

The IALL Guidelines for Public International Law Research Instruction

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1	Preamble.....	1
2	General skills and competences	1
3	International conventions (ICJ art. 38 no 1 lit a).....	2
4	International custom (ICJ art. 38 no 1 lit b).....	2
5	General principles of law (ICJ art. 38 no 1 lit c).....	3
6	Judicial decisions (ICJ art. 38 no 1 lit d).....	3
7	Teachings of the most highly qualified publicists (ICJ art. 38 no 1 lit d).....	3
8	Citation Methods.....	3
9	Performance Indicators.....	4

1 Preamble

The purpose of these Guidelines is to be an aid to law librarians teaching public international law research. The document makes no claim to special authority, but has been created as a result of collaboration between IALL members around the world and therefore offers an international perspective on the topic.

The document is meant to address issues on information literacy specific to instruction in public international law. It supplements other more general and comprehensive research competency standards such as the ones offered by the American Association of Law Libraries (AALL) or the British and Irish Association of Law Librarians (BIALL).¹

The guidelines follow the structure of article 38 of the Statute of the International Court of Justice (ICJ). Although this article formally only concerns the methodology of the ICJ, it is widely accepted as general formulation of the relevant sources in public international law.

The content of the guidelines should neither be considered exhaustive nor essential. Since the time available for instruction on public international law varies greatly between law schools some may not have enough time to cover the points offered in this document, while others may be able to cover the topics in more depth.

Useful resources

International Law Research Tutorial (<http://law.duke.edu/ilrt/>)

United Nations Treaty Series Glossary

(https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml)

IALS Library's Public International Law Research Guide (<http://libguides.ials.sas.ac.uk/publicinternationallaw?hs=a>)

2 General skills and competencies

Demonstrate awareness of the recognized sources of international law, distinguishing primary sources from subsidiary sources.

This point deals with an overview of public international law, but also understanding the interactions of public international law with the domestic legal system. The interactions will be very different depending on whether or not a jurisdiction is monistic or dualistic in relation to public international law.

¹ <http://www.aallnet.org/Archived/Leadership-Governance/policies/PublicPolicies/policy-lawstu.html>
[http://www.biall.org.uk/data/files/BIALL_Legal_Information_Literacy_Statement_July_2012.pdf](https://www.biall.org.uk/data/files/BIALL_Legal_Information_Literacy_Statement_July_2012.pdf)

This point should also cover the international and domestic terms for different public international instruments. Although named differently, treaties, charters, conventions, declarations and statutes etc. may have many of the same legal implications.

3 International conventions (ICJ art. 38 no 1 lit a)

- a. Determine if there exists an international instrument that may apply to a particular issue**
- b. Find the instrument in the authoritative source (taking account of language and resources available)**
- c. Determine if the instrument is applicable**
 - I. Entry into force**
 - II. Parties, ratifications and signatures**
 - III. Declarations and reservations**
 - IV. Determine if the instrument has been modified since adoption**
- d. Clarify meaning and intent through background documents (travaux préparatoires)**
- e. Cite the instrument in an authoritative source**

Determining if a relevant international instrument exists is not an exact science. Searches of important treaty depositaries, such as the UN, as well as general web searches may be necessary. Printed treaty collections will normally contain a topical table of contents that may offer some help. Printed indexes to treaties (e.g. Kavass, *United States Treaty Index*) offer a systematic subject-based approach.

Discussion points could cover the resolution of conflicting treaty obligations, implied reservations and other issues relating to the validity of treaties (Vienna Convention on the Law of Treaties section 2 and 3).

Useful resources

Yale Law School's Guide to Travaux Préparatoires (<http://library.law.yale.edu/collected-travaux-preparatoires>)

4 International custom (ICJ art. 38 no 1 lit b)

- a. Find evidence of state practice**
 - I. Records of a state's foreign relations and diplomatic practices**
 - II. Legislation concerning a country's international obligations**
- b. Find practice of intergovernmental organizations**
 - I. UN Security Council**
 - II. UN General Assembly**
- c. United Nations human rights committees and other relevant intergovernmental organizations** (For instance: UN Human Rights Committee (CCPR), UN Committee on the Elimination of Racial Discrimination (CERD), UN Committee on the Elimination of Discrimination against Women (CEDAW), UN Committee against Torture (CAT))
- d. Find and cite international custom in an authoritative source if available**

The requirements for considering something customary international law are regularity and *opinio juris*.

With regard to state practice, some discussion points could be: How can we determine if an action was taken ad hoc or as a consequence of a perceived customary rule? What actions of state representatives can be taken as evidence of state practice? Is a state bound by the interpretations of international law voiced by their counsel in international legal disputes?

Relating to the practice of intergovernmental organizations useful discussion points can be what are the kinds of matters each organization deals with? What kinds of practice does the organization produce (for instance UN committees: General comments, concluding observations and decisions of individual complaints) and what legal weight should be ascribed to them?

5 General principles of law (ICJ art. 38 no 1 lit c)

Understand the types of rules that may constitute general principles of law.

This concept is difficult to grasp for law students and there are several different interpretations in legal theory. As an overview it is worth noting that the principles include principles of international law, principles of national law and rules of legal logic.

Rules that have been claimed as general principles of law include: a right to self preservation, equity, state liability, responsibility and reparations for illegal actions, respect for property rights, good faith, pacta sunt servanda and procedural principles.

Useful discussion points can be: What evidence is required to claim a rule as a general principle of law? What arguments can be made for and against considering protection of the environment as a general principle of law?

6 Judicial decisions (ICJ art. 38 no 1 lit d)

- a. Find relevant decisions of international tribunals**
 - I. International Court of Justice (ICJ)**
 - II. International Tribunal for the Law of the Sea (ITLOS)**
 - III. International Criminal Court (ICC)**
 - IV. World Trade Organization Appellate Body (WTO AB)**
 - V. Other international and regional courts and tribunals (for instance ECtHR, IACtHR, ACJHR)**
- b. Find court decisions of an individual state concerning their international obligations**
- c. Find and cite a judicial decision in an authoritative source**

Discussion points: Does the subsidiary role of judicial decision accurately reflect how international criminal courts solve cases before them? What are the formal and the practical differences between sources "a" to "c" and "d"?

7 Teachings of the most highly qualified publicists (ICJ art. 38 no 1 lit d)

- a. Find relevant writings of legal scholars**
 - I. Treatises**
 - II. Periodicals**
 - III. Publications of regional international law associations**
- b. Cite writings of legal scholars correctly**

8 Citation Methods

The requirements for citations to international legal materials should adhere to local citation standards. These recommendations do not prescribe what standards should be used, but merely point out that citation of international materials is very different from domestic materials and is therefore an important part of a public international law research course. This entails knowing what the major publications and online sources are and

being aware of which are the most important. However, there does not seem to be a single accepted hierarchy of treaty sources, at least as far as citation guides are concerned.

Citation of international instruments

OSCOLA (Oxford Standard for Citation of Legal Authorities) 2006, Citing International Law section, p.25 (<http://www.law.ox.ac.uk/publications/oscola.php>) divides them into three categories: 'primary international treaty series' (UNTS, Consolidated Treaty Series and LNTS), which are the preferred source to cite; then official national series such as UKTS and ATS; then 'other' series such as British and Foreign State Papers.

The Bluebook (19th ed.), R.21.3.4 says that if the US is a party to the treaty you should cite UST or another US source, with an optional second citation from a source published by an international organization (UNTS, OASTS, etc.). If US not a party, The Bluebook says you should cite a source published by an international organization; if the treaty does not appear in such a source, cite a national series of one of the parties, e.g. ATS; if the treaty is not in any of the official sources, cite to ILM, and if not in ILM, cite to another unofficial source, e.g. Consolidated Treaty Series, Martens, 'or a government or international organization website.

The New York University Journal of International Law and Politics (N.Y.U. J. Int'l L. & Pol.), in its Guide to Foreign and International Legal Citations, says if you're writing for a domestic readership you should cite your national series first, only citing UNTS first if writing for an international readership (p. 266 in 1st ed. – see www.law.nyu.edu/ecm_dlv1/groups/.../ecm_dlv_006388.pdf ; p.229 in 2nd ed., wording unchanged – this ed. not available on the web).

Citation of judicial decisions

One should be aware that there are official reports, e.g. ICJ Rep, and unofficial ones, e.g. International Legal Materials, International Law Reports.

The Bluebook R.21.5.8 (Other Multinational Courts) says if the case is not in a series of official reports, cite ILR. OSCOLA says cite to official series such as ICJ Rep, or official court websites; under 'Other sources of international decisions' it mentions the International Law Reports first, then lists 'Other general sources of reports...', including ILM and ICLQ.

Understanding citations with other standards

Being able to understanding citations to public international law materials created in other standards than the standard prescribed for

9 Performance Indicators

A law student proficient in public international law research should be able to demonstrate:

- An ability to identify public international sources that relate to an issue.
- A capacity to formulate arguments on the relevant public international law based on the qualities of sources, their status and applicability.
- An effective research methodology for public international law.
- Skills in recognizing when sufficient research has been done to illuminate a public international law issue or determine if findings are incomplete.
- A proficiency in finding and citing international law sources from authoritative sources.