

# Jessup Guide

## Working with the Jessup Compromis

### I. Introduction to the Compromis

The Jessup Compromis (also called the Jessup Problem) is a hypothetical case involving topical issues of international law published by the International Law Students Association ("ILSA") in September every year. The Compromis uses a limited set of facts concerning a dispute between two fictional states appearing before the International Court of Justice (the "ICJ" or the "Court"). The two states seek particular orders or declarations from the ICJ in relation to the dispute. The facts, and the orders or declarations being sought by the parties, suggest a number of legal issues which must be addressed in written and oral argument.

Each Jessup team must first analyze the Compromis and identify the relevant facts and legal issues. This analysis forms the foundation of your work for the Competition. Analyzing the Compromis effectively is critical to your other tasks in the Competition: performing legal research, developing legal arguments, writing memorials and preparing oral arguments.

This section of the White & Case Jessup Guide sets out an approach which will help you get the most out of working with the Compromis. To illustrate certain concepts, we use the Compromis from the 2005 Jessup Competition: "The Case Concerning the Vessel *The Mairi Maru*." Keep in mind that this approach is merely a recommendation and certainly not the only way to analyze the Compromis.

### II. Understanding How the Compromis is Drafted

The Jessup Compromis is a complicated document, but is drafted in such a way that balances legal issues between the parties with each issue given the appropriate weight and importance. The authors of the Compromis try to include enough interesting aspects to the Problem to sustain the writing of two memorials and 90 minute oral presentations. However, the authors are aware that the workload must be manageable and try to ensure that the issues can be adequately addressed within the Competition limitations.

Understanding how the Compromis is drafted is an important first step in your competition preparation and should help you perform an analysis more effectively.

#### A. Major Topics Indicated by the Prayers for Relief

The Compromis generally has four "Prayers for Relief" (i.e., a statement of what kind of relief the requesting party wants from the Court), representing four major topics. The Compromis will usually have a major theme, with the facts and issues structured around that theme.

For example, in the Compromis for "The Case Concerning the Vessel *The Mairi Maru*," the Prayers for Relief for each Party were as follows:

#### *Appollonia requests that the ICJ adjudge and declare:*

- (a) Raglan is responsible for the attack upon and wreck of *The Mairi Maru* and all consequences thereof by virtue of (1) its failure to respond appropriately to pirate activities in its archipelagic waters and (2) the acts of Thomas Good, which are imputable to Raglan.
- (b) Raglan is responsible for the loss of *The Mairi Maru* and the MOX and other cargo that she carried, because its scuttling of the vessel was illegal, and therefore owes compensation to Appollonia on behalf of its citizens who suffered direct financial and other losses.
- (c) Raglan does not have standing to seek compensation for economic losses resulting from acts that occurred wholly outside of its territorial waters and exclusive economic zone.
- (d) Appollonia did not violate any obligations owed to Raglan under international law in transporting MOX through the waters of the Raglanian Archipelago.

#### *Raglan requests that the ICJ adjudge and declare:*

- (a) Raglan is not responsible for the attack on *The Mairi Maru* and owes no compensation to Appollonia for any injury resulting therefrom.

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- (b) Raglan did not violate any obligation owed to Appollonia under international law in the scuttling of *The Mairi Maru*.
  - (c) Appollonia violated international law by transporting MOX through Raglan's archipelagic waters without prior notification to or the consent of that state.
  - (d) Appollonia is responsible for the damage to the sandbar and the surrounding waters as a result of its unlawful shipment of MOX, and must compensate Raglan for both the resulting injury to its fishing and tourist industries and the cost of decontaminating the area.

In broad terms, the theme in the above illustration centers around legal issues related to the law of the sea. The major topics raised by these Prayers for Relief are:

- Piracy (or other wrongful acts against vessels at sea) and preventing such acts
- State destruction of a private vessel at sea
- Environmental harm arising from polluting the sea
- Transportation of toxic or hazardous substances at sea

The topic and full scope of the issues associated with each Prayer for Relief will not always be clear until you have performed both a detailed analysis of the Compromis and some legal research.

## B. Balance Between the Parties

The Jessup Competition is intended to be a relatively fair match between the two arguing sides. Jessup judges want to focus on your team's ability to prepare and present good legal arguments, rather than decide which team has the "winning" legal argument. Therefore, most Jessup Problems are written with the goal of balance. In order to maintain that balance, certain facts are included, or omitted, so that the issues do not overwhelmingly favor one side. Often, the facts are drafted so that there is a degree of ambiguity: the goal of the authors is to avoid clear answers as to which side is right, thus allowing both parties to use particular facts in their favor to argue their case.

Once you begin your research, if you find that the facts and the law for a particular issue seem only to support either the Applicant or Respondent, you should continue to research with extra care. Most issues in the Compromis are capable

of producing arguments on both sides; it may be that one side has the support of a history of judicial decisions, while the other side has developing international law or scholarly commentary. Be mindful of thinking you have come across a legal argument that is too good to be true—you are probably right.

## C. Balance Within the Prayers for Relief

The authors of the Jessup Compromis generally try to avoid issues that are well-settled in international law (because it makes the competition less interesting). When well-settled points of law are included in the Compromis, the authors usually try to strike a balance between both the Applicant and Respondent. That is, if the majority of legal precedent supports the Applicant's position on one issue covered in its Prayer for Relief, it is quite likely that the majority of legal precedent will support the Respondent's position on another issue covered in its Prayer for Relief. Therefore, competitors should be wary of research results that seem to support one side in all four issues set out in the Prayers for Relief.

## D. Differences in Weight Between the Prayers for Relief

When reviewing the Prayers for Relief, you should prioritize and determine which issues will require the most attention. There will often be two Prayers for Relief which involve the most important topics to be addressed in your research, writing and oral argument. There are usually sub-issues that will need to be addressed in addition to the primary rules of international law that arise from the Prayers for Relief (for example, standing or state responsibility) and these can significantly increase the effort required to address the topic. After your initial analysis and preliminary research, the overall importance of each Prayer for Relief will usually become much clearer than when you first read the Compromis.

The difference in weight given to various issues in the Prayers for Relief means that you should consider carefully how you draft the memorials. You should avoid dedicating too much space to the minor issues that arise. For example, in "The Case Concerning the Vessel *The Mairi Maru*," the relative weight of the topics can be assessed as follows:

- Piracy (or other wrongful acts against vessels at sea) and preventing such acts—a relatively minor substantive topic, but when combined with the secondary issues of standing and state responsibility for the acts of private individuals, this is a much larger topic than it seems

- State destruction of a private vessel at sea—a major substantive topic, incorporating significant material on “dumping” of toxic materials at sea and issues regarding state damage to private property and compensation, together with secondary issues of standing
- Environmental harm arising from polluting the sea—a major substantive topic, incorporating significant material on the rules governing environmental harm and responsibility for it, and very important secondary issues of standing to bring any claims for harm to international areas of the sea
- Transportation of toxic or hazardous substances at sea—a relatively minor substantive topic



#### Jessup teams and coaches attending the orientation meeting at the International Rounds

Similarly, the difference in weight means that you should also consider carefully how your team will divide the arguments for oral pleadings. Ideally, your team will divide the arguments so that, for each side of the dispute, the first oralist is responsible for one major Prayer for Relief and one minor Prayer for Relief, and the second oralist has one major Prayer for Relief and one minor Prayer for Relief. This division of argument allows for a more balanced presentation from each team member during oral pleadings.

#### E. Corrections and Clarifications to the Compromis

Several thousand students around the world start to analyze and interpret the issues in the Compromis within days of its

release in September, so it is not surprising that students discover ambiguities, subtleties and even entirely new issues that the Compromis authors did not originally intend to address. The Problem Clarification and Correction process is designed to deal with these matters and provide an opportunity for teams to request clarifications and/or corrections that they believe are necessary.

Many gaps and ambiguities are purposefully included in or omitted from the Compromis, so from the hundreds of requests which are submitted by teams each year, only a few warrant clarification or correction by ILSA. We recommend that you organize your team’s analysis of the Compromis early enough in the process to allow identification of matters to be clarified or corrected. Please refer to the ILSA Official Schedule ([www.ilsa.org/jessup/schedule.pdf](http://www.ilsa.org/jessup/schedule.pdf)) and note the deadline for submission. The Problem Clarification and Correction process is a useful incentive for your team to analyze the Compromis carefully and early; you may be rewarded by your comments shaping the final version of the Jessup Problem.

#### Official Jessup Rule 2.7 states:

Teams may request clarification and correction to the Compromis by submitting a written request to the ILSA Executive Office by the date in the Official Schedule. Based upon the requests received from all Teams, the ILSA Executive Office will publish Problem Clarifications and Corrections on the date in the Official Schedule. Each Team must ensure that it receives and adequately notes the Problem Clarifications and Corrections in preparation for the Competition.

### III. Analyzing the Compromis

Before writing the memorials—and, in fact, before starting any substantive research—your team must determine the relevant issues in the Compromis. This involves reading the Compromis closely and understanding the facts, with the goal of obtaining the relief your side is requesting from the ICJ. Do not assume that the facts are as simple as they first appear.

There are many ways to interpret the Compromis—as law students, part of your training involves looking at factual scenarios

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in different ways—but what is set out below is a good way to begin your search for relevant facts in the Compromis.

### A. Read the Compromis Several Times

As Jessup competitors, you should have a thorough familiarity with the facts of the Compromis by the time you begin oral rounds and, ideally, before you begin drafting the memorials. Legal disputes hinge not only on the law, but also the facts of each case, and the facts will have a direct effect on how and what international law applies. Before doing anything—researching, writing, preparing oral arguments—teams should acquire a thorough knowledge of the facts in the Compromis. We suggest reading the Compromis at least three times before beginning any legal research.

#### 1. First Reading: Generalities

You should read the Compromis as soon as possible after its release. The first time you read it, you should read the entire Compromis in one sitting. You may want to do the first reading without taking any notes. Competitors should read through the entire Compromis to get a general idea of all of the facts involved. The goal is to understand the entire situation leading to the dispute before time is wasted on researching issues that appear to be important early in the Compromis, but are explained or made moot by facts appearing later.

In this first reading, your goal should be to identify *generalities*: what types of governments are represented by the parties, what sort of history the two disputant states have with each other, how individuals noted in the Compromis fall within each government's bureaucracy, the general types of harm suffered by those who are claiming redress, etc. Do not focus on *specifics* during this reading, as the first reading should tell a complete story.

Your first reading should conclude with taking note of the Prayers for Relief. As previously outlined, the relief sought by the parties is your first roadmap towards the arguments your team will prepare in the memorials and the oral rounds, so the Prayers for Relief are important to note at the end of the first reading.

After reading through the entire Compromis and taking note of the Prayers for Relief, set the Compromis aside and *think* about the problem. Ask yourself which facts seemed most important for each of the issues noted in the Prayers for Relief. Ask yourself

which facts could lead to ambiguities in each of the issues noted. Most of all, think about the *entire* set of facts in the Compromis before focusing on the specifics.

#### 2. Second Reading: Specifics

After thinking about what you discovered in your first reading of the Compromis, return to the document, but this time with pen in hand to take detailed notes.

While the Prayers for Relief give you an idea of how to organize your ultimate arguments, they are usually too general to act as the only organizational tools in your initial notes. The following list of topics can be helpful for your note taking exercise:

##### Timeline

Keep a quick-reference list of every major event in the Compromis, with references to the specific paragraph in which such events are described. For ease of reference later, try to fit this list on one page.

##### Statements

Pay close attention to every statement or quote included in the Compromis. A statement or quote is usually drafted to foreshadow legal arguments which might be raised by one of the parties.

##### Treaties

Keep a list of all treaties to which the two states are a party, with references to the specific paragraph where such treaties are discussed. Also include any reference to a state that is *not* a party to particular treaties.

##### Laws/Agreements

There is usually at least one national law or regional agreement between the two states that is created solely for the purposes of the Jessup Competition. Keep a list of these laws and the relevant provisions. [Note: this could be included in the section on Treaties if you prefer.]

##### Prayers for Relief

For each issue noted in the Prayers for Relief, keep a list of relevant facts noted in the Compromis. You may want to split this set of notes into two sides: (1) facts which favor the Applicant and (2) facts which favor the Respondent.

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### People/ Organizations

Keep a list of all individuals and organizations mentioned in the Compromis. This list should show: (1) the name of the person/organization, (2) that person's/organization's nationality or principal place of business, (3) the person's title or job responsibilities, or the organization's purpose, (4) any statements made or any activities conducted by that person/organization (see above for the significance of these) and (5) any actions taken by either of the two nations or the international community as a whole with respect to that person/organization (national court judgments, job termination or promotion, imprisonment, injury, NGO statements about that person/organization, etc.).

### Questions

Keep a list of questions for yourself. For instance, is the Compromis silent on a certain topic? Does the Compromis fail to define a person's status or relationship to one of the parties? Are some facts in the Compromis too ambiguous to determine or subject to multiple interpretations? Because of the Problem Correction and Clarification process, keeping track of these questions may become important later in the research phase.

Read through the Compromis and take notes to fill in each of the topics noted above, making sure to refer to specific Compromis paragraphs for each item of information.

Once you have read through the Compromis a second time, review your notes. Again, *think* about the entire set of facts when you review your notes. Consider whether your timeline shows all relevant events. Ask yourself if your description of the

people involved in the facts provides enough information to begin researching the law as it applies to those individuals. Contemplate whether the facts favor one party or another for each of the Prayers for Relief.

### 3. Third Reading: Prepare for Research

After you have reviewed your notes from the second reading, read through the entire Compromis a third time. During this reading, add any information previously overlooked, but your third reading should be focused on preparing for legal research.

You should make another set of notes dedicated to the issues to be researched. Ask yourself what you need to satisfy the ICJ of (in terms of both law and fact) to obtain each of the reliefs in question. While reading through the Compromis for the third time, pay attention to specific words or phrases that are included in each of the Prayers for Relief. For instance, when you made your notes on "People/organizations" in the second reading, does the Compromis repeat phrases like "immunity" or "attributable" or "state responsibility?" Does the Compromis reference specific treaty provisions, national laws, or intergovernmental organization resolutions? Does the Compromis refer to certain people or organizations as "refugees" or "immigrants" or "minorities?" If so, these words, treaties, laws, resolutions and facts should form a part of your research queries.

### 4. Begin the Research, and Refer to the Compromis and Your Notes Often

Following the third reading of the Compromis, you should begin your initial international law research. While conducting the research, make sure that you regularly compare the results to your notes and the facts in the Compromis—that is, you should not be compiling all research related to a certain issue of international law, but should focus your research on only the results which are *relevant to the case*.

### B. Addressing the Limits of the Compromis

Defining the limits of the Compromis is an important step in your research. Some of the facts from the Compromis for "The Case Concerning the Vessel *The Mairi Maru*," set out in the table below, are useful to illustrate this exercise.



**The Final Bench at the 2009 White & Case UK Jessup Competition**



<b>15 Oct 1999</b>	<p>Raglanian Prime Minister Price unveils a comprehensive anti-piracy program, consisting of providing Raglanian naval personnel to pilot ships traveling through the archipelago upon request. Under the plan, vessels utilizing pilots fly a specially-designed flag, indicating they are under Royal Navy protection. He promises that the Royal Navy will electronically monitor the progress of piloted ships, the pilots will be in touch with the Raglanian Royal Navy throughout their voyage and the Navy will respond to distress calls from such pilots within 30 minutes. The program takes effect immediately, and is immensely popular.</p> <p>In the program's first two years, no vessel piloted by a Royal Navy officer was attacked by pirates.</p>
<b>2001</b>	<p>Observing a decrease in pirate attacks since 1999, ILSA reduces its warning to a "four-point warning," and indicates that it might consider a further reduction. The few pirate attacks that have occurred since 1999 happen only at night, and only in the sparsely populated western edge of the Raglanian Archipelago.</p>
<b>30 Nov 2001</b>	<p>Raglanian Prime Minister Price announces that the Royal Navy is no longer able to provide enough officers to meet every request for an escort. The Navy trains about 100 private Raglanian citizens to serve as pilots. Paid by the Raglanian government, these pilots are assigned by the Royal Navy and are able to request armed intervention by the Navy if and when needed.</p>
<b>26 Jul 2002</b>	<p><i>The Mairi Maru</i>, laden with MOX and manned by a small crew, leaves port in Appollonia on a course for Maguffin. The crew are citizens and residents of Appollonia. The vessel's course will take it through the center of the Raglanian Archipelago, on a route (and on a daytime schedule) intended to minimize the risk of pirate attack.</p> <p>Only Appollonia's Ministry of Energy, the IAEA headquarters, and <i>The Mairi Maru's</i> Captain and First Officer are aware that the vessel is carrying MOX.</p> <p>The captain does not request a Raglanian naval pilot as he approaches Raglan's territorial waters.</p>
<b>Later that day</b>	<p>Before it enters Raglan's Exclusive Economic Zone, <i>The Mairi Maru</i> is delayed for several hours by a severe storm.</p>
<b>Three hours before dusk</b>	<p><i>The Mairi Maru</i> nears Raglan's archipelagic waters. The Captain radios the Raglanian Royal Navy and requests a pilot.</p>

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<b>Two hours later</b>	The assigned pilot, a private contractor named Thomas Good, arrives with two assistants aboard a privately-owned and operated vessel hired by the Royal Navy for that purpose. They board the ship on the High Seas, and Mr. Good hoists the specially-designed anti-piracy flag.
<b>27 Jul 2002 2200 hours</b>	<i>The Mairi Maru</i> enters Raglan's archipelagic waters.
<b>27 Jul 2002 2300 hours</b>	<p>Mr. Good reveals to the Captain that he has a small explosive device and demands that the Captain surrender control of the ship. The Captain agrees, and Mr. Good and his assistants lock the crew in the galley.</p> <p>Mr. Good navigates the ship to a rendezvous location, where he meets with confederates. They remove all navigation and communication equipment from <i>The Mairi Maru</i>. They then disable the aft propeller shaft, making it impossible to steer the ship. They do not disturb the MOX.</p> <p>Mr. Good and the other attackers then disembark, leaving <i>The Mairi Maru</i> adrift on a southeasterly course.</p>
<b>Several hours later</b>	<i>The Mairi Maru</i> leaves Raglan's archipelagic waters.
<b>28 Jul 2002</b>	<p>A storm alters the course of <i>The Mairi Maru</i>, which runs aground on one of the sandbars in the Norton Shallows. The ship's hulls rupture, as does the secure compartment holding the MOX canisters. The canisters, also damaged, leak more than 50 kilograms of highly radioactive MOX pellets onto the sandbar and into the surrounding waters.</p> <p>In the hours following the crash, members of the crew are able to free themselves from the galley.</p>
<b>29 Jul 2002</b>	<p>A Raglanian patrol boat spots <i>The Mairi Maru</i> while training nearby. Crew members note a large number of dead fish and sea birds in the vicinity. The Captain of <i>The Mairi Maru</i> reports the leaking radioactive materials to the patrol vessel, which immediately retreats to a safe distance, radios naval headquarters and radios for medical support, which arrives within the hour.</p> <p>Several members of the crew of <i>The Mairi Maru</i> die, and others exhibit acute radiation syndrome. Doctors rescue the surviving crew of <i>The Mairi Maru</i>, and recover the bodies of the dead.</p>

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## 1. Recognize Deliberate Gaps and Ambiguities in the Facts

As previously discussed, the Compromis is a limited set of facts which the parties have agreed to present to the ICJ. Gaps or ambiguities in the facts, unless these have been corrected or clarified, are intentional. You must therefore identify these gaps and ambiguities, analyze their significance and consider how to address them when you develop your legal arguments.

For example, one of the Prayers for Relief in “The Case Concerning the Vessel *The Mairi Maru*” raises the issue of piracy (or similar wrongful acts against vessels at sea), and the prevention of such conduct. One of the key questions concerns how a state (in this case, Raglan) can be made liable for failing to prevent acts of piracy (or similar criminal actions) which endanger and harm nationals of other states (in this case Appollonia) while those other nationals are within the defendant state’s territory.

As you can see from the facts extracted above, the Compromis provides some information about what Raglan did to combat piracy generally (particularly its piloting program for guiding vessels through its waters), and what was specifically done in the case of the vessel *The Mairi Maru*. Whether Mr. Good’s conduct is “piracy” or some other international criminal act, Appollonia could argue that Raglan has had ample warning and has not acted appropriately to prevent the injury to *The Mairi Maru* or the members of the crew. Raglan could reply that it not only acted to control pirates generally, but that its general actions were successful because of the overall reduction in piracy since 1999.

In relation to the specific circumstances of *The Mairi Maru* (rather than Raglan’s prevention of piracy generally), some important factual questions arise:

- How was Mr. Good screened before becoming a pilot in the piloting program? Was that screening process deficient in some way?
- How was the Raglanian Royal Navy monitoring *The Mairi Maru*’s journey and movements? If the piloting program is supposed to involve electronic monitoring of the progress of vessels being piloted, didn’t the Navy notice that *The Mairi Maru* had deviated from its course? Does this suggest that the electronic monitoring is deficient in some way?
- How was the Raglanian Royal Navy staying in contact with Mr. Good? Under the piloting program, the pilots are supposed

to be in touch with the Raglanian Royal Navy throughout their voyage. At some point, Mr. Good must have ceased contact, and certainly after the communication equipment was removed from the vessel. How did the Navy respond to that loss of communication? Did the Navy not notice, or did the Navy ignore the problem?

- There is no evidence that the Royal Navy responded to these events until July 29, when the Royal Navy patrol boat found the grounded ship on the sandbar.

Answering these questions and dealing with these gaps and ambiguities is critical to advancing or resisting Appollonia’s argument that Raglan did not do enough to prevent harm to *The Mairi Maru* and its crew.

The exercise described above is intended to help you analyze the Compromis in an efficient and effective way. The topics in the Compromis will change every year, but the need to identify the key issues and isolate gaps and ambiguities is an important exercise every Jessup year.

## 2. Explore Reasonable Inferences: The Limited Scope for Interpreting the Facts

You are limited in what you can do with the facts in the Compromis, despite the gaps and ambiguities. Your team is restricted to using the stipulated facts and *reasonable inferences* from the Compromis. You should not try to rely on unsupported facts or distortions of stated facts. Certain facts which might be relevant or dispositive to the outcome of the case are generally omitted. Jessup teams are judged on their ability to conform the facts to their arguments without creating new facts or drawing unreasonable inferences from the Compromis.

When attempting to assert that an event did or did not occur, think carefully about the basis you have for making that argument. For example, in “The Case Concerning the Vessel *The Mairi Maru*,” some potential inferences in favor of Appollonia, from the facts extracted above, include:

- Mr. Good was allowed to be a pilot, but he is actually a pirate (or some other type of criminal). *It may be inferred that the screening process for the piloting program must be deficient.*
- Under the piloting program, the Raglanian Royal Navy was supposed to monitor the progress of piloted vessels electronically. As soon as the vessel deviated from its course,



the Royal Navy should have noticed and acted, but there is no evidence of action by the Navy for at least a day. *It may be inferred that either the Navy's monitoring equipment is deficient, or the Navy failed to pay attention in this case.*

- It is unlikely that Mr. Good would have stayed in contact with the Navy as required under the piloting program, *since it is reasonable to infer that the Navy would have noticed that the vessel was off-course and would have asked what was happening. For that reason, it is a reasonable inference that communication with Mr. Good ceased around the time Mr. Good had threatened the crew by saying he had an explosive device.* At the very least, once the navigation and communications equipment was removed, the loss of communication with Mr. Good should have been noted by the Royal Navy, and action taken. Again, since there is no evidence that the Royal Navy responded to these events until July 29, *it may be inferred that either the rule about constant contact is not followed, or the Navy failed to follow it in this case.*

Of course, Raglan may dispute that these inferences are reasonable and may argue that there is simply not enough evidence in the Compromis to support these factual arguments.

If part of your strategy is to deny that something happened, be aware that the facts stated in the Compromis are *agreed* to by both parties. You have the most latitude for such a challenge where the existence of a fact depends on what a person or organization says in the Compromis (i.e., the existence of the fact depends on whether what has been said is actually true).

For example, in “The Case Concerning the Vessel *The Mairi Maru*,” from the facts extracted above, you can see that Raglanian Prime Minister Price says that “the Royal Navy is no longer able to provide enough officers to meet every request for an escort.” The fact that he made this statement may be agreed, but Appollonia can dispute whether this is sufficient evidence that the Royal Navy is actually unable to provide enough officers to meet every request and must therefore resort to private contractors to serve as pilots (which Appollonia might argue is too risky). Whether Prime Minister Price’s statement is true can be relevant to whether Raglan has taken sufficient steps to prevent piracy.

However, in such a case, consider whether you have any credible support for suggesting that the Court should not believe what a person or organization says in the Compromis. There will sometimes be statements or facts in the Compromis that will support your contention that a statement of a particular person

or organization is wrong. But if you do not have such supporting material in the Compromis, you will find it difficult to challenge the statement and may do damage to your credibility before the judges.

### 3. Use Facts and Events from the Real World with Caution

Real facts and actual events, even if they are not stated in the Compromis, can be relevant to understanding (or arguing) what happened in the fictional circumstances in the Compromis. You can assume that judges have experience in the real world and are familiar with international affairs. You would be wise to draw on that experience to make inferences about the facts or to accept inferences relating to real world matters, such as basic knowledge about how people react to hunger, thirst and pain, and how objects are affected by the laws of physics.

However, you need to be very careful about referring to or relying on facts from the real world where they require special knowledge. Jessup is a moot court competition, and proving facts from evidence is not part of the competition. It is therefore inappropriate for teams to try to introduce facts from the real world where the existence of those facts cannot be proved, or cannot be challenged by the other side, and where those facts fall outside what judges are generally expected to know.

For example, in “The Case Concerning the Vessel *The Mairi Maru*,” it may have been tempting for a Jessup team to discuss how MOX and radiation actually work in the real world, and how easy or difficult it would be for the MOX to leak out of canisters and



An oralist arguing in the 2009 White & Case Russian Final Round

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contaminate the environment in the manner it was described in the Compromis. Although a scientifically accurate analysis probably exists, such “facts” cannot be proved in the Jessup Competition, so they should not be the focus of argument. Facts from real world events should only be addressed in generalities unless such facts are summarized in a relevant legal authority (for example, in a previous judgment of the ICJ).

### C. Basic Issues Arising in Most Jessup Problems

Some basic issues of international law arise in most or all Jessup Problems, and you should therefore look for these issues as you analyze the Compromis. The following is not intended to be a comprehensive or exhaustive guide to the sources or status of the law, but only highlights key legal themes that tend to recur year after year in Jessup Problems.

#### 1. Jurisdiction of the ICJ

In some Jessup Problems (and, for that matter, in many real world international legal disputes), a preliminary issue is whether the Court has jurisdiction to *hear* the case in the first place and whether it has jurisdiction to *grant the relief requested*. These two jurisdictional issues are slightly different, and require slightly different treatment. In most years in the Jessup Competition, the jurisdiction of the ICJ to hear the case will not be an issue raised by the Compromis. The fictional parties have, after all, agreed to bring the dispute to the ICJ for determination.

When the authors of the Compromis intend to raise jurisdiction as an issue, it will usually be clearly stated in the Prayers for Relief.

#### 2. Standing of the Parties to Bring their Claims

Most Jessup Problems will involve an issue surrounding the competence of one of the parties to bring a certain claim. This is the issue of “standing” (for example, does state X have standing to assert a claim against state Y for wrongful acts committed against a citizen of state Z?). *Every* Jessup competitor should become familiar with the issues regarding standing to bring claims to the ICJ. For every Prayer for Relief, consider *why* each party is allowed to assert the claim. In some years, standing is a major issue associated with one or two of the Prayers for Relief. In other years, standing is a preliminary, but minor, issue which needs to be addressed only briefly as a matter of procedure before you can proceed with arguments on the other issues. You must differentiate between these two situations and take the

appropriate stance. Many teams overlook standing when it is not given particular emphasis in the Compromis, thus failing to address the important procedural requirement of standing to bring a claim.

The two interrelated issues regarding standing which often arise from the Prayers for Relief are as follows:

- Does the rule regarding exhaustion of local remedies apply? If the rule does apply, have the individuals, organizations, or companies who appear to have suffered harm in the Compromis actually exhausted local remedies?
- Apart from the local remedies rule, is the state permitted to exercise diplomatic protection in relation to the harm suffered by the individuals, organizations, or companies in the Compromis? For instance, is there any issue regarding the nationality of the individuals, organizations or companies?

Consider these and other jurisdictional questions when analyzing the Compromis to identify potential controversies regarding standing.

#### 3. State Responsibility

A fundamental issue which is raised in most Jessup Problems relates to how a state can be held responsible for the events described in the Compromis (i.e., “state responsibility”).

The relevant rules of state responsibility will differ from year to year depending on the Compromis. It is *essential* that you become familiar with the rules of state responsibility and understand the arguments for or against state responsibility. Ideally, every member of the team will become familiar with these rules as you research and write the memorials, but it is essential that *every* oralist be ready to discuss the relevant rules of state responsibility in the oral rounds.

It is beyond the scope of the White & Case Jessup Guide to give a primer on the rules of state responsibility. However, all competitors in the Jessup Competition are expected to have comprehensive knowledge of the International Law Commission’s Draft Articles on State Responsibility. The Draft Articles on State Responsibility are not exhaustive of the rules in international law, and they are not necessarily conclusive, but they are universally acknowledged as being persuasive authority and, with respect to some of its provisions, are considered to be customary international law. The Draft Articles will almost always be relevant to the Compromis and should be one of your first starting points of legal research.

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The Draft Articles are particularly useful for Jessup competitors because they set out the basic rules (which are in numbered “Articles”) in a relatively simple structure, and the International Law Commission’s Commentary provides clear explanations of each rule as well as references to important authorities.

When arguing your state’s right to relief, you must show that the other state has breached an international obligation and that the state is obliged to make reparation or otherwise provide relief in relation to that breach. You will be expected to identify the relevant international obligations and explain how they have been breached; these primary issues are the subject of the major topics reflected in the Prayers for Relief and are important to consider when analyzing the Compromis. Beyond these primary issues, you must also address the following secondary issues:

- Whether the relevant conduct constituting the breach is *attributable* to the state (i.e., that it can be said to be the conduct of the state itself), as opposed to the individuals/organizations that committed the conduct
- Whether the state accused of wrongdoing can escape responsibility under some legal justifications or excuses which are recognized under international law
- If the state cannot escape responsibility, whether the state should provide the particular relief that you are seeking in relation to the breach

These secondary issues are governed by the rules on state responsibility. Keep them in mind when analyzing the Compromis.



**Jessup judges providing comments following an oral round**

#### 4. Customary Rules versus Treaty Rules

The Compromis will always stipulate the treaties to which each state is a party. The authors usually design the Compromis so that there are only a few treaties to which both states are party (the 1969 Vienna Convention on the Law of Treaties is typical). Most of the treaties mentioned in the Compromis will only have one of the two states as a party, with one state being a party to some treaties and the other state being a party to others. This is done on purpose and is a recurring technique used by the Compromis authors.

If a state is not a party to a treaty, you cannot argue that the state is bound by the provisions of the treaty unless you can establish that the relevant treaty rules are also rules of customary international law and bind that state as customary rules. That is what the authors of the Compromis intend for you to do.

Jessup competitors often make the mistake of simply citing some rules in a treaty as if they bind the non-party state, and argue as if all the detailed provisions of the treaty bind the non-party state in some way. That is almost never correct. More often, teams argue that these treaty rules reflect customary international law and thus bind the non-party state. However, because of the nature of customary international law, it is difficult to argue convincingly that complex and detailed rules contained in a treaty have become binding through custom. It is more likely that general versions of such rules have developed as custom. For instance, you may be able to argue that there are certain general rules regarding extradition which have become customary international law; but you are unlikely to persuade the judges that the detailed and specific procedures sometimes involved in extradition treaties are binding as custom on non-party states.

You must therefore pay close attention to which treaties are mentioned, and which of the two states are party to those treaties. This will be the first step in identifying which treaty rules you must establish as customary international law to support your arguments. Keep this in mind as you analyze the Compromis and prepare for your legal research.

#### IV. Conclusion

Analyzing the Compromis carefully before launching your legal research is a key step to Jessup success, but many teams skip the process (in part because of eagerness). A thoughtful and careful vetting of the Compromis will only help your research. Take the time to perform an analysis of the Compromis along the lines described above—you will be glad you did.

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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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