

# The Wide World of Laws

A quick-start guide to international legal research

by Christopher C. Dykes



**F**rom the proliferation of jobs outsourced to other countries, to the impact of the United States' economic crisis on foreign markets, it's easy to see that the world is now intricately interconnected. Due to this globalization, international law is also increasingly important—even to law librarians in the United States. The reasons are numerous.

First, more attorneys are involved with international litigation, even those with practices that do not handle international cases. Second, courts find themselves entangled with international issues, especially with regard to the interpretation of treaties. Third, law school curriculums now include courses on international law, and some even offer LL.M. programs in international law.

“International legal research is important for academic law librarians because law schools are adding international courses to their curriculum but professors are also adding international elements to their non-international law courses,” says Lee F. Peoples, associate professor of law library science, associate law library director, and director of international programs for Oklahoma City University School of Law. Peoples points out that Harvard now makes International Law a requirement for its first-year students.

All of this adds up to greater demand for reference assistance from law faculty and students, attorneys, judges, and even the general public. Marci Hoffman, foreign and international law librarian at the University of California-Berkeley’s School of Law, believes that international law is really important for law students, professors, and attorneys. She says that even attorneys “whose practices do not traditionally deal with international law may find themselves having to research in this area, and even a family law attorney in a small town could easily be involved in international legal issues.”

Law librarians are not immune from globalization, regardless of the type of library setting. Unfortunately, many academic and law firm libraries do not have the resources to hire international specialists, and even those that do have difficulty filling these positions because of an apparent shortage of qualified candidates. Thus, librarians without special training in this area now find it necessary to learn how to research international law.

## Getting Started

It is difficult to sift through the endless types of sources and documents available for international law. Where should the beginner start first?

There are several introductory resources available to get the novice started. *The Guide to International Legal Research* (George Washington University International Law Review, LexisNexis, 2007) is a very useful source because it gives a brief introduction to international law and then goes into detail on the primary and secondary sources. Along with Robert C. Berring, Marci Hoffman coauthored *International Legal*

*Research in a Nutshell* (Thomson-West, 2008), which requires less reading and does an impressive job of listing different types of print and online international legal research materials.

Several law libraries, particularly those that have strong international collections, will have research guides that can be downloaded online. Columbia, Duke, Harvard, UC Berkeley, and Yale law libraries all have research guides designed to assist the beginner in this area. Globalex ([www.nyulawglobal.org/Globalex](http://www.nyulawglobal.org/Globalex)), produced by the New York University Law School, includes a detailed listing of research guides, including various areas of international legal subjects such as international criminal and even international health. LLRX ([www.llrx.com](http://www.llrx.com)) also has a number of research guides posted by librarians on international law.

Researchers can also find online tutorials for international law. Computer Assisted Legal Instruction (CALI) offers lessons on international law and international legal research. Duke University Law Library has a free online tutorial ([www.law.duke.edu/ilrt](http://www.law.duke.edu/ilrt)) that includes the basics of international legal research and expands on treaties and agreements, customary law, and international organizations such as the United Nations. The tutorial also includes review questions to adequately reinforce principles taught for each major section.

AALL’s Foreign, Comparative, and International Law Special Interest Section (FCIL-SIS) has ample programs at the Annual Meeting that deal with various topics on international legal research. The FCIL-SIS Web site ([www.aallnet.org/sis/fcilsis](http://www.aallnet.org/sis/fcilsis)) provides a list of members willing to help with legal research on various international topics, as well as course syllabi and materials posted by members. Joining this SIS will allow members to take part in discussion groups and subscribe to the online discussion list, which often includes conversations on international topics.

## Framework for International Law

In order to research international law it is important to have a general understanding of its structure. Article 38 of the International Court of Justice Statute provides some authority on what effectively constitutes international law. These include treaties, customary law, and General Principles of Law as exhibited by highly qualified scholars of the various nations and international cases.

First, international law largely consists of treaties between nations. Treaties can be bilateral (between two nations) or multilateral (among more than two nations). Treaties are often

referred to as “agreements” or “conventions,” and their authority within a specific country varies depending on its specific laws. Treaties enjoy full standing under Article VI of the U.S. Constitution as the supreme law of the land but require advice and consent from the Senate for ratification.

Customary law is essentially the common law of international law. It is not as definitive as treaties and varies with respect to authority. According to Sean D. Murphy’s *Principles of International Law Hornbook* (Thomson-West, 2006), customary law has two parts. The first part, known as state practice, looks at “relatively uniform and consistent state practice regarding a particular matter.” For example, one could view how nations have dealt with maritime shipping requirements.

The second part deals with nations’ beliefs that they can commit certain acts because they feel obligated or allowed to under international law. A great example used by *Principles of International Law* is how the United States will display its flag side by side with a flag of a foreign country during a head of state’s visit. All nations typically follow this tradition, although there are no international rules that require it.

General Principles of Law refers to basic principles embedded in the laws of the various nations. This can be used as evidence of international law in situations where treaties and even customary law fail to provide adequate guidance. The International Court of Justice uses international case law and writings from well respected scholars to effectively illustrate General Principles of Law according to Article 38 of the International Court of Justice Statute.

While international cases have the respect of the International Court of Justice, according to *Guide to International Legal Research* (§1-12), there is no *stare decisis* in international tribunals, although previous decisions by an international tribunal can be persuasive. National courts that review international issues can also be authoritative but to a lesser extent than international tribunals.

## Locating International Law

Learning to locate treaties is the foundation of international legal research. Finding treaties between the United States and other nations is manageable because there is a good selection of sources to choose from. “A U.S. treaty is typically easy to locate, but finding treaties where the U.S. is not a party is more complicated,” advises Lee Peoples.

Marci Hoffman states that the difficulty with searching for treaties is that there is “no one way to locate them,

and doing so can involve utilizing numerous print and online resources.” According to Hoffman, “three things should influence the tool that is ultimately chosen by the librarian: including the party to the treaty, the date of treaty, and the topic of treaty.”

U.S. treaties are available through a variety of sources. There are a number of indexes that make effective finding aids. *Treaties in Force* (Government Printing Office, 1941-) by the U.S. State Department and *A Guide to the United States Treaties in Force* (W.S. Hein, 1982-) are necessary when locating treaties that are currently in effect. The *United States Treaty Index* (W.S. Hein, 1991-) is helpful to locate all treaties regardless of ratification.

Sources that have the treaties in full text include *Treaties in Force (TIF)*, *Treaties and International Acts Series (TIAS)*, and *United States Treaties and Other International Agreements (UST)*. The *TIAS* include treaties that were issued in slip form from the 1940s until the early 1980s and then compiled in *UST*. There are significant gaps from 1984 forward and a lag time of nearly a decade for many of these treaties. U.S. treaties prior to 1950 can be located in Bevans' *Treaties and Other International Agreements of the United States of America, 1776-1949* (Government Printing Office) and also in the *United States Statutes-at-Large* (Government Printing Office) until 1950.

Many law libraries have these print sources, but treaties can be accessed online. *The U.S. Treaties in Force* is listed on the U.S. State Department's Web site ([www.state.gov/s/l/treaty/treaties/2007/index.htm](http://www.state.gov/s/l/treaty/treaties/2007/index.htm)). This site includes current information from *Treaties in Force* as well as information for *TIAS* from 1996-1998. The Thomas database ([www.thomas.gov](http://www.thomas.gov)), sponsored by the Library of Congress, contains information for treaties through the *U.S. Senate Treaty Document Series* (Government Printing Office) but only includes the ratified treaties. Librarians who have access to the Hein Online ([www.heinonline.org](http://www.heinonline.org)) database can locate the full text of treaties from *TIF*, *TIAS*, and *UST* sources. Westlaw and LexisNexis both have treaties where the United States is a party, but LexisNexis has greater coverage.

Finding treaties where the United States is not a party can be excruciating and mostly involves using online sources because print resources are difficult to come by. Marci Hoffman points out that searching for treaties where the United States is not involved requires utilizing more than one online source, because there are a lot of gaps in information. She also suggests checking the accuracy of the information. “It's a good idea to

verify one source with another,” Hoffman says.

*The United Nations Treaty Series* (United Nations, 1947-) includes treaties that are deposited with the United Nations and is available in both print and through a free online database (<http://untreaty.un.org>). These treaties are also available through the Hein Online and Oceana Oxford ([www.oxfordonline.com/oceanalaw](http://www.oxfordonline.com/oceanalaw)) databases, both of which require subscriptions.

Locating treaties where the United States is not a party is easier for certain topics than for others. One example is with tax law. Researchers can easily locate international tax treaties by subscribing to the Tax Analysts Web services ([www.taxanalysts.com](http://www.taxanalysts.com)). Electronic Information System International Law (EISIL) ([www.eisil.org](http://www.eisil.org)) provides free access to recent multilateral treaties.

### **“Numerous online sources have significant gaps with respect to case coverage and require looking through several sources.”**

Locating customary law makes searching for treaties look like a breeze. Customary law requires creative searching and can involve a lengthy process even for the seasoned expert. Mary Rumsey, foreign and international law librarian at the University of Minnesota, advised that the best approach to researching customary law is to use secondary sources and take advantage of experts who have “tediously pulled together sources of authority.”

Rumsey recommends using Rudolph Bernhardt's *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 1991-2001) “because it describes the rules of customary international law, with citations to evidence of such rules.” This source is now available online by subscription ([www.mpepil.com](http://www.mpepil.com)) and is edited by Rüdiger Wolfrum.

Those who need further detail should consult *Sources of State Practice in International Law* by Ralph Gaebler and Maria Smolka-Day (Transnational Publishers, 2002-) because it is one of the most effective sources to locate evidence of state practice for various nations. The Columbia Law Library has several foreign research guides ([www.law.columbia.edu/library/Research\\_Guides/foreign\\_law/foreignguide](http://www.law.columbia.edu/library/Research_Guides/foreign_law/foreignguide)) compiled by International, Foreign, and Comparative Law Librarian Silke Sahl. The guides assist with locating evidence of state practice.

Yearbooks are also very efficient resources for researching customary law, according to Rumsey. Yearbooks are authored by well-regarded scholars and save the newcomer a lot of work and frustration.

There are yearbooks available for most nations and for international organizations such as the United Nations. They consist of academic articles that contain summaries of that nation's current practice and an overview of various documents. Digests are useful sources for locating customary law reflected by the states' diplomatic papers. Some popular digests for the United States include *Digest of United States Practice in International Law* (Government Printing Office, 1973-1980; 1989-) and Marian Nash Leich's *Cumulative Digest of United States Practice in International Law* (Government Printing Office, 1981-1988). The U.S. State Department provides full access from 2001 forward to the *Digest of United States Practice in International Law* online ([www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm)). There are a number of research guides on international customary law that will list numerous digests, and the *Sources of States Practice in International Law* by Gaebler will also list digests for various nations.

For researching U.S. state practice, the *Foreign Relations of the United States* (1861-) contains major foreign policy decisions and can be located in the HeinOnline database. Unfortunately, because of the depth of the materials there is a backlog of nearly three decades. The U.S. State Department publishes the *Department of State Bulletin* (Government Printing Office, 1939-1989) and the *Dispatch* (Government Printing Office, 1990-1999) for those who want current information.

General Principles of Law can be researched by finding international case law and the writings of well respected scholars. *General Principles of Law, as applied by International Courts and Tribunals* (Cheng, London Stevens, 1953) and Ian Brownlie's *Principles of Public International Law* (Oxford University Press, 2003) are highly regarded sources for researching General Principles of Law.

While there are print resources for international cases, Mary Rumsey points out that many of the international cases are available free online through a variety of sources. The International Court of Justice and its predecessor the Permanent Court of International Justice cases can be located from the International Court of Justice Web site ([www.icj-cij.org](http://www.icj-cij.org)). Reporters are also available for these courts as well.

Other tribunals, such as the

International Criminal Court, World Trade Organization, Dispute Settlement, and the Permanent Court of Arbitration, will issue decisions on their Web sites. The WorldLII International Courts and Tribunals Web site ([www.worldlii.org/int/cases](http://www.worldlii.org/int/cases)) makes these cases available online.

Numerous online sources have significant gaps with respect to case coverage and require looking through several sources. Westlaw and LexisNexis are very helpful for locating international cases, but their collections are incomplete, particularly for organizations outside of the International Court of Justice.

For locating domestic cases that explore international issues, librarians who subscribe to International Law in Domestic Courts (<http://ildc.oxfordlawreports.com>) will be able to review selected cases from various nations throughout the world. The *International Legal Research in a Nutshell* has a very informative section that discusses locating international cases.

## Looking to the Future of International Legal Research

International legal research is gaining in importance as more attorneys and courts within the United States deal with international issues and more law schools add international law courses to their curricula. Information professionals, whether in the law firm or the academic law library, will need to have knowledge in this area. This does not mean it is necessary to become an expert in international law, but instead one should start simple and begin with some research guides and tutorials.

“There is a basic skill level including a familiarity with international sources and the ability to navigate through these sources that everyone needs to have,” says Marci Hoffman. Those who are interested in foreign and international law librarianship may wish to consider joining the AALL FCIL-SIS section, which only costs \$15 for annual membership for AALL members.

The International Association of Law Libraries ([www.iall.org](http://www.iall.org)) is a worldwide organization that provides a number of opportunities, such as its annual conference, publications, and an online discussion list.

The American Society of International Law ([www.asil.org](http://www.asil.org)) is chartered by Congress and designed to foster interest in international law. It holds an annual conference in March and provides ample opportunities for involvement. ■

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# Resources for International Legal Research

## Introductory Resources

- AALL Foreign, Comparative, and International Law Special Interest Section ([www.aallnet.org/sis/fcilsis](http://www.aallnet.org/sis/fcilsis))
- Computer Assisted Legal Instruction (CALI)
- Duke University Law Library free online tutorial ([www.law.duke.edu/ilrt](http://www.law.duke.edu/ilrt))
- Globalex ([www.nyulawglobal.org/Globalex](http://www.nyulawglobal.org/Globalex))
- *The Guide to International Legal Research* (George Washington University International Law Review, LexisNexis, 2007)
- *International Legal Research in a Nutshell* by Robert C. Berring and Marci Hoffman (Thomson-West, 2008)
- LLRX ([www.llrx.com](http://www.llrx.com))
- Online research guides from Columbia, Duke, Harvard, University of California-Berkeley, and Yale Law Libraries

## Treaties

- Electronic Information System International Law (EISIL)—recent multilateral treaties ([www.eisil.org](http://www.eisil.org))
- *A Guide to the United States Treaties in Force* (W.S. Hein, 1982-)
- Tax Analysts Web services—tax treaties ([www.taxanalysts.com](http://www.taxanalysts.com))
- *Treaties in Force* (Government Printing Office, 1941-) ([www.state.gov/s/l/treaty/treaties/2007/index.htm](http://www.state.gov/s/l/treaty/treaties/2007/index.htm))
- *Treaties and International Acts Series (TIAS)* ([www.state.gov/s/l/treaty/treaties/2007/index.htm](http://www.state.gov/s/l/treaty/treaties/2007/index.htm))
- *Treaties and Other International Agreements of the United States of America, 1776-1949* (Government Printing Office)
- *The United Nations Treaty Series* (United Nations, 1947-) (<http://untreaty.un.org>)
- *U.S. Senate Treaty Document Series* (Government Printing Office) ([www.thomas.gov](http://www.thomas.gov))
- *United States Statutes-at-Large* (Government Printing Office)
- *United States Treaties and Other International Agreements (UST)*
- *United States Treaty Index* (W.S. Hein, 1991-)

## Customary Law

- Columbia Law Library foreign research guides ([www.law.columbia.edu/library/Research\\_Guides/foreign\\_law/foreignguide](http://www.law.columbia.edu/library/Research_Guides/foreign_law/foreignguide))
- *Cumulative Digest of United States Practice in International Law* by Marian Nash Leich (Government Printing Office, 1981-1988)
- *Department of State Bulletin* (Government Printing Office, 1939-1989)
- *Digest of United States Practice in International Law* ([www.state.gov/s/l/c8183.htm](http://www.state.gov/s/l/c8183.htm))
- *Dispatch* (Government Printing Office, 1990-1999)
- *Foreign Relations of the United States* (1861-) (HeinOnline)
- *General Principles of Law, as applied by International Courts and Tribunals* (Cheng, London Stevens, 1953)
- International Court of Justice Web site ([www.icj-cij.org](http://www.icj-cij.org))
- International Law in Domestic Courts (<http://ildc.oxfordlawreports.com>)
- *International Legal Research in a Nutshell* by Robert C. Berring and Marci Hoffman
- *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 1991-2001) ([www.mpepil.com](http://www.mpepil.com))
- *Principles of Public International Law* by Ian Brownlie (Oxford University Press, 2003)
- *Sources of State Practice in International Law* by Ralph Gaebler and Maria Smolka-Day (Transnational Publishers, 2002-)
- WorldLII International Courts and Tribunals Web site ([www.worldlii.org/int/cases](http://www.worldlii.org/int/cases))

## Organizations

- AALL Foreign, Comparative, and International Law Special Interest Section ([www.aallnet.org/sis/fcilsis](http://www.aallnet.org/sis/fcilsis))
- The American Society of International Law ([www.asil.org](http://www.asil.org))
- The International Association of Law Libraries ([www.iall.org](http://www.iall.org))