition Venue

(1) If you have a schedule with location of the next round, say Conference Room 4, go take a look at that conference room.

(2) Where do the judges sit? Where do you and your opponents sit? Where will the bailiff (the ones who keeps time) sit?

(3) Is there a podium? Try the podium. Is it too high or too low for you? (My teammates used to carry a paper box on which we can place our binder in case the podium is too low.)

(4) How far away is the podium from the bench? Will you need to raise your voice?

(5) How many seats are there for spectators?

The point of this exercise is to familiarize yourself with the setting. This will help keep you calm and avoid any surprises, so that you can focus entirely on your argument once the game starts.

II. AN ADVOCATE'S DEMEANOUR

46. Professional appearances add to your performance

This typically means a suit for males. Female oralists can of course choose to wear formal pants, skirts or dresses with a dark coloured jacket. This is not a fashion show or a ball, so keep distracting jewellery to a minimum.

No matter how passionate you are when making submissions, do not leave your podium or abandon your lectern.

47. Make eye contact

Maintaining eye contact is critical. Eye contact will engage the bench and keep the judges interested in your arguments. Good eye contact will make you appear confident, regardless of how you actually feel. Ideally, you should be comfortable with making arguments and maintaining constant eye contact, particularly during your introduction.

You should make sure that you do not focus too much on any one judge, even if that judge is asking most of the questions. Include the entire bench in your eye contact so none of them feel left out, even if one or two of them dominate the questioning. Another extreme you should avoid is turning yourself into a light-house, constantly shifting between all three judges.

48. Work on your body language

Your body language can either add to your presentation or distract the judges.

Stand firmly behind the podium with your head held high and refrain from swaying or rocking back and forth. You should not make any noise at the podium other than speaking, so do not bring a pen to the podium, tap your fingers on the podium or pound the podium. Also, keep noise from looking through your materials to a minimum. The goal is to project confidence, no matter how you may actually feel. Hand gestures should be used sparingly and only where they help convey the meaning of your argument.

Body language is also critical while you are sitting at the counsel table during a round. When you are not speaking, you should not make gestures that express approval or disapproval. For example, do not nod your head vigorously when the judges ask a particularly difficult question to the opposing team and do not shake your head when the opposing team gives a poor answer. You must appear professional at the counsel table.

Try recording yourself to identify the habits that might distract the bench.

49. Addressing the Bench/ Judges

There will be a panel of judges in front of you. Most panels have three judges. The chief judge, who sits in the middle of the bench, is known as the '**President.**' You may refer to him as '**Mister President**' or her as '**Madam President**' (Many students are not gender-sensitive enough, be aware!). Even if there are only two judges, the one sitting the middle will still be the President. You can refer to the other judges as '**Your Excellency'** or **'Your Excellencies**'. Judges should not be addressed as 'Your Honour' as in some domestic courts, or simply as 'Judge'.

50. Addressing the Advocates

Each oralist is referred to as '**Agent**' (Agent of Application or Respondent). You may refer to your teammates as '**my Co-Agent**'. If your team has a third member, usually a researcher, he/she can be referred to as '**of counsel**'.

Your opponents are referred to as '**the Opposing Agent**' '**My learned friends, Agent of Respondent/Applicant**' or simply as '**My learned friends**'

Be aware that non-English names (especially the given name) can sometimes be confusing to the judges. You should work out a solution. For example, 'I am Agent LIU representing the Applicant in this case, Alfurna, together with my Co-agent, Ms. Zhang'. Do it with a natural emphasis when pronouncing your names.

Needless to say, it is more important for judges to remember your argument than your name. So please keep this short and sweet. Feel free to smile at the judges but do not force it.

51. Terms to avoid

Do not use: *I think/believe…*; Rather, use: *We (Agent for Applicant) submit….*
You are an agent of the state; there is no room for your opinion or thoughts but instead for the states you represent. You are submitting to the court for consideration.

Do not use: *Yeah, Yah*; Rather, use: *Yes.*

Do not use: *We wanna*; Rather, use: *We'd like to.*
Lawyers usually are not rappers. At least not in court.

Do not use: *I am sorry, I don't know…*; Rather, use *I cannot assist the Court in this regard….*

Do not use: *As stated before…*;
Even if you have to say it again, say it. Or use '*it is submitted by …*' as an emphasis. Don't tell judges they are not listening to you carefully.

Do not use: *UNCLOS, it said that …*; Rather, use: *According to UNCLOS article182...* or *Article 112 of UNCLOS provides that…*

Do not use: *The court has in many times stated…* Use instead: *The court has on several occasions reiterated...*

Do not use: *This is a good question!* Use instead: *Thank you for your question.*
You are simply not supposed to make a judgment on judges' questions.

Do not use: *Actually, as a matter of fact.* Use instead: *According to paragraph … of the moot problem.*
Or just don't use it at all. Terms like '*actually*' and '*as a matter of fact*' can be annoying to judges (- it is fine if it appears only occasionally). It may sounds you are telling the judge you know something he does not know. Even this is true, you can reveal the provenance of this knowledge, rather than tell them you know better.

Do not use (at least not too often): *This is a clearly a violation of …*or *It is just a …*
If it is that '*clear*', irrelevant or unimportant, counsel might not need to address it. Make your argument stronger through your analysis, your legal authorities, but not through these meaningless words.

Do not over-use *Your Excellencies.*
It might be disturbing if you start every sentence with this.

III. STRUCTURING YOUR ORAL SUBMISSIONS

52. First Oralist

Good morning/afternoon/evening Madam/mister President, Your Excellencies. May it please the Court. My name is [Your name], and I have the honour to appear on behalf of [Full Country Name], the Applicant/Respondent in today's proceedings. I will speak for __ minutes, my co-agent [Your teammate's name] will speak for __ minutes, and with your permission we reserve __ minutes for rebuttal/sur-rebuttal.

Your Excellencies. Over the course of the next __minutes, I will be submitting that [Here need to insert your roadmap ...]. My co-agent will demonstrate [insert very brief version of your teammate's roadmap].

Would Your Excellencies like a summary of the facts? [Only the first applicant oralist must ask this ... do not include this if you are Respondent oralist].

53. Second Oralist

Your Excellencies, madam/mister President, may it please the Court. My name is [Your name] representing the Applicant/Respondent and I will speak for __ minutes. As my co-agent, [Your team-mate's name] stated I will be submitting that [insert your roadmap].

Turning to my first submission…

54. Provide a roadmap of your pleadings

Tell the judges what your submissions are—in other words, what decision you would like them to render—and major supporting reasons of your submissions.

You often have more than one argument (sub-submissions) for each submission, and probably have made several arguments in your memorial. You should select only the strongest ones. A rule of thumb is two to three arguments. You will not have the time or the judges' continuous attention to go through anything more than that. So, outline the sub-submissions for the judges, and explain briefly how they support the main submission. For example,

'Your excellencies, our first submission is that this Court has jurisdiction over this case. We submit two major bases for this Court's jurisdiction. First, xxx; second, xxx. Either of these two bases can independently establish this Court's jurisdiction. Moving to the first basis, Art. 36 of the ICJ Statute provides …'

Do this slowly, as most judges will be scribbling your proposed structure. You do not need to summarize your co-agent's pleadings in similar detail.

55. Pause from time to time

It is advisable to pause after each point, or judges might not realize that you are starting a new argument. It also makes it easier for judges to follow your arguments or ask you a question before you move on.

56. Refer to the *Compromis* from time to time

Do this especially when you are referring to a piece of fact that is critical to your argument that the judges have ignored or misunderstood. If you know the paragraphs of the *Compromis* to refer the judges to, it shows the judges that you have come prepared.

57. When submitting a legal authority, put the rule before you cite the provenance of rule

It probably gives oralists a sense of achievement to know the exact source of a rule cited. However, what the rule is, is a lot more important than from where the rule is.

Here is an example:

Q: Does the Applicant's national have to exhaust all local remedies in Respondent?

Bad Answer: Yes, Your Excellencies. According to which case, from which court, decided in which year, which para…, there is an exception.

Better Answer: Yes, Your Excellencies. However, we submit there is an exception to this rule that local remedies do not have to be exhausted if there are no effective local remedies available. This exception has been confirmed by …

Of course, this is not an absolute rule. You can adapt it in the ways it fits.

58. Be prepared for a 'cold bench'.

A cold bench is one that asks few questions during your oral submission. For some quiet judges, it is just their personal style; for others it is the newness of the experience. No matter which, it can be hard for the oralist to interact with quiet judges, precisely because they don't ask many questions and it will be hard to discern their concerns.

When faced with a cold bench, it is advisable to:

(1) Plan a presentation of at least 15 minutes totally of your own.

(2) Be clear about the structure of your submissions and the facts in the *Compromis*. The cold bench is sometimes cold because they are unfamiliar with the case.

(3) Add more references to legal authorities in your presentation, including the name of the case, where it is from or even paragraph references, if you are trying to emphasize a legal issue.

(4) Use more pauses and slow down your presentation a bit as well, so as to adapt to their rhythm and invite questions from the bench.

(5) Of course, don't make this too obvious; otherwise it will become a bit embarrassing for both the bench and the bar table.

59. Use 'Plain English'

Strive for simplicity without simplification! Examples of 'Plain English' include:

(1) Short sentences to help keep your submission simple and concise.

(2) Avoid complex sentence structures and impressive sounding words that are simply too long.

(3) Refrain from using jargon of any sort and if the *Compromis* obliges you to use them, explain them in simple terms.

(4) As for the manner of speech, be yourself with a few exceptions: refrain from being too colloquial or overly familiar and saying, 'ok, yeah, yup, guys, gals'. Some judges dislike the use of the word 'I'. Use 'we' instead.

(5) Latin maxims can be helpful as a shorthand way to refer to a legal principle, but they should be used sparingly. If there is an English version of the maxim, then consider using that instead. Avoid alienating the judges, particularly judges from a non-Western legal tradition, without Latin and European languages.

60. Pay attention to your tone

You should avoid being dramatic. If the submission concerns the killing of people, do not smile or appear too upbeat. By the same token, if your client's rights have been violated, you should not sound too passive.

Nevertheless, this is not to say you should be acting indifferently when making your submissions. Using emphasis and other body language as if you

really believe in your submission is also important. Speaking with various tones can also help continuously attract judges' attention.

61. Conclude your points

You will get a reminder shortly before time runs out. No matter where you are, try to wrap up quickly, and give a summary of your points to conclude. 'In conclusion, the Applicant submits that this Court has jurisdiction on two separate bases of xx and xx. In addition, Respondent's conduct of xx violates international law. Unless your Excellencies have further questions, this concludes my submissions.' The summary should be high-level and short.

As this is a rule rather than exception, there is nothing embarrassing if you fail to finish your submissions. Keep yourself cool and gracefully conclude your submissions. For example, 'If I cannot assist the court further, I will rest with those points', or 'Unless I may be of further assistance to this Court, this concludes my submissions', or 'May I refer Your Excellencies to our memorial for the balance of our submissions.'

IV. RESPONDING TO YOUR OPPONENTS' ARGUMENTS

62. Disagreeing with your opponent

It may not be very professional to directly designate your opponents' submission as 'wrong' or tell the judges that your opponents are wrong. Judges should have the call of that finding. You, as a counsel to assist them, should therefore avoid usurping their authority. A safer approach might be summarizing the 'wrong' argument and tell the judge 'but it is our respectful submission that …' or the opponents have misconceived/misconstrued something.

However, the above rule is not absolute and depends on how tough a stance you are taking. Some judges find it offensive that advocates use the term 'wrong' whilst others feel that is just an act of confidence to which the advocates must live up. You may still use the phrase when you are comfortable with it. But always remember to show the utmost courtesy to your opponents. No matter what, if you make a serious allegation that someone is just wrong, you had better be able to back up your arguments with sufficient evidence.

63. Inserting Rebuttals into your submissions

If you get a copy of your opponent's memorial, take a careful look at it. Read through the table of contents to see if there are any major arguments that you did not anticipate. If so, read the specific arguments and see what the supporting authorities are and whether you can refute or distinguish them. The teams are allowed to, and often do, deviate from their memorials in oral arguments, so there is no need to spend too much time on or get nervous about them.

If you are the Applicant, you can try to address the Respondent's arguments that are made in the memorial. Do not invent new arguments. Just style your original presentation as a response to the Respondent's written arguments:

(1) If the Respondent has a major supporting authority from which you are prepared to distinguish: 'In their memorial, the Respondent relies heavily on xxx. However, that case is not applicable here. Elaborate the reasons.'

(2) If the Respondent has a major argument which you are prepared to attack anyway: 'The Respondent argues in their memorial that … We submit that this argument is contradicted by …'

Do not overdo this.

64. While the Applicant is submitting, the Respondent should be on high alert

The Respondent should pay close attention to the Applicant's submissions. You can learn the Applicant's arguments, to which you will need to respond, and the judges' styles, to which you will need to adapt.

You should not show any emotional reactions to the Applicant's arguments. Do not shake your head, or appear concerned or even angry, even if the Applicant misstates the law or the facts. You should listen with a poker face, and take notes from time to time quietly. Do not talk to each other; communicate in writing instead. Be professional.

You can cite the judges' points in your own presentation. Often, during Applicant's submissions, judges try to ask hard questions by citing facts or authorities that are unfavourable to the Applicant's position. You should have planned to use those authorities and facts anyway. When it is your turn, you can cite those authorities or facts by referring to the judges' questions: 'As this panel pointed out just now, this Court has never adopted the rule proposed by the Applicant'; 'As your Excellency pointed out, the Applicant's ship was not any normal civilian ship, but in fact a navy battle cruise'; 'This bench referred to the xx case, which held xxx in a situation very similar to this case'… Beware that this might trigger an equally difficult response from the judges to you. Also, do not overdo this.

65. Rebuttals and Sur-rebuttals

Rebuttal is to point out what Respondent's Agents might have erred. You should not reargue your principal argument. Oralists should directly counter points that respondents have made and point out mistakes and inconsistencies. When appropriate, rebuttal should also incorporate points raised by judges.

Sur-rebuttal is to tell the Court that you, as the Respondent's Agents have done nothing wrong. Sur-rebuttals are more difficult, as the oralists must respond immediately and only to points made in rebuttal. Therefore, most oralists will take a very safe approach. Brilliant oralists, however, will attack almost every point and then tie the points together with their case theory and make a very strong last impression.

66. Rebuttals and Sur-rebuttals are vastly different from oral submission

Best Rebuttals and Sur-rebuttals have been famously described as a 'short, sharp shot.' Some Judges like a rebuttal with two points, some Judges prefer a short rebuttal with only a single point. A good Rebuttal usually won't be more than three points.

Regardless of what you say in your argument, you must explain to the judges why your argument helps your case and hurts your opponent's case after each of your topics. For example, say 'this is critical because it demonstrates that respondent's claim of self-defence is inapplicable to the present case and the respondent state is therefore responsible.'

67. Focus on law in Rebuttals and Sur-rebuttals

Your rebuttal should ideally be based on the law, not on the facts. You should look for instances where the respondent has misstated a point of law that is critical to your case or where you can concede a position that made by Respondent but still win. Explain to judges why respondent is wrong or even if they are right, you can still win the case. For example: The respondent has based its argument on [which legal issue] by relying on [Case A]. However Case A is different from our case as there is a [condition X] in Case A. Applicant submit Condition X is the principal reason the court come to its conclusion on [legal issue] in [Case A]. Because there is no [condition X] in our present case, respondent cannot reply on [Case A].

Another powerful tactic is to find judges' questions that the respondent was unable to answer.

Only rebut on the facts if your opposing agents have intentionally and mistakenly submitted some facts.

68. Using Pre-scripted Rebuttals

Considering that you will have practiced against your team's respondent side many times, you will get a good idea of what your opponents will argue against you before you even get into your first round. You will also have an intimate understanding of the critical weak points in the respondent's positions. Thus, you should take advantage of these opportunities to create pre-scripted rebuttals that target those weak points. Write up potential rebuttal arguments and bring them up to the counsel table with you. Then, if you hear the respondent make an argument for which you are prepared, you can save time on that point by incorporating what you have already written into your rebuttal.

69. In Rebuttals and Sur-rebuttals, judges rarely ask questions

Given the nature of rebuttals and sur-rebuttals, most of the judges don't ask any questions. You should really take this uninterrupted opportunity to leave a very good last impression on judges.

Contrary to the oral submissions, the best rebuttals and sur-rebuttals avoid arguments that might tempt judges to interrupt, for example, committing a gross blunder or error warranting contradiction form the bench.

70. You don't have to decide who will make the rebuttal or sur-rebuttal before the round

The team need not determine ahead of time which of the two oralists will deliver rebuttal or sur-rebuttal. This is often a strategic choice, made during the course of opposing counsels' arguments. If the bailiff is confused, you can inform him this rule.

71. In extreme situations, you may waive your rebuttal or sur-rebuttal

Use this tacit with great caution! If Applicant waives Rebuttal (which it may do by informing the Court from the podium when the time for rebuttal arises), then Respondent does not have an opportunity to exercise Sur-rebuttal. Respondent may in a similar manner waive Sur-rebuttal after the Applicant presents Rebuttal.

V. ANSWERING THE JUDGES' QUESTIONS

72. Questions are your best friend and the quality of your answers matters!

Soon after you start, the judges will be interrupting you with questions or instructions. And of course you will have to answer/follow them (never try to dodge a question). That takes up time, and you may have limited time to finish your scripts.

The biggest challenge and single most important skill in doing oral arguments is to treat the judges' questions as opportunities of advancing your own arguments. In other words, use your pre-prepared scripts in answering questions if appropriate. You should not engage in purely academic debates or mechanically providing answers to satisfy the judges' curiosity. Everything you say at oral arguments should be advancing your client's position. No matter how irrelevant or hostile a question is, your answer should be gearing toward a favourable ruling for your client.

Here is an example:

Q: What does Art. 36 paragraph 2 provide?

Applicant: [If you are the Applicant] It provides that as long as xx is satisfied, this Court has jurisdiction. Just like in this case, [proceed with your argument of why jurisdiction exists on the basis of Art. 36-2].

Respondent: [If you are the Respondent] It only provides jurisdiction for this Court when an important requirement is satisfied, which is xxx. In this case, this requirement is not satisfied. [Proceed with your argument of why there is no jurisdiction.]

Q. What is the nature of the Applicant's ship that engaged in the hot pursuit?

Applicant: It is a navy ship. We submit that this fact should not affect this Court's consideration, given the other facts that 1.xx; 2.xx. Also, whether a ship is civilian or military was not considered as among the factors listed by xx.

Respondent: Paragraph xx of the *Compromis* provides that it is a xx-foot long battle cruise on active duty in the Applicant's navy force. And that is a critical fact there. As a navy cruise could pose higher security threat than a civilian ship . . . .

These are easy examples. Other questions are harder to spin. But the point is, do not think of questions as annoying or something you have to deal with outside of your original presentation. Embrace the questions. Use them as

natural triggers of your own points. Frankly, this is often the only way in which you can finish your planned points within the time allocated.

73. Answer Yes or No question with a Yes or No!

It annoys judges if you don't put a yes or no in the beginning of your answer. Even if that answer may not support the argument that you are trying to make, that is all fine. Most of the time Oralists don't answer with a yes or no because they are afraid this is trap, or they know for sure this is a trap. But so what? Jump into this trap made by the judges, and give them this sense of achievement. After that, jump out of this trap by giving detailed reasons why you can still triumph with your argument.

If the answer hurts your position, you may use 'however', 'nevertheless' or 'but' right after you answer yes or no and then explain the reasons. You may also resort to the beautiful words like 'with all due respect, we disagree.' In any case, your response should be coupled with very firm eye contact and a convinced tone.

Here is an example:

Judge: Agent, while you have shown significant state practice, you have not demonstrated that this rule is supported by *opinio juris*. Didn't this court in the North Sea Continental Shelf case hold that the formation of customary international law requires state practice and *opinio juris*?

Bad Answer: Well your Excellency, it is true that the Court cannot hold that the formation of customary international law requires *opinio juris* but...

Better Answer: Yes, your Excellency, however numerous Article 38(1)(d) scholars have noted that in recent cases, international tribunals have placed less focus on the *opinio juris* requirement and have found that state practice alone reflects *opinio juris* in some instances. For example...

74. It's good to have some structure in your answer

You should always answer directly and then explain the reasons. If you have more than one response, begin by saying, 'Your Excellency, there are 2 responses to that question, firstly …, secondly …' If you are trying to distinguish a case raised by the judges, you can try to start with: 'Yes, we acknowledge that case. But the case submitted by the Applicant is not the leading authority in this regard. … (reasons)'

This will help to keep judges engaged in your entire response.

75. Distinguish scenarios giving by judge's hypothetic questions

Hypothetical questions are a favourite of many judges. They will ask you to apply the rules that you have outlined into a hypothetic situation. By doing this, judges can take your position to the extreme in an attempt to reveal an inherent absurdity in your logic. Often, these hypothetical questions will hurt your position. You must answer the hypothetic scenarios and then explain how the hypothetic scenarios will be different from the facts in the present case. Never give an answer by telling a judge it does not apply or the present case is different.

76. Don't turn your oral submission into a question and answer section

There are chances you will be facing an extremely hot bench (especially in international rounds). A bench like this may have thrown out 10 questions to you, while you barely finish answering the first one. It is a thrilling experience if you can have a heated discussion or debate with judges. Nevertheless, don't get into the circle of answering the judges' question and expecting another one. You still have your own responsibility as an Agent to make your submissions. Plus, even a hot bench like this, judges will let you do your submission or they simply get tired after a while.

77. Some terms attract judges' attention a lot more than others

Judges are all trained legal professionals. There are some 'words' that attract judges' attention a lot more than other words. Usually these words are referred as 'term of art', i.e. some terms that has a specialized meaning in a particular field or profession. Examples of this in Jessup context would include proportionality, temporal law etc. Judges might be alerted by these terms immediately when you raise them and feel more comfortable to ask questions. So be prepared. On the contrary, if the term you are submitting is not a very well known term, for example discontinuance of statehood, you may want to elaborate more.

78. Judges' questions are mostly predictable. Prepare answers beforehand.

One common arrangement is that when the Applicant team is arguing the pleadings, the Respondent team can write down their questions. The Applicant team will review those questions and improve their answers. The goal is simply to prepare ahead as much as you can.

79. Procedural issues may be more appealing to judges than substantive issues.

Judges may find procedural issues such as standing and exhaustion of local remedies more interesting than you'd think. It is the tradition for common law judges (which represents most judges) to attach greater importance to procedural issues. Also, the substantive issues in Jessup change every year, but every two or three years the same procedural issue recurs in the *Compromis*. Experienced judges are very familiar with these procedural issues and would love to discuss them in great detail.

80. If you don't understand a question, ask the judge to repeat or clarify.

You should not be embarrassed if you didn't get the judge's question.

You could also rephrase the judge's question.

E.g. 'Your Excellency, if I understand the question correctly, you are asking ...?'

Chances are you will not be the only one. Ask for the Judge to repeat or clarify the question. He or she will only be too happy.

81. If you really cannot answer the judge's question, there is no harm to tell the judge that you don't know.

Agents, no matter how good they are, are human. They are not expected to have an answer for every question. However, you can admit this in a gracious way.

E.g. 'I cannot assist the bench in this regard' or 'Your Excellencies, this is my best endeavour'.

Nevertheless, you should minimize the occasions where you have to concede this.

82. Move on after you finish answering the judge's question.

You don't need to wait or ask the judge's permission to move on after answering a question. The simplest way of moving on is to say 'coming back to my submission' or 'I will now turn to'. If you want to sound more natural, you may say 'this leads me to my next submission...' or simply 'at this point it is necessary to discuss...'

83. Judges' questions should always be presumed to be relevant.

A judge is sitting there to decide the case. Therefore, whatever he or she is interested in should always be relevant.

Very often judges may have their own differing views on issues; you will need to engage with them and persuade them to accept your views and arguments. It may well be that these lines of questioning will eat further into your allocated time, but remember that advocacy is about the art of persuasion not merely reading from a planned speech.

84. If you are certain the judge is incorrect, you may politely point it out.

Likely, some judges in the Moot Court do not know as much as you do regarding the facts of the *Compromis*. They may not be entirely familiar with the legal issues involved. You need to expect this and gently correct the judges.

If the judges are mistaken, you can politely alert them to this:

E.g. 'Your Excellencies, I respectfully disagree with …' and explain yourself.

85. It may not be necessary for you to correct the judge.

You ought to remember that it is the judges' Court and if they do not agree with you after you have attempted to convince them otherwise, move on. Also, if you feel the judge has misunderstood a fact or law that is irrelevant to your submission, don't waste valuable time attempting to correct him/her.

86. If you have been invited to discuss something unfavourable to your case do not avoid it.

Even you know the issue in point is not on your side, you cannot simply say you don't know. In 2012, an important decision of ICJ Germany v. Italy came out in February (unexpected early) just shortly before the Jessup. One pleading in the *Compromis* got most of its inspiration from this case and one side would almost certainly lose the case following this decision. Judges understand this but still would like to see if the counsel has prepared.

If you are the Respondent and the Applicant raises a major case or argument, you must respond to it.

87. Start again when you feel that you have given an unsatisfactory response.

If it ever happens that you rambled off point and gave an unsatisfactory answer that confused yourself and the bench, pause, and respectfully ask the judges if you could answer that question again. Then, proceed with a more

organized and reasoned response. This would be better than leaving everyone confused. The bench will appreciate your efforts in making the clarification. Of course, ideally, you shouldn't have to do this too often.

88. Keep your composure when challenged by the questions.

If a judge asks you a question that stuns you: don't look stunned. It is perfectly acceptable to say:

E.g. 'Your Excellencies, may I have a moment, please'.

Most of them would want to hear a proper answer, and would thus, be happy to offer you a moment. What some would do is to have a sip of water. Everyone knows you are buying time but they have all been in your position before, so they would understand. The judges are not looking for THE answer, but a reasonable one that you are not embarrassed to make. So just make an honest and reasonable attempt that aims to put forward the thrust of your case; or, at least rehash your arguments, if you can't think of a direct response.

89. Don't assume that the judges know all the facts

You have lived with the *Compromis* for months, but the judges might not have started reading the *Compromis* and your memorial until a few days or a few hours before the oral round (unless he is a coach of another team or has judged other national rounds – that's another reason why you have to be extremely familiar with the facts). This is particularly important in the preliminary rounds. Judges will be more familiar with the facts in the more advanced rounds of the competition.

VI. TIME MANAGEMENT IS KEY

90. How to distribute your time

It is the duty of the judge to ensure a proper time-keeping in the courtroom and score your time-arrangement skills. You need to assist the judge to do this job. The first counsel of each team must tell the judges how many minutes you and your teammate will spend.

> E.g. 'I will spend 21 minutes on the first and second pleadings and my co-agent will spend another 20 minutes on the third and fourth pleadings. We reserve 4 minutes for our rebuttal.'

91. Try to speak slower

When one is under pressure, there is a tendency to speak faster than usual. Try to intentionally slow down a bit. Everyone speaks much faster than they realize. Slow down. Pause between sentences. This gives the judges time to digest what you said and time to ask you questions.

Speak as if you have all the time in the world. Have the introduction written down before you and deliver it slowly. After that, your submission will proceed fairly smoothly. It is not uncommon for advocates to be unable to finish their submissions - as long as you are three-quarters of the way through it, it is usually considered acceptable (even this rule is not absolute). Remember that your task is to assist the judge, and the focus is on answering their questions. If in the process of doing so you are unable to finish all your submissions, they will understand. It should all be in the written submissions in any event.

92. Cover your co-agent's unfinished arguments

If you are the second co-agent, you only need introduce yourself and briefly state what submissions you are going to cover. But in some circumstances you have to pick up where your co-agent left off. This is not strictly necessary except if the judges explicitly require you to do this. But it could be very impressive if you can show that you are familiar with not only your own arguments, but also your co-agent's. It may also help the natural flow of the pleadings.

93. Be flexible when making your submissions

It is generally not a big challenge to know how long you have been talking as the Bailiff will start to remind you when you have 10 minutes left. The greatest difficult is keeping good time management while handling judges'

questions. Your aims should be a fair allocation of the time on the two pleadings you cover and ensuring you made submissions on important (not all) issues.

If judges are particularly active on one or two legal issues, you may find that your original time allocation plan will not work. This is almost certainly the case if you have a hot bench, so change the plan immediately. While the judges are still interested in the current discussion, don't rush into the rest of your submission because you are afraid you won't have enough time for them. Entertain judges' interest and simplify the rest of your submissions. Of course, this requires you to make submissions on legal issues at different length (three minutes, one minute, 30 second or even one short sentence) when practicing.

94. You do not have to use up all the time allocated in your submission.

If at the end, you have not spent all your time, you can ask the judge:

E.g. 'Your Excellency, are there any more questions from the Bench?'

If you are making your final attempt to invite any questions from the Bench:

E.g. 'If I cannot assist the court further, I will rest with those points', or 'Unless I may be of further assistance to this Court, this concludes my submissions'

95. Conclude your submissions neatly even if you fail to finish your submissions.

When your time is up but the judge has just asked a question that you are obliged to answer, politely say:

E.g. 'Your Excellency, I see that my time is up, may I have a minute to complete my submission?'

Don't take much time to conclude what the oralist has to say. That is not the time for a lengthy narrative.

If you find yourself over time, do not ignore this. Mention this to the judges:

E.g. 'I see that my time has expired, I am in your hands Your Excellency as to whether you wish to conclude at this point …'

The judges will then be prompted to provide further direction as to how they wish to manage the time available. In extreme cases, you may request permission to wrap up. It is acceptable to go over time to close but this should be very formulaic and last only a few seconds.

Chapter Three: Competition Strategy

Team selection and other strategies

This Guide would be incomplete without discussing the all important role of a coach in terms of selecting a team and assisting the latter in preparing and competing for the Jessup Moot.

We will conclude with 'A Journey through the Jessup Moot', hopefully demonstrating to you the Best Practices, not just in terms of written and oral advocacy as discussed in Chapters One and Two, but sportsmanship and courtesy towards your opponents and judges.

This chapter aims to assist you on the practicalities of the moot. It will cover:

I. Team Selection;
II. Coaching Responsibilities and Tips; and
III. A journey through the Jessup Moot.

Please remember that the essence of the moot is not in winning but in learning and having fun!

I. TEAM SELECTION

This section is drafted with coaches in mind.

Competition strategy begins with team selection. Jessup rules allow for five team members, so take advantage of this and have as many team members as permitted. Choosing a good team is a combination of serendipity and skill on the part of the coach. Once your team is chosen, believe in them, entrust them with responsibilities and accompany them in this journey of theirs.

96. Holding try outs to select team members.

Ideally, a faculty member or a student coach should hold a tryout to select the Jessup team. If you are holding tryouts for team members, it is best to have a written component and oral component that closely simulates the Jessup Competition.

> E.g. The interviewer can choose an Issue from a past Jessup Moot and invite interviewees to pick a side and make both written and oral submissions on it. A 1-3 page skeleton argument and a 10-minute oral submission would typically suffice.

96.1 In reviewing the skeleton argument, amongst other qualities, you should look out for:

(a) a good mastery of the English written language, meaning that the sentences are complete and comprehensible, and that the choice of words are accurate rather than loosely deployed;

(b) an awareness that arguments have to be structured, separating Issue from Rule from Application and Conclusion, bearing in mind that this might present itself in different forms such as Topic Sentence, Exposition, Example, Conclusion;

(c) a sound knowledge of international law, but this should not be a prerequisite, as the Jessup may be a good way to learn international law.

96.2 In assessing the oral submissions, amongst other qualities, you should look out for:

(a) an ability to think on their feet which can you test by asking questions as a judge would, or asking them to argue their opponent's case without informing them before hand;

(b) good legal instincts, typically referring to the ability to identify the crux of an Issue or a flaw in a particular argument, including ones that they did not have the luxury of time to carefully consider, which is usually testimony to having a good foundation in the core legal principles; and

(c) proper pronunciation, bearing in mind that accent is irrelevant as it is more important to be true to yourself.

(d) Tryout should be arranged as early as possible, even before the *Compromis* is released. You can also leave a window period to finalize the team members among those initially selected.

97. Other expected qualities of team members

97.1 Motivated

When choosing the team, it is important that team members are motivated individuals who are steadfast in duty. Preparing for the Jessup Moot is a very time-consuming endeavour and it is advisable to ask for the candidates' possible time commitment in the coming year during the interview.

97.2 Ability to work in a team

The Jessup Moot requires a high level of teamwork. Often, candidates are motivated high-achievers who in certain jurisdictions and faculties, had to out-compete a lot of their peers in many aspects of their studies to become eligible for the Jessup Moot. Being highly motivated is an asset to the team, but as the coach you have to ensure that these candidates also genuinely have the capacity for teamwork and will not cause unnecessary friction within the team. For instance, it might be helpful to ask the candidates for examples when they had to demonstrate teamwork and how they resolved a conflict.

97.3 Previous mooting experience

There is no substitute for experience, and this is especially true in Jessup. Therefore, if your school allows team members to compete multiple times, use this to your advantage, and have a combination of new participants and participants that competed the previous year.

98. Division of labour within the team

In theory, all five members of a Jessup team can be oralists. However most teams choose four to be the oralists and left one to be the researcher. If this is the case, as soon as the moot problem is released, the team should split up into Applicants and Respondents. It's important to give everyone as much time as possible to research his or her issues.

Split the team into First Applicant (generally will argue Claims 1 and 2, and argue rebuttal), Second Applicant (generally will argue Claims 3 and 4), First Respondent (generally will argue Claims 1 and 2, and arguer sur-rebuttal), and Second Respondent (generally will argue Claims 3 and 4). The First Applicant and Respondent and the Second Applicant and Respondent should work with each other when researching on the issues.

The fifth member, or researcher, can be used in many different ways – it's up to you to figure out which way is best. Some teams have the researcher write an entire claim. This can be especially useful if a team member has a very

busy semester. Some let the novel member to be researcher and observe, to get him or her prepared for next year.

It is also popular to choose only two team members to be the oralists. This may be preferred, as good oralists with all the essential qualities as well as the commitment can be rare to find. Needless to say, this puts a lot more burden upon the two selected oralists. Yet the upside is these two will gain considerably more experience than others during the competition.

99. Maintaining a balance between Applicant and Respondent

Balancing the team is also very important. Neither the applicants nor the respondents should be too much better than the other side. Some teams do this; i.e. they stock one side with the two best team members, leaving the other side weaker. Teams that don't balance their sides well can advance to internationals, but they rarely advance into the knockout rounds. Try to keep your team balanced so that both the applicants and respondents have a solid chance at winning every round.

II. COACHING RESPONSIBILITIES AND TIPS

100. Being a Coach is a huge responsibility

Being a coach is a huge responsibility and we applaud you for taking up this commitment. Sometimes, this appears to be a thankless job as your students may not always seem to appreciate your hard work, and however hard you and your team work, you have not bagged any major prizes till date.

Please do not be disheartened. Do not throw in the towel just yet. We know how difficult it is to be a coach and feel free to contact us at moot@ciicj.org if you think that there is anything with which we can help you.

Please bear in mind that regardless of the results of the Moot, the team will have benefited greatly from the entire experience and that alone is a good reason to continue participating in the Moot. We hope that you enjoy the experience as much as the team does!

101. Assistance to the team

You should refer to the latest edition of the Jessup Rules which outlines the type of assistance, in particular advice on research and legal submissions, that you can give the team. Apart from the law, the team can benefit greatly from the following resources:

(1) faculty or private funding for both the National and International Round as soon as possible the applications for which should ideally begin in the summer before the *Compromis* is released, given how difficult and time-consuming this process can be;

(2) a facility where the team can meet regularly, conduct research and draft their memorials, as this is important for teamwork and the storage of all the research materials;

(3) printing quota allowing them to print reasonable amounts of research materials, and library privileges to have longer borrowing periods for books that are relevant to the Moot, subject to the teaching needs of the faculty; and

(4) practice rounds with other faculty members, practitioners or Jessup alumni, subject to the Jessup Rules.

We understand that this is a lot to ask for, but if these resources are within your reach, your students would benefit greatly from them.

102. Effective brainstorming sessions

You should not hold meetings too irregularly as meetings tend to compel students to produce a piece of work whilst online communication alone tends to be less intense.

With that said, you should not meet every other day; instead, the rationale should be to meet to discuss the Issues that the students cannot resolve in their own research, rather than Issues they thought of but on which have yet to conduct any research. Everyone must come prepared to a meeting with the Issue they want to discuss, the sources they have read, possible legal arguments and the difficulties they are facing.

Most probably, once every 10 to 14 days during the early days of research, and increasing it to once every 7 days after the Issues have been confirmed and the arguments are being teased out, and intensifying it to once every 2 to 3 days in the last few weeks before the memorial is due.

If you find it necessary, you can ask the students to attend meetings according to their Issues. In other words, not everyone has to attend the meeting.

103. Effective Practice Rounds

Depending on how many weeks you have between the memorial deadline and the oral arguments, you should organise a number of practice rounds to get the students ready. Two practice rounds per week before different judges, hopefully, with different styles, would be helpful. At the very least, you should let your students submit before one cold bench, one hot bench, judges who have a good command of the facts and those who do not.

When practice rounds are conducted, consider correcting the oralists during their submissions and inviting them to amend their submissions on the spot rather than just giving remarks at the end. This is more time-consuming and challenging for the oralists but it tends to be most effective when you are trying to teach an oralist IRAC for instance.

Also, oralists should not practice with a laptop, as this inhibits establishing proper eye contact and is unrealistic as they will not be submitting with their laptop during the competition itself.

III. A JOURNEY THROUGH THE JESSUP MOOT

104. Best Practices before Rounds begin

Jessup competitions provide four preliminary rounds. It is important to take one round at a time and focus all of the team's energy into each round. Before a round, the entire team should be helping the oralists prepare, and after the round, the team's energy should shift to the oralists arguing next.

104.1 When preparing for each round, you should tailor your arguments based on your opponent's memorial

Prior to the competition, you receive the memorials of your opponents. These provide a window into their arguments. You should prepare arguments pre-empting or responding to the memorials so that your oral argument is tailored to your opponent. In other words, your oral argument will never be the same from round to round. Remember, however, that teams change their arguments drastically between the time they submit memorials and the time that they argue. Thus, the memorials will not likely be an accurate reflection of your opponent. Nonetheless, it is important to know how to respond to all of the arguments in the opponent's memorials in case they are advanced in oral argument.

104.2 What To Do When The Opposing Team Enters The Courtroom

When you first see your opposing team, it is appropriate to introduce yourselves and wish them luck. It is important to remain friendly and professional.

104.3 What To Do When Judges Enter The Courtroom

When the judges enter the courtroom, you should stand and smile. Judges begin judging from the moment they see you, so you want to make a strong first impression.

104.4 Choosing Who Argues In The Next Round

For advanced rounds, your team might have the opportunity to choose which side will argue. Making this determination can be difficult, and each team might have a different approach for how to choose. Because this decision must be made quickly and because it can involve a lot of conflicting emotions and expectations, it is important to discuss this situation with your teammates before the competition begins and have a plan for how to decide. No matter who is chosen, it is important for the entire team to support the two oralists and contribute to their success.

104.5 Keeping Perspective

Jessup competitions are full of competitive intelligent people, and this can be intimidating. It is important to be confident in yourself and to focus on your own team's preparation. Know in advance what you need to do to keep calm and prepared and stick to that routine. Keep in mind that the most important part of Jessup is connecting with new people from around the world. Thus, while teams endeavour to win The Jessup Cup, they also should take time to make friends.

105. Best Practices during Rounds

105.1 Team Members at the Table

Three people can sit at the front table during rounds. Even when you are not arguing, judges will look at you, so it is vital to maintain a calm and professional demeanour at the table. It is inappropriate to react to the opposing team's arguments in a visible manner. Instead, you should discreetly write notes to one another if you need to discuss responses. You should keep the table neat and orderly so that you look professional and prepared.

Oralists should listen to the opposing teams' arguments and tailor their responses accordingly. Judges do not want oralists who read from a set script. Instead, the arguments should relate to the opposing team's submissions.

The person who is not arguing can still contribute to the team. That person should listen carefully to the opposing team and the judges' questions and help the oralists prepare for their arguments, rebuttal, and sur-rebuttal. The teammate who is not arguing should pass notes and comments to his or her teammates, as talking at the table is prohibited. Because your practice rounds should closely simulate the real competition, you should know which oralists prefer significant advice at the table and which do not. Thus, how active the third teammate not arguing is at the table should be tailored based on team dynamics.

105.2 Team Members Not At The Table

Jessup is a team effort. Even when a teammate is not arguing, he or she can play an important role. Teammates who do not have to focus on their own presentation can better observe the judges and opposing team.

Teammates who are sitting in the audience should write down all questions asked on their issues. Before the next round, teams should ensure that they can answer all of these questions. In addition, teammates who are sitting in the audience should prepare constructive feedback for their teammates who are presenting that round. They should also take notes on the arguments from the opposing team, especially arguments that require further research.

105.3 Keeping a Professional and Confident Demeanour While Presenting Your Arguments

Do not forget that Jessup judges want to see interesting and enjoyable presentations. Show the judges that you enjoy presenting your arguments by engaging with them. In addition, take all questions as invitations to show how much you know. Often, judges ask more questions to the oralists who they think are the strongest. Thus, do not be concerned if you are asked challenging questions. Instead, take them as compliments and show that you can answer them well.

106. Immediately After Each Round

When the round concludes, it is appropriate to thank the judges individually and congratulate the opposing team. Judges appreciate that Jessup is about more than competition and that everyone should be professional and friendly.

Immediately after a round is over, the team should debrief. This is the time to provide constructive feedback and create a list of issues to follow-up on before the next round. After a short debrief, the attention of the team should turn to the teammates who are speaking next, and the team should work together to prepare them.

At the end of each day, go through all the questions that the judges asked which the oralists may not have answered well and as a team brainstorm on a more satisfactory answer.

107. National Rounds vs. International Rounds

The goal at National Rounds is to advance to Internationals. Yes – it is nice if you can become National Champion, but if your team's ultimate goal is to lift the Jessup Cup, then becoming National Champion means less than advancing to Internationals.

Judges at National Rounds are generally, but not always, less knowledgeable about the intricacies of international law than at International Rounds. This is acceptable and you can use it to your advantage. First, make sure your arguments at National Rounds are easy to understand. Second, leave out some of the more nuanced sections of your arguments. Third, really concentrate on responding to the judges' questions and make sure the judges understand the legal issues. Fourth, where applicable, relate international legal issues to domestic laws/legal issues, discussing analogous situations and rationales.

Conclusion

Have Fun!

Jessup is fun. Jessup is a community. Your teammates, your competitors, your coaches and your judges are and will be your peers and colleagues. Make friends, learn about other cultures, discuss international law, go out to dinner, dance – just have fun and learn. You can learn more in one week at international rounds than you can in a semester at university, so take advantage of the opportunity. If you are not having fun then you are not winning.

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