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Undertaking Effective Research in International Law

For most of us, undertaking research in international law is reminiscent of the late night television commercial for the "Amazing Ginzu Knife," which chops, dices, and shreds vegetables a hundred different ways. To introduce the ad a man clad in a karate-style costume swings his hand through brick and block. The narrator reports that the hand is an amazing tool, "but it can't cut a tomato." Whereupon the tomato is karate-chopped into soup. With the usual training lawyers receive in legal research, if any at all, conducting international legal research is like cutting tomatoes by hand—messy, distasteful, imprecise, and, too often, worthless. But, it need not be that way. International legal research can be productive, nearly painless, intellectually stimulating, and cost-effective, whether the cost be your own time or your client's money.

Unlike research in American legal documentation, where defining a problem or issue is usually more important than retrieving the documents, research in international legal documentation demands that as much, if not more, time be spent in locating the documents than in defining the problem.

Because of the thoroughness and orderliness of American legal documentation, once a problem or issue has been defined, the location of the solution (e.g., a case cite, advisory opinion, regulatory ruling) practically suggests itself. Unfortunately, because there is little thoroughness or orderliness in international legal documentation, defining the problem will get you less than half way to the solution. What one has to do is build your own framework of international law. The secret of international legal research is to systematize or pigeonhole the law and its documentation. By doing this, you will identify the more fruitful routes of research and avoid the haphazard results of "shotgun" research.

Resources by Subject Matter

It is possible to categorize international law (in its broadest sense) and its documentation by subject matter. Of course, very general or comprehensive writings are difficult to pigeonhole and many topics overlap. Nevertheless, the following outline is a beginning to an international law subject matter classification scheme:

- I. Foreign Law: laws of specific jurisdictions or types of law
 - A. By country
 - B. By region: e.g., Africa, Latin America, the European Economic Community
 - C. By type: e.g., Islamic, Canon, Civil, Common
- II. Comparative Law: comparisons between legal systems
 - A. Substantive comparisons: e.g., criminal law
 - B. Procedural comparisons: e.g., jurisdiction
 - C. Historical and Jurisprudential comparisons
- III. Public International/Supranational Law: generally, law between sovereign states
 - A. Laws of war and peace: e.g., armed forces, arms control and disarmament, world order, conflict resolution
 - B. Laws of international organizations: e.g., U.N., E.E.C., international courts, international economic/development bodies
 - C. Laws of international relations: e.g., treaty-making powers, conduct of foreign affairs, constitutional law, national security, diplomatic and consular law
 - D. Laws of common areas: e.g., law of the seas, air, space and celestial bodies, polar regions, the environment
 - E. Laws of human rights: e.g., U.N. covenants, the Helsinki accords
 - F. Laws concerning individuals: e.g., immigration and naturalization, criminal law, extradition
 - G. Procedural laws: e.g., foreign claims, transnational procedure
- IV. Private International/Business Law: generally, law between private parties in different jurisdictions

- A. Business law: e.g., transactions, taxes, antitrust, banking, insurance, patents and copyrights
- B. Trade law: e.g., finance, trade barriers, import-export controls
- C. Development law: e.g., foreign aid, resources, distribution, investments, the North-South dialogue
- D. Conflict resolution: e.g., conflict of laws, remedies, arbitration
- E. Personal relations: e.g., trusts and estates, child custody, wills, matrimonial matters, taxes
- F. Admiralty law
- G. Aviation law
- V. International Law Background: a grab bag
 - A. Education in international law
 - B. History and jurisprudence of international law
 - C. Research in international law

While this categorization is endorsed by no one but myself, it parallels the classification scheme of the Library of Congress' catalogue system, the breakdown of the subject for international law courses and textbooks, and the organization of professional bodies such as the ABA's Section of International Law. Thus, both scholars and practitioners see value in this functional breakdown. Furthermore, the subject matter classification comes instinctively to the researcher.

Beyond the obvious, that you don't look up English tax law in a collection of Soviet aerospace treaties, this classification scheme suggests several research techniques. First, and foremost, the scheme eliminates all the unproductive areas of law. For example, if you are dealing with a problem in French law, there is no initial need to consult comparative or public international law documents. Instead, you should head for documents on French law.

Second, the scheme suggests the importance between a reference problem, where you need to locate a specific document, citation or wording, and a research problem, where you seek to analyze the meaning of a legal document or event. In the first instance, you will want to locate a legal document, while in the latter instance, you will want to locate analyses of the law. Comparative law resources, because they compare and contrast laws, are almost entirely devoted to analysis and are unfruitful vineyards for a search for legal documents. The other categories are good sources for both documents and analysis.

Finally, because of its similarity to library cataloguing methods, the scheme is a useful starting point for looking for books in the card catalogue or on the library shelf. For instance, Library of Congress call numbers beginning with the prefix JX represent international law. Call numbers JX 6001 through JX 6650 represent private international law. Call numbers with the prefix K represent law in general, with the prefix KF being assigned to the United States. Prefixes KD, KE, and KG through KT represent laws of foreign jurisdictions. Thus, if you are interested in becoming

familiar with the writings on Israeli law, just look at the books filed under the call number prefix KPD.

Resources by Format

It never occurs to most researchers that international legal documents can be grouped according to their form or format. By categorizing international documentation by type, you can analogize various research strategies to parallels in American legal literature. First, to illustrate, I suggest the following framework:

Primary Resources: The Best Place to Look for Legal Documents

I. Statutory or Codified Law

A. Constitutions

1. Comprehensive collections: e.g., *Constitutions of the Countries of the World* (Blaustein & Flanz), *Constitutions of Nations* (Peaslee)
2. Specialized collections (historical or regional): e.g., *The Constitutions of the Communist World* (Simon)
3. Single copies (available from embassies)

B. Statutes

1. National collections: e.g., *U.S. Code*, *German Civil Code*
2. Subject-specific collections: e.g., *Commercial Laws of the World* (Foreign Tax Law Association), *Investment Laws of the World* (Oceana)
3. Administrative regulations: e.g., *Code of Federal Regulations*

C. Treaties

1. Comprehensive collections: e.g., *United Nations Treaty Series*, *League of Nations Treaty Series*, *Consolidated Treaty Series*
2. Regional collections: e.g., *European Treaty Series*, *Organization of American States Treaty Series*
3. National collections
 - a. slips: e.g., press releases, *Treaties and International Agreements Series* (T.I.A.S.)
 - b. gazettes: e.g., *Department of State Bulletin*
 - c. collections: e.g., *United States Treaty Series* (U.S.T.), *United Kingdom Treaty Series*
 - d. indexes and status tables: e.g., *Treaties in Force*
4. Subject-specific collections: e.g., *International Tax Treaties of All Nations* (Diamond & Diamond)
5. Historical collections: e.g., *Treaties of the Major Powers, 1914-1918*
6. Indexes: e.g., *World Treaty Index* (Rohn)
7. Status tables (akin to "Shepards")

- D. Legislative histories and negotiating texts: e.g., U.N. documents system, *State Papers* (U.K.), *Digest of International Law* (various editions) (U.S.)
- II. Case Law
 - A. International bodies or tribunals: e.g., Permanent Court of International Justice, International Court of Justice
 - B. Multinational collections: e.g., *International Law Reports*, *International Labour Law Reports*
 - C. National or municipal collections:
 - 1. Focused on international law: e.g., *American International Law Cases*, *British International Law Cases*
 - 2. General collections: e.g., *Law Reports* (U.K.), *All England Law Reports*, *U.S. Supreme Court Reports*
 - D. Indexes and status tables: e.g., *Shepard's*
- III. Official documents, etc. (including advisory opinions and restatements of the law)
 - A. Digests (which, unlike American domestic legal digests, reproduce official documents): e.g., *Digest of U.S. Practice in International Law*
 - B. State papers: e.g., *State Papers* (U.K.), *American Foreign Affairs* (U.S.)
 - C. Restatements: e.g., *Restatement of the Law (2d ed.) Foreign Relations Law of the U.S.* (A.L.I.)
 - D. Other sources: e.g., official press releases and bulletins, *International Legal Materials* (American Society of International Law)

Secondary Resources: The Best Place to Look for Legal Analysis and Factual Background

I. Serials

- A. Mass media
 - 1. Radio, television, wire services: e.g., NEXIS (computer data base similar to LEXIS), television news libraries at Vanderbilt and George Washington Universities
 - 2. Daily newspapers, mass circulation magazines: e.g., use *Reader's Guide to Periodic Literature*, *Public Affairs Information Service*, *New York Times Index*
- B. Legal current awareness
 - 1. Legal newspapers and periodicals: e.g., *Case & Comment*, *A.B.A. Journal*
 - 2. Press releases and mailing lists (available from every government agency and international organization)
 - 3. Gazettes (my terms for official periodicals): e.g., *Department of State Bulletin*, *U.N. Chronicle*
 - 4. Bulletins (my term for private, subscription periodicals): e.g., *Bulletin of Legal Developments*, *International Law Perspectives*

5. Newsletters (my term for periodicals that come with membership privileges): e.g., newsletters of the A.B.A. Section of International Law, American Society of International Law

C. Periodicals

1. Law reviews (student edited): e.g., *Journal of International Law and Economics*
2. Subject-specific journals: e.g., *Quarterly Human Rights*
3. Professional organization journals: e.g., *International Lawyer*, *American Journal of International Law*

D. Annuals

1. Annual law reviews (often called yearbooks): e.g., yearbooks published by almost every industrialized nation and most national international law societies
2. Almanacs (which carry significant factual data, including names and addresses of valuable contacts): e.g., *Statesman's Yearbook*, *Yearbook of International Organizations*, *U.N. Yearbook*
3. Annual reports, proceedings of annual meetings, etc.

- #### E. Periodic Indexes: e.g., *Index to Legal Periodicals* (covers most English language articles); *Index to Foreign Legal Periodicals* (covers most non-English language articles)

F. Looseleaf services and reporters

1. Regional or national coverage: e.g., *Common Market Law Reporter*
2. Topical coverage: e.g., *Tax Havens of the World* (Diamond & Diamond)
3. Document reproduction: e.g., *Investment Laws of the World* (Oceana)

II. Analytical Resources

A. Treatises

1. Classic treatises: e.g., *Classics of International Law* (translations collected by Carnegie Endowment for International Peace)
2. Subject-specific treatises (look up in library card catalog, for there are hundreds of these)
3. General commentaries, hornbooks and manuals: e.g., *Principles of International Law* (Brownlie), *A Modern Introduction to International Law* (Akehurst)
4. Textbooks and casebooks: e.g., *International Law: Cases and Materials* (Henkin, *et al.*), *International Law and World Order* (Weston, *et al.*), *Points of Choice* (Fisher)

- #### B. Legal encyclopedia: e.g., *International Encyclopedia of Comparative Law*

III. Research Tools

- A. Bibliographies and indexes: e.g., *A Manual of International Law* (Schwarzenberger)
- B. Directories, law lists and organization manuals: e.g., Department of State telephone directory
- C. Research shortcuts: e.g., contacts in professional organizations (e.g., A.B.A. Section of International Law); organization libraries and public affairs offices (e.g., State Department, U.N., Library of Congress); computer data bases (e.g., LEXIS/NEXIS, Westlaw); publishers (e.g., Oceana, Sithoff, Martin-Nithoff)

As is readily apparent, primary sources essentially reproduce the law, either in statutory or case law form, while secondary resources discuss and analyze the primary documentation. Typically, the legal researcher in the United States will first look at the law or statute itself, then the legislative history behind the law, followed by the relevant case law, and, if necessary, at the policy or practice. The following chart indicates the similarities between this process and international legal research and interpretation.

Domestic Legal Research

1. Statutes
e.g. constitutions
laws
regulations
2. Legislative history
e.g. draft bills
debates
hearings
reports
3. Common law
4. Cases
5. Public policy
6. Shepards

International Legal Research

1. International legislation
e.g. treaties
international agreements
resolutions of international organizations
2. Legislative history
e.g. negotiating texts
reports
diplomatic correspondence
3. Custom and usage
4. Cases (both international and municipal courts, tribunals, etc.)
5. Policy and equity
6. "Treaties in Force" and status tables

You must be aware, however, of fundamental differences between these two systems. First, unlike a national constitution, there is no single universal or supreme international document. Second, the problem of statutory interpretation is compounded by the use of numerous official languages, whose translations may be conflicting. Third, different types of legal documentation are accorded different weight in different legal systems.

The framework suggests several research techniques. The first, which I believe is unique in legal research, is the ability to associate your research needs with specific forms or formats of documentation. Second, which has already been noted, is the ability to apply your "American" law research techniques to international documentation. For instance, codified international law generally has precedent over international custom or case law.

Also, which is valuable for the American practitioner, is the fact that treaties signed and ratified by the United States have equal weight with federal statutes. In fact, subsequent treaties can nullify prior statutes. Third, as with American law, you need to "Shepardize" your international research, especially in the area of treaty law.

One of the limitations to international research is the dearth of comprehensive indexes. While indexes to treaty collections are available, they are either incomplete or not current. Only in the area of periodic literature are there adequate indexes, including the *Index to Legal Periodicals* and the *Index to Foreign Legal Periodicals*. Unfortunately, many obscure international periodicals and most annual publications are not covered by these indexes. This inability to access international legal documentation serves to emphasize the importance of developing one's own research style.

Because of the inherent difficulties in undertaking this kind of research, "non-document" resources, especially people and organizations, take on a greater importance. To use the terminology of the librarian, if you are after a "reference question," where the answer already exists and you just need to find it, you should rely on the professional researchers: reference librarians (at the local or university law library, Library of Congress or U.N. library), public affairs officers (in every government agency and international organization), involved officials (in government agencies, international bodies and non-government organizations), and members of relevant professional associations. These people are already familiar with the field and are skilled in retrieving the information. Of course, they may not be as useful if you are undertaking original research, known to the librarian as "research questions," though they can provide excellent research tips and give you a sense of direction. Regular involvement in the field, particularly through professional associations, will help you come in contact with these people.

Resources by Time Frame

International information, documentation, and analysis can fall into one of five temporal categories. These categories, which often overlap, indicate the "freshness" of the information and the depth of the analysis. The time lapse is measured from the date an incident occurred to the date it is documented. The freshness of information, however, is often inversely proportionate to its depth of analysis. Thus, an article on a recent occurrence may have a quality of freshness, but may lack thorough study, analysis, or accuracy.

I use the following five time categories, in which the time lapse is measured from the date of occurrence to the date of publication and distribution. These reflect the realities of research and publishing and parallel the categorization of "serials" indicated in the earlier discussion on "Resources by Format." Use of this time frame can give you a quick research direction

depending on how recent the event in question is and upon whether freshness or depth is required.

<u>Category</u>	<u>Description</u>	<u>Examples</u>
a) Instant	one day to two weeks	wire service, television, and radio news reports; press releases; and personal attendance
b) Present	one week to one month	mailing lists; bulletins; looseleaf services; gazettes; and material from organizations and agencies
c) Current	one month to one year	newsletters; periodicals; treaty and case slips; and information centers
d) Recent	one year to ten years	annual digests; case law reporters; treaty collections; and libraries
e) Historical	over ten years	encyclopedias; treatises; annotations; casebooks and textbooks; classics; handbooks and manuals

I want to reemphasize at this juncture the importance of developing personal contacts for international research. As the examples indicate, organizations, information centers and libraries are valuable resources. In fact, most international documentation is generated in places like these. The addresses and phone numbers of these gold mines can be found in directories such as the annual *U.S. Government Organizational Manual*, law lists and directories of professional bodies, the *Statesman's Yearbook*, the *Yearbook of International Organizations*, and the *U.N. Yearbook*.

A Few Trial Runs

When confronted with a research problem, you need to first define its parameters. The two fundamental questions in this regard are: (1) what do you already know about the subject?; and (2) how much time or energy do you have to answer the problem? Upon settling the parameters of your research, such as setting time and scope deadlines, you need to establish a basic research approach. If you know nothing about the subject, you need to do some background reading. Upon gaining even a minimal background, you can approach your research by one of the three methods I have suggested: research by subject matter, research by type of documentation, or research by time frame.

To help identify advantageous starting points for a particular problem, consider the following examples, which illustrate different, but useful research approaches.

Problem: Find out if there is any precedent in foreign municipal law for finding domestic jurisdiction in a civil matter involving a violation of customary international law, especially with regard to violations of human rights.

The question can be broken into four component parts or key concepts: customary international law, foreign law, domestic jurisdiction, and civil matters. This narrows the scope (e.g., look only in foreign (non-U.S.)

case law and only at civil cases) and provides a series of key words (e.g., jurisdiction) that will guide the researcher through the various indexes. The key word approach is one with which most lawyers are familiar.

Problem: Analyze the use of “public policy” or “order publique” in the resolution of international contractual conflict of laws.

Very little has been written on the subject. The search involves two directions. First, use a key word approach in the documentation indexes (e.g., the *Index to Legal Periodicals*). This may reveal a few law review articles and a court case or two. Second, consult the leading treatises and casebooks dealing with international conflict of laws. Most of these texts supply only cursory mention of this principle. They do, however, make reference to a few other articles and a couple of cases. Now use the detective approach in tracking down and cross-referencing every reference to the topic (e.g., cross-checking every citation in each case and article). Be dogged, methodical, and thorough in your approach. Eventually, the citations will refer back to citations you have already investigated. This “going-around-in-circles” indicates that you have exhausted the best material known to be available.

Where to Go for More

Now that I have whetted your appetite and attracted your attention to the possibility of conducting effective and productive international legal research, where can you go for more information? Let me recommend three relatively inexpensive but valuable books as your next step in developing your international legal research skills. The first, which you already have in your personal library, is *A Uniform System of Citation* (13th ed., 1981), commonly known as the “Harvard Bluebook.” Over a fifth of this little gem is devoted to the recommended citation of international (pp. 67-79) and foreign (pp. 142-170) law documents. In addition to its citation function, the “Bluebook” serves as a basic catalogue of what is available in the way of international legal documentation, particularly in the area of “primary resources” and “foreign law.” Second, which you may also have, is Cohen’s paperback “nutshell” on *How to Find the Law* (7th ed., 1976). It has chapters on international, comparative, and foreign law research. For its price of a few dollars, it is the best buy among the general legal research guides on the market. Unfortunately, like nearly all legal research textbooks, it does not help you develop innovative, personal research techniques. The only book to attempt this chore is issue 1, volume 15 (1981) of *The Journal of International Law and Economics* (The George Washington University), which contains over three hundred pages of bibliographic notes and tips on conducting research in international law. These books will suggest additional sources of information.

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