

**Legal Writing and Research**  
**LAW-UH 1011, 4 credits, Fall 2018**  
**Cross-listed as POLSC-AD 2124**  
**Pre-requisites/Co-requisites: None**

Professor Barry Hashimoto  
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Class: Tues/Thurs at 10:25—11:40 AM in A2-002  
Office Hours: Mon/Wed at 4:15—5:30 PM in Social Sciences in A5 113

## **Course Description**

This course engages students in the fundamentals of legal writing and research in the context of a cumulative project to compose rigorous legal arguments about the rules and facts involved in a multifaceted litigation. Students will do research on selected areas of public and private international law to create case briefs, memoranda on legal rules, and iterative drafts of written materials for interstate litigation encompassing multiple areas of regulation at the International Court of Justice, the primary judicial organ of the United Nations. Students will be instructed in the organization, strategy, grammar, and citation standards for legal writing. They will practice the discovery, analysis, and effective use of primary and secondary legal sources. Sources will be drawn from, among other areas, the laws regulating treaties and custom, state responsibility, procedure in international adjudication and arbitration, statehood, territory, diplomacy, and human rights. For a subset of students, this collaborative work will culminate in students submitting written legal arguments for entry to the world's largest simulated moot court competition (the 60<sup>th</sup> annual White & Case International Rounds of the Philip C. Jessup International Law Moot Court Competition) as a candidate for the representative team of the United Arab Emirates.

## **Learning Outcomes**

1. Master the basics of legal research, reasoning, writing, and citations.
2. Understand the rights and responsibilities of the relevant legal personalities in applicable areas of international and municipal law.
3. Analyze the facts, reasoning, and holdings of contentious cases and advisory opinions at selected courts and tribunals.
4. Conduct and synthesize research on relevant, contemporary topics of law, using NYU libraries, legal databases, and sources archived online.
5. Practice the collaborative composition and presentation of arguments for interrelated legal claims, acting as counsel for fictitious disputants.

## **Textbooks**

Required texts:

- James Crawford. 2012. *Brownlie's Principles of Public International Law*. Oxford, U.K. Oxford University Press.

- James Crawford. 2005. *The International Law Commission's Articles on State Responsibility*.

Recommended texts:

- James Crawford. 2013. *State Responsibility: The General Part*. Cambridge, U.K.: Cambridge University Press.
- James Crawford, Alain Pellet, and Simon Olleson. 2013. *The Law of International Responsibility*. Oxford, U.K. Oxford University Press.
- Andreas Zimmermann, Christian Tomuschat, Karin Oellers-Frahm, and Christian J. Tams. 2012. *The Statute of the International Court of Justice: A Commentary*. Oxford, U.K. Oxford University Press.

## Teaching and Learning Methodology

The methodology of this course is to educate students in the fundamentals of legal writing and research by composing case briefs on judicial opinions and litigant submissions in contentious cases and advisory opinions of the International Court of Justice, research and analytical writing on primary and secondary sources of international law, and case materials for a mock litigation based. Some class meetings will be lectures on general topics in international law, legal research, and legal writing. Other class meetings will be organized as student group-work. Other class meetings will be seminars on readings. The instructor's written and oral feedback on student's writing is an integral part of the course.

As an important part of the course, four groups of students will be formed, and the research and writing of each will be compartmentalized from the others to comply with the [2019 Jessup Rules](#). This is especially important for the group of five Members, who are disallowed from viewing or using any of the research or writing of the other groups in their own work. A group of Advisors will be formed, as well, who will be permitted advise Members on general issues relating to the 2019 Jessup problem, but will be prohibited from doing any research or writing for that group or otherwise acting as Members. One or two additional groups of students will work on preparing memorials for a Jessup problem, as well. But if the chosen problem is the 2019 problem, then these students will be prohibited from discussing their work on that problem with students in the Members group or informing themselves of the work of the Members. It is essential to recognize that breaches of this rule could disqualify NYU AD from competing in the 2019 Jessup, and will count as serious infractions of course policy.

## Evaluation

1. **Case briefs, 24%:** Each student will submit two case briefs of contentious cases and advisory opinions at the International Court of Justice, other international courses, or international arbitral tribunals. Cases will be chosen in consultation with the instructor. A preliminary list of significant cases is in the reading schedule. Length: three pages. Due in Weeks 5 and 8.
2. **Rule analysis paper, 8%:** Each student will submit one paper that identifies and analyzes a significant rule articulated in legal commentary on a treaty, an international custom, a general principle of international law, or in the majority or

dissenting opinions of a significant international court case or arbitral award.  
Length: three pages. Due in Week 9.

3. **Memorials, 53%:** Each student will participate in a group writing memorials for the Applicant and Respondent states in one of the problems of the Philip C. Jessup International Law Moot Court Competition. Four teams of students will compose memorials for each side. These memorials must be kept confidential from the other teams (along with any research or oral argumentation related to them). First drafts due in Weeks 9-12. Final draft reflecting additional student research and instructor's remarks due in Week 13.
4. **Class Participation, 15%:** Class participation will be assessed using evidence such as a student's record of constructive teamwork, attendance, contributions in classroom discussion, and ability to meet deadlines.

## Grading scale

A: 93%-100%	B: 83%-86.9%	C: 73%-76.9%	D: 60%-66.9%
A-: 90%-92.9%	B-: 80%-82.9%	C-: 70%-72.9%	F: < 59.9%
B+: 87%-89.9%	C+: 77%-79.9%	D+: 67%-69.9%	

## Course Policies

- Email: I will usually answer your emails within 24 hours, but please do not leave important questions to the last minute.
- Late submissions: work turned-in past their deadlines will be penalized by six percentage points every 12 hours.
- Students wishing to be Members of the NYU AD Jessup Team must sign a pledge with various obligations and understandings and return it to the instructor by September 6.
- The work of NYU AD Jessup Team Members on the 2019 Jessup problem is to be compartmentalized from the work of other students in the course, and NYU AD Jessup Team Members are required to produce original research and writing on the 2019 problem with only the assistance of Advisors who are registered as such with the International Law Students Association for the 2019 Jessup.

## Academic integrity

You are expected to adhere to the highest standards of scholarship and academic integrity. Violations of NYU AD's policy on these matters may subject you to review and the imposition of penalties in accordance with NYU AD's procedures. Please read thoroughly and understand NYU Abu Dhabi's statement on academic integrity, and contact me if you have any questions as you complete your assignments:

<https://students.nyuad.nyu.edu/campus-life/student-policies/community-standards-policies/academic-integrity/>.

## Weekly schedule with required readings

Required and recommended readings are posted in the weekly schedule below. The schedule is subject to adjustment based on the content and length of classroom discussions as well as the relevance of other materials that may require consideration as students draft their legal arguments. Many of the recommended readings are either online with links noted or in the recommended textbooks.

Note: In Fall 2018 some of the URL links below are password-protected. Georgetown Law has graciously shared access to these documents with us. See NYU Classes (Resources) for those readings. Scans of the recommended texts are in NYU Classes (Resources) as well.

### **Week 1: Legal research and writing in litigation before the International Court of Justice and in the Philip C. Jessup International Law Moot Court Competition.**

Required:

- Sir Robert Jennings and Dame Rosalyn Higgins. 2012. “General Introduction” in *The Statute of the International Court of Justice: A Commentary*, edited by Zimmerman, Andreas, Christian Tomuschat, Karin Oellers-Frahm, and Christian J. Tams. Oxford, U.K. Oxford University Press. Pages 3-46.
- James Crawford. 2012. *Brownlie’s Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapter 1, pages 3-19.

Recommended:

- The Writing Center, Georgetown University Law Center, “Ten Rules of Grammar and Usage that You Should Know,” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/grammar.pdf>
- The Writing Center, Georgetown University Law Center, “Tips for Effective Punctuation in Legal Writing.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/punctuationtips.pdf>
- The Writing Center, Georgetown University Law Center, “Concise is Nice! An Aid for Writing Concisely.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/conciseisnice.pdf>
- Harvard Law School, “Action Verbs.” <http://hls.harvard.edu/dept/opia/job-search-toolkit/action-verbs/>
- 2018 Jessup Problem, “Case Concerning the Egart and the Ibra”:  
<https://www.ilsa.org/jessup/jessup18/2018%20Combined%20Compromis%20and%20CandC%20final.pdf>
- Video of the Final Round of the 2018 Jessup on NYU Classes.

### **Week 2: Writing and presenting legal memorials for the International Court of Justice in practice.**

Required:

- International Law Students Association. 2017. Special Agreement and selected Memorials for the Case of the Egart and the Ibra before the International Court of Justice. Distributed by the instructor.
- Columbia Law School Writing Center: Organizing a Legal Discussion (IRAC, CRAC, etc.).  
[http://www.law.columbia.edu/sites/default/files/microsites/writing-center/files/organizing\\_a\\_legal\\_discussion.pdf](http://www.law.columbia.edu/sites/default/files/microsites/writing-center/files/organizing_a_legal_discussion.pdf)

Recommended:

- The Writing Center, Georgetown University Law Center, “When and How to Use Secondary Sources and Persuasive Authority to Research and Write Legal Documents.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/secondarysources.pdf>
- Charter of the United Nations, 1945.
- Statute of the International Court of Justice, 1945.
- International Law Commission, Model Rules on Arbitral Procedure with a general commentary, 1958.
- Treaty on the Non-Proliferation of Nuclear Weapons, 1968.
- International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts, 2001.
- James Kraska. 2015. “Putting Your Head in the Tiger’s Mouth: Submarine Espionage in Territorial Waters.” *Columbia Journal of Transnational Law* 54.

**Week 3: Researching and writing about sources of international law: treaties, custom, general principles, judicial decisions, and the writings of the most highly qualified publicists on international law.**

Required:

- James Crawford. 2012. *Brownlie’s Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapter 2, pages 20-47.
- James Crawford. 2012. *Brownlie’s Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapter 16, pages 367-394.

Recommended:

- 2019 Jessup problem, to be released Sept. 14.
- Alain Pellet. 2012. “Article 38” in *The Statute of the International Court of Justice: A Commentary*, edited by Zimmerman, Andreas, Christian Tomuschat, Karin Oellers-Frahm, and Christian J. Tams. Oxford, U.K.: Oxford University Press. Pages 731-870.
- Draft Articles on the Law of Treaties with Commentaries, Yearbook of the International Law Commission, 1966, vol. II.  
[http://legal.un.org/ilc/texts/instruments/english/commentaries/1\\_1\\_1966.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf)
- Laurence R. Helfer. 2005. “Exiting Treaties,” *Virginia Law Review* 91, 1579-1648.
- Second Report on the Identification of Customary International Law by Michael Wood, Special Rapporteur, (5 May-6 June and 7 July-8 August 2014) UN Doc. A/69/10. <http://legal.un.org/docs/?symbol=A/CN.4/672>

- Third Report on the Identification of Customary International Law by Michael Wood, Special Rapporteur, (4 May-5 June and 6 July-7 August 2015) UN Doc. A/70/10. <http://legal.un.org/docs/?symbol=A/CN.4/682>

**Week 4: Research and writing on core doctrines of international law: statehood, recognition, and territory.**

Required:

- 2019 Jessup problem, to be released Sept. 14.
- James Crawford. 2012. *Brownlie's Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapters 4-5, pages 115-165.
- James Crawford. 2012. *Brownlie's Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapters 8-10, pages 203-254.

Recommended:

- James Crawford. 2012. *Brownlie's Principles of Public International Law*. Oxford, U.K. Oxford University Press. Chapter 20, pages 447-455.

**Week 5: Seminars on students' original case briefs: [Gabcikovo Nagymaros Project](#), [Nicaragua](#), [North Sea Continental Shelf](#), [Fisheries](#), and [Reservations to the Genocide Convention](#) cases at the International Court of Justice.**

Required:

- Memorials of the states parties, preliminary and final judgments, and separate/dissenting opinions for the student's chosen case in the list above.
- The Writing Center, Georgetown University Law Center, "Tips for Effective Organization," <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/2014-Tips-for-EffectiveOrganization.pdf>
- The Writing Center, Georgetown University Law Center, "Creating Effective Rule Statements," <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Stacie-Smith-Effective-Rules-Handout.pdf>

Recommended:

- James Crawford. 2012. *Brownlie's Principles of Public International Law*. Oxford, U.K. Oxford University Press. Part XI, pages 693-774.
- Christian Tomuschat. 2012. "Article 36" in *The Statute of the International Court of Justice: A Commentary*, edited by Zimmerman, Andreas, Christian Tomuschat, Karin Oellers-Frahm, and Christian J. Tams. Oxford, U.K.: Oxford University Press. Pages 633-711.
- Sienho Lee. 2012. "Article 40" in *The Statute of the International Court of Justice: A Commentary*, edited by Zimmerman, Andreas, Christian Tomuschat, Karin Oellers-Frahm, and Christian J. Tams. Oxford, U.K.: Oxford University Press. Pages 922-999.

**Week 6: Research and writing on the doctrine of state responsibility in customary international law: history, breach, attribution, and consequences**

Required:

- James Crawford. 2005. *The International Law Commission's Articles on State Responsibility*. Part I, pages 77-190.
- James Crawford. 2005. *The International Law Commission's Articles on State Responsibility*. Part II, pages 191-253.

Recommended:

- James Crawford. 2005. *The International Law Commission's Articles on State Responsibility*. Pages 1-76.
- Gilbert Guillaume, Brigitte Stern, Luigi Condorelli, Claus Kress, Djamchid Momtaz, Gerard Cahin, Olivier de Frouville, Christian Dominice, Vaclav Mikulka, Pierra Klein, Christian Tomuschat, Anna-Karin Lindblom, Franck Latty, Yumi Nishimura, Constantin Economides, Jean Salmon, and Paul Tavernier. 2013. "Part III: The Sources of International Responsibility" in *The Law of International Responsibility*, edited by James Crawford, Alain Pellet, and Simon Olleson. Oxford, U.K. Oxford University Press. Pages 187-354.

**Week 7: Research and writing on circumstances precluding wrongfulness of breaches of obligations according to the customary doctrine of state responsibility.**

Required:

- James Crawford. 2005. *The International Law Commission's Articles on State Responsibility*. Part III, pages 254-305.

Recommended:

- Affef Ben Mansour, Maja Menard, Jean-March Thouvenin, Hubert Lesaffre, Sandra Szurek, and Sarah Heathcote. 2013. "Circumstances Precluding Wrongfulness in the ILC Articles on State Responsibility" in *The Law of International Responsibility*, edited by James Crawford, Alain Pellet, and Simon Olleson. Oxford, U.K. Oxford University Press. Pages 439-502.
- Denis Allan, Linos-Alexandre Sicilianos, Yuji Iwasawa, Nooki Iwatsuki, Roger O'Keefe, Maurice Kamto, Silvia Borelli, Simon Olleson, Charles Leben, and Laurence Boisson De Chazournes. 2013. "Section 3: Countermeasures" in *The Law of International Responsibility*, edited by James Crawford, Alain Pellet, and Simon Olleson. Oxford, U.K. Oxford University Press. Pages 1127-1216.

**Week 8: Seminars on students' original briefs: *Barcelona Traction Light and Power Company (first and second applications)*, *Arrest Warrant of 11 April 2000*, *LaGrand*, and *Legal Consequences of the Wall in Palestine* at the International Court of Justice.**

Required:

- Memorials of the states parties, preliminary and final judgments, and separate/dissenting opinions for the student's chosen case in the list above.

**Week 9: Separate group-work on students' original draft 40-page memorials for the *Applicant* memorials.**

Required:

- Each student should read the entire Applicant memorial for his/her group only, but is prohibited from reading those of other groups.
- First half of primary and secondary source materials in the “First Batch” of competition materials for the selected Jessup competition year. [Around 8 readings].
- The Writing Center, Georgetown University Law Center, “Writing Effective Point Headings.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/pointheadings.pdf>
- The Writing Center, Georgetown University Law Center, “Citations to International Agreements, Cases and Arbitrations Under *Bluebook* Rule 21.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Citations-to-International-Agreements-Bluebook-Rule-21.pdf>

Recommended:

- The Writing Center, Georgetown University Law Center, “Ten Tips for International Students.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/internationaltips.pdf>
- The Writing Center, Georgetown University Law Center, “Persuasive Writing,” [https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/persuasive\\_000.pdf](https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/persuasive_000.pdf)
- The Writing Center, Georgetown University Law Center, “Just Do It: Tips for Avoiding Procrastination.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Kaavya-Just-Do-It-Tips-for-Avoiding-Procrastination.pdf>
- The Writing Center, Georgetown University Law Center, “Introduction to Bluebooking: Some Basic But Confusing Rules.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/Basic-Bluebook-Rules-Handout-Kolbe-Bock-2016.pdf>
- The Writing Center, Georgetown University Law Center, “How to Build a Table of Authorities and Table of Contents in Word.” <https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/How-to-Build-A-Table-of-Authorities-and-Table-of-Contents-in-Word-Otway-2016-REVISED.pdf>

**Week 10: Separate group-work on students’ original draft 40-page memorials for the *Applicant* memorials.**

Required:

- Each student should read the entire revised Applicant memorial for his/her group only, but is prohibited from reading those of other groups.
- Second half of primary and secondary source materials in the “First Batch” of competition materials for the selected Jessup competition year. [Around 8 readings].



Recommended:

- See Week 9's recommended readings.

**Week 11: Separate group-work on students' original draft 40-page memorials for the *Respondent* memorials.**

Required:

- Each student should read the entire Respondent memorial for his/her group only, but is prohibited from reading those of other groups.

Recommended:

- Additional legal sources pertaining to the content of the memorials, to be determined by the instructor and enrolled students.
- See Week 9's recommended readings.

**Week 12: Separate group-work on students' original draft 40-page memorials for the *Respondent* memorials.**

Required:

- Each student should read the entire revised Respondent memorial for his/her group only, but is prohibited from reading those of other groups.

Recommended:

- Additional legal sources pertaining to the content of the memorials, to be determined by the instructor and enrolled students.
- See Week 9's recommended readings.

**Week 13: Separate group-work: Advocating memorials before the International Court of Justice**

Required:

- The Writing Center, Georgetown University Law Center, "May It Please the Court: Oral Argument in Law School."  
<https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/May-It-Please-the-Court-2003-Bannon-Bissett-Mora.pdf>

**Week 14: Separate group-work: Advocating memorials before the International Court of Justice**

Required:

- The Writing Center, Georgetown University Law Center, "May It Please the Court: Additional Thoughts on Oral Argument."  
<https://www.law.georgetown.edu/academics/academic-programs/legal-writing-scholarship/writing-center/upload/May-It-Please-the-Court-Dilauro.pdf>

**Online resources for legal research**

Legal research resources (access codes to be granted in October 2018 by the International Law Students Association).

- EISIL: <http://www.eisil.org>
- LexisNexis: <https://www.lexisnexis.com/lawschool/lsp/p/studenthome.aspx?lc=LawSchoolPortal/Signin>
- Oxford University Press: <https://global.oup.com/academic/online/?cc=us&lang=en&type=listing&subjectcode1=1136862%7CLAW00010>

Primary source materials:

- Cases at the International Court of Justice: <http://www.icj-cij.org/en/cases>
- Resolutions of the UN General Assembly: <http://www.un.org/en/sections/documents/general-assembly-resolutions/>
- UN Treaty Series: <https://treaties.un.org/pages/AdvanceSearch.aspx?tab=UNTS>
- League of Nations Treaty Series: [https://treaties.un.org/pages/lononline.aspx?clang=\\_en](https://treaties.un.org/pages/lononline.aspx?clang=_en)
- International Law Commission of the UN: <http://legal.un.org/ilc/>
- International Law Association: <http://www.ila-hq.org>
- American Bar Association: <https://www.americanbar.org/aba.html>
- International Committee for the Red Cross Database on Customary International Humanitarian Law: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

Citation format for legal authorities.

- Oxford University Standard: <https://www.law.ox.ac.uk/research-subject-groups/publications/oscola>
- Bluebook: <https://www.legalbluebook.com>
- Peter Martin's "Introduction to Standard Legal Citation": <https://www.law.cornell.edu/citation/>

Competing in the Philip C. Jessup International Law Moot Court Competition.

- FAQs about the Jessup: <https://www.ilsa.org/jessuphome/2014-08-15-09-28-07/faqs>
- More about the Jessup: <https://www.ilsa.org/jessuphome>
- The International Law Students Association: <https://www.ilsa.org/about-ilsa>
- 2018 Jessup Rules: <https://www.ilsa.org/jessup/jessup18/2018%20Rules%20Final.pdf>
- Archives of past winning Jessup memorials: <https://www.ilsa.org/jessuphome/2014-08-15-09-28-30/jessup-archives>
- Jessup Final Round videos: <https://vimeo.com/jessupilsa/videos>
- Complete Final Round of the 2017 Jessup: "The Problem Concerning the Sisters of the Sun" judged by James Crawford, Bruno Simma and Patrick Robinson: [https://drive.google.com/open?id=0B8JI\\_XIeDsh3Slk0bUpYZVg4Q2M](https://drive.google.com/open?id=0B8JI_XIeDsh3Slk0bUpYZVg4Q2M)
- Guide to competing in the Jessup by the Chinese Initiative on International Criminal Justice:

[https://www.ilsa.org/jessup/jessup15/Jessup%20Guide%20\(International\)%20.pdf](https://www.ilsa.org/jessup/jessup15/Jessup%20Guide%20(International)%20.pdf)

- Tips for writing Jessup memorials:
- <https://www.ilsa.org/jessup/jessup15/Tips%20for%20Writing%20Memorials%20for%202015.pdf>
- Jessup Schedule (2018): <https://www.ilsa.org/jessuphome/2014-08-15-09-28-07/jessup-schedule>
- Guide for judges at the Jessup:  
<https://www.ilsa.org/jessup/jessup08/oguide.pdf>
- Basics of oral presentation at the Jessup:  
<https://www.youtube.com/watch?v=i3JMK3glgQ>
- Duke Law guide for oralists at the Jessup:  
<https://law.duke.edu/students/orgs/mootcourt/tips/>

#### Public speaking.

- <https://web.stanford.edu/dept/CTL/Oralcomm/Microsoft%20Word%20-%20Overview%20of%20Effective%20Speaking.pdf>
- <https://web.stanford.edu/dept/CTL/Oralcomm/Microsoft%20Word%20-%20OvercomingSpeechAnxiety.pdf>

#### Jessup problems of the past.

- “Case Concerning the Egart and the Ibra”:  
<https://www.ilsa.org/jessup/jessup18/2018%20Combined%20Compromis%20and%20CandC%20final.pdf>

#### Awards at the Philip C. Jessup International Law Moot Court Competition.

- Student Deak Award: <https://www.ilsa.org/publications/student-deak-award>
- Postgraduate fellowships: <https://www.ilsa.org/listing/fellowships>