



This paper provides each prospective Jessup student with the list of questions he or she must be able to answer in front of a Jessup judge in any given Competition year. While it is not too late to learn answers to some of these questions in the course of preparation to this year's Jessup Competition, please remember that Competition judges will be expecting this knowledge from you together with the knowledge of the facts and law of this year's Jessup Competition Problem.

Tips: The questions below are neither too difficult nor too easy (as it might seem at first glance). The answers to many of these questions have already been given by the International Court of Justice. You will therefore need to find references to the ICJ case-law in the textbooks which you are going to read in the course of your research. This means, first and foremost, that you will need to use textbooks having a good system of references to the ICJ case-law. Because the Jessup Moot Court originates from a common law system, it is very important that in your work you depart from the traditional civil law approach, to which we are all used.

I. Sources of international law as applied by the International Court of Justice

- Article 38 (1) of the ICJ Statute

Treaties

1. What is the force of a treaty for a State which has signed it but has not ratified it yet?
2. Can a third State be bound by a provision of a treaty?
3. What is the relationship between a treaty and *jus cogens* norms?
4. Principles of interpretation of a treaty. How can *travaux preparatoires* be relevant to the treaty interpretation?
5. Invalidity of treaties (change of circumstances, error, duress etc)

Customary international law

6. What is customary international law? What are the elements of customary international law?
7. What is *opinio juris*? How can it be proven?
8. What is State practice? Where can it be found?
9. Can actions *ex gratia* be regarded as *opinio juris* or State practice of a particular State?
10. Can a provision of a treaty become customary international law? If so, what is required for a norm of a treaty to become customary?
11. Consent of how many States is required for a norm to reach the level of customary international law?
12. The concept of persistent objector
13. Regional and local customary law
14. What are obligations erga omnes? Erga omnes and jus cogens.

General principles of law recognized by civilized nations

15. What are general principles of law as enunciated in Article 38(1)(c)?
16. What is *non liquet*?
17. Principles of estoppel and acquiescence
18. Principle of equity
19. Principles of State jurisdiction

- a) Territorial Jurisdiction principle
- b) Effects Doctrine
- c) Nationality (Personality) principle
- d) Protective Principle (Passive Personality)
- e) Principle of universal jurisdiction

Writings of highly qualified publicists and judicial decisions

- 20. What is the weight of this source of international law?
- 21. Is the ICJ bound by its prior decisions?
- 22. What is the legal force of the judgments of the Permanent Court of International Justice?
- 23. What is the hierarchy of the sources of international law provided for in Article 38(1)?
- 24. If a State has conflicting obligations under two treaties (or under a treaty and customary international law), which obligation will prevail?
- 25. Which party bears the burden of proof before the ICJ? Does the doctrine of affirmative defense apply in international law?
- 26. What is the standard of proof required by international law (e.g. beyond reasonable doubt, prima facie, balance of probabilities)? In what circumstances recourse to circumstantial evidence is permitted?
- 27. Which party bears the burden of proof with respect to customary status of a particular norm?
- 28. What is the legal force of resolutions of the UN General Assembly and the UN Security Council? How does the ICJ apply these documents?

II. Protection of individuals before the ICJ

- 29. Can a State bring a claim before the ICJ in order to protect the interests of a private person? If so, how are concepts of diplomatic protection and nationality relevant?
- 30. Is exhaustion of local remedies required in order for a State to bring a claim before the International Court of Justice? What remedies should be exhausted? Is it relevant whether the person was voluntary present on the territory of the respondent state?
- 31. If a matter concerning a human rights issue arises before the ICJ, what sources will the Court apply in adjudicating the matter?
- 32. Do all norms enshrined in the Universal Declaration of Human Rights represent customary law?
- 33. Can the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the European Convention of Human Rights and other human rights agreements be relevant for the ICJ, given that those are particular agreements, and not general international law? Is the practice of the ECHR and IACtHR and the HRC illuminating in defining the rules of general customary international law?

III. State responsibility

- 34. What are the principal international documents concerning State responsibility? Is there a universal agreement on the issue?
- 35. What are the elements of an internationally wrongful act of a State?
- 36. How can conduct of a State be established? Can a State be held responsible if it directs or controls conduct of private persons or acknowledges or attributes conduct of private persons?
- 37. What are the other instances of attribution of conduct to a State?
- 38. What are the circumstances precluding wrongfulness of an act of a State?
- 39. What is the content of State responsibility (e.g., satisfaction, reparation etc.)?

40. Can a State other than an injured State invoke State responsibility before the ICJ? If so, what conditions this State should meet?
41. In what circumstances can the conduct of a State be justified as a countermeasure?

IV. Procedural issues

42. Grounds of the jurisdiction of the International Court of Justice?
43. *Locus standi* (matter of jurisdiction or admissibility)?
44. Admissibility of claims before the ICJ? At what stage should admissibility objections be raised?
45. Clean hands doctrine
46. Can objections to jurisdiction be considered by the ICJ *proprio motu* (i.e. without the other party invoking such an objection)? Does the same apply to the admissibility objections?
47. Waiver of objections? The concept of laches?
48. What remedies may the ICJ grant (and, accordingly, parties to a dispute may claim)?
49. What credence should the ICJ assign to findings of fact and law made by a national court? In which circumstances and to what extent should the ICJ defer to national courts?
50. Are findings of fact and law made by other international tribunals (ICTY, ICC, ECHR etc.) binding upon the ICJ?
51. What is the procedure for enforcement of the ICJ judgments? Have States ever refused to comply with judgments of the ICJ? What were the consequences of these refusals (if any)? What are the consequences of such a refusal in accordance with theory of international law?