

Jessup Guide

Writing Jessup Memorials

I. Introduction

The Jessup Compromis (also called the “Jessup Problem”) is released by the International Law Students Association (“ILSA”) in September of each year. During the first four months of the Jessup Competition, teams analyze the Compromis and write their Applicant and Respondent memorials. These can be very challenging tasks, especially for first-time competitors. Like any other legal research and writing assignment, there is a great deal of work which must be done in a short period of time in order to produce quality memorials. It is important that you devote sufficient time to writing the memorials. Teams which leave the drafting to the last few weeks before the deadline will almost never produce a high-quality memorial. More importantly, you will not get the full benefit of what the Jessup Competition has to offer.

This part of the White & Case Jessup Guide provides advice on how to write well-structured memorials that contain clear and coherent arguments. This advice is not intended to be prescriptive or exhaustive; there are different approaches to writing a Jessup memorial. The suggestions below, however, are based on many years of judging Jessup memorials and provide advice that will assist your team throughout the memorial writing process.

II. Purpose and Function of the Memorials

Official Jessup Rule 6.0 governs the writing and submission of memorials. You need to review and follow the rules carefully: failure to adhere to the strict limitations set out in the Rules can result in penalties.

Remember the ultimate purpose of the memorials is to convince the Court that your side should prevail on the facts and on the law. Jessup memorials are expected to contain *written advocacy*; a Jessup memorial is not a neutral or carefully balanced research paper. You must make strong arguments and strive to persuade the reader that your case should win.

A. What Are Memorials?

Each Jessup team is required to draft and submit one Applicant memorial and one Respondent memorial. These documents contain submissions intended to persuade the International Court of Justice (“ICJ” or “Court”) to rule in favor of the respective party. The use of memorials in the Jessup Competition attempts to mirror some aspects of the use of memorials in real cases before the ICJ.

Although the rules governing the memorials in the Jessup Competition are substantially different than the ICJ procedural rules, the essential purpose remains the same: the memorials are intended to allow each party to advocate its position by making legal submissions on the basis of its view of the facts. The major difference is that the Jessup Compromis sets out all the “agreed” facts, and the parties have limited scope with respect to manipulation of those facts.

Article 49 of the International Court of Justice’s Rules of Court (1978) includes the following provisions:

- A Memorial shall contain a statement of the relevant facts, a statement of law, and the submissions
- A Counter-Memorial shall contain: an admission or denial of the facts stated in the memorial; any additional facts, if necessary; observations concerning the statement of law in the memorial; a statement of law in answer thereto and the submissions

Jessup memorials contain the same basic elements: facts, law and arguments.

B. Role of the Memorials

1. Setting out Your Case

Each memorial should set out the case for the relevant party and contain as much research as possible. However, most Jessup teams find that they will enhance or refine their arguments even after the memorials have been submitted. Further research, practice and competition after the memorial submission deadline often lead Jessup teams in directions not fully appreciated while writing the memorials. You should therefore see the memorials as the first, albeit critical, attempt at setting out your case.

2. Foundation for Oral Argument

Official Jessup Rule 7.3.2 states that each team's oral arguments are not limited to the scope of its memorial. Accordingly, you are permitted to enhance or add to your memorial arguments or choose not to raise those arguments during the oral rounds. Although contradicting or retracting arguments in a memorial is permissible under the Official Jessup Rules, this may be noticed by the judges and your opponents, and may damage your team's credibility. For those reasons, it is important that your written arguments are chosen and drafted carefully.

Many teams rely on their memorials when developing their oral arguments, using them as a form of script. Doing so makes it all the more important that the arguments in your memorial are easy to follow, and presented as clearly and logically as possible. If a Jessup memorial judge finds it difficult to understand your arguments, you will find the same when it comes time for oral pleadings.

3. Memorial Scores

Each memorial will be graded and given a score. That score will go towards determining your team's:

- Win/loss record
- Relative position to other teams if a tie-break is required
- Ranking for memorial awards

The memorial score contributes up one third of the points for your team, with oral pleading making up the remaining two thirds. Accordingly, your memorial scores can be decisive in determining how well your team performs in the Jessup.

For the Jessup teams that compete in the advanced stage of the White & Case International Rounds, the memorials are graded differently, but can still be the decisive factor in determining which team is eliminated.



A Jessup team checking sources before an oral round

III. How Memorials Are Graded

A. The Memorial Scoresheet

Prior to grading memorials, Jessup judges are provided with a number of documents to assist in the grading process. These include the Bench Memorandum (a confidential document for judges only that addresses each issue in the Jessup Compromis, with citations to legal authority and scholarly works), a guide to judging memorials (a brief description of the role of the memorial judge and what parts of the memorial should be taken into account to determine a memorial score), and the memorial scoresheet. A sample memorial scoresheet can be found on the "ILSA" website (www.ilsa.org/jessup/admin.php).

The memorial scoresheet is detailed, and provides a good degree of guidance as to how to assess the memorials. For each category, memorial judges are expected to determine what factors to consider, and what weight to give to those factors, in deciding the score for the particular category.

B. Subjectivity of Judging

The categories in the scoresheet represent concepts that will be familiar and understood by each memorial judge and Jessup competitor. It is important to remember, however, that memorial judges (just like oral round judges) come from

many different backgrounds and legal traditions, and may have different preferences for writing styles. For example, there is a difference between the common law advocacy style and the civil law advocacy style, and, even within each system, there are differences in memorial drafting style (for example, British and American lawyers may differ with respect to preferred tone in a memorial). As another example, in assessing the citation of authority, different judges will have different expectations about how much authority they want to see for propositions of law.

Therefore, there is a degree of subjectivity in grading memorials which is unavoidable. It is possible that the same memorial will receive both very high and very low scores. To reduce the impact of such potential differences and subjectivity, each memorial is graded by three judges. You should keep in mind that, in the real world lawyers often are required to appear before, and submit written pleadings to, judges who come from very different backgrounds, with different preferences and expectations, so the Jessup memorial judging process mirrors the same subjectivity inherent in real international legal practice.

The advice in this part of the White & Case Jessup Guide is intended to reflect what, in our experience, most Jessup judges look for when grading memorials. If you follow this advice, your memorials will probably be well-regarded by most, if not all, memorial judges.

C. English Language Skills

Since teams from all over the world participate in the Jessup, varying degrees of proficiency in the English language are represented. Memorial judges are aware that English is not the native language of most Jessup teams and take this into account when grading the memorials. While judges are not told the identities of the teams (hence the use of team numbers rather than school names), they are generally able to distinguish memorials submitted by native English speakers from teams competing in a foreign tongue. Most judges, therefore, will allow for certain grammatical and syntactical differences which arise from non-native English speaking teams, and focus on the substantive quality of the arguments.

Nonetheless, the quality of the English in your memorials is important. The Official Jessup Rules state that English is the primary language of the White & Case International Rounds, and memorials are required to be in English for the White & Case

International Rounds. Memorials written in a language other than English, within the rules of their National Rounds, must be translated into English if the team advances to the White & Case International Rounds.

In general, most memorial judges are primarily concerned with the quality and the organization of the legal arguments. Memorials which provide good legal arguments arranged in a logical flow will generally score higher than memorials which, while grammatically correct, do not contain solid legal arguments. Teams should never sacrifice the strength of a legal argument in favor of better language skills, but should strive for excellence in both.

D. Memorial Word Count

The word count limit is an important consideration when preparing your memorials. Teams should not ignore the specific limitations in the Official Jessup Rules, as word count violations can result in substantial penalties to your memorial scores.

Please note that the *word count rule applies to footnotes*. Many Jessup teams receive substantial penalties because they did not take into account the number of words contained in their footnotes, which can alter the word count of the document by hundreds of words. Do not make this easily avoidable mistake.

Official Jessup Rule 6.4 states:

The word count shall be conducted using the standard “Word Count” feature in Microsoft Word 2003 or Microsoft Word 2007.

- (a) The total length of the Pleading, including the Conclusion/Prayer for Relief and any associated footnotes, must be no longer than 9,000 words
- (b) The Summary of Pleadings must be no longer than 700 words
- (c) The Statement of Facts must be no longer than 1,200 words

Official Jessup Rule 11.1 states:

The penalty for excessive length of pleadings is the following:

1 – 100 words over = 3 points

101 – 200 words over = 6 points

201 – 300 words over = 9 points

301 – 400 words over = 12 points

400+ words over = 15 points

The penalty for excessive length of the Summary of Pleadings is 2 points (one-time penalty).

The penalty for excessive length of the Statement of Facts is 2 points (one-time penalty).

IV. Preliminary Sections of the Memorial

A. The Required Parts of a Memorial

This section addresses the required preliminary parts of the memorial which come before the Pleadings: cover page, table of contents, index of authorities, statement of jurisdiction, questions presented, statement of facts and the summary of the pleadings. Section V provides advice on drafting the Pleadings themselves (including the Conclusion and Prayers for Relief).

Most of the drafting of the preliminary parts will have to wait until your team has almost finished the memorials (for example, the table of contents and the table of authorities cannot be finalized until the entire memorial is finalized). However, you should start your preparations early and bear the preliminary parts in mind as you draft the Pleadings, since the content of some of the preliminary sections will depend on the content of your Pleadings. Do not wait until the last minute to draft these sections—writing a statement of facts, for example, will take more time than you might think.

Apart from being mandatory under Jessup rules, the preliminary parts are important because, when drafted effectively, these sections can enhance the judges' perception of your team's substantive arguments and result in a better memorial score.

There is no official template for each preliminary part. If you review the award-winning Jessup memorials from previous years, it is possible to identify what should be included in each of the

preliminary parts. Official Jessup Rules 6.3.2 – 6.3.5 also provide some explanation about the content of these parts. The best applicant and respondent memorials from 2006 through 2009 can be found on the "ILSA" website (www.ilsa.org/jessup/archives.php).

Despite the lack of an official template, the rules regarding the preliminary parts of a memorial have remained largely unchanged for many years, so the approach taken by successful Jessup teams in the past allows for the identification of some good practices.

B. Cover Page

A Cover Page should contain all the mandatory elements specified in Official Jessup Rule 6.3.2. Many teams use ornate Cover Pages, which incorporate the logo of the ICJ, different fonts, various borders or other formatting. As long as there are no careless mistakes on the Cover Page and it is in an easy-to-read font, its visual attractiveness makes no difference to a judge when grading a memorial. It is sufficient to have a plain Cover Page, with plain fonts and no borders, provided it is well-presented and contains the required elements.

C. Table of Contents

1. Purpose

A good Table of Contents will assist a reader in finding key sections of the memorial. Apart from this basic function, a good Table of Contents should also allow a reader to see, at a glance, that you have organized the memorial appropriately and logically.

The Table of Contents should include a list of headings contained in the Pleadings (*see* Appendix A for an example of a list of headings). This will allow a memorial judge to quickly review the structure and substance of your arguments, and assess whether your Pleadings include the key arguments required by the Jessup Problem. Many judges use the Table of Contents as a basic introduction to the detailed arguments. If you can create a good first impression with the list of headings, this can assist the judge when grading and improve the judge's overall perception of your memorial.

Official Jessup Rule 6.3.1 states:

The memorial must contain the following parts, and only the following parts:

- (a) Cover Page
- (b) Table of Contents
- (c) Index of Authorities
- (d) Statement of Jurisdiction
- (e) Questions Presented
- (f) Statement of Facts
- (g) Summary of Pleadings
- (h) Pleadings (including Conclusion/Prayer for Relief)

Official Jessup Rule 6.3.2 states:

The front cover of each memorial must have the following information:

- (a) The Team number in the upper right-hand corner followed by “A” if an Applicant Memorial or “R” if a Respondent Memorial (e.g., Team Number 123 would put “123A” in the top right-hand corner of the front cover of its Applicant memorial)
- (b) The name of the court (i.e., “International Court of Justice”)
- (c) The year of the Competition
- (d) The name of the case
- (e) The title of the document (i.e., “Memorial for Respondent” or “Memorial for Applicant”)

Official Jessup Rule 6.3.3 states:

The Index of Authorities must list all legal authorities cited in any part of the memorial and must indicate the page number(s) of the memorial on which each authority is cited.

2. Creating the Table of Contents Using Automated Features

When creating the Table of Contents, it is advisable to use the automated features in the word processing software. Creating the Table of Contents manually may result in formatting problems, cause page number errors and lead to unnecessary work and stress.

3. What Should be Included in the Table of Contents?

The Official Rules do not prescribe format or content for the Table of Contents. However, over many years, the elements of a good Table of Contents have evolved to include the aspects found in Appendix A (this example was taken from a memorial used in a previous year, with its formatting adjusted for illustrative purposes).

While there is no requirement to do so, most teams list the preliminary parts in the order in which they are found in the Official Rules. Alternatively, some teams believe that the “Questions Presented” should follow the “Statement of Facts,” and precede the “Summary of Pleadings.” With this order, the “Summary of Pleadings” can be seen as answers to the “Questions Presented.” Either method is acceptable.

The following formatting is suggested:

- Try to use only three (maximum four) levels of headings in the Table of Contents, per below:

- I. Level 1
 - A. Level 2
 - 1. Level 3

Using only two heading levels is not usually very helpful, while four heading levels can sometimes be unwieldy. See Appendix A as an example, as well as Jessup memorials from previous years on the “ILSA” website.

- The formatting of the headings should mirror the actual headings used in the Pleadings (that is, the Table of Contents should contain the same headings as those that appear in the Pleadings).
- No matter how many heading levels you include, you should make sure that each level is clearly distinguished from the others, using indenting and text formatting. You should be able to manipulate the formatting using the automated Table of Contents features in your word processing software.

D. Index of Authorities

1. Purpose

The Index of Authorities provides the location(s) in your memorial where a particular case, treaty or other authority is cited. Memorial judges use the Index of Authorities to obtain a quick impression of whether you have cited all the key treaties, cases and other sources of law which are relevant to the Jessup Compromis. They will also use the Index of Authorities to get an idea of the depth and breadth of your research—for instance, if you have cited too many domestic cases, or too many obscure journal articles, or done too little research because you cite only a few international cases. Judges can be immediately influenced—positively or negatively—by a quick perusal of the Index of Authorities.

2. What Should be Included in the Index of Authorities?

Over many years, most Jessup teams have adopted a common approach to the Index of Authorities: sources of law are divided into major groupings, and within the groupings the sources of law are listed in alphabetical order (see Appendix B for a sample Index of Authorities). Beyond this, teams differ in how they group their sources of law, and the order in which they are listed.

The following groupings are suggested:

- (i) Treaties and Conventions
- (ii) United Nations Resolutions and other documents
- (iii) International cases and arbitral decisions
- (iv) Municipal cases and laws
- (v) Treatises and other books
- (vi) Journal articles

This is the recommended order because it roughly mirrors the hierarchy of the sources of law to which the ICJ is permitted to have access to when deciding cases, pursuant to Article 38(1) of the Statute of the ICJ.

Jessup teams often use their own labels for these sources of law, sometimes use a slightly different order and sometimes break down these groupings into further sublevels (for instance, international cases and arbitral decisions may be subdivided into



Judges grading memorials at the International Rounds

Permanent Court of International Justice cases, ICJ cases, other international cases and arbitral cases). This can become unwieldy and may make it more difficult to quickly locate a particular authority. Whatever labels for these groupings that you choose, they must be accurate.

E. Statement of Jurisdiction

1. The Usual Position Regarding Jurisdiction

In most years of the Jessup Competition, the jurisdiction of the ICJ is not disputed by the parties in the Jessup Problem. In such cases, the Statement of Jurisdiction is a standard statement that refers to the special agreement procedures derived from Articles 36(1) and 40(1) of the Statute of the ICJ.

There are various ways in which you can draft the Statement of Jurisdiction when there is no dispute as to the Court's jurisdiction. Some examples include:

- “The Republic of Appollonia and the Kingdom of Raglan submit the present dispute to this Court by Special Agreement, dated May 15, 2004, pursuant to Article 40(1) of the Court's Statute. The parties have agreed to the contents of the Compromis submitted as part of the Special Agreement. In accordance with Article 36(1) of the Court's Statute, each party shall accept the judgment of this Court as final and binding and shall execute it in good faith in its entirety.”
- “The Republic of Appollonia (Applicant) and the Kingdom of Raglan (Respondent) have agreed ad hoc to submit the present dispute concerning the ‘Vessel *The Mairi Maru*’ to the International Court of Justice, pursuant to Article 40, paragraph 1

of the Statute of this Court and by virtue of a Special Agreement (*Compromis*) signed in Washington, DC on May 15, 2004, and jointly notified to the Court on June 1 of the same year. Both parties have expressly agreed that no other State is a necessary party for the resolution of any of the issues that are the subject of the *Compromis*."

2. When the Court's Jurisdiction is Disputed

In some years, one of the parties in the Jessup Problem disputes the jurisdiction of the Court to hear the case or to hear one of the issues raised by the Jessup Problem.

In these situations, the Statement of Jurisdiction needs to be altered; the standard references to Articles 36(1) and 40(1) are not appropriate in circumstances where one party disputes jurisdiction notwithstanding its agreement to the case proceeding to the Court for consideration. The Statement of Jurisdiction for the party disputing jurisdiction must refer to the fact that the party does not accept that the Court has the relevant jurisdiction to consider the matter (with substantive argument on this point being left to the Pleadings). Similarly, the party asserting that the Court has jurisdiction must make this explicit in the Statement of Jurisdiction (with substantive argument being left to the Pleadings).

There is no particular formula for a Statement of Jurisdiction in such cases. It will depend on the nature of the dispute as to jurisdiction. However, to illustrate the concept, we have extracted two samples from Jessup memorials submitted in previous years:

- *Sample for party asserting that jurisdiction exists (Kuraca):* "The governments of Kuraca and Senhava have agreed to submit by Special Agreement the present dispute for final resolution by the International Court of Justice, subject to Senhava's reservation of its objection to the jurisdiction of the Court. Although both Kuraca and Senhava have declared their acceptance of the Court's compulsory jurisdiction pursuant to Article 36(2), Senhava is seeking to invoke Kuraca's reservations, maintaining that the Court is without jurisdiction over the subject matter of this case because: (1) the dispute exclusively concerns matters which are essentially within the domestic jurisdiction of Senhava as determined by Senhava and (2) the dispute arises under a multilateral treaty and some affected states are not parties to this case"

- *Sample for party disputing jurisdiction (Senhava):* "The Governments of the State of Kuraca and the Republic of Senhava have recognised as compulsory ipso facto in relation to any other State accepting the same obligation, the jurisdiction of the International Court of Justice in accordance with Article 36, paragraph 2. Senhava objects to this Court's jurisdiction on several grounds. It observes that Kuraca's declaration restricts this Court's jurisdiction by placing two reservations. Senhava, under the principle of reciprocity, relies on those reservations. Alternatively, Senhava contests the validity of Kuraca's declaration. Accordingly, Senhava requests that the Court decline jurisdiction"

ICJ Statute Article 36(1) —

The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

ICJ Statute Article 40(1) —

Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

F. Questions Presented

Teams generally take one of three approaches when drafting the Questions Presented:

- Repeating the relief claimed by the relevant party in the *Compromis*, but rewording the relief into questions
- Identifying the one or two key issues arising from each item of relief sought by the relevant party
- Breaking down the relief sought by each relevant party into a large number of questions which reflect the many issues and sub-issues raised by the Jessup Problem

There are usually four Prayers for Relief sought by each party, although some years have included only three Prayers for Relief. Your team should consider carefully whether it is sufficient to include only questions which mirror the items of relief, or whether

there are more issues involved. There will generally be more than four key issues raised by the Jessup Problem, even though most Jessup Problems are divided into four main topics.

On the other hand, the Questions Presented usually should not include more than eight questions. Each item of relief will generally raise one or two key issues. There is seldom justification for including more questions, and including more than eight questions may indicate that you have not thought carefully about the key issues and how they are interrelated.

G. Statement of Facts

Remember that the Statement of Facts is part of your memorial and, therefore, should aim to *persuade* the Court of your case.

It is very tempting for Jessup teams when preparing the Statement of Facts to do little more than copy and paste most or all of the facts from the Compromis, only slightly restructuring those facts. Resist this temptation: a well-drafted Statement of Facts usually distinguishes the very best teams from the average teams.

There is an art to drafting the Statement of Facts to comply with the restrictions in the Official Jessup Rules, while still presenting the facts in an advantageous way to support the particular party's position. A good Statement of Facts will demonstrate that the team has thought about which facts are relevant and how to present those facts to maximum advantage in light of the issues raised by the Jessup Problem, even in spite of the deliberate gaps and ambiguities included in the Compromis (you should have considered these matters in the



Renmin University receiving a memorial award at the 2009 Chinese Jessup Competition

process of analyzing the Compromis). Unfavorable facts must not be ignored, but they should be presented in such a way as to draw the reader's attention to more favorable facts. This takes practice and cannot be effectively accomplished at the last minute.

Some teams will find it easier to draft the Statement of Facts once significant progress has been made drafting the Pleadings. Once you have considered the stated facts, the necessary inferences and how these should be used in the Pleadings, you will be in a much better position to draft the Statement of Facts without merely copying and pasting from the Compromis.

H. Summary of Pleadings

The Summary of Pleadings is crucial and is often the first section read by memorial and oral round judges (i.e., where the judges form their first impressions). The Summary of Pleadings must be more than a mere reproduction of the section headings contained in the Pleadings. The goal of the Summary of Pleadings is to distill the essence of the arguments in relation to each major pleading. This requires careful consideration and drafting.

As an example, consider the headings used for Pleading I in the sample Table of Contents included in Appendix A. The major pleading has been broken down into three sub-headings, and two of those sub-headings are broken down into two further sub-subheadings. However, that detail needs to be turned into an effective summary of the major pleading:

"Raglan is responsible for the attack on and the wreck of *The Mairi Maru*. Customary international law dictates that states have an obligation to prevent piracy within their waters. Raglan failed to discharge this obligation by not addressing the piracy plaguing its waters for years. Even when Raglan instituted an anti-piracy program, it negligently administered it providing an opportunity for Thomas Good to commandeer *The Mairi Maru*. Moreover, as required by principles of state responsibility, Good's actions are attributable to Raglan. Thomas Good was an agent of Raglan hired and trained by the Raglanian Navy. Good's actions remain attributable to Raglan even if they are ultra vires because he was acting under the pretence of his status as a Raglanian naval officer."

The essence of the pleading has been concisely and effectively explained by this summary.

Official Jessup Rule 6.3.4 states:

Teams are advised that judges will take the following into account in evaluating the Statement of Facts. A well-formed Statement of Facts should be limited to the stipulated facts and necessary inferences from the Competition Problem. The Statement of Facts should not include unsupported facts, distortions of stated facts, argumentative statements, or legal conclusions. The Competition Problem typically omits certain facts which might be relevant or dispositive to the outcome of the case. Participants will be judged on their ability to conform the facts to their arguments without creating new facts or drawing unreasonable inferences from the Competition Problem.

Official Jessup Rule 6.3.5 states:

A well-formed Summary of the Pleadings should consist of a substantive summary of the Pleadings of the memorial, rather than a simple reproduction of the headings contained in the Pleadings.

V. Writing the Pleadings

The Pleadings section of the memorial demonstrates the quality of your analysis of the Compromis, the depth and breadth of your research, and, ultimately, your skills with respect to written legal argument. This is the most important part of a memorial, and requires significant attention during the first few months of the Jessup Competition.

A. Substance of the Arguments

1. Avoid Unnecessary Arguments

The Jessup Competition is not only a test of a competitor's legal reasoning skills, but his or her ability to focus an argument on the important issues, while avoiding unnecessary arguments. This is especially important in the Jessup, as the Compromis is often drafted to purposely include false paths intended to lead the competitor to make such unnecessary arguments. As oral arguments are limited by time, and as memorials are limited by word count, the elimination of unnecessary arguments will give

your team more time in oral rounds, and space in the memorial, for the relevant issues raised in the Compromis.

When drafting a Jessup memorial, always keep in mind the main goal of the document: to persuade the Court to rule in favor of one of the parties to the dispute. A Jessup memorial is not a legal treatise on all topics which might be relevant to the subject matter of the Competition. Thus, the successful Jessup competitor will always keep in mind the Prayers for Relief when drafting the memorial, and ensure that the legal arguments do not stray from the relief requested.

In determining whether you should include an argument in a memorial, consider two interrelated questions:

- “Does this argument convince the Court to grant the relief requested?”
- “Do I **have** to make this argument?”

This requires:

- A careful assessment of what matters you *must* establish to succeed with your case
- Good judgment about what matters will be raised by your opponent which you can be expected to address on a preemptive basis (see Section V(A)(4))

Jessup memorial judges devote significant amounts of time to reviewing numerous memorials, so they will find it frustrating to read through legal arguments that turn out to be meaningless or unhelpful to the team's ultimate goals. This frustration will be reflected in memorial scores, so make sure each argument that appears in your memorial is necessary to your case.

2. Avoid the Repetition of Facts in the Pleadings Section

Just as omitting unnecessary arguments frees up space for necessary arguments, avoiding a repetition of facts in the Pleadings sections will ensure that much-needed room for legal arguments is preserved. The memorial already contains the Statement of Facts, so repeating the facts in any detail in the Pleadings section wastes space.

Judges may react negatively to Pleadings which contain large quotes, paraphrasings, or other lengthy references to the facts of the case which are not integrated with legal argument. Keep such isolated statements of facts to a minimum. Instead, consider

ways of referring to important facts in concise statements (properly footnoted), in connection with the larger legal position the memorial is advocating. For example, compare the two following quotes taken from Jessup memorials and note how the first example conveys the same meaning in a much more concise manner:

- “Thomas Good was clearly acting as an agent of Raglan when he boarded *The Mairi Maru*, since he had been selected by the Raglanian Royal Navy to pilot the ship and boarded the ship under the ostensible authority of the navy. He was still acting as an agent of Raglan when he took over *The Mairi Maru*”
- “Thomas Good was one of 100 Raglanian citizens selected and trained as pilots as part of an anti-piracy program run by the Raglanian government. He was selected by the Raglanian Royal Navy to pilot *The Mairi Maru* through Raglan’s archipelagic waters. In that capacity, he boarded the ship and once aboard, he took control of the ship. Thomas Good was therefore acting as an agent of Raglan”

3. Address Weaknesses in the Legal Argument

Many Jessup competitors fail to address weaknesses in their own side’s case. If there is a well-known ICJ or other international court case that directly opposes one of your arguments, but you neglect to mention it, distinguish it, or otherwise attempt to persuade the Court to rule in a different manner, judges may assume you have not discovered it in your research or you have no effective response to the opposing case law. This can negatively impact your memorial scores, and you may also be called to account by the judges during the oral rounds.

Jessup memorial judges are well-versed in international law and will be aware of relevant case law and academic authority on the issues addressed in the Jessup Problem. Accordingly, it will become apparent to a memorial judge when a team is advocating a position without sufficient support or is ignoring contradictory authority. Thus, the memorial should show the judges that your team realizes and effectively deals with the key weaknesses in its arguments, while highlighting the positive authority which favors the team’s arguments.

There are several ways to address weaknesses in a Jessup argument without undermining your own case, as explained below using examples from actual memorials submitted by successful teams in the past.

a. Mention and Distinguish Negative Authority

If, as noted above, there is a case which holds against the legal argument advocated, a competitor may distinguish it factually. For example:

“Furthermore, Raglan has not breached its obligation to exercise due diligence in light of the decision in the *Corfu Channel* case, which obligates a state to notify other states of any danger to navigation within its jurisdiction. This is because such obligation only applies to risks that are unknown to other states. In our case, the fact of the piratical problems in Raglanian waters is a well-known fact due to the International Maritime Bureau’s Annual Piracy Report.” (Footnotes omitted).

The case may be from a domestic or regional court that does not necessarily reflect the state of the law in the international community as a whole. For example:

“Although the granting of immunity to foreign States in cases involving human rights violations is frequently recognized by municipal courts, this position results in the denial of redress for the victims of human rights violations by third States. For this reason, scholars increasingly sustain that States do not have immunity or, that they implicitly waived it, when they breach their international human rights obligations.” (Footnotes omitted).

The case may be old, predating significant developments or alterations in modern international law, or may be new, reflecting progressions in the law that have not yet gained the status of international custom. For example:

“Maritime violence and terrorism are relatively new concepts under international law that are still developing. There is not even a comprehensive or generally accepted definition on terrorism. As such there is [not] yet any consistent state practice in relation to maritime violence and terrorism, to constitute an obligation under customary international law. The United Nations itself has yet to produce a convention defining and prohibiting maritime terrorism, even though a report and recommendation has been issued in 1979. This shows that although steps have been taken, it fails to be finalized since the international community is not yet ready to create a strict legal obligation upon itself, mainly due to political difficulties in the current international arena.” (Footnotes omitted).

The particular legal theory for which the case is cited might be mere obiter dictum or precatory language that does not create legal obligations. For example:

“A duty of notification to coastal states for shipments of nuclear materials has been proposed in treaty negotiations, but has never been accepted. Of those States who have requested prior notification, few have characterized the request for notification as a legal entitlement (*opinio juris*). Furthermore, of those States whose vessels have shipped nuclear materials few have accepted the existence of a legal obligation to notify coastal States.” (Footnotes omitted).



A Jessup team from Washington University School of Law in St. Louis preparing their memorials

The particular legal theory may be one arising from a convention obligation that does not actually bind one of the parties. For example:

“The *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter* 1972 (“London Convention”), prohibits the dumping of radioactive waste except where the conditions set out in Article V of the treaty are established. Appollonia is not a party to this treaty. Pursuant to the *pacta tertiis* principle, the rights of Appollonia cannot be altered by this treaty without its consent. Raglan cannot rely on the treaty to defend its interference with an Appollonian flagged vessel on the High Seas.” (Footnotes omitted).

As you can see from the above examples, a Jessup competitor need not always avoid the mention of negative authority. An advocate is expected to *assist* the Court with difficult legal issues, and to be candid about authority which may seem contrary to the

advocate’s case, because the Court must consider both sides of the case before reaching its decision. In both the Jessup Competition and the real world, failure to bring the Court’s attention to such negative authority may cause the Court to form a negative opinion of the advocate.

b. If the Law is Not on Your Side, Make an Appeal to Equity

Occasionally, a Jessup Compromis will include a certain issue for which the great weight of the authority is in favor of only one side. In such instances, the judge reviewing a memorial arguing the minority side of that argument will look for the drafter to mention such great weight of authority, but perhaps focus more attention on the equitable arguments which may be supportive of the minority view. For example:

“The granting of an immunity can constitute a denial of justice. In the circumstances of the present case, the granting of an immunity to the Raglanian Royal Navy has denied effective remedies to Appollonian nationals and constitutes a denial of justice.” (Footnotes omitted).

While an appeal to equity is certainly an important consideration when the ICJ—or a Jessup panel of judges—reaches a decision, judges would generally prefer an argument based on law and facts, as opposed to an overly emotional argument. An appeal to equity should generally be an argument of last resort, or an additional point to arguments supported by more persuasive authority. But if no such authority exists, an equitable argument based on public policy or real world effects may be the competitor’s best and only option. Further, a good argument that appeals to the judges’ sense of justice can raise your profile and credibility before the Court, even if you “lose” on the law.

c. Make Strategic Concessions

Jessup teams sometimes have to make a strategic decision as to whether and when to make concessions. At times, if the great weight of authority is against a particular argument, and the equitable considerations are likewise unfavorable, then a judge might be more impressed by a team that concedes that particular point of law, rather than wasting time arguing something that is sure to fail. A team that concedes that a particular legal theory supports the other side’s position, and concentrates the argument on a different legal avenue that might lead to the relief requested, might be more successful with the judges than a team that argues against overwhelming odds.

Be careful when conceding a point. Concessions should be made only when there is no legitimate reason to argue a particular legal point (for example, when the issue is very minor compared to others in the Compromis). Although you may have to concede a legal point, you will never have to concede an entire Prayer for Relief. Also, be aware of how a conceded point may affect the other arguments in the memorial.

d. Alert the Judges When a Legal Rule Applies Differently in Different Situations

Most Jessup Problems require a team to make a contradictory argument in the same memorial, using the same rule of law to justify one position but refute another. For example, when addressing the issue of state responsibility, an Applicant team may have to argue that a person referred to in the Compromis is *not* an agent of the Applicant state for the purposes of attributing responsibility to the Applicant state for that person's conduct. On the other hand, that same team may find itself having to argue that a different person referred to in the Compromis, with a similar position of authority and in similar circumstances, *is* an agent of the Respondent state, and that such person's conduct is directly attributable to the Respondent state. Thus, a team will have to use the same rule of state responsibility to justify one position but refute another. This is a difficult balancing act and a team *must* let the judges know that this is happening and justify the distinction as to why the same rule of law applies to the two situations differently.

Most of these apparent inconsistencies can be addressed by carefully examining the facts in the Compromis, which usually provide some basis for a principled factual distinction. This must be made clear to the judges. Failure to address such inconsistencies could lead a memorial judge to believe that the contradictory arguments were written by different team members, without the team's reconciliation of the sections into a comprehensive, internally consistent brief (see Section V(B)).

4. Predict and Address the Arguments of the Other Side

All Jessup teams are required to argue both sides of the Compromis, so both sides of a team should be able to anticipate most of the arguments that their opponents will raise. All teams, therefore, should have the ability to preemptively rebut the other side's arguments before ever encountering another

team. Successful memorial drafters not only advocate their side's position, but respond to the anticipated arguments of their opponents.

When reviewing memorials, Jessup judges expect the teams to outline the law and how the law applies to the teams' arguments—a team that does so will receive decent or slightly above average scores. Judges are more impressed, however, when teams go even further, by stating how the law *does not* favor their opponents. Thus, judges often look for phrases such as "Applicant will likely argue..." (in a memorial for the Respondent) and "Respondent's only legal authority is..." (in a memorial for the Applicant) as a sign that a team is not only able to advocate a position, but also is able to anticipate the main points of the other side and address them. The following are examples of teams addressing their opponents' argument:

"Appollonia may argue that there were intervening factors that broke the causal link between the damage and the unlawful shipment. However, a closer examination of the facts revealed that the damage to the Norton Shallows resulted from Appollonian illegal act and is not severable from it." (Footnotes omitted).

"Notwithstanding, Rubria may argue that the few objections made bar Acastus' claim, equating this case to that of Yugoslavia. However, in such case, rejection of the continuity was expressed by the vast majority of States and rested primarily on political grounds given the ongoing atrocities in the region. Conversely, Acastus' continuity claim was generally accepted and there are no major political reasons for rejecting its claim." (Footnotes omitted).

A word of caution: your team must exercise careful judgment about how much preemptive rebuttal to use and which arguments to preemptively rebut. Remember that your primary responsibility is to establish your own case and you should not sacrifice too much space in favor of dealing with anticipated opposing arguments. Reserve preemptive rebuttal for only the most important opposing arguments which are obvious and could undermine your own case if you do not comment on them.

5. Respect the Hierarchy of Authority in ICJ Statute Article 38(1)

Article 38(1) of the Statute of the ICJ sets out the hierarchy of legal authority that Jessup competitors and judges must refer

to when considering the relative strength of particular arguments: (a) treaties, (b) customary international law, (c) “general principles of law recognized by civilized nations” and (d) “judicial decisions and the teachings of the most highly qualified publicists.” 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.

Jessup judges are well-versed in the hierarchy set out in Article 38(1), and will recognize when an argument relies on legal authority that falls further down on that hierarchy than an opponent’s authorities. If a team’s legal authority consists mostly of subsidiary works like law review articles, domestic judicial decisions, or studies by international organizations, a judge will likely give that team a lower score than a team whose authority consists of more persuasive sources such as treaties or custom. Whenever possible, teams should base the vast majority of their legal arguments on Article 38(1)(a) and (b) authorities, while using Article 38(1)(c) and (d) authorities as additional support.

There are ways to use subsidiary authorities with greater credibility than their relative position in the legal hierarchy would suggest. For instance, it can often be difficult to find and refer to evidence of relevant state practice and *opinio juris* to prove a rule of customary international law. However, teams can use subsidiary authority (such as scholarly works and judicial decisions) to support the argument that the stated rule is a rule of customary international law, thereby converting subsidiary sources into a primary argument. For example:

“Actual practices of states show that the international community requires shipping states to inform them and seek their consent of transboundary movement of nuclear materials through their territorial waters. This includes Canada, Djibouti, Libya, Malta, Pakistan, Portugal and the United Arab Emirates, Egypt, Guinea, Iran, Malaysia and Turkey and Mediterranean nations. Meanwhile, other states completely prohibit passage by ships carrying nuclear or other inherently dangerous or noxious substances.

In the absence of consent from coastal states, ships carrying nuclear materials had avoided passing through their territorial

sea and exclusive economic zone as evidently shown in the incident involving the *Akatsuki Maru* and the *Pacific Pintail*. This shows that the duty to seek prior consent as obligatory under customary international law, thus proving *opinio juris*. Thus, the duty to notify coastal states of nuclear shipments is a rule of customary international law as it satisfies both the requirements of widespread state practice and *opinio juris*.”

(Footnotes omitted, which cited scholarly works—i.e., Article 38(1)(d) subsidiary sources and national statistical reports to justify the statement that the theory is customary international law).

In short, unlike citing treaty provisions, it is not enough simply to cite journal articles or other materials without explaining *how* these materials assist in establishing a rule of customary international law. Similarly, your team needs to consider carefully how and why you are citing cases, in light of the subsidiary status of judicial authority under Article 38(1). Teams that realize and demonstrate that they know treaties and custom rank higher than “general principles” and subsidiary authorities will impress judges more than those who ignore the Article 38(1) hierarchy.



University College London receiving a memorial award at the 2009 White & Case UK Jessup Competition

B. Organization of Arguments

The organization of a Jessup memorial is an important consideration for judges when determining scores. Jessup Problems always involve a large number of legal issues, and presenting the arguments in a logical, flowing manner that

the judges can understand and easily follow can be almost as important as the legal arguments themselves. Even the most brilliant legal arguments can be undermined if presented in an illogical manner.

The following advice includes several ways to improve the organization of a memorial.

1. The Order of the Main Submissions

Many Jessup teams use the Prayers for Relief in the Compromis (there are usually four paragraphs in the Prayers for Relief, although in some years there have been only three) as the basis for the order of main submissions in the Pleadings section of the memorial. It is common to organize the presentation of the main submissions/pleadings in the order in which the paragraphs appear in the Prayers for Relief in the Compromis.

There is much to be said for this method. The first submission as listed in the Prayers for Relief often involves a threshold question of the ICJ's jurisdiction or competence to hear the case, which is a question which must be addressed before the Court can consider the merits of the case. Using the order of the submissions in the Compromis also provides consistency among the memorials submitted by the teams—and for judges who grade a large number of memorials each year, consistency is certainly helpful. Finally, the order of the submissions in the Compromis is also often split into the claims brought by the parties; that is, the first two submissions are generally regarding relief sought by the Applicant, while the second two submissions are generally relief sought by the Respondent.

On the other hand, there are times when a Jessup team might want to depart from the order set out in the Prayers for Relief and present arguments in a different sequence. As noted in Section V(A)(3)(d), Jessup Problems often require competitors to argue different interpretations of the same legal doctrine in different submissions. For instance, if the second submission and the fourth submission (in the order used in the Prayers for Relief) present the need for a team to argue divergent interpretations of a certain legal point, it might be more logical for a team to address those two divergent interpretations consecutively, rather than in sections separated by a completely different topic. This decision will also depend on how the submissions are divided among the oralists, so keep this in mind when determining which oralist will address which arguments.

Whether to rearrange the order of the submissions or not is a decision for each team to make. The most important consideration, though, is whether the flow of the Pleadings section is improved by such rearrangement. Judges are more likely to give high scores to teams whose memorials are organized in a logical flow, rather than in a haphazard assembly of legal arguments.

2. Separate the Submissions into Logical Sub-points

Because a Jessup Problem involves so many legal topics, and because each topic usually involves the analysis of a number of different factors, it is important for Jessup memorial drafters to provide a logical breakdown of those topics and sub-topics to the judges. Rather than including a single heading for a large, general topic like “jurisdiction,” a well-organized memorial will split the larger jurisdiction topic into logical subparts (for instance, “the text of the Statute of the ICJ,” “decisions of the ICJ interpreting the text,” “application of the law to the facts in the Compromis,” etc.). The authorities collected during the research phase almost always provide logical partitions, which will help Jessup competitors structure their arguments, and will help the judges by providing a logical organization for them to follow.

3. Maintain a “Flow” Throughout the Memorial

The best writing, legal or otherwise, is that which brings the reader from start to finish without confusion. The easiest way to confuse a reader is to jump suddenly, without warning, from one topic to another with little or no transition to ease the reader into a new line of thought. As noted above, many Jessup judges read large numbers of memorials each year. When a judge encounters a memorial that does not flow easily from one topic to the next, he or she must re-read certain sections in an attempt to discover the intent of the drafters. Needless to say, such duplication of effort is not appreciated, and often causes judges to deduct points from that team's score.

Thus, it is important for a memorial drafter to ensure that the large numbers of legal issues addressed fit seamlessly together in a logically organized fashion, using clear headings and subheadings, and concise transitional phrases which link one section or subsection to another.

4. Using the Headings to Summarize Your Argument

As outlined in Section IV(C), the Table of Contents in a memorial is often used by judges to obtain an overview of the Pleadings.

Accordingly, you should draft your headings so that they convey exactly what your argument is, not just the general topic of the relevant section.

For example, the following headings (contained in the sample Table of Contents in Appendix A), are drafted so that they make submissions at each heading level:

I. Raglan is Responsible Under International Law for the Attack and the Wreck of *The Mairi Maru*

A. Raglan has breached its obligations under international law to suppress and prevent piracy.

1. Thomas Good's acts of violence fall within the definition of piracy.

Breaking down your Pleadings in this way will provide a good test of whether your legal arguments make sense, whether they are well-organized, and whether you have created a “flow.” Summarizing your arguments by drafting the headings in this way will also assist the reader in following each step in your argument throughout the Pleadings.



Memorials to be distributed to the opposing teams at the International Rounds

C. Citation of Sources

Citation of sources is an absolute necessity, and the Jessup Competition maintains strict citation rules, the violation of which may lead to penalties assessed by the competition administrators.

Citation of sources is also helpful for the judges who score the memorials. Proper footnotes and source references allow the

judges to verify how fully the competitors understand the facts and the law of the Jessup Problem.

Citation rules and methods are outlined in the Official Jessup Rules 6.5 and 6.6. However, *when* to cite sources can sometimes be a point of confusion for Jessup teams. There is a relatively simple rule to follow: citations should be offered for every statement of fact, quotation of another’s words, definition or assertion of legal theory. This means that most sentences in the Pleading section will require footnoting with the exception of statements that are truly original thoughts from the drafters of the memorial. Plagiarism is a serious violation of the Jessup Rules and will be penalized accordingly.

Certain authorities are used many times in a memorial, and it would be very cumbersome for the drafter to include a full citation every time such a source is referenced. Citation signifiers such as *infra* (appearing later in the document), *supra* (appearing earlier in the document), *id.* or *ibid.* (appearing in the footnote immediately preceding) are useful. You should also include abbreviations of longer titles in the index of authorities and use these abbreviations whenever possible instead of signifiers like *supra*, *infra* and *ibid.* (for example, use *Barcelona Traction* rather than *Case Concerning the Barcelona Traction, Light and Power Company Limited (Belgium vs. Spain)*).

Although insufficient citation is a problem, excessive citation is equally a problem. Some teams cite 10 to 15 authorities, or more, in support of some propositions of law. This is often referred to as “string citing,” and is a problem which memorial judges note quickly. There are very few occasions where citing that many authorities is justifiable—perhaps the only justification is where the team is attempting to show widespread and uniform state practice. Whenever citing authority to support a point, you should cite only the authorities that are necessary in support of the point.

D. Writing Style

1. Consistency of Language

Jessup is a team competition, and therefore the research and written memorials are usually done collectively by more than one team member. While this team effort makes the research phase much easier for competitors by separating the duties and avoiding repetition of effort, each memorial submitted to the judges should not appear as though multiple individuals wrote it.

To avoid this problem, teams should ensure that all of the research and drafting of memorial sections is completed much earlier than the submission deadline, leaving sufficient time for one team member to review and revise the *entire* memorial. This will help ensure that grammar, syntax and “voice” will remain consistent throughout the entire document. Rules allow a fifth member of the team to act as co-agent; it may be a good idea for this fifth member to act as the central memorial editor to ensure the level of English proficiency. Some teams prefer to conduct final review and revision of memorials together as a team, so that all members are expected to agree on each line of drafting in the Pleadings. This approach can work, as long as your team leaves enough time for a group review.

2. Use Spell-check and Grammar-check

Most, if not all, word processing software includes both automatic spell-check and automatic grammar correction, and most of them will include both British and American English resources even if the standard language used by that team is not English. Memorials should not contain spelling or grammar mistakes since a quick and easy means of avoiding these problems involves simply pressing a button. However, teams should carefully read the memorials prior to submission and not rely *completely* on such automatic corrections.

E. The Conclusion/Prayer for Relief

This is a required element of the Pleadings, but there is no prescribed format or content for this section. Many Jessup teams simply copy and paste the paragraphs from the Prayer for Relief in the Compromis for the relevant party and use this as the Prayer for Relief in the memorial. This may be preceded by brief concluding remarks. Teams often include this final section on the last page of the Pleadings. Please refer to Appendix C for examples of Prayers for Relief.

VI. Getting the Most Out of Writing Jessup Memorials

The objective of this part of the White & Case Jessup Guide is to help you write high-quality memorials for the Jessup Competition. However, this advice is not obligatory, prescriptive or exhaustive. Each team needs to find its own way of approaching the task of writing the memorials. If you keep in mind the main tasks involved in writing memorials, the main problems which teams encounter throughout the writing process and our suggestions for overcoming those problems, you will have a solid foundation upon which to write your memorials.

Appendix A—Sample Table of Contents*

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A. Raglan has breached its obligations under international law to suppress and prevent piracy 1

1. Thomas Good’s acts of violence fall within the definition of piracy 3

2. Raglan failed to fulfill its obligations under international law because it failed to suppress piracy in its archipelagic waters and failed to properly respond to the attack on The Mairi Maru 4

B. Raglan is responsible for the attack on and wreck of The Mairi Maru because Raglan failed to respond appropriately to the pirate attacks in violation of its obligations under international law 5

C. Raglan is responsible for the attack upon and wreck of The Mairi Maru because Thomas Good’s acts are attributable to Raglan 6

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2. Thomas Good’s actions are attributable to Raglan even if they are ultra vires or contravene Raglan’s instructions . . 8

* This sample page of a Table of Contents was taken from a Jessup memorial submitted in 2005.

Appendix B—Sample Index of Authorities*

Index of Authorities

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B. United Nations Resolutions and Other Documents

Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States, GA Res. 2131 (XX) 1965	6
International Law Commission, Draft Articles on the Responsibility of State for Internationally Wrongful Acts, UN Doc.A/CN.4/L.602/Rev.1 (2001)	1, 2, 3, 7, 10, 16
International Law Commission Report for the Commission’s Fifty-fifth session (2004)	5

C. International Cases and Arbitral Decisions

<i>Corfu Channel Case (UK v. Albania)</i> (Merits), ICJ Rep. 1949	4, 25
<i>Factory at Chorzów (Claim for Indemnity) Case (Germany v. Poland) (Merits)</i> , PCIJ Ser. A, No.17, 1928.	10
<i>Gabcíkovo-Nagymaros Project Case (Hungary v. Slovakia)</i> , ICJ Rep. 1997	7, 8
<i>Lotus Case (France v. Turkey)</i> , PCIJ Ser. A, No.10, 1927	6
<i>Military and Paramilitary Activities in and Against Nicaragua Case (Nicaragua v. USA)</i> , ICJ Rep.1986	5
<i>Neer</i> , 4 R.I.A.A. 60 (U.S.-Mex. 1926)	17
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<i>Rainbow Warrior (N.Z. v. Fr.)</i> 10 R.I.A.A. 217 (1990)	25

D. Municipal Cases and Laws

<i>Container Corp. of America v. Franchise Tax Board</i> , 463 US 159, 103 S.Ct. 2933, 77 L.Ed.2d 545 (1983)	13
<i>Street v. Carr. Corp. of Am.</i> , 102 F.3d (6th Cir.,1996)	2

* This sample Index of Authorities was taken from a Jessup memorial submitted in a previous year.

Appendix B—Sample Index of Authorities (Cont'd)

E. Treatises and Other Books

L. Alexander, NAVIGATIONAL RESTRICTIONS WITHIN THE NEW LOS CONTEXT (1986) 18

H. Grotius, THE FREEDOM OF THE SEAS (transl. by R.Magoffin, 1916) 18

A. de Hoogh, OBLIGATION ERGA OMNES AND INTERNATIONAL CRIMES (1996) 17

F. Journal Articles

O. Akiba, International Law of the Sea: The Legality of Canadian Seizure of the Spanish Trawler (Estai), 37 Nat.Res.J'l (1997) 7

A. Laursen, The Use of Force and (the State of) Necessity, 37 Vand.JTL 2004 8

Van Zwanenberg, Interference with Ships on the High Seas, 10 ICLO 1961 7

Appendix C—Two Sample Prayers for Relief*

Prayer for Relief

Appollonia respectfully requests this Honourable Court to adjudge and declare that:

- (a) Raglan is responsible for the attack upon and wreck of *The Mairi Maru* and all consequences thereof by virtue of (i) the acts of Thomas Good, which are imputable to Raglan and (ii) its failure to respond appropriately to unlawful activities in its archipelagic waters
- (b) Raglan is responsible for the loss of *The Mairi Maru* and its cargo because Raglan's scuttling of the vessel was illegal and, therefore, Raglan 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.

Conclusion and Prayer for Relief

For the foregoing reasons, the Kingdom of Raglan, the Respondent, respectfully prays that this Honorable Court:

- 1) DECLARE Raglan is not responsible for the attack on *The Mairi Maru* and owes no compensation to Appollonia for any injury resulting therefrom
- 2) DECLARE Raglan's act of scuttling *The Mairi Maru* was in accordance with international law
- 3) DECLARE Appollonia had violated international law by transporting MOX through Raglan's archipelagic waters without prior notification or consent of Raglan
- 4) ORDER Appollonia to pay compensation to Raglan for the cost of its decontamination efforts and for the loss suffered by its ecotourism and sport fishing industries.

* These two sample Prayers for Relief were taken from Jessup memorials submitted in 2005.

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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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