

Jessup Guide

Researching International Law

I. Introduction

Conducting research in international law can be a difficult exercise, even for experienced practitioners. The sources of international law are vast, and yet, unlike in most domestic legal systems, there is no single code of legal rules or single court whose decisions can be relied upon as comprehensive and binding. Accordingly, a well-thought-out plan of international legal research can be the difference between hours of wasted time reviewing unhelpful material and productive targeted research that provides you with relevant information for your memorials and oral pleadings.

Many Jessup competitors do not have access to a well-stocked international law library, but a team can perform well in the Jessup even with only a few international law textbooks and access to the internet (recognizing, of course, that some Jessup competitors do not even have reliable access to the internet). To give all teams a fair opportunity to access at least some of the research necessary for drafting memorials and oral pleadings, shortly after the Compromis is released the International Law Students Association (“ILSA”) distributes a package of Basic Materials consisting of key treaties, articles and other materials that are specifically relevant to the current Compromis. Every team must use these materials extensively, but not exclusively. The Basic Materials are not comprehensive and you are expected to look to other international law sources and materials.

Keep in mind that the legal issues in the Jessup Compromis change every year; this will affect what sources and materials your team relies on for research. In some years, human rights and state responsibility are the most prominent themes; in other years the law of the sea and international investment law are the focus of the Compromis. The issues will vary in each Jessup Compromis, but the need to adopt a rigorous methodology of research is always present.

This part of the White & Case Jessup Guide provides guidance to Jessup teams conducting international legal research. It is not intended to be comprehensive, but will help you devise a research plan of primary and secondary sources to consult,

which in turn will lead you to other valuable materials. We have organized this part to reflect the hierarchy of sources of international law as listed in Article 38(1) of the Statute of the International Court of Justice (“ICJ” or “Court”), and have indicated where to find them on the internet (when possible) and how to utilize these sources and materials in your research. We have also included a list of Fundamental Resources, developed by the International Law Students Association (ILSA), to help with your research (see Appendix A).

II. Starting to Research: The Jessup Compromis

The first place to begin your research is the Compromis itself. Read the Compromis carefully and regularly, and keep a copy of it with you at all times during your research, writing of the memorial and oral pleadings practice. It contains many important factual details and subtleties that are easily overlooked, and also frames the legal issues you will need to research. Take careful note of which conventions and treaties are applicable to each party and, also, whether there are any fictional agreements between the two parties.

For more information on working with the Jessup Compromis, see the “[Working with the Jessup Compromis](#)” section of the White & Case Jessup Guide.

III. Article 38(1) of the Statute of the International Court of Justice

Article 38(1) of the Statute of the ICJ, which every Jessup competitor should commit to memory, sets out the sources of international law that the Court uses when making its decision. It states:

“The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

- (a) International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

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- (b) International custom, as evidence of a general practice accepted as law;
 - (c) The general principles of law recognized by civilized nations;
 - (d) Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

While some scholars and international lawyers might disagree, the prevailing view is that this list outlines a hierarchy of importance; that is, treaties will generally be thought of as more important than customary international law, while customary international law will be more important than "general principles of law," and so forth.

Article 38(1) is repeatedly referred to by Jessup judges, so every competitor should have a thorough understanding of each source of international law and its relative importance. Below is a brief description of each category, with examples and suggestions for research.

A. Treaties and International Conventions

Each year, the Jessup Compromis either refers directly to or involves the application of international treaties and conventions (it is common in the Jessup that one disputant state will be party to a particular treaty while the other is not). Conventions that are commonly applicable to one or both parties in the Jessup Competition include the Universal Declaration of Human Rights, the United Nations Charter, the Vienna Convention on the Law of Treaties, the Vienna Convention on Diplomatic Relations, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Statute of the ICJ itself will often be directly relevant, especially if there is an issue regarding jurisdiction of the Court.

Most international conventions and other important international treaties are available on the United Nations Treaty Series ("UNTS") website (<http://treaties.un.org>). This database is notable for its breadth and scope and also tracks the status of signature and ratification of various treaties and conventions, as well as reservations/declarations of the parties. The UNTS should be constantly consulted during your preparation for the memorials and oral rounds.

The conventions discussed below are by no means comprehensive, but they will provide guidance to those treaties that are typically relevant to the Jessup Competition year after year.

1. Charter of the United Nations

The Charter of the United Nations sets out the governing principles and functions of the main bodies of the United Nations. The duties of the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat are listed, and the Charter is generally considered to be binding upon all United Nations member states, although debates exist over the meaning of specific articles. The Charter is available online at www.un.org/aboutun/charter/index.html.

2. Vienna Convention on the Law of Treaties

The Vienna Convention on the Law of Treaties ("VCLT") was drafted in 1969 and entered into force in 1980. The VCLT codified long-standing practices regarding treaty interpretation and compliance, and, for this reason, many if not all of its provisions are considered to be customary international law, binding upon all states regardless of ratification. Often-cited provisions in the VCLT include Article 19 (Formulation of reservations), Article 26 (Pacta sunt servanda), Article 31 (General rule of interpretation) and Article 32 (Supplementary means of interpretation). Article 32 may be employed when citation of the preparatory work (travaux-preparatoires) of a treaty is necessary to ascertain the meaning of a certain provision.

The Jessup Compromis almost always involves one or more of the provisions of the VCLT, so all competitors should be intimately familiar with this document. The VCLT is available online at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.

3. Universal Declaration of Human Rights

The Universal Declaration of Human Rights ("UDHR") was adopted in 1948 by a resolution of the United Nations General Assembly. There is some debate over whether the rights listed in the UDHR are binding upon United Nations member states, or whether they constitute customary international law. This controversy will often be relevant in years when the Jessup Compromis involves human rights, and, when it does, the UDHR is a critical source of law for all competitors. The Declaration is available online in dozens of languages at www.un.org/en/documents/udhr.

4. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights

The International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social

and Cultural Rights (“ICESCR”) are twin treaties that were adopted in 1966 and entered into force in 1976. Generally stated, the ICCPR contains the rights that a state must refrain from violating, while the ICESCR sets out rights that a state must provide for its citizens. In addition to the debate as to what provisions of these treaties, if any, constitute customary international law (a common theme in the Jessup Competition), there is also debate as to the binding nature of the ICESCR relative to the ICCPR. The ICESCR requires affirmative state action that may be difficult for states to implement in practice. These and other legal debates with respect to the ICCPR and ICESCR mean that you will have to work hard to gather enough research to show a particular provision of either convention constitutes customary international law. In years when the Compromis deals with human rights, the ICCPR and ICESCR are almost always directly relevant.

The ICCPR and the ICESCR, as well as other important human rights treaties, are available online at www2.ohchr.org/english/law.

5. Other Important Conventions

In years past, the Jessup Compromis has dealt with the United Nations Convention on the Law of the Sea (“UNCLOS”), which can be found at www.un.org/depts/los/index.htm.

Diplomatic and consular relations and the immunities of international organizations are often the focus of the Jessup Competition. The Vienna Convention on Diplomatic Relations (“VCDR”), Vienna Convention on Consular Relations (“VCCR”) and the Convention on the Privileges and Immunities of the United Nations are particularly relevant and are available on the United Nations treaty website at <http://treaties.un.org>.

The Jessup Compromis from time to time deals with international trade and investment law issues (for example, expropriation of foreign investment, most favored nation treatment), although the legal questions are typically framed as questions of customary international law rather than the application of specific trade and investment treaties. Nonetheless, certain multilateral commercial conventions may be important for your research, including, for example, the United Nations Commission on International Trade Law (“UNCITRAL”) Model Law on International Commercial Arbitration (www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”) (www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html). Given the rising prominence of investor-state arbitration, bilateral and multilateral

investment treaties are of great importance. The United Nations Conference on Trade and Development provides information and links to the more than 2,000 bilateral investment treaties currently in force (www.unctad.org).



Judges at the 2009 Georgian Jessup Competition

B. Customary International Law

Customary international law is a body of law which is binding on all states, whether or not the law is codified in treaties or has been agreed to by states.

1. Elements of Custom

Rules of customary international law arise from (1) consistent and widespread state practice and (2) a sense of legal obligation on the part of states (*opinio juris*). It is important to note that both factors must be present in order for such norms to qualify as custom (although some scholars suggest that *opinio juris* may be implied from consistent and widespread state practice and need not always be proven separately). Jessup memorials must always refer to these elements of custom and seek to provide convincing evidence to prove or disprove a rule of custom. During oral pleadings, Jessup judges will often ask competitors detailed questions about state practice and *opinio juris*, so every Jessup competitor should be prepared to engage in an extensive and substantive discussion on the nature of customary international law.

Proving that a particular norm is customary international law can be difficult, and you will need to support any assertion that a norm is customary international law with multiple sources. For example, in the Best Respondent Memorial—Baxter Award Winner for “The Case Concerning *The Mairi Maru*” (2005), the team presented the following argument:

“Despite common usage of the term, this Court must apply the definition of piracy set out under customary international law. That definition is codified identically in the Geneva Convention on the High Seas and the United Nations Convention on the Law of the Sea. Both agreements reflect customary international law with respect to all matters related to this dispute.”

The footnote to the last sentence above contained both the conventions listed as well as judicial decisions and treaties supporting the contention that the conventions reflect customary international law:

“3. See High Seas Convention, *supra* note 1, Preamble; Case Concerning Delimitation of the Maritime Boundary of the Gulf of Maine Area (*Can. v. US*), 1984 I.C.J. 246, 294; Case Concerning the Continental Shelf (*Libya v. Malta*), 1985 I.C.J. 13, 30; Case Concerning the Arbitral Award of 31 July 1989 (*Guinea-Bissau v. Sen.*), 1990 I.C.J. 64, 72, (separate opinion of Judge Evensen); Case Concerning Passage through the Great Belt (*Fin. v. Den.*), 1991 I.C.J. 12, 13; Restatement (Third) of Foreign Relations Law of the United States, Part V, Introductory Note [hereinafter Restatement of Foreign Relations].”

Among the most widely accepted customary norms are those that are considered “peremptory,” or *jus cogens*, meaning rules that are binding upon all states and no derogation is permitted, by treaty or otherwise. Examples of *jus cogens* include the prohibition on maritime piracy, slavery and genocide.

2. Identifying State Practice and *Opinio Juris*

There is no single way to find evidence of state practice, and the sources and materials to consult will depend on the subject matter of the customary rule sought to be proven or disproven. However, Jessup competitors are expected to make the effort to research the typical sources of evidence to prove customary international law: diplomatic correspondence, policy statements and press releases by states, opinions of Ministry of Foreign Affairs (or other state government) legal advisors and official rules and procedures adopted by national governments (for example, military manuals).

A first step is to consult the websites of states’ foreign ministries in order to find statements and policies on current events and the status of various treaties. States which provide substantive documentation on their websites include the United States (www.state.gov), the United Kingdom (www.fco.gov.uk),

Canada (www.international.gc.ca), France (www.diplomatie.gouv.fr), China (www.fmprc.gov.cn), India (www.meaindia.nic.in/) and Russia (www.mid.ru).

Research and advocacy organizations also publish commentary on state practice on specific issues (for example, Human Rights Watch and Amnesty International). The International Committee of the Red Cross (www.icrc.org) publishes *Customary International Humanitarian Law*, which is an indispensable resource for evidence of state practice with respect to international humanitarian law (a favorite Jessup topic). The International Law Association (www.ila-hq.org) is also an excellent source for studies on various international legal topics.

The resolutions of international organizations (such as the General Assembly of the United Nations) may also be used as evidence of customary international law. UN General Assembly resolutions and the resolutions of other UN bodies are available at www.un.org. When considering whether to use such resolutions as evidence of custom, you need to research whether they have been endorsed by a large number of states, whether the resolution was adopted with or without a vote and whether the legal principles contained in the resolution have been previously stated in other resolutions. These are important considerations because they go towards the “widespread state practice” and *opinio juris* requirements of custom. When making written or oral arguments, the more resolutions or comments from an international organization you can point to that cite a particular principle of law, the stronger your argument that the principle is customary international law.

As will be explained further below, a great source of research is always the International Law Commission (“ILC”) at www.un.org/law/ilc. The ILC includes in its annual reports to the General Assembly draft articles codifying principles that it considers to be customary international law (See Section E below). State commentary to such draft articles under consideration can also be used as evidence of state practice.

Finally, an often overlooked research resource that has only become easily accessible in recent years are the written submissions by states appearing in cases before the ICJ, many of which are available on the Court’s website (www.icj-cij.org). The Memorials themselves are, of course, not evidence of custom. However, if you look carefully at the footnotes in the Memorials submitted by the disputant states, you might find a wealth of evidence your Jessup team can rely on as well. Depending on the rule of custom sought to be proven, you may find that the disputant states have done much of the work for you.

3. National Legislation and Judicial Decisions

If enough countries have adopted similar legislation setting out a particular rule (for example, “polluter pays”), this may be used not only as evidence of state practice, but that states feel legally obligated to implement such rule (i.e., *opinio juris*). Similarly, if there are widespread judicial rulings that find the existence of the same legal rule (for example, “duty to consult” with respect to use of international watercourses), such decisions may be used as evidence to prove custom.

Accessing national legislation and domestic court rulings has become easier because of the internet. Some online resources are provided in Part IV.

4. Counter-arguments to a Claim of Customary International Law

Jessup teams are often required to argue that a particular rule is not customary international law. When conducting research for such “negative” evidence, focus on finding conflicting legal theories from qualified publicists or conflicting judicial decisions on the status of a principle as customary international law. Look for “persistent objectors,” i.e., states that constantly refuse to acknowledge or comply with the rule principle in question—this may undermine an argument that a particular rule constitutes

custom, or at the very least may exempt the persistent



The 2009 White & Case Polish Jessup Competition before an oral round

objector(s) from the application of that rule. Jessup teams should also consult, when they are available, the *travaux-preparatoires* (preparatory work) for the treaties. Long negotiations or lack of agreement among states during the

negotiation of a treaty may indicate that a principle has not yet risen to the level of custom. Finally, state reservations to treaties should also be considered.

Jessup competitors are often required to argue that a particular treaty rule is also a codification of customary international law (be careful not to argue that the entire treaty, as opposed to a particular provision, constitutes custom—this is almost never true). This issue often arises with respect to treaties like the VCLT, the Geneva Conventions, the Convention Against Torture, UNCLOS and the ICCPR/ICESCR. When conducting your research into whether a particular treaty provision also qualifies as a rule of customary international law, consider the following: whether the relevant principle is accepted by a large number and variety of states (and possibly included in more than one international treaty); whether the principle is applied in the same way and for the same purpose by states and whether the principle has been practiced for a long period of time, regardless of the treaty date. Focus your research on these questions and your arguments will be enhanced significantly.

C. General Principles of Law

The “general principles of law recognized by civilized nations” as set out in Article 38(1)(c) of the ICJ Statute is traditionally considered to include such broad legal concepts as good faith, estoppel, equity, proportionality and *res judicata*—fundamental concepts that are found in every municipal legal system.

“General principles of law” may also refer to those general principles that emerge out of international relations, as opposed to national domestic legal systems (for example, “sovereign equality of states” and “non-intervention” are often referred to as “general principles of law”).

Researching “general principles of law” usually overlaps with the same sources as those for customary international law. With respect to those general principles of law from domestic legal systems, they are often referred to and identified in national codes or judicial decisions, particularly those of a state’s highest court. For example, in the Best Respondent Memorial for “The Case Concerning *The Mairi Maru*” (2005), the team stated that:

“[The] ‘polluter pays’ principle has been recognized as a ‘general principle of international law.’ (180) International jurisprudence supports this contention, especially the *Trail Smelter*, *Lac Lanoux*, *Corfu Channel* and *Gut Dam* cases. (181) The OECD encourages nations to implement the ‘polluter pays’ principle in domestic regulation, (182) a directive widely followed. (183)”

The footnotes to this paragraph include several national legal codes:

“183. See, e.g., Cass. civ., 15 Jun. 1972, D. 1973 312, note Michel Despax (Fr.); General Principles of the Civil Law of the People’s Republic of China, art. 124; RS 814, 8 Oct. 1971, arts. 36(1), 36(4) (Switz.)”

The laws and high court decisions of many countries are increasingly available on the internet (see Part IV). Additionally, Professor Bin Cheng’s treatise, *General Principles of Law as Applied by International Courts and Tribunals* (Cambridge, 2006) is a comprehensive authority on arbitral and judicial decisions that have relied upon general principles.



A Jessup team preparing for an oral round in the 2009 White & Case Russian Jessup Competition

D. Judicial Decisions

The International Court of Justice is not bound by precedent (see Article 59 of the ICJ Statute). However, its own decisions and the decisions of other courts and arbitral tribunals may be used by the Court as persuasive authority.

Which courts and arbitral tribunals are relevant for a particular legal issue will depend on the subject matter of the Compromis. For example, if the Compromis involves issues of indigenous rights, domestic court decisions from countries such as Australia, New Zealand and Canada may be helpful, since those countries have significant indigenous populations. If you are looking for authority on crimes against humanity or broader issues in international law, the ICJ itself or the international ad hoc tribunals (such as the ICTY and ICTR—see below) will be more useful. Decisions of arbitral tribunals established under the auspices of the International Centre for Settlement of

Investment Disputes will be relevant for a Jessup Problem involving international investment law.

A brief summary of the main international courts most often relevant for the Jessup are described below.

1. International Court of Justice

The ICJ was established in 1945 by the Charter of the United Nations and is the principal judicial organ of the United Nations. Only states may submit legal disputes to the Court, although United Nations organs and other agencies may request advisory opinions on legal issues. The Court’s decisions in contentious cases are binding upon the two state parties involved, but advisory opinions are nonbinding.

The ICJ’s website (www.icj-cij.org) is comprehensive and generally easy to navigate. On the left side of the homepage is a navigation bar: “The Court” contains procedural and other information about the ICJ, and “Cases” gives you the option of narrowing your search to either contentious cases or advisory proceedings. The cases are listed chronologically, with the most recent decisions (or pending cases) near the top of the page. Written pleadings and transcripts of oral hearings are sometimes available on the ICJ website and can be quite useful. Commonly-cited ICJ cases in the Jessup Competition include the *Corfu Channel* case, the *Nicaragua* case and the *Arrest Warrant of 11 April 2000* case.

2. Permanent Court of International Justice

The Permanent Court of International Justice (“PCIJ”) was the predecessor of the ICJ and was established in 1922, as provided in the Covenant on the League of Nations. The PCIJ was the first tribunal with general jurisdiction and several of its decisions, such as the *Case of the S.S. Lotus*, *Mavrommatis Palestine Concessions* and *Legal Status of Eastern Greenland* are still cited by the ICJ in its judgements. These PCIJ rulings are almost always relevant for the Jessup Competition. The PCIJ was dissolved in 1946 after the Charter of the United Nations provided for the establishment of the ICJ. The PCIJ’s decisions and reports are available on the ICJ’s website. On the left side of the homepage is a tab titled “Permanent Court of International Justice.” Once you click this tab, there are instructions on how to find specific cases and reports from the PCIJ.

3. European Court of Human Rights

The European Court of Human Rights (“ECHR”) was established in 1959, following the adoption of the Convention for the Protection of Human Rights and Fundamental Freedoms in the

Council of Europe in 1953. The ECHR is a permanent court and has jurisdiction over states alleged to have committed violations of rights contained in the Convention. Unlike the ICJ, the ECHR accepts cases brought by individuals as well as states.

Even though its rulings are based upon a regional human rights treaty, the decisions of the ECHR are still important persuasive authority in the area of international human rights law and are a key source for Jessup competitors when the Compromis involves human rights.

The ECHR's website is www.echr.coe.int. Everything on the ECHR's website is available in English and French, and the homepage has links to "The Court" which provides background information about the ECHR. There is also a "Case-Law" button that leads you to the ECHR's "HUDOC" search engine, in which you can input information about the case (title, quotations, respondent state, application number, etc.) in order to find the full text of the case. Documents from both pending and completed cases are available, as well as advisory opinions and resolutions.

4. International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia ("ICTY") was established in 1993 by United Nations Security Council Resolution 827. The ICTY has jurisdiction over individuals alleged to have committed four categories of crimes in the former Yugoslavia during the ethnic conflicts of the 1990s: genocide, crimes against humanity, war crimes and grave breaches of the Geneva Conventions.

The ICTY website is www.un.org/icty. The website's home page contains information about the ICTY under the heading "ICTY at a glance." The Statute of the ICTY and other procedural documents are available under the heading "Basic legal documents." To search for cases, click on "ICTY Cases and Judgments." You can search for cases either by the case numbers (if you already have a citation for the case you are looking for) or by the name of the accused. Searching by name can make the process easier, especially when looking for the well-known ICTY cases (for example, Tadic, Karadzic or Krstic).

5. International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda ("ICTR"), similar to the ICTY, was established in 1994 by a United Nations Security Council resolution. The ICTR has jurisdiction over individuals alleged to have committed genocide, crimes against

humanity and war crimes in Rwanda and neighboring states during the 1990s.

The ICTR website is <http://69.94.11.53/>. The structure is different from that of the ICTY website. The website's front page provides a choice of viewing the website in English, French or Kinyarwanda. Once you choose a language, you enter the main website. On the left side are various headings: "About the Tribunal" will take you to information about the ICTR and its establishment. The Statute of the ICTR, the Security Council resolution establishing it and other procedural documents are available under the heading "Basic Legal Texts." To search for cases, click on the heading "Cases," and then "Status of Cases." This will lead you to a page where you will see all of the indictments and judgments listed alphabetically according to the current status of the cases. For example, documents relating to the *Akayesu* and *Nahimana* cases can be found under "Completed Cases."

6. International Military Tribunal

The International Military Tribunal was convened in 1945 in order to try the most prominent members of the Nazi leadership in Germany. It is the best-known of the tribunals established following World War II and it is considered the beginning of the development of international criminal law. Decisions from the International Military Tribunal can be located by the names of the officials indicted at www.yale.edu/lawweb/avalon/imt/proc/judcont.htm.

7. Inter-American Court of Human Rights

The Inter-American Court of Human Rights ("IACHR") was established in 1979 for the purpose of implementing and enforcing the American Convention on Human Rights. The Convention has been ratified by twenty-five North and South American states and is therefore binding upon those states. The IACHR has jurisdiction over human rights violations committed by states-party to the Convention, and cases may be referred to it by either the Inter-American Commission on Human Rights (another organ of the Organization of American States dedicated to the protection of human rights) or by other states-party.

The IACHR's website is www.corteidh.or.cr/index.cfm, and is available in English and Spanish. The homepage contains headings across the top: "Information" provides background information on the court, and "Jurisprudence" has links to the "Decisions and Judgments" and "Advisory Opinions." The cases under both sections are listed chronologically, with the most recent cases at the bottom of the page. The "Jurisprudence"

heading also allows you to search for cases by respondent country. Notably, the “Jurisprudence” heading also provides the orders that the IACHR issues to states to implement their judgments under “Compliance with Judgment.”

8. Other International Human Rights Courts and Tribunals

Various United Nations human rights bodies provide mechanisms for individuals to file complaints against states with respect to violations of key UN human rights conventions (for example, the Convention against Torture and the Convention on the Elimination of Racial Discrimination). Decisions of such bodies may be a valuable resource to Jessup competitors when the Compromis deals with Human Rights and can be found under the “Human Rights Bodies” tab on the Office of the High Commissioner for Human Rights website at www.ohchr.org.

The International Criminal Court (“ICC”) (www.icc-cpi.int) will undoubtedly be closely monitored within the international legal community.



Jessup judges deliberating at the International Rounds

9. Permanent Court of Arbitration

The Permanent Court of Arbitration (“PCA”) was established in 1899 by the Hague Convention on the Pacific Settlements of International Disputes. The PCA has more than 100 member states, and provides dispute resolution assistance for cases involving states, state-owned entities, inter-governmental organizations and private parties (for example, facilitating arbitrations, hearing facilities at The Hague).

The PCA has taken on greater importance in recent years, largely because of the rise in international investment treaty arbitration

(the PCA is currently administering more than twenty investment arbitrations). The PCA has also administered numerous boundary disputes (for example, Eritrea-Ethiopia) and disputes involving the Law of the Sea (for example, *Ireland v. United Kingdom* (the “MOX Plant Case”). Jessup competitors should always consult the PCA website for useful but often overlooked precedent.

The PCA’s website (www.pca-cpa.org) contains a tab at the top labeled “Cases,” which has a partial list of past and pending cases, with accompanying documents.

10. Other Specialized Courts/Tribunals

There are several international tribunals whose rulings may be of great value to Jessup competitors, depending on the subject matter of the Compromis. Any Jessup Problem that deals with international investment will require extensive research of the decisions of the Iran-US Claims Tribunal (www.iusct.org/) and arbitral decisions under the auspices of the International Centre for Settlement of Investment Disputes (www.worldbank.org/icsid/). Jessup Problems that deal with international trade will require research of the decisions of panels at the World Trade Organization (www.wto.org). If the Jessup Compromis deals with the law of the sea, the decisions of the International Tribunal for the Law of the Sea (www.itlos.org) will be crucial.

E. Highly Qualified Publicists

1. Books/Articles

The “teachings of the most highly qualified publicists” can be found in books and articles by legal scholars. When citing the work of a publicist as persuasive authority, be cognizant of the publicist’s standing in the international legal community and the degree to which the publicist’s views are shared by others. Scholars who are widely known and respected are more persuasive than scholars who are less familiar to the Court.

Below is a sample of classic general treatises by highly qualified publicists that Jessup competitors rely upon every year. They are an excellent starting place for research on a wide range of legal topics, and their bibliographies and footnotes will point you to further and more specific sources.

- Ian Brownlie, *Principles of Public International Law* (6th ed. 2003)
- Vaughan Lowe, *International Law* (Oxford, 2007)

□ L. Oppenheim, *Oppenheim's International Law*, Part 1 and 2 (Robert Jennings and Arthur Watts eds., 9th ed. 1992)

□ Malcolm N. Shaw, *International Law* (5th ed. 2003)

Textbooks in other languages can and should be utilized, when appropriate:

□ Pierre-Marie Dupuy, *Droit International Public* (9th ed. 2008)

□ Alain Pellet, *Droit International Public* (7th ed. 2002)

The publication of The Hague Academy of International Law, *Receuil des Cours* (Collected Courses), is a highly respected collection and invaluable resource for Jessup competitors. Some university libraries have the entire collection of books (which go back more than 80 years), others have an online subscription (www.nijhoffonline.nl/pages/recueil-courses). Given the prestige of The Hague Academy and those publicists whose lectures are the basis for the Collected Courses, citations to them are especially credible in the Jessup Competition.

Although the *Restatement of the Law Third, Foreign Relations of the United States* published by the American Law Institute is specifically applicable to the United States, its sheer breadth and detail make it a worthwhile resource for any Jessup competitor. The *Encyclopedia of Public International Law*, published by the Max Planck Institute for Comparative Public Law and International Law, is a comparably invaluable starting point.

Annual yearbooks of international law—the *British Yearbook of International Law*, *Netherlands Yearbook of International Law*, *Annuaire Français de Droit International*, just to name a few—are also credible academic sources. Law journals are also key sources; the more prestigious the publication (for example, the *American Journal of International Law*), the more credible the source, in the eyes of Jessup judges.

Articles in journals and yearbooks can be found by conducting online searches with LexisNexis, Westlaw, or HeinOnline. Jessup competitors are usually given free access to these databases (contact the International Law Students Association for information). Try to consult publications from different countries and authors from different backgrounds in order to gain a broad perspective on the topics you are researching and to avoid being overly influenced by a particular point of view.

2. International Law Commission

Another important source of “teachings of the most highly qualified publicists” is the work of the International Law Commission. The ILC was established by resolution of the UN General Assembly in 1947 for the “promotion of the progressive development of international law and its codification” pursuant to Article 13, paragraph 1 of the UN Charter. It is comprised of 34 members elected by the General Assembly who are drawn from academia, diplomacy, government ministries and international organizations.

To promote the “codification” of international law, the ILC publishes draft articles setting out what it considers to be rules of customary international law where there has already been extensive state practice, precedent and doctrine. These draft articles are accompanied by commentaries, written by a Special Rapporteur appointed by the ILC, and provide illustrative cases and analysis critical to a thorough understanding of the law sought to be codified. One key example of the ILC’s work (and always important for the Jessup) is the Draft Articles on Responsibility of States for Internationally Wrongful Acts, commonly referred to as the “Draft Articles on State Responsibility” or simply “Draft Articles.”

Each year the ILC publishes its *Yearbook of the International Law Commission*, containing its annual report to the General Assembly as well as any draft articles and commentaries adopted at its annual plenary session. The Yearbooks are available on the internet at www.un.org/law/ilc/.



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IV. Electronic Resources

The internet contains vast resources for researching international law. The list below is not meant to be comprehensive or exhaustive, but should lead you to many other important sources for purposes of the Jessup Competition.

□ American Society of International Law (ASIL)

<http://www.asil.org/>

The ASIL website contains the electronic resources below as well as ASIL publications and transcripts of recent ASIL meetings and speeches.

- ASIL's Electronic Information System for International Law (EISIL) at <http://www.eisil.org/>

EISIL contains a collection of primary documents and websites organized by area of law. The human rights area is broken down by subject matter.

- ASIL's Electronic Resource's Guide (ERG) <http://www.asil.org/erghome.cfm>

ERG is a thorough, up-to-date research guide organized by area of law, including human rights.

□ Avalon Project at Yale Law School

<http://www.yale.edu/lawweb/avalon/avalon.htm>

This website provides a collection of historical treaties from pre-18th century through the 20th century.

- ### □ Bayefsky
- <http://www.bayefsky.com/>

This site is devoted to the UN human rights treaty system with complete information on the seven core UN human rights treaties. This site is searchable by subject matter and links to human rights websites hosted by the UN and by universities and NGOs.

□ Compilations and Collections of Laws from Numerous Countries

<http://www2.lib.uchicago.edu/~llou/foreignlaw.html#countries>

- ### □ Constitutions of the World
- <http://confinder.richmond.edu/>

- ### □ Foreign Primary Law on the Web
- <http://www.law.uh.edu/libraries/fi/foreignlaw.html>

□ The Lauterpacht Centre for International Law

<http://www.lcil.cam.ac.uk/>

Part of the Faculty of Law at Cambridge University, the Lauterpacht Centre for International Law provides topical publications and lecture transcripts.

□ List of Guides for Foreign Legal Research

http://www.law.columbia.edu/library/Research_Guides/foreign_law/foreignguide

□ The Max Planck Institute for Comparative Public Law and International Law

<http://www.mpil.de/ww/en/pub/news.cfm>

The Institute is a research center for current developments and issues in international law, with an Online Public Access Catalogue containing books and articles.

□ Multilateral Treaties Deposited with the UN Secretary General and UN Treaties Database

<http://untreaty.un.org/>

<http://treaties.un.org/>

The multilateral treaty database website tracks the status of more than 290 treaties drafted under the UN and League of Nations. It also provides status information and the reservations/declarations of the parties. It is limited to those treaties deposited with the Secretary General.

□ Tufts Fletcher School Multilaterals Project

<http://fletcher.tufts.edu/multilaterals.html>

This website contains a collection of multilateral conventions and other agreements organized chronologically and by subject. Most treaties provided here are post-1945.

□ University of Minnesota Human Rights Library

<http://www1.umn.edu/humanrts/>

This website contains a collection of human rights treaties and other international instruments organized by subject matter. It lists the ratification of human rights treaties organized by country and bibliographies and links to human rights websites. You have the option to search for documents on multiple human rights sites at once, including Amnesty International and Human Rights Watch.

V. Conclusion

Researching international law can be a frustrating exercise, but it will also be immensely satisfying if done right. Without a single source of law to consult, you need to cast a wide net and be creative in your research. You should take time to think about the *Compromis* before you start your legal research and then conduct enough research so you can start writing your memorials based on a detailed outline. As with everything in the Jessup, leave yourself a lot of time, be deliberate and be strategic.

Appendix A—Fundamental Resources

This list of Fundamental Resources was compiled by the ILSA Executive Office.

I. Resources Available from the ILSA Website

Jessup Research Homepage

- Research tips and links to resources <http://www.ilsa.org/jessup/research.php>

Video Recordings of Past World Championship Rounds

<http://www.ilsa.org/merch/dvd.php>

- DVD videos (years 2004-2009 are available in DVD format) US\$40.00
- VHS videotapes, PAL format (limited years available) US\$5.00
- VHS videotapes, NTSC format (limited years available) US\$5.00

Basic International Legal Materials

<http://www.ilsa.org/jessup/materials.php>

- 2010 Jessup Competition Basic Materials List, Batch 1 (October, 2009)
- 2010 Jessup Competition Basic Materials List, Batch 2 (December, 2009)

II. Resources Available from the ILSA Executive Office

Publications

- *ILSA Quarterly* (most recent issue)
Free to registered teams
- Bob Beckman's Introduction to *International Law*
Free to registered teams

III. Resources Available from Outside Sources

Online Legal Research

- **International Court of Justice cases** <http://www.icj-cij.org/docket/index.php?p1=3> (organized by year and case type (contentious cases and advisory proceedings); includes pending cases)
- **Basic documents governing the International Court of Justice** <http://www.icj-cij.org/documents/index.php?p1=4> (includes the UN Charter, the Statute of the Court, and the Rules of Court)
- **Database of all treaties in the United Nations Treaty Series** <http://treaties.un.org/Pages/UNTSONline.aspx?id=1> (searchable by treaty name, participant country, key dates, and treaty full text)
- **Status of all multilateral treaties deposited with the UN Secretary-General** <http://treaties.un.org/Pages/Treaties.aspx?id=1&subid=A&lang=en> (searchable by type of treaty and name of treaty; includes date entered into force, number of signatories, number of parties, participants by country name, and dates of accession, succession, and ratification)
- **Categorized United Nations Documents** <http://www.un.org/en/documents/index.shtml> (includes links to key documents, UN General Assembly sessions and resolutions, Security Council meeting records and resolutions, and the Secretary-General's annual reports; links are organized by UN body and document type)
- **Official Documentation System of the United Nations (ODS)** <http://documents.un.org/> (includes resolutions of the General Assembly, Security Council, Economic and Social Council and the Trusteeship Council from 1946 onwards; includes all types of official United Nations documentation from 1993 onwards; older documents are added to the system on a daily basis; documents are searchable by date, symbol, session, agenda item number, and full text)

Appendix A—Fundamental Resources (Cont'd)

□ **United Nations Documentation Research Training Guides** <http://www.un.org/depts/dhl/resguide/train.htm>

(includes instructional PowerPoint presentations about how to retrieve documents using the Official Document System and the Bibliographic Information System, the journey of documents through the Security Council, and searching the UN website)

□ **International Law Commission** <http://www.un.org/law/ilc/>

(includes a research section with links to text, instruments and final reports; annual reports; summaries; and an analytical guide to the Commission's work organized by legal issue)

Mooting and Legal English Guides

□ White & Case Jessup Guide

<http://jessup.whitecase.com/newsdetail.aspx?news=2450>

□ ILSA Guide to International Moot Court Competition, available from the International Law Institute, US\$30.00

http://www.ili.org/publishing/ilsa_guide.htm

□ Kee, Christopher, *The Art of Argument—a guide to mooting*, Cambridge University Press

□ Wojcik Mark E., *Introduction to Legal English: An Introduction to Legal Terminology, Reasoning, and Writing in Plain English*, 3rd ed., International Law Institute

<http://www.ili.org/publishing/l.eng.htm>

Treatises and Casebooks on International Law

□ Buerghenthal, Thomas and Sean Murphy, *Public International Law in a Nutshell*, West Publishing (2006)

□ Brownlie, Ian, *Basic Documents in International Law*, 6th ed., Oxford University Press (2009)

□ Brownlie, Ian, *Principles of Public International Law*, 7th ed., Oxford University Press (2008)

□ Harris, D.J., *Cases and Materials on International Law*, 6th ed. Sweet & Maxwell (2004) [7th ed. Forthcoming (May 31, 2010)]

□ Gardiner, Richard, *Treaty Interpretation*, Oxford University Press (2008)

□ Jennings, Robert and Arthur Watts, *Oppenheim's International Law: Volume 1 Peace* (v. 1), 9th ed., Oxford University Press (2008)

□ Shaw, Malcolm N., *International Law*, 6th ed., Cambridge University Press (2009)

Jessup Collections

□ Jessup Compendium, a compilation of Competition Problems and winning memorials from prior years, available for purchase from HeinOnline.

<http://www.wshein.com/Catalog/Product.aspx?sku=4160>

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We look forward to the opportunity to meet many of you throughout your participation in the Jessup. If you have questions, comments or suggestions about the White & Case Jessup Guide, or the Firm's participation in the Jessup, please contact

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