



LEGAL SKILLS

in international
contexts

Tamara N. Lewis Arredondo

Legal Skills in International Contexts

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Dr. Lewis has worked as a corporate and finance attorney, legal counsel for a neutral court monitor and as an academic researcher and lecturer for Dutch and Irish universities. She has also worked as a researcher on a European Commission-funded project.

Dr. Lewis considers her areas of legal expertise to encompass International Human Rights Law, European Union Fundamental Rights Law, International Criminal Law and US Constitutional Law.

Dr. Lewis' international experience covers Ecuador, Costa Rica, Yemen, The Netherlands and Ireland. She speaks English, Spanish and French. She has some knowledge of Dutch and Arabic.

This book is designed to fill a gap in textbooks for Legal Skills. There are very few resources available to assist students who will practice at the international and regional level. This e-textbook seeks to provide examples and assignments that use instruments and documents from those environments.

Preface

Legal Skills in International Contexts

Globalization or internationalization-- whatever name you assign this phenomenon-- there is no refuting the fact that advancements in technology, communication and transportation have made the world figuratively smaller. The interdependence of economies and the proliferation of internet-based commerce facilitates transactions between merchants and buyers the world over. Territorial boundaries no longer impede the velocity of transactions. Sovereign nations collaborate to plan global economic and environmental policies in an apparent acknowledgement that their individual interests are intertwined and their destinies dependent upon each other's well-being.

Law has never been a stranger to global trends. Rudimentary forms of International Law were born in the early civilizations the world around. For example, Herodotus' *Histories* recount a time when traders wished to obtain goods they could not acquire in their own territories. They made contact with other seafarers to exchange goods on mutually agreeable terms. International Law in a nascent form was also evidenced by warring peoples who wanted to create rules for the way they fought their enemies. Long before the advent nation state, diplomatic emissaries were sent to contact other tribes, clans or city-states, in a very basic form of international relations.

The confluence of commerce, war and diplomacy has resulted in an acute need for standards, principles and, yes, laws to govern human interaction across the continents. Two key events-- the rise of the nation-state and the discovery of the New World-- accelerated the

CHAPTER One

Legal Analysis

Chapter Overview

Skills explained:

- Critical thinking
- Problem solving
- Collaborative approaches
- Fact investigation
- Legal reasoning
- Written and oral communication

International legal instruments:

- Treaty
- Court judgment

Tools introduced:

- Mind mapping (multi-media)
- Close reading
- Case brief

Practice Tip: IBA International Principles

Pim, a recent law graduate, has been working at a small NGO for four months since he graduated from law school. He is tasked to update the database summary of legal decisions from international and regional jurisdictions relating to human rights issues. Pim must give a summary of the facts and issues arising in the case, as well as the reasoning and outcome of the decision. Pim's work is essential for the researchers who write pamphlets and develop informative literature for the NGOs constituents. Those researchers expect that they are citing the most recent decisions, judgments and pronouncements in the field. In short, those researchers will rely on Pim's legal analysis for their work. Being adept in legal analysis is a key skill for practice.

Part One of this chapter identifies and examines the subsets of skills necessary for producing sound legal analysis. Awareness of these skills help the legal professional to better process and reason as they undertake legal analysis. It also enables practitioners to know that those skills must also be regularly honed and refined. In addition to knowing the secondary skills, legal professionals are also thoroughly familiar with the types of instruments they will encounter when engaged in international legal practice. These instruments are discussed in Part Two of this chapter.

Skills used in legal analysis

When Pim and the researchers carry out their work, they must perform legal analysis. In fact, legal analysis is a daily activity for all law

Collaborative work approaches

The workplace is increasingly collaborative since the beginning of the millennium. Legal professionals are expected to perform their research and analysis on teams. This often entails drafting in a common document, meeting in groups or subgroups to monitor the progress of the project or written document. Collaborative work is also a skill that can be taught and refined with experience and over time. Many law schools and colleges are requiring students to work in groups and produce joint reports, legal briefs and memoranda in an attempt to simulate the work environment.

Collaborative work means that at a minimum, tasks are divided and deadlines are given. However, it also signifies greater cooperation by group members in reviewing, commenting and editing each other's work. Many companies have project management software and other resources to ensure that deadlines are met, editing and commenting is seamless and the final products are user friendly and deliverable.

Legal professionals collaborative work approaches include being able to carry out several collaborative roles. Those roles include persons who convene the groups or monitor how well the group is carrying out its assigned tasks, individuals responsible for recording the outcomes of any group meetings, members that can run the meeting and cover all agenda items and the group's official spokesperson.

Persons who take charge of convening the group, let members know when the group will meet to discuss joint work and monitor progress. **Convenors** must possess a high degree of organizational insight. Often effective convenors use good software or calendar reminders in keep the group on task, alert group members to meetings (including the date, time and location).

Meeting **facilitators** usually ensure that there is an agenda and that all items are discussed during the meeting. Effective facilitators know how to allow all members voices to be heard and do not push their own

personal viewpoints during the meeting. Generally, the facilitator also has an arsenal of weapons for combatting deadline and stalemates on the team, including consensus making.

Collaborative working groups also memorialize the outcomes and decisions made in their meetings. Persons tasked to record (**secretary or recorder**) the main decisions and ideas coming from a meeting can also circulate the information to other members so that everyone can be apprised of important decisions made by the team. Recording the sessions in audio, video or in writing provides key points of reference for the team in later stages of the project and for institutional memory for future similar endeavors.



The group **spokesperson** is the group's face to the larger organization. The spokesperson can represent the group's work and progress in management meetings or in meeting with other departments. The group spokesperson can also serve as a contact point for other persons who may need to be apprised of the work done in the group. The spokesperson reaches out to other members of the organization if outside expertise or advice is needed.

Chapter Overview

Skills explained:

- Writing
 - Objectively
 - Persuasively
 - Informatively
- Structuring your draft
- Drafting-- sentences, paragraphs
- Refining-- structure, clarity, content
- Feedback loop

International legal instruments:

- Memorandum
- Brief
- Report

Tools introduced:

- Mind mapping
- Outlining (multi-media)
- Microsoft Word's track changes, comment features

Practice Tip: Plain English movement

CHAPTER Two

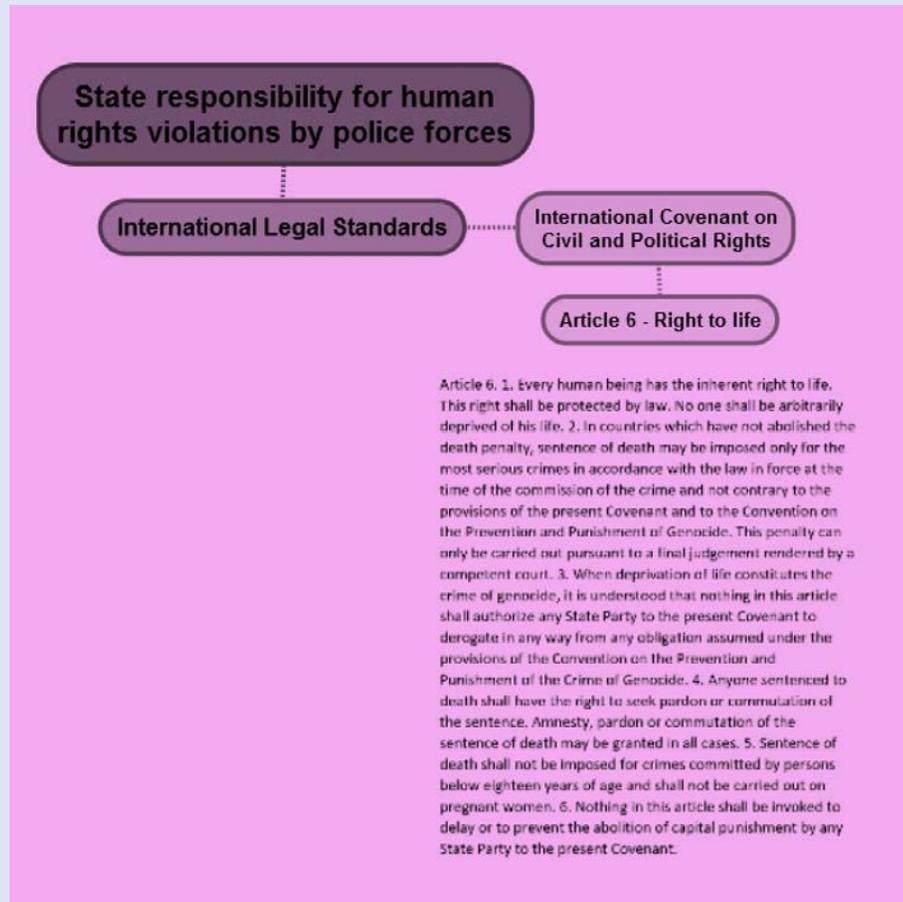
Legal Writing

Sandra, a colleague of Pim, has been working on a memorandum outlining the international standards applicable to states regarding the use of force against civilians by police forces. Sandra knows that she will analyze one of the international human rights covenants and she also knows which of the provisions is most applicable in this case and how it has been interpreted by the relevant monitoring body. However, Sandra needs to put this into writing in such a way that her readers will understand the applicable provisions and how they regulate state responsibility for the behavior of their police forces.

Legal professionals regularly conduct legal analysis, using legal reasoning, examining legal issues and applying the legal standards to the circumstances of their cases. Yet, the intellectual exercise of reasoning through a problem or deciding based on legal standards rarely ever ends with the cognitive exercise itself. Most professionals will need to distill their analysis in a written form. Often, the analysis is incorporated into a court brief, internal memorandum, opinion letter or report. Each of these written instruments reflect the cognitive reasoning used by the writer when doing her legal analysis.

Mind mapping to structure your writing

As Sandra begins to set her analysis to writing, she will draw a mind map and use it to help her make an outline.



The main point will be the right to life found in Article 6 of the covenant. She knows she will have to talk about the covenant, the

right to life and the way the article has been interpreted by the monitoring body for the treaty, but her outline will let her make a quick sketch of the main points to have in mind as she drafts.

Creating an outline

While all documents will have an introduction, body and conclusion, the way in which the content in the body of the document is structured and developed differs with the specific purpose of the analysis. For example, in a memorandum, you may have been asked to give an answer to specific legal questions. Your memorandum will introduce the issue, talk about the relevant facts and discuss the law applicable to the facts, then give a conclusion. If the facts are relevant to each of the legal questions you need to answer, then when structuring the memorandum, it may make sense to have a beginning section discussing the applicable facts and a second section subdivided into the questions that need to be answered. However, if the facts for each of the questions differs, it may be wiser to divide the body, at once, into the separate sections dealing with each question, followed by the analysis of each question separately.

Using the mind map, Sandra can create an outline that may look like this:

- I. Introduction
 - Statement of facts
 - Preview of the structure of the document
- II. Standards for state responsibility for police conduct
 - Local and national
 - International
- III. International Covenant on Civil and Political Rights (ICCPR)

CHAPTER Three

Legal Citation

Chapter Overview

Skills explained:

- Legal citation
 - Purpose
 - Types
 - Examples in national contexts
- OSCOLA
 - Building a citation for primary and secondary sources
 - International
 - Regional
 - Foreign countries

International legal instruments:

- Memorandum

Tools introduced:

- 3-step citation building

Practice Tip: Citation management software

Sandra's draft memorandum though complete with respect to content and argumentation is still incomplete. The memorandum is missing a key piece to enhance the credibility and utility of its contents. The memorandum needs citations for the legal sources that are quoted or otherwise used to develop the arguments and issues discussed in the document. Part One of this chapter explains what citations are and why they are used. It also gives a general overview of citation systems used in some national jurisdictions. Part Two explains OSCOLA, the Oxford University legal citation system, introduces the 3-step process for building a citation and gives examples of relevant primary and secondary sources used in international and regional law contexts and demonstrates how they should be cited using OSCOLA's rules.

Part One: General information about legal citation systems

Definitions

Citation is a practice of systematically acknowledging sources quoted or consulted in a written document by fully identifying the author, title and identifying information for the material. Citations are commonly used in academic settings, but are also used in professional setting such as in the briefs submitted to courts or the articles written for journals. Citations are also important when preparing grant applications or even writing textbooks.

The title of this chapter is *legal* citation. Is there, then, a difference in legal citations and non-legal citations? The answer is yes... and ...

Source	Books, journal articles, newspapers
Rule	R. 3.2(books) 3.3 (journals) 3.4.9 (newspapers)
Elements	<p><u>Books:</u></p> <p><u>Contribution to edited books:</u></p> <p><u>Journal article:</u></p> <p><u>Electronic journal article</u></p> <p><u>Newspaper article (print/electronic):</u></p>
<p>Timothy Endicott, <i>Administrative Law</i> (OUP 2009); Justine Pila, 'The Value of Authorship in the Digital Environment' in William H Dutton and Paul W Jeffreys (eds), <i>World Wide Research: Reshaping the Sciences and Humanities in the Century of Information</i> (MIT Press 2010); Paul Craig, 'Theory, "Pure Theory" and Values in Public Law' [2005] PL 440;</p>	

are italicized, while titles of articles are placed in single quotation marks (' '). All pinpoint citations come at the end of the citation and

are NOT set apart by a comma. OSCOLA does not require you to cite an online publication if it is available in hard copy. The citation should be to the hard copy.

Be aware of the rules for citing works with more than two authors. The use of the phrase "and others" is required. Additionally, edited volumes with chapters authored by different people, require both the author of the chapter's name and the editor's name and use a special formulation indicating the title of the chapter as well as the title of the entire book (see examples below). There are also special formulations for articles that are only available online. If your secondary source does not fall into the guidelines, you can use this formula as a guide for building the citation keeping in mind that if an author is not indicated, the citation begins with the title, instead:

Author, | 'title' | (additional information, | publisher | year)

A brief formula for each secondary source is set forth in the chart that follows:

Graham Greenleaf, 'The Global Development of Free Access to Legal Information' (2010) 1(1) EJLT accessed 27 July 2010;
 Ian Loader, 'The Great Victim of this Get Tough Hyperactivity is Labour' *The Guardian* (London, 19 June 2008) accessed 19 November 2009.

Foreign sources

OSCOLA is the legal citation system for the United Kingdom; therefore, any jurisprudence from national jurisdictions that do not lie within the UK territory are treated as foreign law in OSCOLA. The