

‘The students bring it to life’

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2021-05-24T11:01:53

After authoring his first Jessup Problem in 2018, [Peter Tzeng](#) returned this year with the ‘[Case Concerning the J-VID-18 Pandemic](#)’. In an unusual competition year, the case – somewhat unsurprisingly – addressed legal issues relating to a pandemic, as well as questions of diplomatic asylum and the shoot-down of a civil aircraft.

Peter practices as a lawyer from Washington, D.C. and regularly works on cases before the International Court of Justice and other international courts and tribunals. He graciously agreed to have a virtual chat in early May of this year with our editor [Jens Kaiser](#) to discuss the process of drafting the 2021 Jessup Problem, how he came up with all those fancy proverbial names and how the Jessup compares to the ‘real’ International Court of Justice.

Peter, thank you so much for making time in your schedule for us. You have now written two Jessup Problems. Would you say that the pandemic influenced the drafting process compared to a non-pandemic year?

Thank you for having me, Jens. It’s an absolute pleasure to connect again after meeting at the German National Rounds in Kiel, now more than three years ago, believe it or not.

The pandemic certainly influenced the content of the Problem this year, but the drafting process was very much the same. I submitted a proposal in early February, the [International Law Students Association \(“ILSA”\)](#) selected it in April, and from then until the Problem’s release in September, I was responsible for producing multiple drafts of the Problem. Each one of these drafts was reviewed, critiqued, discussed and debated by a ten-member editorial committee. All of this was done over e-mail and video conference this year, but that was also the case in 2018. So, there was really no difference in the drafting process.

The Jessup Problem usually draws on real life, in some years more heavily than in others. Could you elaborate a bit on your inspirations this year?

Sure. There were three main substantive issues in the Problem. One was a pandemic, or rather, entry restrictions in response to a pandemic. The second one was diplomatic asylum, although some might use a different term to characterize what actually happened there. And the third issue was the shoot-down of a civil aircraft.

For the pandemic issue, obviously, COVID-19 was the inspiration. At the time I submitted my proposal, in early February 2020, COVID-19 was not yet a pandemic and not yet on everyone’s minds, at least not in the US. But I happened to be in Singapore for a hearing, and the country had just introduced [entry restrictions with](#)

[respect to China](#), which I thought raised fascinating questions of international health law.

As for diplomatic asylum, the incident that sparked my interest in this issue occurred in late 2019 when a group of former Bolivian government officials [sought refuge in the Mexican embassy in La Paz](#). Mexico had reportedly intended to [bring the matter to the International Court of Justice](#), though such a case was never registered.

And regarding the aircraft shoot-down, I've long been interested in questions of international aviation law, and, regrettably, there is quite a bit of [State practice on aircraft shoot-downs](#). But the immediate incident that inspired this issue in the Problem was [the tragic shoot-down of Flight PS752 in Iran](#) in January 2020.

Finally, parts of the plot were inspired by the movie [Mile 22](#). There's this one scene where [Iko Uwais](#), playing a triple agent, speeds through traffic and arrives at the front gates of a US embassy in a Southeast Asian country seeking asylum. I had that scene in mind when describing how Ms. Vormund flees to the Ranovstayan consulate in Aprepluya.

Had you planned on doing another Problem anyway? Or was the pandemic something that particularly interested you and made you submit another proposal?

I definitely did not plan to submit a proposal this year. But after hearing about Singapore's entry restrictions and reading more about the subject out of curiosity, I immediately felt that it would be a fascinating international legal issue to debate – there are the legally binding [International Health Regulations](#) that have never been interpreted by a formal judicial body, and yet there is plenty of State practice, as well as [relevant WTO jurisprudence on the SPS Agreement](#). At that time, ILSA happened to be looking for proposals for the Jessup Problem, so I thought 'oh, why not just make this a Jessup proposal?'

I have been told that you provide ILSA with a detailed legal analysis of your Problems, also during the drafting process, and that this is not necessarily done by every author. What is your motivation for doing that?

(laughs) I see you have your inside sources. Yes, I do it to facilitate productive exchanges with the editorial committee. As I mentioned earlier, from April to September, the author produces multiple drafts of the Problem, and the editorial committee reviews and critiques each one of those drafts. This year, in order to help the committee assess my drafts, I accompanied each one with a detailed analysis of the relevant legal issues. This way, the committee would know what issues I wanted to play up, what legal arguments the students could make and how the arguments were intended to be balanced. In my view, this really helped make our exchanges more fruitful.

The editorial process sounds quite productive, but also like there are a lot of people involved. Can discussions among this group sometimes be controversial?

Yes, we certainly have disagreements, and as the author you sometimes have to defend your position against criticism. But on the whole discussions with the editorial committee are very cordial. Everyone is very nice and this year we all got along very well.

Is there something that you wanted to include in the Problem that did not make it through the committee?

Yes, I actually wanted to have Ms. Vormund be a member of a disadvantaged ethnic minority group in Aprepluya, which was an idea that originally came from an editorial committee member. To me, this would have better justified why she took refuge in a consulate rather than just reporting the information she had to the Aprepluyan authorities. I also thought it would strengthen Ranovstayo's arguments for granting her asylum, such that it would better balance out that issue. But there were several members of the committee that were very strongly against it and at the end of the day you have to pick your battles, so this is one I ultimately decided to let up on.

What was the reasoning behind not including that?

Some editors were of the view that Jessup problems always have ethnic minorities, and wanted to move away from that paradigm. Others felt that Ranovstayo already had a very strong argument on diplomatic asylum. I personally thought that the issue ended up slightly favourable to Aprepluya, which is part of the reason of why I wanted to introduce the ethnic minority element, but other people felt differently, even after I provided my legal analysis.

How different is the final Problem from the first draft?

This year, on the whole, it was not that different. The three main substantive issues were pretty much the same as I had originally proposed. ILSA encouraged me to add a jurisdictional issue, which I ended up developing in the drafting process. The actual wording of the Problem, on the other hand, underwent many changes. Certain senior members of the editorial committee are particularly gifted in wordsmithing Jessup problems.

You already addressed the issue of balancing arguments. How do you generally go about ensuring that there is a balance between both sides? Do you have some examples of how you adjusted this year's case to make it 'fair'?

I think there are two steps. First, you need to find a live legal issue that hasn't been resolved. If the ICJ has already decided an issue, it is very hard for the other side to argue against that. This year we had the entry restrictions issue, which was a clearly a live one given that there has not been any formal judicial interpretation of the International Health Regulations. On diplomatic asylum, you have [one ICJ Judgment from 1950](#), but it was not very clear on some aspects of the issue. And regarding the shoot-down of a civil aircraft, that's generally unlawful, but the legal relevance of mistake and self-defence are less clear.

The second step is to then tailor the facts so that credible arguments on the legal issue can be made from both sides. To give an example, I knew from the beginning I wanted the students to debate whether a strict entry regulation violated international law. But the exact terms of that regulation could be manipulated to balance out the equities. So for example we played with the length of time that had to elapse before a non-Ranovstayan national who had been to a “high-risk country” could enter Ranovstayo. It started as 14 days but ended up at 18 days.

Competitors and coaches tend to look for ‘hints’ in the Problem that tell you which legal issues are supposed to be argued. I have crowdsourced some questions from students in preparation for this interview that seem to confirm this, because almost all of them are along the lines of ‘were we supposed to argue x in submission y’? Is this something that you think about as an author?

In general, not really. There are certain main issues I want to be discussed, but they are usually pretty clear, such as an aircraft being shot down or an entry restriction. As for the sub-issues, if anything, I actually prefer to not give hints because I like the idea of creating a factual scenario with a live legal issue, and then just letting the students use their creativity to come up with any arguments they can to support their position.

What would you say makes a good Jessup Problem?

I would say there are three main things. The first thing is, you need exciting, timely legal issues, because I think that just makes things more interesting for everyone – the competitors, the coaches, the advisers, the judges, the administrators.

The second thing is, each main issue needs to be balanced. That is, there should be good legal arguments on both sides. The reason for this is obvious – teams need to actually be able to have a debate.

The third element that I think is very important – and there may be different views on this – is that the principal areas of the debate should be legal, rather than factual. So there need to be relevant legal authorities on the issues at stake, such as jurisprudence and commentary. I feel that, at the end of the day, the Jessup is a competition for students to learn international law. If they spend most of their time researching and developing arguments on legal issues, that’s something they can take with them as they move forward in their careers. But if the students instead focus on memorizing the facts of the Problem, that’s not necessarily something that will benefit them in the future, as the Problem of course is entirely fictional.

One could argue that working with and arguing about facts is a skill that transitions beyond a fictitious case, though.

That’s a fair point, and the Problem will always have facts and those skills will be honed as well. I guess what I’m trying to get at is that you want students to develop the skills to use facts and apply the law to them, but you don’t want them to get bogged down in what the facts actually are. Another point that might be worth raising: the Jessup has [hundreds of volunteer judges](#) and they generally don’t have

the time to study the Problem as much as the students. So, it's better if the facts are as concise as possible so that the judges can understand them quickly and ask the students about them in an oral round.

Almost every Jessup Problem has some more or less obscure 'easter eggs' to be found by attentive readers, but you are taking this to another level. In your cases, almost every name or place has some sort of meaning – if you understand a lot of different languages, that is. Is this just you having some fun or is there a deeper thought behind it?

Both. As an author, I want to give the Problem as much meaning and depth as possible and I think one fun way to do that is through the names. What I did [this year](#), and [also in 2018](#), was to have the names all come from foreign language proverbs, sayings or phrases that relate to the person or place with that name.

There's also another purpose behind doing this, and that is to remind students that international law is not monolingual. The reality is, in practice, when you're dealing with multiple, diverse countries you have names in different languages, and sometimes you have to pronounce them.

Another reason I did this in 2018 is that I was hoping that at the International Rounds in Washington, D.C. students from different parts of the world would come together and the names would kind of serve as an icebreaker. So, there could be a German student saying 'oh, did you know that "Keinblat Vormund" actually comes from this German saying' and there could be a Chinese student saying 'oh, by the way, "Gwo Hye" has this meaning in Mandarin'. So, I was deliberately doing this to foster communication between teams from different countries.

Do you actually speak all these languages?

(laughs) Definitely not. I do speak [the six UN languages](#), that is, Arabic, Chinese, English, French, Russian and Spanish. And although I'm not entirely fluent in all of them, for those languages, it's easier for me to come up with something that works. For example, the names of Respondent and its capital come from the Russian proverb 'kto rano vstayot, tomu bog padayot' (### #####, #####), which was the very first proverb I learned when I lived in Kyrgyzstan. It's essentially the Russian equivalent of 'the early bird catches the worm', which I thought adequately described Ranovstayo's attitude towards dealing with the pandemic.

Do you have a favourite name from this year's Problem?

I guess my favourite would be the name that has the most depth, which this year would probably be 'Segura'. It comes from the Spanish proverb '[a Seguro se lo llevaron preso](#)', but there are three relevant meanings. First, the proverb could be literally translated as 'to Safety they took him prisoner', which is a reference to how Aprepluya quarantined Segura Province, effectively taking the residents prisoner for general safety. Second, the modern meaning of the proverb is 'anything can happen', which reflects how something as unexpected as a province-wide quarantine

can occur. Third and finally, the proverb historically refers to a village called Segura, where there was a prison known to have very difficult conditions, reflecting how Segura Province was in turmoil after the quarantine was imposed. The fact that there are three levels of meaning that all sort of work with the plot of the Problem in my mind made it a very appropriate name.

By now, another of your signature moves – you have done it twice in two years now – is to deviate from the tradition of calling the Problem a ‘Compromis’ or ‘Special Agreement’ and instead calling it a ‘Statement of Agreed Facts’. In 2018, this was definitely a big change, and everyone, students and judges, kept using the word ‘Compromis’ and then correcting themselves. Why do you insist on annoying us?

(laughs) Well, one of my goals as author is actually to annoy the competitors as much as possible. I’m glad to hear that I succeeded. Kidding, of course.

So, legally, there is a compromis only if the two parties agree to submit the specific dispute to the ICJ. But in 2018 and this year, [the Court’s jurisdiction](#) was not based on a special agreement of the parties, but rather on a [compromissory clause](#) and [optional clause declarations](#), respectively. In these instances, there is no compromis.

The reason why I did this was to better reflect reality, which is that the large majority of cases brought to the ICJ are not via compromis. These days, they are usually brought under a compromissory clause. So I didn’t want students having participated in Jessup for multiple years to think that all ICJ cases are brought by compromis.

I should add that, while I did want to move away from the paradigm of the compromis, I did not include this in my initial 2018 proposal because I did not want to propose something so different from the past. But it turned out that a couple senior members of the editorial committee had also thought about moving away from the compromis paradigm, so I jumped on that and said ‘yes, let’s do it’. It was nice how the stars aligned there.

You have judged both in 2018 and this year. How does it feel to see students working with your case?

It’s really fulfilling. For months, you feel like the Problem is just some words on a piece of paper, a short story that might or might not be read. But when you’re judging that first oral round, the students bring it to life. And it’s only at that point that you fully realize, thousands of students have not only read the Problem multiple times, but have also analysed it to death. It’s quite a contrast with the academic articles I’ve published, where it would be a miracle if any one of them has been read by more than five people – and those five people probably just needed a sleeping aid.

One interesting issue that arises sometimes during oral rounds is that, as the author, you prepared so many drafts of the Problem that you sometimes don’t remember what actually ended up in the final version.

Have you ever asked a question or raised a particular issue only to then realize that it is actually not in the Problem?

I could certainly see that happening, but I don't recall any such instance. Usually, if I'm uncertain about a fact, I'll say something like 'in the Problem, doesn't it say xyz?'. And then the pleader will clarify. The bottom line is that the students often know the facts better than the author!

Did you encounter any unexpected arguments while judging this year?

I remember one instance in one of my early rounds, with the third issue on jurisdiction and the self-judging nature of Aprepluya's reservation. I had only intended for the self-judging wording to apply to the 'domestic jurisdiction' part of the clause. However, one student made the argument that the self-judging language also applied to the 'military activities' part. I had to actually look back at the Problem and I then realized 'oh yeah, the way that I wrote it, it could potentially be interpreted that way'. As I judged more oral rounds, I realized that many teams made this argument.

I think this shows that, as the author, you put the Problem down on paper and after you've done that, the students can interpret it however they want. It is no longer what it was in your mind, it's the written word that counts.

There must be points during pleading where students claim something that you know is not actually in the facts. Is it hard not to say, 'I wrote this, I know this is not true!'?

(laughs) My reaction is usually the opposite, in that I tend to defer to the students on the facts because I am afraid that I am confusing it with an earlier draft or potentially also what I had intended to write. At the end of the day, the final text is what matters because that's what the students are given to analyse. So usually, if a student mentions something from the Problem where I think 'this is not actually what it says', I would first turn to the Problem itself to make sure it actually says what I think it says before trying to challenge the student.

You practice before the ICJ. How does the Jessup compare to the 'real thing' in your opinion? Some would say that the Jessup is an 'Americanised' version of ICJ proceedings.

Great question. I certainly see why one would say that the Jessup is 'Americanised'. After all, it was originally a US competition.

The main difference between the Jessup and the ICJ is in the way questions are asked during oral pleadings. In the Jessup, the judges interrupt the pleaders with questions, and they have to respond on the spot, just as would be the case in US courts. But that's something you don't see before the ICJ. The Court does sometimes ask the parties questions, but usually only at the end of a sitting, and then the parties have time to prepare their responses, which are to be given in their next set of oral submissions, or after the hearing in writing. I have to say, the way

things are done in the Jessup makes things much more exciting and also a much better educational tool than it would otherwise be if it were to actually mirror reality.

Another small thing is, interestingly, even though the Judges are 'Excellencies' in international diplomacy, in the oral pleadings, you very rarely see a speaker actually say, 'Your Excellency'. If at any point in time they wish to refer to the judges they usually call them 'Members of the Court'. My guess would be that the Jessup tradition of calling judges 'Your Excellency' comes from the fact that in the US we address judges as 'Your Honor'.

Similarly, we call the pleaders 'agents' in the Jessup, but in ICJ proceedings, while the 'agent' *is* the person who is in charge of a delegation representing a State, he or she is usually a government official who just makes the opening and closing remarks on behalf of the government. The individuals making the legal arguments are called 'counsel' or 'advocates', and they are addressed simply as 'Mr. X', 'Ms. Y' or 'Professor Z'.

You said that the oral pleadings are different, but in terms of preparing the written submissions to the ICJ, would you say that the Jessup in this regard mirrors what you do before the Court?

Yes, written pleadings in the Jessup are generally similar to written pleadings before the ICJ. The big difference, though, is length. Written submissions to the ICJ in practice are often very long, and accompanied by many annexes. By contrast, the Jessup imposes a strict word count on the memorials submitted by teams, and there are no annexes. This forces students to tackle a lot of different legal issues with a very limited word count, which I think is a good thing for Jessup, as it gives students a broader exposure to the world of international law.

There are many other minor differences, which again I think owe to the fact that the Jessup was originally a US competition. One example is the way the written pleadings are structured. You have to have an index of authorities in the beginning, and there's a statement of questions presented. You don't have that in the ICJ, but you do see that in legal briefs for US courts.

Has the Jessup gotten closer to the reality of the ICJ with this year's virtual rounds?

That's an interesting question, and one that I hadn't thought of. Because of the pandemic, the ICJ [moved to virtual hearings last year](#) and I participated in one. More recently, I participated in a hybrid hearing, where some members of the Court and the delegations were physically in The Hague and others were participating virtually. This year's Jessup was completely virtual.

One could say that the virtual aspect might bring the two experiences closer together, because, in both cases, many if not most individuals are on computer screens. Someone pleading before the ICJ could be sitting at a desk at home wearing a suit and tie, and ideally also pants. And a student participating in Jessup could be doing the same exact thing. Also, the logistics of setting up a webcam at

home, positioning it right, adjusting the lighting, selecting a background – these are all things that both ICJ pleaders and Jessup competitors would have to pay attention to.

Do you plan on writing another Jessup Problem any time soon?

Not anytime soon. Maybe in the future if some interesting legal issue arises that I think would be perfect for a Jessup Problem, and if I have the time, I might submit another proposal. But I have no plan to do so in the near future.

Do you have any advice for future authors, or those who want to become authors?

For future authors, I would say, enjoy the experience and appreciate the process. Although it can be overwhelming to receive ten sets of editorial committee comments on each draft, it is on the whole a very enriching and rewarding experience to have. Both in 2018 and this year, I think I learned a lot from going through that process.

And for those who want to become authors, my advice would be simple: submit a proposal! ILSA puts out [a call for proposals](#) usually towards the end of each calendar year, and anyone and everyone can make a submission. Moreover, the Association is very open-minded in selecting authors. It's just about putting forward your ideas and seeing what ILSA decides to go forward with.

