



No. 1

# *TimeSavers*

## *International*

**Roger Williams University  
School of Law Library**

## Researching Treaties and Other International Agreements

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### **Terminology**

As defined in the *Restatement*, an international agreement is “an agreement between two or more states or international organizations that is intended to be legally binding and is governed by international law.”<sup>1</sup> While the term treaty, convention, agreement, protocol, or another term may be used to designate an international agreement, the particular terminology used does not affect the legal status of the agreement. These terms are often used interchangeably.

International agreements can be bilateral (between two parties) or multilateral (having three or more parties).

### **The Role of Treaties in International Law**

Treaties are probably the most important source of international law. Article 38(1) of the Statute of the International Court of Justice<sup>2</sup> provides that the Court, in deciding disputes according to international law, shall apply: international conventions, international custom, and general principles of law recognized by civilized nations. Judicial decisions and the teachings of the most highly qualified legal scholars of the various nations are listed as “subsidiary means,” or secondary sources. Although the Statute does not specifically state that the primary sources of international law are listed in order of their authority, in practice an international court will give preference to a treaty provision over a conflicting rule of custom or general principle of law. Another practical consideration is that customary law or a general principle of law may not be as easy to establish as a treaty provision which is in writing.

### **The Role of Treaties in U.S. Domestic Law**

In general terms, international law and international agreements to which the U.S. is a party are law of the United States and supreme over the law of the states.<sup>3</sup> Cases arising under international law or international agreements of the United States are within the judicial power of the United States and, subject to Constitutional and statutory limitations and requirements of justiciability, are within the jurisdiction of the federal courts.<sup>4</sup>

Article VI, Section 2, of the Constitution provides, “[the] Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State notwithstanding.” As the language of this clause indicates, treaties clearly supersede any state constitutional or legislative provisions; however, there is no clear statement on the relative importance of treaties vis-a-vis federal law. Where provisions of treaties and federal statutes are in conflict, U.S. courts apply the rule that the treaty or federal statute later in time controls.<sup>5</sup>

A peculiarity of United States treaty law is the restrictive meaning of the term “treaty,” which is created by the more formal process described in Article II, Section 2, para. 2, of the Constitution, giving the President the “Power, by and with the Advice and Consent of the Senate to make Treaties, provided two thirds of the Senators present concur...” In addition to this formal treaty-making power, the President makes international agreements, called Executive Agreements, by the authority granted to him through legislation or treaties, or in the exercise of his Constitutional powers as commander in chief or as chief diplomat.

Remember that the President alone possesses the constitutional power to negotiate and conclude agreements with other nations. Although the consent of the Senate is required in the treaty-making process, only the President can ratify the treaty. Nonetheless, implementing legislation is often required for the treaty or other international agreement to become an effective part of U.S. domestic law, and the researcher should always check for federal legislation and administrative regulations on point.

### **Checklist of Information Needed for Research**

All of the following are important items of information when researching an international agreement. You will rarely have all of this data when starting your research, but carefully note what information you have found as a starting point and proceed to the appropriate source as indicated in the remainder of this *TimeSaver*.

- Name of Treaty (as close to official name as possible)
- Place and Date of Signing
- Date of Entry into Force
- Whether Treaty is Bilateral or Multilateral
- Whether the U.S. is a Party
- Citation to a Source of the Treaty Text

### **Finding the Text of a Treaty**

#### **S By Citation**

A citation to a treaty should include the agreement’s name, date of signing, parties, a subdivision if applicable, and a source in which the treaty can be found.<sup>6</sup> For example, Vienna Convention on Diplomatic Relations, 23 U.S.T. 3227, T.I.A.S. No. 502, 500 U.N.T.S. 95 (done at Vienna April 18, 1961; entered into force April 24, 1964; for the United States December 13, 1972).

#### **S S If the U.S. Is a Party - Current Sources**

*U.S.T.* - Since 1950, the State Department has published a separate series of bound volumes entitled *United States Treaties and Other International Agreements* (KZ235.3.A34) which contains the official text of

treaties to which the U.S. is a party. Treaties published in the set are arranged by TIAS numbers (see next entry) and are cited by volume and page of *U.S.T.* This set was intended to be published as an annual cumulation, but the latest volume published as of this date is v.35, pt. 4, 1983-84.

*T.I.A.S.* - Since 1945, the State Department has published the official text of treaties in a series of pamphlets entitled *Treaties and Other International Acts Series*. Each treaty is assigned a number, referred to as its TIAS number. Recent treaties, not yet published in *U.S.T.*, are cited by their TIAS number. In recent years this series has not been published in a timely manner. The latest numbered treaty as of this writing is No. 12470, dated August 1992.

*Hein's No. KAV* - This cite refers to an unofficial, commercial service, *United States Treaties and Other International Agreements, Current Microfiche Service*, published by William S. Hein & Co. Recent treaties published in this service are assigned a "KAV Number" by Hein. They have not been released for publication by the Department of State and have not been assigned a TIAS number. Most will eventually appear in the *T.I.A.S.* series.

*S. TREATY DOC.* - Treaties which require the advice and consent of the Senate are sent by the President to the Senate. The Senate then prints the proposed treaty with accompanying Presidential message in a series called *Senate Treaty Documents*. Beginning with the 97<sup>th</sup> Congress (1981-82), each treaty document is assigned a number, the first part of which corresponds to the relevant Congress, for example, Treaty Document 105-2.

## **S S If the U.S. Is a Party - Retrospective Sources**

*Stat.* - Before 1950, the official texts of treaties were published in the *Statutes at Large*. Treaties from 1776-1845 are collected in volume 8 of *Statutes at Large*. Indian treaties from 1778-1842 are collected in volume 7, with later treaties appearing in subsequent volumes.

*T.S.* and *E.A.S.* - Two separate pamphlet series, *Treaty Series* (1795-1945) and *Executive Agreement Series* (1929-1945), preceded the current *T.I.A.S.* series which includes both treaties and executive agreements.

*Bevans - Treaties and Other International Agreements of the United States of America, 1776-1949*, compiled by Charles I. Bevans (KZ236 1776-1949.B48), is a collection of treaties which originally appeared in *Statutes at Large*. This thirteen-volume collection, published by the State Department, covers the period before the *U.S.T.* began in 1950.<sup>7</sup>

*S. EXEC. DOC.* - Before 1981, Senate treaty documents containing the text of proposed treaties and Presidential messages, were called *Senate Executive Documents* and were designated by letter and Congress (e.g., Ex. W. 96-2).

## **S S If the U.S. May Not Be a Party**

*I.L.M.* - *International Legal Materials* (KZ64.I58) is a bimonthly periodical published since 1962 by the American Society of International Law. It is frequently used to locate recent treaties and other international documents. Online versions of *ILM* are on both Westlaw (*ILM* database) and LexisNexis (Legal: Area

of Law: By Topic: International Law: Treaties & International Agreements: International Legal Materials).

*U.N.T.S.* - The *United Nations Treaty Series* (micro) began in 1946 and contains the treaties and international agreements of member countries. Published by the UN Secretariat, this collection is not as current as it should be.

*L.N.T.S.* - The *League of Nations Treaty Series* (micro), the predecessor of the *U.N.T.S.*, consists of 205 volumes covering the period 1920-1946.

*C.T.S.* - The *Consolidated Treaty Series* (KZ120.P35 1969/81) is a commercially published series of 243 volumes containing the texts of world treaties from 1648-1919.

## **S By Name, Subject, Country, or Date**

There are many indexes and other finding aids which assist the researcher in finding the text of a treaty when no citation to a specific source is available. Incomplete information is not unusual when conducting treaty research. A name, popular name, or partial name may be the only information given to the researcher. Do not despair. Use the following indexes, as appropriate, based on the information at hand.

### **S S If the U.S. Is a Party**

*Treaties in Force* (KZ236.T74) - An annual Department of State publication which lists all treaties in force for the United States as of January 1 of each year. Part 1 is an index of bilateral treaties by country, subdivided by subject; Part 2 is an index of multilateral treaties by subject, with a chronological arrangement within each subject.

*A Guide to the United States Treaties in Force* (KZ236.1.G84) - A commercial publication which is similar to *Treaties in Force* in content but contains additional indexes: a numerical list of all treaties in force, subject indexes for both bilateral and multilateral treaties, a chronological list and a listing by country for multilateral treaties.

*United States Treaty Index: 1776-1990 Consolidation* (KZ235.U58), updated by *Current Treaty Index* - These companion indexes, published by William S. Hein, provide access to all treaties, whether in force or not. The main set is a multi-volume work containing separate sections: numerical guide, chronological index, country index, subject index, and geographical subject index.

*Shepard's Acts and Cases by Popular Name* can provide the researcher with a citation and other information if a treaty is well known.

### **S S If the U.S. May Not Be a Party**

*Multilateral Treaty Calendar, 1648-1995* (KZ118.W55 1998 Ref.) - A chronological listing of all multilateral treaties concluded from 1648-1995. Basic information about the treaty includes the parties, date signed, date entered into force, and cite(s) for locating the full text. In addition to the main listing, there is a general subject index, a geographical index, and other useful appendices.

*Multilateral Treaties: Index and Current Status*, edited by M.J. Bowman & D.J. Harris (on order), contains a subject index and a word index which can be used to locate treaties by name. Published in 1984, a supplement brings the work to date as of January 1, 1994.

*World Treaty Index*, 2d ed. covers the years 1900 through 1980. (KZ173.R64 1983).

*Index to Multilateral Treaties* (KZ118.H35 M6 1965) covers the period 1596-1963. Includes subject and regional indexing.

## **Verifying Status and Updating Treaty Information**

### **S If the U.S. Is a Party**

*Treaties in Force* (KZ236.T74), an annual Department of State publication, lists all treaties and international agreements which are in force for the United States as of January 1 of each year.

*Office of Treaty Affairs, U.S. Department of State* - Call the Treaty Affairs office in Washington, D.C. at (202)647-2044 for the most recent information available on the status of U.S. treaties.

*Shepard's Federal Statutes Citations* - Treaties can be Shepardized® to find out if they may have been amended.

### **S If the U.S. May Not Be a Party**

*Multilateral Treaties Deposited with the Secretary-General* (KZ171.U372) is an annual publication of the United Nations, tracking the status of treaties deposited with the UN by member countries as of December 31 of each year. An electronic version, updated weekly, is available on the Internet at <http://www.un.org/Depts/Treaty/>.

*United Nations Treaty Section* can be reached at (212) 963-5484 for the most up-to-date information on status and states which are parties to the treaty.

*International Legal Materials (ILM)* is published six times a year by the American Society of International Law. *ILM* is not only a leading source for the text of recent and proposed international agreements, but also provides status information in a regular column called "Recent Actions Regarding Treaties to Which the United States Is [or Is Not] a Party." Online versions of *ILM* are on both Westlaw (*ILM* database) and LexisNexis (Legal: Area of Law: By Topic: International Law: Treaties & International Agreements: International Legal Materials).

## **Interpreting a Treaty**

It is outside of the scope of this *TimeSaver* to explain the use of all of the sources in this section. Most of them are of the more traditional variety, and a Reference Librarian should be consulted for assistance in locating and using them.

## **S Legislative History**

If an agreement has gone through the formal treaty process, requiring the advice and consent of the U.S. Senate, several documents have been generated which may provide valuable information about the treaty. After a treaty is negotiated and signed by representatives of the governments involved, the President submits a message and accompanying text to the Senate. This document is published in the *Senate Treaty Documents* series (issued as *Senate Executive Documents* prior to 1981). All treaties are referred to the Senate Committee on Foreign Relations, which holds a public hearing and issues a report published as a *Senate Executive Report*. Treaties, unlike ordinary legislation, can be carried over from one Congress to another, and therefore can remain “pending” for many years, mystifying the unwary researcher.

Another instance in which legislative history research is relevant occurs when a treaty or other international agreement requires “implementation legislation” in order for it to have any practical effect. Senate Committees other than the Foreign Relations Committee, and House of Representatives Committees, can be involved in researching this type of legislative history.

## **S Case Law**

Some of the traditional sources used to find case law in other areas of legal research are applicable here. The West digests assign the topic, “Treaties,” to cases which apply or interpret treaties. The *United States Code Service* includes a volume which collects case notes to various treaties of the United States which are not part of the statutory code. *Shepard’s Federal Statutes Citations* allows the researcher to use a *U.S.T.*, *T.I.A.S.*, or *Stat. cite* to find federal court cases citing a U.S. treaty. State editions of Shepard’s must be consulted to find state cases citing U.S. treaties. A search query can be formulated on LexisNexis or Westlaw using key words from the name of a treaty in order to find cases arising under or interpreting a treaty.

## **S International Law Practice Digests**

The Department of State has been publishing practice digests since 1877. The most recent set is the *Digest of International Law* prepared by Marjorie M. Whiteman and published 1963-1973 (KZ237.7.W55 1963-70). Starting in 1974, the State Department began to publish an annual *Digest of United States Practice in International Law* (KZ27.U55 and KZ27.U552) which can be updated by referring to “Contemporary Practice of the United States Relating to International Law,” a regular feature of the *American Journal of International Law*. Check the library shelves under the call number KZ237.7 for historical digests.

## **S Journals**

The two most important journals for treaty research are *American Journal of International Law* published by the American Society of International Law and *The International Lawyer* published by the Section of International Law and Practice of the American Bar Association.

## **S Electronic Sources**

An excellent starting place for conducting treaty research is the web site of the American Society of International Law, specifically their *ASIL Guide to Electronic Resources for International Law: Treaties* (<http://www.asil.org/resource/treaty1.htm>). Because of all of the information and links to other sources

provided by ASIL, there is no need to list other web sites here.

Both LexisNexis and Westlaw have some coverage of treaties. The International Law library of LexisNexis (Legal: Area of Law: By Topic: International Law) has numerous files which contain the texts of treaties and other materials such as case law and journal articles. Westlaw carries a number of international law databases, including USTREATIES (treaties since 1979). Check the online directories of both services for the most current information on database content.

### **For Further Information**

Cohen, Morris L., et al. *How to Find the Law*, 9<sup>th</sup> ed. (West, 1989) (Chap. 15, pp. 450-513).

Jacobstein, J. Myron, et al. *Fundamentals of Legal Research*, 8<sup>th</sup> ed. (Foundation Press, 2002) (Chap. 20, pp. 453-500).

Janis, Mark W. *An Introduction to International Law*, 2d ed. (Little, Brown, 1993).

*Restatement of the Law (Third) Foreign Relations Law of the United States* 144-229 (American Law Institute, 1987) (Vol. 1, Pt. III, pp. 144-229).

Paust, Jordan J. *International Law as Law of the United States* (Carolina Academic Press, 1996).

Reuter, Paul. *Introduction to the Law of Treaties* (2d rev. ed., translated by Jose Mico and Peter Haggmacher, Kegan Paul International, 1995).

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<sup>1</sup> RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 301(1) (1987) [Hereinafter RESTATEMENT]. This definition is adapted from Article 2 of the Vienna Convention on the Law of Treaties, concluded at Vienna, May 23, 1969, 1155 U.N.T.S. 331.

<sup>2</sup> 59 Stat. 1055 (1945), T.S. No. 993.

<sup>3</sup> RESTATEMENT, *supra* note 1, § 111(1).

<sup>4</sup> RESTATEMENT, *supra* note 1, § 111(2).

<sup>5</sup> MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 89 (2d ed., 1993).

<sup>6</sup> THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION rul. 20.4 (16<sup>th</sup> ed. 1996).

<sup>7</sup> *Bevans* supersedes two other retrospective collections which may still be cited by their compilers' names: *Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and other Powers*, compiled by William M. Malloy, and *Treaties and Other International Acts of the United States of America*, edited by Hunter Miller.