

INTERNATIONAL LAW LEGAL RESEARCH

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Series Note

This groundbreaking book on *International Law Legal Research* launches a new legal research series for Carolina Academic Press, following a path similar to its acclaimed series of state legal research guides. Books in the Carolina Academic Press Foreign and International Law Legal Research Series will include guides to researching international law generally, guides to common international research areas (such as treaties and other international agreements, or to specific topic areas such as international criminal law), guides to the work of international organizations and tribunals, and guides to researching foreign law of selected jurisdictions or regions (such as the law of Canada, the United Kingdom, or the European Union).

The inaugural volume in this series by Anthony S. Winer, Mary Ann E. Archer, and Lyonette Louis-Jacques is the culmination of years of study, work, and experience. Their collective effort has produced a book that will serve long-overlooked needs for materials focused on how to research international law. Professors teaching international law courses will find this book to be a useful supplemental text that will reinforce substantive international law principles but also empower students to put that knowledge to use in advocacy and scholarship. With this new book, many law schools can now offer formal classes on how to research international law. Students competing in international moot court competitions will treat this book as a secret weapon with the answers to many of their international legal research questions. Editors of international law journals and contributing authors will keep this book close at hand. And law librarians will find themselves recommending the book to patrons with international legal research questions.

This book will also serve private practitioners, in-house counsel, government attorneys, and attorneys at international organizations whose legal work may touch upon international law issues (such as determining the applicability of a treaty, or finding an elusive document from the United Nations). The book includes basic information essential for any professional researcher as well as a great many secrets of cost-effective international legal research. While providing a useful guide for a novice, there is also information here new to even the most experienced researchers. This is an invaluable guide to finding

established and emerging rules of international law as well as to understanding the ongoing work of international organizations.

By helping researchers find international law, Anthony S. Winer, Mary Ann E. Archer, and Lyonette Louis-Jacques have also created a tool that may ultimately strengthen the field of international law and lead to more frequent application of its principles. Researchers who can confidently find rules of international law can cite them authoritatively and accurately to tribunals and legislative bodies whose work will be informed by international law. With more frequent citation to international law sources, international law itself becomes more firmly established. The authors of this inaugural volume in international law legal research have made a great start for this series.

Prof. Mark E. Wojcik
The John Marshall Law School—Chicago
Series Editor

Preface

We would like to welcome the reader to *International Law Legal Research*. We designed this book for several audiences, each of which can use it in distinctive ways.

- *For law students enrolled in a doctrinal course in public international law*, this book will provide additional knowledge and technical advice about how to conduct research in the field, to complement your doctrinal curriculum.
- *For law students who have never formally studied public international law*, this book will provide both background knowledge about public international law and practical advice about how to do research in the subject.
- *For competitors in international moot court competitions*, this book will provide advice that will assist your research and preparation.
- *For legal practitioners who are new to the area of public international law*, this book will help you learn how to do research in public international law, and provide the basic doctrinal points necessary to guide early research.

We believe this book is unique in its two-fold approach. First, it contains the essential introductory instruction on how to research public international law. However, it also provides a complete yet concise introduction to the substantive legal concepts underlying the subject area. The combination of these two features should make the book especially useful to each of its audiences.

We believe that this book will be most useful if we address a few important points before beginning the full discussion.

I. Generalized Search Methods: Non-Specific Electronic Search Tools and General Databases

We use the phrase, “non-specific electronic search tools,” to refer to Google and other search engines that are not designed specifically for legal research. We use the phrase, “general databases,” to refer to Wikipedia and other databases that may contain legally oriented material, but are not designed particularly for

legal materials. We sometimes call the combined use of these two tools, “generalized search methods.” In our daily lives, many of us use generalized search methods to find books, car repair services, airline flight times, and all manner of other goods, services, and information. The temptation can be to use them to find legal source material as well.

Sometimes that temptation need not be resisted, but in most significant contexts it should be. Generalized search methods can be used legitimately for introductory purposes, but should not be the basis of advice that needs to be relied upon by clients or colleagues.

A. An Example Demonstrating the Frequent Lack of Suitability of Generalized Search Methods

As one example, suppose a researcher needs to learn about the original international treaty limiting the liability of the owner of an ocean cargo ship when cargo is damaged during a violent ocean storm. Suppose that the researcher has no background in the area, but has heard something about “the law of the sea treaty.” The researcher might not be sure what this treaty is. But the researcher would like to determine whether the “law of the sea treaty” addresses ship owner liability in any major way.

In such a case, generalized search methods could be used legitimately to get a preliminary view. The researcher might enter “law of the sea treaty” as a search term in a non-specific electronic search tool. Right away there would be at least a bit of confusion, because the researcher would probably discover that there are at least five different treaties that could be called “law of the sea treaties.” Four are from 1958 and the fifth is from 1982.¹ A certain amount of background reading, and probably not all of it through generalized search methods, would be necessary to decide which treaty the researcher initially had in mind. The researcher would probably decide that the document envisioned was the 1982 United Nations Convention on the Law of the Sea.²

1. The five treaties are the 1958 Convention on the Territorial Sea and the Contiguous Zone, the 1958 Convention on the High Seas, the 1958 Convention on Fishing and Conservation of Living Resources, the 1958 Convention on the Continental Shelf, and the 1982 Convention on the Law of the Sea. See, e.g., Malcolm N. Shaw, *International Law* 555 & n.5 (6th ed. 2008) (listing these conventions and indicating that all of them are considered “Conventions on the Law of the Sea”).

2. Dec. 10, 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1261 (entered into force Nov. 16, 1994). The United States is not yet a party to this convention.

However, a brief review of the material in any general database would convince the researcher that the 1982 convention does not have much to do with ship owners' liability. The convention chiefly demarcates the territorial sea, and various other regions within the oceans. It does this in order to define the rights of coastal states over the surface of, and the resources in and below, the waters in each type of region.³ It has relatively little to do with the liabilities of ship owners or other private persons vis-à-vis one another. Linked information for the other four conventions would be similarly unavailing.

So in this example, using generalized search methods did not yield information that was directly useful in addressing the question. But at least the failure to turn up useful information would help narrow the field of subjects for further consultation; the researcher has learned that at least "the law of the sea treaty" does not involve ship owner liability.

Suppose the researcher gets more precise in composing search terms, and next searches "treaty for liability of ship owners for cargo damage." Here again the non-specific electronic search tool will turn up a set of links to material in databases. Some of these links presented now may be more on point than those presented through the first search. They may be headed by phrases like "Charterer's risk of liabilities," "Insurance for ship owner's cargo liability," or a U.S. domestic statute called the "Carriage of Goods by Sea Act." But once again, if the researcher does not have prior background, it will not be immediately clear if these concepts are relevant, which treaty is most directly involved, or how the information at these links might or might not relate to that treaty, whatever it is.

It turns out that, for most contexts involving U.S. nationals, the original international treaty most fundamentally relating to the limitation of ship owner liability is the 1924 International Convention for the Unification of Certain Rules Relating to Bills of Lading.⁴ This is often called the "Brussels Convention on Bills of Lading."

And yet this convention would probably not turn up as a link even for the second, more refined, search using generalized search methods. The researcher, not being knowledgeable in the area, would not have searched "bills of lading" or "Brussels Convention," for example. And the link headings retrieved from the terms the researcher *did* search would be unlikely to reference the

3. Key provisions of the 1982 convention define and regulate the use of the territorial sea and contiguous zone, straits used for international navigation, the exclusive economic zone, the continental shelf and the high seas. *See id.* parts II, III, V, VI and VII.

4. Aug. 25, 1924, 51 Stat. 233, 120 L.N.T.S. 155, 2 Bevans 430 (entered into force June 2, 1931).

convention. Accordingly, reliance solely on generalized search methods would be problematic even with the more refined search terms. However, the 1924 convention would be more directly retrievable using the traditional and analytical techniques outlined in this book.

So, the main problem with relying only on generalized search methods is *suitability*. Although they can be legitimately used at the early stages of research, they often will not retrieve a useful and relevant final answer. This was the case in our ship owner example: using the most normal search terms and most typical links simply did not get the researcher to the treaty desired. However, even when generalized search methods *do* provide a useful and relevant answer, there are still three more problems with them.

B. Additional Concerns Regarding Generalized Search Methods

The first of these additional problems is *accuracy*. Many websites and general databases are not prepared by the most highly qualified authorities. The information they contain may simply be wrong (or at best inaccurate). Using the official international law sources described in this book will result in a greater assurance of accuracy.

The second problem is *currency*. Even if generalized search methods provide material that is useful, relevant and accurate, it may not be current. Many websites and databases are not updated as often as would be ideal. For example, a given treaty may be found at a website using generalized search methods, and the text of the treaty may have been accurate when it was first uploaded to the site. But the treaty may have since been amended, or denounced by relevant parties. It is quite possible that nothing at the website where the treaty was found, using generalized search methods, will indicate that the treaty has been altered. Again, using the research methods outlined in this book should help assure that the material obtained will be sufficiently current.

The third problem is *authenticity*. Most international treaties and conventions, and most international court decisions and arbitral awards, for example, are best located at particular “official” or “authoritative” sources. And yet many times they can also be found at unofficial, private, commercial or other non-standard sources. It is important to know which sources are official or authoritative for each kind of material. This is for several reasons. First, the official and authoritative sources are more likely to have accurate and current versions of the material. An unofficial source may have posted an earlier draft of a document rather than its final version.

But even beyond accuracy and currency, research is most productive when it uncovers authentic sources. This is because authentic sources are most useful when communicating the research results to others. Unofficial, private, or commercial versions of these materials (such as treaties or arbitral rulings, etc.) may not be readily retrievable to other parties in other places at other times. And certainly, if one is dealing with a particular court or governmental authority, one wants to reference versions that have been officially issued, produced, or catalogued by that court or authority rather than an unofficial, private, or non-standard version. Accordingly, authenticity is usually very important when researching international legal materials.

II. Electronic Versus Print Sources

Even within the realm of official and authoritative sources, material is often available in both electronic and print formats. For example, recent treaties to which the United States is a party can often be found at authoritative sources in both electronic and print formats. One electronic format would often be available through the *United Nations Treaty Collection* electronic database.⁵ A print format would usually be available through the volumes of *United States Treaties and Other International Agreements* (usually called “UST”).⁶

In this book, we make every effort to describe search and retrieval techniques for both electronic and print versions of source materials, whenever authoritative versions are available in both formats. When the official or authoritative version of a particular type of material is available in only one format (either electronic or print), then we emphasize that format. Depending on the importance of the material, we may also reference unofficial, but usually reliable, versions in the other format. One example involves resolutions by certain bodies of the United Nations (the “UN”). Resolutions of the UN General Assembly and the UN Security Council are authoritatively available at the UN website.⁷ We accordingly emphasize working with, and citing from, resolutions at the UN website. However, we also

5. Usage of *The United Nations Treaty Collection* database is discussed in detail in part VIII.A of chapter 5 of this book.

6. Usage of UST is discussed in part VII.B.3 of chapter 5 of this book.

7. Usage of the UN website to retrieve General Assembly and Security Council resolutions is discussed in parts IV.B and IV.C of chapter 7 of this book.

discuss the availability of some resolutions at reliable but unofficial print sources, such as the print version of *International Legal Materials* (often called “ILM”).⁸

For purposes of citation, it is still preferable to cite a print format first, whenever it is broadly available.⁹ For some especially common sources, citation rules require reference to the print version, prohibiting the substitution of an electronic version. (For example, the citation of a treaty that appears in UST generally must include the UST reference, or at least a print reference to *Statutes at Large*.¹⁰ As noted in part III of this prologue, we have adopted the *Bluebook* citation system for this book. The *Bluebook* rules would not permit exclusive citation to an electronic format when the UST text is available.)¹¹ Similar citation rules can require print texts in other cases as well.

These citation-based concerns are reason enough to be familiar with search-and-retrieval techniques for print materials. However, it is also desirable to be conversant with both print and electronic research techniques for practical reasons. Websites or electronic connections can be subject to disruption, whether through blockage at the site, problems with individual devices, or general service interruptions. Conversely, practical circumstances can sometimes limit access to print resources.

For all these reasons, we have a dual-track approach to research, and offer guidance on both print and electronic research.

III. The *Bluebook* Uniform System of Citation

We emphasize citation rules and practices more than most other books on this subject. This is due to our focus on practicality and usefulness by practitioners and others working in the field.

We have chosen to adhere to *The Bluebook: A Uniform System of Citation*,¹² as compiled by editors of four leading academic law reviews and journals in the

8. We also refer briefly to the ILM as a source of information regarding particular UN resolutions in part IV.D of chapter 7 of this book.

9. E.g., *The Bluebook: A Uniform System of Citation* r. 18.2, at 165 (Columbia Law Review Ass’n et al. eds., 19th ed. 2010) (“*The Bluebook* requires the use and citation of traditional printed sources when available, unless there is a digital copy of the source available that is authenticated, official, or an exact copy of the printed source . . .”).

10. See *id.* r. 21.4.5, at 189 (requiring the use of UST or *Statutes at Large* as treaty sources, when they are available).

11. *Id.*

12. See *supra* note 9.

United States. We are mindful that other citation systems can be chosen. However, there are basically three reasons for our choice of the *Bluebook*.

The first is that this citation manual is still frequently used not only in U.S. legal education but also by many international law journals around the world. It is a system familiar to U.S.-trained students and lawyers as well as law journal editors and scholars worldwide. Second, we believe that the *Bluebook* approach to international legal sources, while certainly not ideal, is somewhat more sophisticated than the approaches used in the other more prominent systems.¹³ The *Bluebook* specifies the different types of international authorities in detail, and generally provides complete guidance for the citation of each.

Finally, the *Bluebook* also uses a complete and sophisticated approach to legal sources generally, such as domestic cases and statutes. The *Bluebook* is designed so that citation rules from the international context are compatible with, and complement, those in the domestic context.¹⁴ There are still some coverage gaps, and we point these out where they are significant. However, we view the *Bluebook* as being (currently) at least marginally preferable for international law research over other prominent systems.

At press time, the nineteenth edition of the *Bluebook* is current. Citation rules may differ, of course, in the event another edition is consulted or brought into force.

IV. Library Guides

A large number of law libraries have made available electronic research guides on the subject of international law. These guides are generally of high quality and can be very useful. As a rule, we do not reference these guides in this book. This is not to disparage the guides themselves, but simply to recognize that the guides are not independent sources in their own right. They simply guide the way to other materials and sources that (for the most part) we discuss in this book directly. Many law library guides also highlight materials particular to each library, rather than providing an overall guide that could be used in any library.

13. As evidenced throughout this book, rule 21 of *The Bluebook* is devoted to “International Materials.” It prescribes detailed and distinct treatment, for example, for treaties and conventions (rule 21.2), international law court cases (rule 21.5), international arbitral rulings (rule 21.6), UN materials (rule 21.7), and so on.

14. For example, the *Bluebook* prescriptions for the citation of books (rule 15) and for “Short Citation Forms” (rule 4) dovetail acceptably with normal usage for international materials.

These library guides exist on the public websites of many law libraries. We invite readers who would like to supplement their review of this book to investigate the online research guides prepared by law libraries.

This book does reference, in a few particular contexts, research guides published by certain international organizations and associations (such as the UN and the American Society of International Law, or the “ASIL”).¹⁵ We believe that these references are warranted because of the special prominence of these institutions. The UN is of course in a special position to advise on researching UN materials, and the ASIL (along with other national associations around the world) has a significant preeminence and experiential background that makes its observations on certain points especially noteworthy.

V. Authoritative Versus Less Authoritative Sources

In part I of this preface we explained that this book chiefly directs researchers to the most official and authoritative locations for materials involving international law. That discussion was to encourage deliberate searching for authoritative sources as against the use of non-specific electronic search tools and general databases.

We would now like to observe directly that there are many websites, databases, and other (now usually electronic) sources that can contain international legal information. These websites, databases, and other sources are often generated by private persons, groups, and non-governmental organizations (“NGO’s”) who are commendably committed to certain goals and causes. These websites and databases can be colorful, enjoyable, and dramatic in their presentation of the issues.

We do not want to discourage investigation of these sources, but again we caution readers against using less authoritative materials as the final basis for research. Private persons, groups, and NGO’s have distinct interests. While not disparaging the integrity of any particular person, group, or organization, we point out that many of the materials generated in this way fulfill substan-

15. We encourage the use of UN research guides in various contexts, especially when researching UN ancillary bodies. See *infra* chapter 9 (“Other UN Materials”), part V. Similarly, we prominently include the ASIL’s “*Electronic Resource Guide*” among useful electronic sites for working with treaties and conventions. See *infra* chapter 5 (“Treaties and Conventions”), part VIII.C.

tial public relations and advocacy purposes. They are not necessarily objective, and on occasion they can be incomplete or inaccurate.

At very least, researchers need to be aware that information presented with a view toward maintaining public relations and advocacy positions needs to be viewed with an appropriate degree of circumspection, and even skepticism where warranted. More generally, reliance on the traditional methods and sources outlined in this book will assure that legal source material retrieved is accurate, timely, and authoritative, with minimal danger of opportunistic taint.

VI. Certain Terminology and Usage Points

Finally, we note briefly that in a small number of instances, we have opted for every-day terminology at the expense of traditional usage employed in international legal discourse. We have made these decisions in view of the character of this book as introductory and as based in practical advice. For example, we usually refer to the laws of individual countries as their “domestic law,” rather than their “municipal law.” We have also made common-sense alterations to what the *Bluebook* would normally require in some situations, although we always point this out explicitly when doing so. For example, we encourage the use of unofficial treaty sources to a greater extent than that specified by the *Bluebook*, in view of the difficulties of access that can be associated with some of the “official” sources.¹⁶

We hope that readers will understand and appreciate these touches of informality, and wish all our readers a productive and fulfilling experience in the use of this book.

16. See *infra* chapter 5 (“Treaties and Conventions”), part XI.

Acknowledgments and Authors' Notes

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We would also like to provide the reader with a brief note of attribution regarding the different aspects of this book. Ms. Louis-Jacques contributed solely the “Additional Resources and General Bibliographic References” for each chapter. Ms. Archer contributed the general inspiration, guidance, and friendship she had provided to us over the years leading up to the preparation of this book. All other features of the preparation, composition, and review of the book were the responsibility of Professor Winer.