

**CHAPTER 12**  
**FOREIGN AND INTERNATIONAL LAW RESEARCH**

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**TERMINOLOGY USED IN RESEARCHING INTERNATIONAL LAW**

<i>General Terms</i>	<i>Definitions</i>
International Law	Rules and principles applied to the relations between states
Foreign Law	Internal law of countries outside the United States
Public International Law	Laws dealing with the relations between states
Private International Law	Rules that govern the choice of law (conflict of laws) in private matters such as family law, business disputes, etc.
Customary International Law	Rules arising from general and consistent practices of states that are accepted as legally binding
<i>Terms Relating to Formal Agreements</i>	<i>Definitions</i>
Convention	Includes treaties and other international agreements of all kinds; the word is used interchangeably with "agreement"
Treaty	A formal written agreement between states
Bilateral Treaty	Treaty between two states
Multilateral Treaty	Treaty between three or more states; typically a minimum number of countries must join a multilateral treaty before it becomes binding on the countries that agree to it
Executive Agreement	An agreement entered into by the President that does not require consent of the Senate

## SELECTED SOURCES FOR RESEARCHING UNITED STATES TREATIES

### Indexes

*Treaties in Force* (U.S. Department of State) (JX236 1929c, Level 4)

Published since 1964, this is an annual publication listing all treaties and other international agreements in force and of which the United States is a party. Part 1 lists bilateral treaties by country and includes subdivisions by subject. Part 2 lists multilateral treaties by subject. Electronic versions are available on the Department of State web page <http://www.state.gov/s/l/treaty/treaties> and HeinOnline (subscription access.)

*A Guide to the United States Treaties in Force* (JX236.5 G84, Level 4)

Published since 1982, this annual publication supplements *Treaties in Force* by providing additional access points. The Guide is also available on HeinOnline (subscription access.)

*United States Treaty Index: 1776-1990 Consolidation and Current Treaty Index* (JX236.5 C87, Level 4)

Edited by Igor I. Kavass, this is "a comprehensive index of all documented treaties and agreements entered into by the United States from 1776 through 1990." It has been updated by 1995 and 1998 revisions and is further updated by the *Current Treaty Index* that is issued twice each year. The *Current Treaty Index* is also available in the HeinOnline database (subscription access.)

*Treaties Pending in the Senate* (U.S. Dept. of State web page)

<http://www.state.gov/s/l/treaty/pending/>. This is a list of treaties awaiting the advice and consent of the Senate. Pending treaties are listed chronologically with the oldest first. There are links to the full text of the treaties in PDF format. For research on older treaties the *Congressional Index* (J69 C6, Level 1) is a good resource. Volume 1 has a "Treaties" tab that can be used for locating summaries and status information on pending treaties. A subject index is included. The Thurgood Marshall Law Library has volumes from the 88<sup>th</sup> Congress (1963-64) through the 110<sup>th</sup> Congress (2007-2008).

### Treaty texts

*International Legal Materials* (American Society of International Law) (Periodicals Stacks, Level 1)

This is a bi-monthly publication that contains a wide and well selected range of documents prior to publication in official sources. Included are treaties and agreements, judicial proceedings, legislation and regulations, and reports. Each issue includes tables of "recent actions regarding treaties to which the United States" is and is not a party. Electronic versions: Lexis Advance (Directory path: Browse – Sources – type International Legal Materials and hit Enter – Select International Legal Materials/Get Documents; Westlaw – type ILM in the search box at the top of the home screen; JStor.org (subscription access); and HeinOnline (subscription access).

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*Treaties and Other International Acts Series* (T.I.A.S.) (JX231.A341, Level 4)

This is the first official publication in slip form of all treaties and international executive agreements. The pamphlets are published somewhat chronologically with a lag time usually between four and six years. Electronic access is through the U.S. Dept. of State web page: <http://www.state.gov/s/l/treaty/tias/index.htm> (1996-2013) or HeinOnline where coverage is 1982 to the present (subscription access.)

*United States Treaties and Other International Agreements* (U.S.T.) (JX231.A34, Level 4)

Since 1950, the U.S. Department of State has published official bound volumes containing all treaties and international executive agreements. The set follows the numerical order of documents as first published in pamphlet form in T.I.A.S. The current lag time in publication is about ten years. Electronic access is via HeinOnline (subscription access.)

Charles I. Bevans, ed., *Treaties and Other International Agreements of the United States of America 1776-1949* (JX236.1968 A5, Level 4)

This is the most comprehensive collection of pre-1950 treaties and agreements. Volume 13 is the general index. Available through HeinOnline (subscription access.)

### **Databases containing treaties on Westlaw**

Begin your search on Westlaw by typing the words you want to search in the search box at the top of the home page screen. A drop-down box will appear with a selection of databases.

### **Databases containing treaties on Lexis**

If you are using Lexis Advance, type the word(s) you wish to search in the box at the top of the home page screen. If you type in treaties, a drop-down box will appear with a number of choices including US Treaties on Lexis, Tax Analysts Worldwide Tax Treaties and Treaties in Force.

### **Internet sites containing treaties**

Congress.gov also has a link to treaty documents at the bottom of the homepage.

<https://www.congress.gov/>

## **LOCATING IMPLEMENTING LAWS AND REGULATIONS AND JUDICIAL INTERPRETATIONS**

Often, implementing legislation is required before terms of an international agreement become a part of United States law. In addition, implementing regulations may be found that have been issued by an appropriate federal agency, and federal court cases may interpret ambiguous treaty language. The usual sources of federal law (the *United States*

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*Code, C.F.R., Federal Reporter, or United States Reports*) may, therefore, have information relating to implementation of a particular treaty.

### United States Codes

The normal access points for finding statutes should be used to search for implementing legislation. Additionally, the *United States Code Service* (U.S.C.S.) has a volume called "Annotations to Uncodified Laws and Treaties," that collects case notes to various multilateral and bilateral treaties to which the United States is a party.

### Code of Federal Regulations and Federal Register

The usual access points and updating techniques should be used to search for implementing regulations.

### West's Federal Practice Digest

A West topic "Treaties" collects references to cases that interpret and apply U.S. international agreements. The topic "International Law" is useful for finding cases that relate to more general questions about the sources of international law and their relationship to U.S. law.

### United States case law databases on Lexis and Westlaw

The federal case databases can be helpful for locating cases that have applied or interpreted international agreements. The West topic "Treaties" is assigned the topic number 385 online. So, if for example you had found that the digest topic Treaties key 14 on violation was useful, you could enter a search for 385k14 on Westlaw. The West topic "International Law" is assigned topic number 221 online. You can also search key numbers on Westlaw. Go to the Federal tab and then access advanced search. There is a search box for Synopsis/Digest.

### Internet sites containing international law materials

The internet has become an especially rich source of foreign and international law materials.

ASIL Electronic Resource Guide (ERG) – this is a development project of the American Society of International Law. Chapters include research information on the European Union, International Humanitarian Law, International Intellectual Property Law and the United Nations: <https://www.asil.org/resources/electronic-resource-guide-erg>.

Excellent sources of international materials are the web pages of Non-Governmental Organizations (NGOs). The United Nations Treaty on the Law of the Sea page <http://www.unlawoftheseatreaty.org/> and the World Intellectual Property Organization page are good examples. <http://www.wipo.int/portal/index.html.en>.

## SELECTED SOURCES FOR RESEARCHING WORLD TREATIES

When searching for information on treaties to which the United States is not a party, the following sources should be consulted:

### Historical

Clive Parry, ed., *Consolidated Treaty Series* (JX120 P35, Level 4)

This is a collection of world treaties, with limited annotations, in their original languages and existing translations in English or French from 1648 to the beginning of the *League of Nations Treaty Series* (approximately 1918 to 1920). Also available on HeinOnline (subscription access)

*League of Nations Treaty Series* (JX170 L4, Level 4)

Treaties of member and nonmember nations registered with the Secretariat from 1920 to 1946. Also available on HeinOnline (subscription access)

### Current

*United Nations Treaty Series* (U.N.T.S.) (JX170 U35, Level 4)

Beginning with 1946, this set contains the text of all treaties registered with the Secretariat by its member states, or filed and recorded by nonmember states or international organizations. It is not as comprehensive as the United Nations intended, especially for bilateral treaties. Cumulative indexes are published for every 50 volumes of the Series. The Series is currently published with a lag time of about 10 years and the Index with a lag time of about 15 years. This publication is available in the United Nations Treaty Database: <http://treaties.un.org/Pages/UNTSONline.aspx?id=1>

### Indexes and finding aids

**United Nations Office of Legal Affairs.** *Multilateral Treaties Deposited with the Secretary-General* (JX1977, Level 4)

Since 1968, this yearly publication covers all multilateral treaties that have been concluded under the auspices of the United Nations and that have been deposited with the Secretary-General. An electronic version of this title is available through the United Nations Treaty Collection database.

## STRATEGIES FOR RESEARCHING INTERNATIONAL LAW

### Background research

As is true in other subject areas, general law reviews may contain articles that can be used as starting points. Searching the journal databases on Lexis and Westlaw can be a helpful first step in the research process. However, many law reviews exist that relate to specific international law topics. Coverage of these on Lexis and Westlaw is not complete

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and, even if the title is included, contents may not go back very far. Therefore, the legal periodical indexes may be more helpful for this purpose than the full text journal databases. The *Legal Resource Index* (or LegalTrac) is available on Lexis Advance. If you type “legal resource index” into the search bar, a drop-down box will appear will appear with the database listed. You may also access LegalTrac through the Thurgood Marshall Law Library’s list of electronic databases on its home page. HeinOnline also has a searchable database for law reviews and journals with full coverage and PDF format. The print indexes, *Current Index to Legal Periodicals* and the *Index to Legal Periodicals*, are shelved on Level 1. Once citations to specific articles are obtained, you will find that the Thurgood Marshall Law Library subscribes to many of the law reviews that relate to international law topics.

Searching the Thurgood Marshall Law Library’s online catalog allows access to the treatise collection in this library, which contains many works relating to international law topics. Coverage ranges from discussion of specific subject areas to general texts on international law. For information on current topics, newspaper articles may provide useful information.

In addition, there are several extremely good international legal research guides available on the internet. The LLRX web page has a wide variety of international research guides. [http://www.llrx.com/international\\_law.html](http://www.llrx.com/international_law.html), and Lyonette Louis-Jacques, of the University of Chicago Law School, D'Angelo Law Library lists many of them on her own international legal research website. <http://www2.lib.uchicago.edu/~llou/forintlaw.html>

### Locating the text of international agreements

The official sources of agreements for which the United States is a party are *United States Treaties (U.S.T.)* and *Treaties and Other International Acts (T.I.A.S.)*. Because publication rates for the print versions of these titles have a long lag time, researchers must use the Department of State web page <http://www.state.gov/s/l/treaty/tias/>, *International Legal Materials*, Westlaw/Lexis, or one of the internet sites to find the text of recent treaties.

### Updating international agreements

Once an international agreement has been located, it is necessary to consult a listing of treaties currently in force to determine its status. Either *Treaties in Force* <http://www.state.gov/s/l/treaty/tif/index.htm> or *A Guide to the United States Treaties in Force* can be used to answer questions concerning the current status of particular agreements. The indexing in the *Guide* is more detailed than that in the official *Treaties in Force*; the *Guide* is also more up to date. Further updating should be done using the Department of State publication *Treaty Actions*: <http://www.state.gov/s/l/treaty/c56220.htm> and possibly the American Society of International Law publication *International Legal Materials*.

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### **Researching customary international law**

In addition to formal international agreements, much of international law practice relates to determining "international custom." Customary law is derived from numerous sources and such a search is beyond the scope of a basic introduction. Several publications with names like "Digest of International Law" are the typical starting points for this type of research.

### **Researching adjudications at the international level**

A variety of forums and mechanisms exist for the settlement of differences between states. These range from mediation and arbitration to decisions of the International Court of Justice. Current decisions of the International Court of Justice are available at the official website, accessed through the Thurgood Marshall Law Library International and Foreign Law Page. Again, these sources are beyond the scope of an introduction, but would be important for serious research in international law.

### **Summary**

International law is a specialty area that requires considerable expertise and familiarity with the sources. It is not unusual, however, for attorneys who do not consider themselves to be specialists in international law to become involved in such questions. Commercial transactions and domestic relations are examples of areas where international law questions arise on a regular basis.

It is important to recognize that many of the same techniques that are used for researching U.S. law are appropriate for international law research as well. Beginning with secondary sources, for example, is a technique that is often helpful.

## **BASIC FOREIGN LAW RESEARCH**

### **Cautions on performing foreign law research**

The following cautions on undertaking foreign law research are summarized from Susan Van Syckel, *Strategies for Identifying Sources of Foreign Law: An Integrated Approach*, 13 TRANSNAT'L LAW. 289 (2000):

- (1) there may not be published sources of law for the country you are researching;
- (2) if there are published sources, they may not be in English;
- (3) if they're in English, a particular law library might not have them; and
- (4) if the library has them, they may not be current, or the translations may be inaccurate.

Furthermore, without knowing something about the legal system of the country you are researching, it will be difficult to evaluate the reliability of the sources you find. And even if they are reliable, you won't know how to use them. For example, suppose you find a relevant case from a court in the country whose law you are researching. Are cases

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binding or even persuasive in the courts of your target country? What is the relationship between cases and statutes?

### Selected sources for foreign law research

*Guide to International Legal Research* (current edition, Reading Room: KZ1234.G85). The *Guide to International Legal Research* discusses primary and secondary sources for researching foreign and international law. The first part is organized in two parts: the first part is divided into chapters by geopolitical region and offers country-specific resources. The second part covers substantive areas of international law such as intellectual property trade, environmental law and human rights. Also available on Lexis.

*Martindale-Hubbell International Law Digest* (Superseded Collection, Compact Storage-Level 1-Stack C68: KF190.M22 (2006)).

Part of the multi-volume Martindale-Hubbell directory set, this portion contains summaries of the laws of over sixty countries and of the European Community. A description of the governmental and legal systems of each country is also provided. The Thurgood Marshall Law Library cancelled its print subscription to this service in 2006, but online access is available through Martindale.com (available for on-campus users): [www.martindale.com](http://www.martindale.com) > Communities > Legal Library > Advanced Search. Under “Advanced Search,” search for “law digest” (with quotes) in the keyword search box. Under “Jurisdiction Search” select “All countries” or a specific country to search.

*World Constitutions Illustrated* (HeinOnline).

This is library in HeinOnline that contains current constitutions in the original language and an English translation. In addition, there are links to constitutional periodicals, classic books and links to scholarly articles. HeinOnline is a subscription access database. For historical research go to *Constitutions of the Countries of the World* (Superseded Collection, Compact Storage-Level 1:K3157.A2B4). While this title has not been updated since 2006 it contains the English translations of constitutions of nations of the world. It also includes annotated bibliographies.

*Foreign Law Guide* (Brill Online Reference Works). This database is one of the best places to start your research on foreign law. Searchable by country or subject, the Guide first presents an overall view of a country’s legal system and then sets out sources of the law and cases. Live links to online resources are also provided. Access this database through the Thurgood Marshall Law Library web page database list. Access is limited to University of Maryland Carey Law faculty, students and staff.

*Thurgood Marshall Law Library Research Guide on Researching Foreign Law:*

[http://law.umaryland.libguides.com/foreign\\_law](http://law.umaryland.libguides.com/foreign_law)

## SELECTED SOURCES FOR RESEARCHING EUROPEAN COMMUNITY LAW

*European Union web page* ([http://europa.eu/index\\_en.htm](http://europa.eu/index_en.htm))

One of the best sources of information on the European Union. This database contains links to statutes, enabling treaties and case law. In addition, there are links to reports and other excellent sources of information.

*European Union Law Guide* (KJE949.E97, Level 4 (no longer updated as of 2013))

Multi-volume looseleaf that contains "the major treaties setting up the European Union together with other important institutional acts and the most recent legislative program of the Commission." This resource is also available and current from westlaw. Once you have logged into westlaw, simply type "European Union Law Guide" in the search box at the top of the home screen and select the title.

*Foreign Law Guide.*

There is an excellent chapter on European Union sources in this database. An historical overview of the EU is provided and there are links to online resources. There is also a section on print resources.

Council of Europe. *European Conventions and Agreements*. (JX626 1971.C68, Level 4)

Full text of all documents from 1949 – 1998. The Council of Europe Treaty Office has posted the Conventions and Agreements on its web page:

<http://www.coe.int/en/web/conventions/home>.

Ralph H. Folsom, *European Union Law in a Nutshell* (8th ed. 2014). (KJE949.F55 2014, Level 2 Reading Room).