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**Accidental Tourist on the New Frontier:
An Introductory Guide
to Global Legal Research**

Edited by
Jeanne Nehberg & Radu D. Popa

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This book is dedicated to
Blanka Kudej,
Associate Librarian for Special Collections (retired),
New York University School of Law Library.

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Contributors

The contributors to this book presented lectures during a 1996 Summer Institute for the Palmer School of Library and Information Science of Long Island University entitled "Foreign and International Law Research: A Basic Introduction for the Non-Specialist," held at New York University School of Law Library, from June 28 to July 3, 1996. The subject of each contributor's lecture during the Institute is indicated below in parentheses.

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Introduction

If the whole world turns into Manhattan, how will you know when you're on vacation?¹

Those who love to travel know the feeling: You yearn to get out of town, to wake up every morning in a different place, with a clean slate, unencumbered by the boring, ordinary, routine objects and occupations of the workaday life; to explore new places; to delight in the unexpected; to taste new food; to see how the rest of the world lives. And then the newness of traveling wears off and there are the frustrations: reading road signs, train schedules, and menus in foreign languages; driving on the "wrong" side of the road; searching for a bagel outside of Manhattan; generally, doing without the comforts of home.

For many lawyers, legal scholars, and law students, and for the librarians and information specialists who work with them, the globalization of the economy and legal transactions opens up new territory for legal research. Like traveling in strange places, research in foreign, comparative, and international law can be fascinating, challenging, and rewarding. And then there are the frustrations: overcoming language barriers, coping with legal concepts and legal systems that may sound American but are different, struggling to find a copy of a recent foreign law, maneuvering through the jungle of documents from international organizations.

1. Margaret Maron, *Shooting at Loons* (New York, NY: Mysterious Press Books, Warner Books, Inc., 1994), at 117.

This book is a basic guide to foreign, comparative, and international law research for the non-specialist. Chapter One, entitled "The Unambiguous Rightness of Meaning," describes the problems of language and meaning that are inherent in foreign, comparative, and international law research. In a review of the development of the Library of Congress classification scheme for foreign, comparative, and international law, Chapter Two illustrates how an understanding of LC classification contributes to proficient research in these areas of the law. Chapter Three is an introduction to foreign and comparative law, and Chapter Four follows with a guide to finding foreign law. Chapter Five is an introduction to international law, and the subsequent three chapters cover specific areas of international law research: treaties (Chapter Six), the United Nations (Chapter Seven), and the European Union (Chapter Eight). The final four chapters focus upon specialized areas of research chosen for their relevance to the "real world" of transnational legal practice and scholarly research: transnational business law (Chapter Nine), international taxation (Chapter Ten), international environmental law (Chapter Eleven), and international human rights law (Chapter Twelve).

The material in these chapters extends beyond a bibliography of sources. Each chapter also describes the subject and suggests a practical research strategy. The chapter on treaties and the chapter on the United Nations also include sample research questions with suggested strategies.

A few "rules of the road" must be observed. First, it should be noted that each contributor has written about materials and practices that have proved useful in his or her experience and for the researchers with whom he or she works. Many titles that deserve a prominent place in a foreign and international law collection are not mentioned in this book, but the goal is to give the reader a framework knowledge and the basic tools and skills to be able to discover those other resources.

Second, the reader will observe that electronic sources have been integrated into each chapter at the appropriate place, and there is no separate chapter on the Internet or other electronic tools. This reflects the fact that in the last few years most information professionals who have access to the Internet have integrated it into their work on a daily basis and no longer as an occasional "if there's time" option, thanks largely to interfaces that have made it easier to

search for and download documents. That being said, this book nonetheless shares the view of the “enthusiastic skeptics” who are encouraged about what has happened with electronic tools, but who believe that we will not soon see the day when large paper collections and budgets for foreign and international law are unnecessary in research libraries. In that regard, readers are reminded that Universal Resource Locators (URLs) on the Internet often change and that the names, identifiers, and scope of databases from WESTLAW, LEXIS-NEXIS, and other online providers, as well as the cost of these services, are subject to change and should always be verified with the provider.²

The contributors to this book have endeavored to write for an audience of “accidental tourists” in the land of foreign, comparative, and international law research. Assuming some basic knowledge of the types of publications (constitutions, gazettes, codes, statutes, regulations, cases) that are generally used to convey legal texts, these chapters should be appropriate for non-law librarians and students of library and information science, as well as for legal researchers (students, practitioners, professors, and experienced law librarians) who have not worked in this area before.

Learning to use the tools is just crossing the first bridge. The search for any precision in foreign, comparative, and international law research also requires the ability to perceive the ambiguities and nuances in different legal systems and cultures and to recognize the resulting pitfalls in legal research. In that quest, we leave readers to their own motivation, energy, and intellectual curiosity. The journey, even for an “accidental tourist” on the new frontier of global legal research, is well worth the bumps in the road.

2. Internet URLs in this book are enclosed between < and > symbols. Those symbols are not part of the URL.

Part I—Issues of Language and Classification

Chapter
One

**The Unambiguous Rightness of Meaning:
The Search for Precision in Foreign,
Comparative, and International
Law Research¹**

by M. KATHLEEN PRICE

When I served as the Law Librarian of Congress, I directed the only U.S. government team of foreign, comparative, and international law specialists who served Congress, the INS, and other agencies. I quickly became an expert in those areas of law most requested by our patrons. Most librarians do not have the luxury of being specialists—we must respond to whatever needs our users present. When questions concern foreign, comparative, or international law, they require a level of scrutiny even greater than the typical legal reference question. Not only must we gauge the users' understanding and ascertain what they think they are asking, but we must also place the question within a legal and cultural context in which words may not have the same meanings, and case law and secondary sources may not carry the same weight that they do in the common law system.

1. © 1998 M. Kathleen Price.

When I was a reference librarian, my foreign and comparative law library consisted of West's *Law and Commercial Dictionary in Five Languages* (St. Paul, MN: West, 1985), the annual *Martindale-Hubbell International Law Digest* (New Providence, NJ: Martindale-Hubbell) and the Glendon, Gordon and Osakwe Nutshell (*Comparative Legal Traditions in a Nutshell*, St. Paul, MN: West, 1982). My knowledge of international law was limited to the *United Nations Treaty Series*. Each of these sources demonstrates a particular problem for reference service in this area.

I. Non-equivalence of Terms

The West dictionary lists terms and common law definitions in English culled from *Black's Law Dictionary*, with synonyms from Spanish, French, German, and Italian. Unfortunately, the synonyms are definitions of words, not legal concepts. Common law concepts may or may not have counterparts in the civil law. Moreover, even when a similar concept does exist in different jurisdictions, research will be confounded if the domestic law term is inappropriately used as a search term in subject indexes for foreign law. The index to the *Laws of Hong Kong*, for example, has entries under *Inland Revenue Ordinance*, but nothing under *tax* or *taxation*.

Even when the same word is used within a language, it may not have the same meaning in all jurisdictions using that language. The Global Legal Information Network (GLIN) at the Library of Congress² began with an English language thesaurus to Latin American

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2. GLIN is a government-to-government project designed to store legislative texts electronically in a distributed fashion and to provide English and vernacular indexing of the texts based on a common thesaurus, a 1992 version of which is appended to *International Access to Legislative Information: A Preliminary Investigation*, ed. Chiang & Price (Sarasota, FL: UNIFO, 1992), at 110. Dr. Rubens Medina, developer of the forerunner to GLIN and current Law Librarian of Congress, describes the evolution of the project in the same volume at page 21. Eleven countries have begun participating in the project, each dedicating a legal specialist and a computer specialist to training at the Library of Congress (LC). Eleven more countries are waiting to come on board. The Law Library of Congress was an early proponent of content standards for Internet projects. Despite its futile efforts to map legislative thesauri of intergovernmental

law with added Spanish terms, such as "amparo," for terms not found in common law. Foreign legal specialists from Argentina, Mexico, Nicaragua, and Paraguay engaged in healthy debate over the meaning of terms. For example, despite common Spanish roots the elements of offenses and prima facie civil causes of action have developed differently in the various jurisdictions.

Similar differences arise between common law jurisdictions as closely related as the United States and Canada. A recent survey found that Canadians living along the U.S. border and influenced by U.S. television believe that they have "Miranda rights" and use that term! It is hard to blame them: Several of the looseleaf services published after Canada adopted its new Bill of Rights cited U.S. cases to fill gaps, without allowing for differences in the underlying concepts and policies. One significant difference in Canada, which places greater value on community rights than on individual rights, is an interpretation of freedom of speech that allows pornography to be outlawed.

The problem of the same term expressing different concepts is even more prevalent when one compares common and civil law systems. "Lay assessors" in the former Soviet socialist legal systems was equated with "jury" in common law, but even though the two individuals chosen from the Soviet defendant's workplace were peers, their purpose was not fact finding but representing the interests of society. Similarly, "right to counsel" in many civil law systems, and formerly in socialist systems, attaches after the police investigation is completed; at that point we would call it futile!

II. Problems of Translation

Although professing to draft simultaneously in member languages to reflect more precisely the different cultures of member jurisdictions,

organizations (IGOs) (a project that also proved beyond the reach of the Council of Europe), the Library has convinced the World Bank that the LC methodology should be the standard for developing democracies as they codify their laws. Even countries without paper can provide Internet-searchable electronic texts of legislation if it was originally produced on a word processor. For countries that cannot provide electronic drafts of their legislation, texts can be imaged.

some intergovernmental organizations actually draft first in French and then translate into other languages. This is especially true in the European Court of Justice where some justices do not even have clerks who speak their languages. By using a thesaurus of legal terms in member languages, they provide automatic and very stilted translations. Since the French versions may appear years before other languages, damage is minimized.

To remedy translation problems, legal linguists recommend simultaneous *drafting* to reflect the nuances of the individual languages rather than literal identity. All versions are "official." Even when simultaneous drafting occurs, as in Canada and Belgium, language problems may persist. Often the two versions do not say the same thing. When this occurs, can litigation be far behind?

Researchers and information specialists inadvertently may exacerbate this problem by insisting upon English texts and by being indifferent or unaware that there are alternative texts or that an official language has been designated. If official versions exist, they should be studied along with the translation. Review of such texts against the English version by a legal linguist is a necessity if litigation is involved.

III. Summaries

For access to the law of civil law jurisdictions, the full-text database is a rarity. Too often one finds oneself dealing with summaries. Martindale-Hubbell's national law summaries in the *International Law Digest* are written by practitioners in the jurisdiction involved, and many of these topical summaries, but not all, are supported by citations to the underlying sources. Good sources in this category will provide specific citations to the law being summarized so that the researcher can pursue a copy of the text.

IV. The Myth of the Electronic Library

In spite of stellar developments on the Internet in the last year or so (notably, the United Nations Home Page and the AUSTLII database of Australian primary materials, each described in this book),

CD-ROMs and the Internet will not soon, if ever, take care of all research in foreign, comparative, and international law. Problems of content and reliability stand in the way.³

In terms of content, we still operate in a world where we must devote vast resources (budget, space, the time of acquisitions and filing staff) to paper materials, especially in foreign law. International law researchers are grateful for ready and reliable access to recent UN documents straight from the UN home page, and the dream of replacing shelves of the *United Nations Treaty Series* with Internet access could one day be a reality. It is not now possible, however, nor is it a realistic hope for the future, to find *everything* one needs in electronic form. What is there is rarely free, especially if the cost is measured in terms of user training and inconvenience, unreliable CD-ROM equipment, or the uncertainty of archives.

In terms of reliability, the Internet only compounds the problems of meaning inherent in foreign, comparative, and international law research: How do we know that we have an accurate, official and up-to-date text? The widespread availability of electronic data can lull us into a false sense of security. Electronic sources, although allowing access to texts immediately after promulgation, cause difficulties when archived. If stripped of identifying information—source of document and translation, date and means of acquisition—they are of doubtful value.⁴ Electronic archives are particularly prone to

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3. We all are familiar with Marshall McLuhan's dictum in *Understanding Media: The Extensions of Man* (New York, NY: McGraw-Hill, 1964) that the "medium is the message." Unfortunately, the transition from book to electronic medium may result in a distortion of the message. The democratic Internet, which allows anyone with a PC and a web browser to become a publisher, removes the reliability tags that attach to professional publication—validation of author and content based upon the ability to judge the reputation of the publisher for quality. When we see a West Publishing Co. logo or a key number symbol, for example, we recognize the shorthand for a process of acquiring, editing, and indexing the law far more meticulous than the courts and governments involved could afford. WESTLAW, the electronic version of the same information, retains that level of care.
 4. Listservs, such as INTLAW, which allow dialogue over the Internet among foreign and international legal information professionals from all over the world, maintain a high degree of reliability where the sharing of current materials is concerned. It is common for respondents to identify their credentials, institutional affiliations, and the source of their information when they supply

inaccuracy and unreliability: The democratic nature of the Internet encourages the misguided Samaritan to scan whatever information he or she finds—drafts, private translations, copyrighted materials—to build content on the web.⁵

V. Systems vs. Individual Jurisdictions

Although an overview such as the Nutshell on comparative law will describe legal systems, it will not deal with differences in the philosophy of legal practice between civilians and common lawyers. The flexibility of common lawyers and their openness to evolving law is alien to traditional civilians bound by the text of a code. Nothing prepared me for the literalism of the foreign civilians at the Library of Congress. When asked to provide Congress with a particular law, they produced the text from the official gazette, whether that law ever actually had been practiced. When asked for the Dutch law on physician-assisted euthanasia, the Dutch legal specialist reported that none existed in the codes or the gazette, despite the fact that an extra-legal practice existed, was well known in that country, and hundreds of articles had reported on it in English in both popular and legal journals. Similarly the practice of lobbying was denied, even though it occurred in various jurisdictions and in the intergovernmental organizations, and despite documentation to the contrary, including, for example, books on lobbying in Switzerland in the LC catalog and a myriad of articles on lobbying (by that name) in the European Union. Although librarians and editors challenged specialists with citations from the library catalog or periodical indexes,

documents, citations, or even hearsay. The ability to question the person who provides a document or a citation on a listserv adds a sense of security that is lost in dealing with archived information.

5. If used naively, the apparent time-saving devices of the Internet can also compound the problems of translation. We tested the translation of legal terms offered by the Rule of Law Online Project at <<http://www.rol.org>>, for example. When we asked for the French translation of several English terms, we got *la taxation code* for *tax code* (instead of *code des impôts*), *la cour souveraine* for *supreme court* (instead of *cour de cassation*), *le copyright* for *copyright* (instead of *droits d'auteur* or *propriété intellectuelle*), and *la volonté* for *will* (instead of *testament*).

these were discounted as not the work of the leading commentators from the jurisdictions involved.

The greatest temptation faced by the researcher and the information specialist is the screening of answers through the common law lens, even for sophisticated laymen such as Congress and its staff—including the Congressional Research Service (CRS). Add to that the difficulty of separating law from politics. Civilians insist upon maintaining that distinction. The Americans in CRS assigned to the task force to build Eastern European parliaments—most of whom spoke no foreign languages and were uninterested in briefings on parliamentary government as practiced in Eastern Europe—were absolutely convinced that the Helsinki Accord was evil: prohibitions on capital punishment and guarantees of a right to a job were un-American; democracy could not exist without separation of powers!

The situation is more difficult in dealing with unsophisticated laymen. Recently an elementary school teacher called me to obtain a library pass for a gifted fourth grader. He wanted to do a report on the differences among the criminal law systems of the United States, Canada, and Australia—a highly technical assignment even for a specialist. I explained that these were all common law jurisdictions and suggested that differences between U.S. and French law would be more striking and perhaps easier to perceive. I suggested the Nutshell on comparative law, which I knew contained a simple description of the French system, referred her to the public library in Westchester County to use *AmJur 2d* and called the director at Pace Law School Library to explain the problem and my strategy in case the student visited there.

This situation indicates our dilemma as reference librarians. Specialists usually know what they want—even if it sometimes does not exist. High school debate teams, faculty children, and laymen trying to conduct business outside of the United States—all tertiary clientele—require an incredible amount of one-on-one time from librarians. In fact, librarians who do have collections in foreign and international law are already scrambling to serve members of their primary clientele who may be approaching an international, foreign, or comparative law problem for the first time, not to mention serving the tertiary clients who do not know what they want.

VI. Conclusion

How is the generalist librarian to cope with the various problems of meaning? We may not all be specialists in foreign, comparative, and international law research, but we are *information specialists* and we know how to deal with subjects that are unfamiliar to us. We have the skills to interview and advise a researcher, and we know when and how to make a referral to a special library. We know how to attack an unfamiliar subject by exploiting background reading and contacting expert colleagues. And we know how to make a rigorous and critical evaluation of sources and tools, both print and electronic.

For foreign, comparative, and international law research, this means first that we must ascertain the sophistication and needs of the patron; just as the high school debater does not need copies of original material in all official languages, so he or she also does not need primary sources if an encyclopedia or legal newspaper article will do. On the other hand, the litigator should be advised that sources must be of utmost accuracy and reliability, periodically updated, with translations supplied by the promulgating authority or a certified legal translator. Generalist librarians should know when they are in over their heads and how to refer questions to experts.

We must also admit that fancy layouts do not change the first law of computer science: "Garbage in, garbage out!" The appearance of a foreign law text on the Internet does not necessarily sanctify it—it may be merely recycled garbage, one or more steps removed. It must be inspected for internal "reliability tags": images of the original source document; accessibility on the website of the organization responsible for promulgating the information; listserv messages in which the supplier of a text indicates the author, title, "age" of the document (draft, final, ratified, effective date), and an explanation of how it was acquired; published sources, either paper or electronic, that carry the implied warranty of the publisher's reputation; websites widely known for the care with which data is acquired and maintained.

Of course, the law librarian who wishes to develop a specialty in this area, or simply to be well-informed, can do more. This includes exercising intellectual curiosity by reading foreign and international publications, taking courses related to other cultures, attending professional meetings in other countries, participating in "sister law

school” programs, cultivating friendships with visiting faculty and students, and taking advantage of sabbaticals, exchanges, or internships with foreign law libraries, and consulting work for foreign institutions. Most importantly, we should immerse ourselves in foreign languages and begin building a library both in English and the vernacular of reference materials, general background works, and books that acquaint us with other cultures. We should be open to new ideas and experiences and not be afraid to consider ourselves “citizens of the world.”

Chapter
Two

Law Classification as a Gateway to Research¹

by *JOLANDE E. GOLDBERG*

I. Introduction

In the past, the Library of Congress Classification (LCC) has been described as a generally acceptable library shelving device and shelf browsing mechanism for American libraries based upon the Library of Congress literary warrant. That is, the system was not based upon an abstract classification of knowledge, but rather upon what was warranted by the actual literature in the LC collection.² This short description addressed the most basic functions of the LCC: (1) the processing of library materials for fixed and stable arrangement on the shelf; and (2) the retrieval of these materials from the shelf in the same order. The order for both shelving and browsing or retrieval was created by a knowledge-based logical system applied to

1. © 1998 Jolande E. Goldberg.

2. Lois Mai Chan, *Immroth's Guide to the Library of Classification*, 4th ed. (Englewood, CO: Libraries Unlimited, Inc., 1990), 16 (hereinafter *Immroth's Guide*).

the various manifestations of recognized fields of study, corresponding to their scientific framework at a given point in history.

While from inception the LCC was intended only for reclassifying and servicing of LC's own large *physical* collections, the development of the last LC class, Class K (Law), was no longer tied to the mandate of reclassification of *existing* LC holdings. Therefore, other classification techniques could be explored with the goal of creating in this part of the LCC a more coherent classification of concepts and subjects.

The introduction of the electronic version of the LCC, coinciding with the development of the twin LC classes JZ (International Relations) and KZ (International Law), which together will substitute upon implementation for the obsolete Class JX (International Relations and Law), has put a different spin on classification. The development of these new classes can prove that, freed from the strictures of older policies and the mandate to secure stable shelf arrangements for American libraries at large, classification will realize the full potential of the electronic LCC as a unique retrieval tool (browsing the virtual shelf) as well as a trans-class navigation tool for electronically stored blocks of information (building the virtual library).

II. Historical Development of the LCC Classes for Foreign, Comparative, and International Law

Development of the LCC, today one of the largest and most widely used classification systems domestically and internationally, has been an evolutionary process that will have taken one hundred years by completion of the last class, Class K (Law), which accounts for more than a third of the LCC overall. During this period, the orientation of policies governing collection building and accession has changed at various times, adapting to scientific, cultural, philosophical, and political developments. Therefore, classification should not be contemplated as isolated from the general history or intellectual climate of the country. The political history explains what is written and the intellectual and cultural history explains what is collected. It is no coincidence that the first and largest collection and the first classification schemes to be developed at LC were Classes E–F for

American History, D for Old World History and J–JX for Political Science, including International Law.

A. LC Collections and Organizations, 1801–1861

In the United States, the first growth period of the LC collections coincided with the period of political history and historiography beginning about 1800 and culminating with the introduction of a new general catalog in 1861.

After the Revolutionary War, historical accounts show the colonies' progression from colonial independence to nationhood. For that one needed a common politico/legal system but, most importantly, the creation of a common heritage, a common national history that would subordinate the role of the individual colony or state to the story of the nation, recording and explaining the past of the country as a whole.³

The years of the mid-nineteenth century, dominated by the popular historians and the "romantic nationalists,"⁴ were particularly interesting for the type of collections then forming at LC. Writing was guided by the desire to see the United States acquire "American character," to teach patriotism, and to spread the saga of freedom and hope of mankind for a better world. The interest to educate was stimulated by the flood of immigrants from the old country (up to 1848), bringing advanced education which in turn led to the building of schools, a large market for textbooks, and development of a school curriculum in which American history formed a central part.⁵ This period coincided with the Heidelberg romantic period in Germany, marked by the 1848 German Revolution, an academic youth movement, and the growth of German Nationalism; and then by the early constitutionalism in the German states and the revolutionary civic response to absolutism. The American historian George

3. David D. Van Tassel, *Recording America's Past: An Interpretation of the Development of Historical Studies in America, 1607–1884* (Chicago, IL: Univ. Chicago Press, 1960), 31–34 (hereinafter *Recording America's Past*).

4. *Id.* at 111–20.

5. *Id.* at 87.

Bancroft "translated the democratic faith into the language of German romanticism."⁶

During the same period, one encounters in the United States the steadily rising number of local historical societies, including those in the new frontier territories, which provided the historiographer with collections of personal papers and accounts of lawyers, businessmen, pioneer settlers, and colonial offices, and treatises on American institutions.⁷ Another phenomenon was the so-called "documania," the scramble for documentation in which the original colonies competed for acquisition of colonial documents from abroad, in pursuit of government documents, treaties, laws, legislative journals, and official and diplomatic correspondence that would "restore 'history to its truth.'"⁸

Various accounts such as annual reports, memoranda, and laws illuminated what was collected; critics of the collections exhorted that they were quite narrow in scope. From 1809 on, collecting had concentrated mostly on laws and congressional papers. In 1815, Jefferson's collection was acquired; in 1817, the Senate authorized LC to receive its first copyright deposits. In 1837, the Joint Library Committee supported international exchange of public documents.⁹ And in 1836, the Secretary of War in an address to the American Historical Society advocated expansion of LC collections to all subjects of human learning to "elevate it to an equality with those great repositories of knowledge which are among the proudest ornaments of modern Europe."¹⁰

The organization of the early, rudimentary collection was very simple. Before its move to Washington in 1800, Congress had used the collection of the Library Company of Philadelphia. In Washington, a catalogue for the LC collection of 900-plus works was issued in 1802, subarranged by size, followed in 1808 by the

6. *Id.* at 111-20.

7. *Id.* at 95-102.

8. *Id.* at 103.

9. John Y. Cole, *For Congress and the Nation: A Chronological History of the Library of Congress* (Washington, DC: Library of Congress, 1979), 6-17 (hereinafter *For Congress and the Nation*).

10. *Id.* at 16.

third catalogue which, besides size, introduced for the first time forms, including plans, state laws, journals of the House, House reports, executive papers, and gazettes. By 1812, the first subject-oriented catalogue was issued for the growing collections, following the catalogue of the Library Company of Philadelphia. The thirty-one subject classes of the Philadelphia scheme, modeled after Francis Bacon's *System of Knowledge Classification*, 1605 (modified by Jean le Rond d'Alembert, 1751), were reduced by the congressional library to eighteen subject classes before application to its 3,076 volume holdings. With the acquisition of Thomas Jefferson's collection in 1815, his classification scheme was introduced at the Library.¹¹ Jefferson's classification still was in use in 1861, when a new general catalogue was issued for the collection, now totaling some 70,000 volumes. Although the classification was expanded steadily to accommodate the fast-growing collections, its division of knowledge into the three principal classes—History, Philosophy, and Fine Arts (Poesy)—was preserved until implementation of the LCC in 1901.¹² As expansion for new topics occurred within these classes, the numbering system gradually changed from book numbering to shelf numbering.¹³

B. Expanding Collections and Organization: The LCC to 1949

The second period of LC collection growth saw major changes in the treatment of the subject History, which would eventually deeply impact LC's classification policies. In the United States, history writing changed to critical historical exploration (ca. 1866–1884), in particular after the Civil War, establishing the national past as the basis for the reunion (which in turn became the justification for the Civil War).¹⁴ From Germany, the "scientific" method of studying

11. *Immroth's Guide*, *supra* note 2, at 1–3.

12. *For Congress and the Nation*, *supra* note 9, at 27–28, 69–70.

13. *Immroth's Guide*, *supra* note 2, at 4–5. Example of early book numbers: 4/27 (chap. 4, American history, book number 27). Expanded numbers: 4/27a (chap. 4, American history, book number 27a (added collection from the Massachusetts Historical Society)). Last revision of the book numbers: 15/9456 (chap. 15, Technology, shelf number 9456, reserved for books on Inter-Ocean Canals).

14. *Recording America's Past*, *supra* note 3, at 160.

and writing history was brought back to the United States in approximately 1884, by scholars trained in German seminars where government and international law formed part of the history curriculum. These "scientific historians" viewed history as a study and record of social evolution. The best of these scholars, viewing themselves as political scientists, would establish departments for history and political science at American universities. It is interesting to observe that the American Social Science Association lent its authority to the foundation of a new organization, the American Historical Association.¹⁵

The expansion of the LC collections in this period was based on congressional requests for deposit of all documents by the states' governors (1866), the formalized exchange of foreign government documents (1867–1875), establishment of major collections (to 1890) either by congressional appropriation or by bequest and gift—among them the Chinese, Turkish, Lincolniana, and Rochambeau collections—and purchase in Europe of document collections relating to the Treaty of Paris (of 1783).¹⁶

These developments should be seen against the general politico/cultural background of the second half of the nineteenth century, the citizens' century: Humboldt's Declaration of Freedom of Study and Teaching in Germany, underpinned by major achievements in the arts and sciences, and archeological endeavors of the Germans and the English in the Middle East, deepening the interest in antique and Hellenic studies and Roman law. A critical factor was the wealth—paired with the German *Bildungsideal*—of the new industrial upper-middle classes, which were to lay the foundation for public collections, mostly libraries and museums, as well as botanical and zoological gardens, open to all citizens. This was the time when the best of America's industrial upperclass had their agents for buying and acquisitioning in Europe, DuPont, Frick, Vanderbilt, Morgan, and the Pittsburghers, competing with the Continent. Most importantly, LC also had its permanent purchase agent in Europe.¹⁷ And in

15. *Id.* at 171–79.

16. *For Congress and the Nation*, *supra* note 9, at 30–42.

17. *Id.* at 25.

1892, the president approved a congressional resolution finally to open the Library of Congress to the public.¹⁸

It was around this time that the Library of Congress, with collections up to the one million mark, underwent a major reorganization into several departments. Herbert Putnam of the Boston Public Library and Melvil Dewey of the New York State Library testified on behalf of the American Library Association before the Joint Library Committee, emphasizing the need for a new classification system for LC. In 1898, as the new Library of Congress building was ready for occupancy, Charles Martel, new Superintendent of the Catalogue Department, together with J.C. Hanson, the previous superintendent, began to explore available schemes in preparation for the intended reclassification. In 1898, during these preparations, Librarian Young proclaimed that LC's mission was to collect "whatever illustrates American History—the varied forms of American growth, theology, superstition, commonwealth, building, jurisprudence, peace, and war." His successor, Herbert Putnam, appointed in the following year (1899), focused on the development of the collections and of a new classification, since, according to his first statement to Congress, he found the classification to be meager, rigid, and inelastic, and the collections to be defective.¹⁹

During the search for a modern system that would provide a logical arrangement of the collections, the Dewey Decimal Classification was ruled out, since Dewey was not willing to make changes to accommodate LC's needs. Another system under consideration, the *Schema* of the University of Halle (Germany) was dismissed because it seemed too strongly oriented to traditional German philosophical thought.

Charles Ami Cutter's Expansive Classification was selected as the prototype, although with significant modifications in the notation structure, as a cursory analysis shows. Cutter's main classes bear no resemblance to the Bacon or the d'Alembert system, nor to the Jeffersonian outline, all European in their comprehension and division of knowledge. Cutter already had separated Science, Mathematics, and the Law (*Jus naturae et gentium*) from Philosophy. LC's adaptations (up to 1904) went beyond that: Class A

18. *Id.* at 46.

19. *Id.* at 51, 54, 62, 64–67, 69.

(Philosophy and Religion) was broken up and, by introducing double letters, Subclasses B–BJ for Philosophy and Subclasses BL–BX for Religion and Theology were created. Classes J–JX in the early version of the LCC were already the Classes for Political Science. Class K (Law), though initially proposed as a distinct class, was incorporated as a section in Class H, then Social Science.²⁰

C. First Classes of the LCC

Because of its importance for the planned massive reclassification, Class Z (Bibliography and Library Science, 1898) was the first class to be designed. First to be published (1901), however, were the classes for the most extensive collections, Classes E–F (History and Geography of the United States), followed by the draft of Class D (History of the Old World). Classes J to JX (Political Science), V and U (Naval and Military Science), and some other classes were published in 1910. This shows clearly two things: (1) Putnam's own vision of LC as " 'a bureau of information' for Americana,"²¹ (which aligned with the America-oriented philosophy of Putnam's predecessor); and (2) the prevailing philosophical comprehension of the times in which history was treated as an all-inclusive field, since historical studies had, in fact, provided answers to contemporary needs, closely tracking political, social, and economic developments. Thus, Classes E–F encompassed boundary questions and treaties, both related to the narrower subject of a state's territory and sovereignty; the recorded manifestations of U.S. westward expansion and territorial dominance over the Indian territories; works dealing with war and peace, and the peace treaties as well; regional development leading eventually to the formation of the OAS, a subject belonging by definition to International Law; and geography. Classes D, PJ, and PA had absorbed eminent historic–legal sources belonging to Germanic and ancient law, as well as prominent Roman jurists. Legal history was never recognized as a branch of legal studies but formed part of general history.

20. *Immroth's Guide*, *supra* note 2, at 6–15.

21. *For Congress and the Nation*, *supra* note 9, at 70.

D. Classes J–JX: Political Science and Class H: Social Science

Classes J–JX had absorbed official gazettes (a primary source of the law), legislative papers, and texts of constitutions of the world together with constitutional history. In accord with the understanding of the time, international law was welded together with international relations, instructing the cataloger, in case of doubt, to prefer Classes D–F, the classes for history. Class K (Law), although reflected as a class in the final outline of the LCC, was never developed. Instead, many of the other LC Classes, completed by 1948, had absorbed legal materials that one would have expected to serve as the basis for Class K. Law was considered a congeries of aspects of other disciplines and not a discipline in itself. It had become a *form division* for use with the other classes, in particular Classes H (Social Science) and J (Political Science). Therefore, bibliographic queries always need to include related areas in classes such as E–F, D, H, J, and U to complete the investigation of a subject.

E. Last Stage of LCC Development: Class K for Law (1949 to present)

Under Librarian Luther H. Evans, collection and selection policies focused on post–World War II Europe. Evans' "Mission in Europe," aimed at "obtaining 'multiple copies of European publications for the war period' for distribution to American libraries and research institutions,"²² accounted for an unprecedented expansion of LC's collection due to the massive inflow of foreign, predominantly legal, materials between 1945 and 1949. Of special importance were German laws and all related materials for the study of Germany's past role in the European theater, now the Territory under Allied Occupation. This would finally lead to development of the last component class of the LCC, Class K (Law).

F. Policies and Principles for Law Classification Development

In 1949, during the Annual Convention of the American Association of Law Libraries (AALL), the guiding principles for classification of

22. *Id.* at 121.

Law were worked out, later to be published with an outline of the entire Class as the *Interim Report of June 10*, which has remained the governing document for the development of Class K.²³ The report defined for the first time the types and categories of law materials and from then to the present has set the demarcation lines, retrospectively and prospectively, between Class K and other classes.

G. The Physical versus the Virtual

In design issues, opinions were greatly divided: (1) Should the schedule be based on the actual library holdings or (2) Should it be developed on a strictly theoretical basis? The latter was ruled out by the library's Committee on Development of Class K, since the library already had considerable experience in classifying existing collections. (3) Would LC then ever make a commitment to reclassify its legal materials? The development of the first class, Class KF (Law of the United States), eventually published in 1968, was caught up in this point-counterpoint argument for twenty years, both outside and inside LC.²⁴

The eventual shift in development patterns was due to a major change in classification policy. The planned creation of a *virtual* law collection on which the development of Class K would be based, that is, a law shelflist consisting of bibliographic data extracted from the shelflist of Classes A–Z for the older law materials buried in such classes and combining them with more recent records already designated as Law for reclassification, was abandoned as "dragnet operation." Consequently, the building of a *physical* law collection by deselecting or separating materials from existing collections A to Z

23. In the spring of 1949, the Librarian of Congress appointed a Committee on the Classification Schedule for Law to study theoretical and administrative problems. At the same time, AALL appointed a Committee to Cooperate with LC on Law Classification. In May 1949, the two committees developed the Principles for the Classification of Law, to be announced during the 42nd annual convention of AALL of the same year, and henceforth known as the *Interim Report of June 10, 1949*. See Jolande E. Goldberg, "Library of Congress Class K: Law of Germany: A Historical Review of Law Classification," in *Parliament and Library. International Festschrift für Wolfgang Dietz*, ed. G. Hahn & H. Kirchner (München: K.G. Saur, 1986), at 328–33.

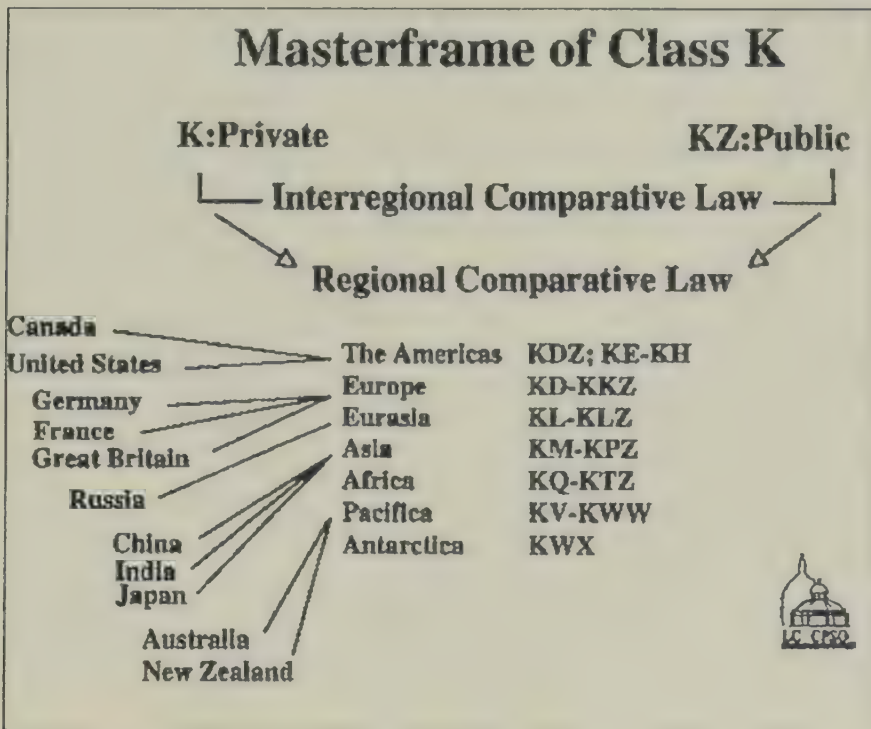
24. *Id.* at 329.

never materialized either. Thus, for the first time in LC's classification history, *reclassification*, or conversion of assigned class numbers to the current (or corresponding) class number in the new schedule upon its implementation, was ruled out from the start. This provided the opportunity to design the new Class K, not tied to existing collections, or custodial and other preferences, as an ideal-conceptual organization for the large and diverse body of knowledge called Law, with a set of principles and policies unique to it.

H. The Masterframe of Class K

1. Jurisdictionality

This is the highest element in the hierarchy of governing principles for the structure of Class K and all its Subclasses.



By definition, a jurisdiction is a political geographic subdivision that is issuing law (a country) or is governed by law (for example, a colony, territory, or first-order administrative subdivision of a country). Additionally, a jurisdiction or quasi-jurisdiction may be a political

(geographic) intergovernmental organization that is issuing law or is governed by law. It was recognized that the differences in legal systems, nomenclature, public policies, and intellectual tradition from one jurisdiction to another would not allow for superimposing of concepts and nomenclature valid only for one jurisdiction onto another. Thus, arrangement by jurisdiction takes precedence over other criteria such as subject.²⁵

2. Model Schedules

Already with the first group of classes for the common law countries, classification technique had resorted to model schedule development. The first schedule, Class KF (Law of the United States), was the model for the other common law schedules and tables, but only in approximate, broad use of patterns without a common number base, and not strictly symmetrical. With the creation of KK–KKC: Law of Germany, the model for civil law jurisdictions, the derivation technique was introduced, whereby the number, pattern, and, as far as possible, terminology pool from one schedule is used for creation of a related class, such as KKA (Socialist Law of East Germany).²⁶ As a result of comparative study to determine common principles underlying both systems, harmonized, analogous class detail based on the legal doctrine shared by both jurisdictions could be created. The following is an example from constitutional law:

KK	Constitutional Law	KKA	Constitutional Law
5049	Separation of powers	5049	Centralization of powers
	Organs of Federal government		Central government and its organs
	Legislature		Legislative power
5318	Bundestag (Federal Diet)	5318	Volkskammer (Peoples Delegates)
5392	Bundespräsident (Fed. Pres.)	5392	Staatsrat (State Council). Collective head of State

25. *Id.* at 332–34.

26. *Id.* at 329.

3. *The regionalism principle*

This evolved in response to further restriction in development of the class: not all jurisdictions could be provided with a customized classification schedule. Thus, another formula had to be invented to create some organization for the rapidly growing foreign law collections. In fact, the development of the next generation of schedules was already on course towards further refined model schedules, but after careful analysis of concepts and patterns, it switched completely to symmetrical uniform tables for all jurisdictions in a given (geographic) region or continent.

III. Philosophical Orientation of the LCC: Features and Function

Although the policies of collection building, organization, and accession have changed many times, the LCC can still be viewed as an encyclopedic classification for the Universe of Knowledge in Classes A–Z, primarily designed for LC collections.

A. Hierarchy

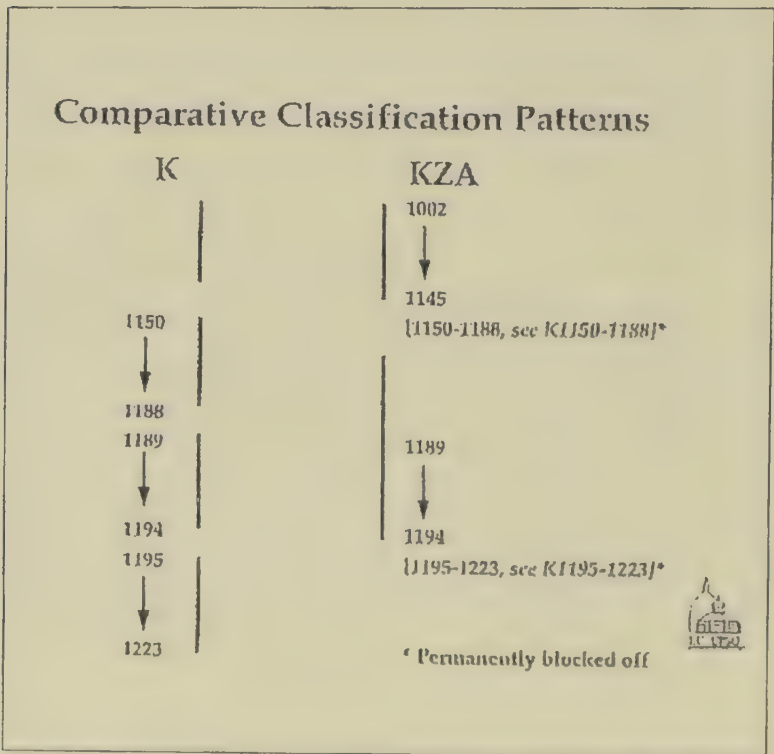
Translated into classification structure, this means that the schedules are designed *systematic-hierarchic* in the order of concepts or textual elaborations of a knowledge field or topic. The following principles have been greatly standardized during development of the LCC, particularly during the development of the law class in the 1950s, and recently during conversion of LCC to the electronic format. Concepts, facts, or phenomena are arranged from the most general and broadest to the most specific and refined term or definition in descending order, a logical, deductive method grounded in late eighteenth-century European philosophy.²⁷ These concepts, facts, or phenomena express their relationship to each other in the

27. Franz Wieacker, *A History of Private Law in Europe with Particular Reference to Germany*, trans. Tony Weir of *Privatrechtsgeschichte der Neuzeit*, 2d ed., 1967 (Oxford: Clarendon Press, 1995), 254, 296. The principal representative was Christian Wolff, the head of German Enlightenment philosophy.

hierarchy by indention. Hierarchies are further carried through by form divisions, uniformly applied to topics.

B. Symmetry and Linearity

The schemes, with all their subclasses, are to a large degree symmetrical, but they are not strictly linear. The reference structure (see and see also references) provides key information about secondary relationships of one concept to others, especially to those in parallel hierarchies in the same class (for example, the distinction in sales contracts of civil law and of commercial law is typical for most European jurisdictions), or cross-class. In other words, it creates the connection to parallel hierarchies that could allow for synthesizing of numbers.



All references contain the alphanumeric notation and the verbal definition, since the notation alone is not self-explanatory. Extensive

referencing from the *systematic* position of fact, event, or topic to the actual classification was introduced and has been applied widely since implementation of the LCC. This feature of the LCC was used for the most recent development of the international law complex to accommodate new legal doctrines and scientific developments effecting distribution and rearrangements of materials between several older classes.

C. The Notation Structure

The alphanumeric notation system adopted for the LCC is a composite system utilizing letters and Arabic numerals. All main classes are represented by a single or double capital letter; for Classes D and K, triple letters also denote subclasses. Within each class (or subclass), the integral numbers 1–9999 (or 1–4999) are used for subject divisions and subarrangements, with a generous amount of free numbers for future expansion. In its alphanumeric design, the notation still bears some resemblance to the nineteenth-century shelf number. The *class number* assigned to each caption is the numeric expression (code) of a concept, phenomenon, or fact defined by natural language or subject-typical terminology in the caption. That is, it is coded information denoting the order of subjects in the schedule.

After the first set of letters and numbers, the second set, the Cutter numbers preceded by a period, indicates a particular form subdivision. The addition of a work-specific Cutter number, usually by main entry (the *book Cutter*) to distinguish a book from others on the same subject in the classification schedule, extends the systematic class number to the *call number* (or shelf locator). Only the integral numbers and topical or geographic subject subarrangements expressed by Cutter numbers are represented in the text of the schedule, while form divisions (expressed either by full, decimal or Cutter numbers) are usually appended tables. For example, the class number for the Rules of Procedure of the European Parliament is as follows:

Class number KJE [=Community Law]
5390 [=integral number for European Parliament]
.A18 [=Form Division IX for Rules of Procedure]
Book number .E97 [=Main entry]

All components together form the call number.

D. Subject Content of Class K Schedules

The subjects and sources have been explored and checked thoroughly during the working process against actual presentations in every knowledge field (new doctrines, new field of research, and so forth). The history sections, with their painstakingly researched source arrangements, actually represent fully printed catalogs (for the Germanic, Roman, and Ancient law sources; for the document collections of IGOs; for treaties; for learned societies and scholars). The detailed enumeration of concepts and definitions is condensed into captions in field typical language. The terminology, legal doctrines, and the legal definitions are presented in careful translation or, where necessary, in the original or official languages.

E. The Index

The most important feature is the index of all of this information. LC Subject Headings (controlled terms) have been integrated as far as is possible and appropriate into the text of the schedules (captions or scope notes) since this will create in the online environment a direct link to the class number. The introduction of uncontrolled terms (such as synonyms) will, through classification, create additional access points to the bibliographic data. The index serves at the same time as an encyclopedic dictionary and a vocabulary for the different languages used in the schedules (German, French, Latin, and so forth) and in general as a terminology database. The great detail of the schedules has often been criticized. The more advanced

or experienced the expected user is thought to be, however, the more detail is commanded by the index.²⁸

F. Attributed Functions of the LCC

1. Cataloging Tool

The most conventional function of the LCC, and traditionally perceived as its primary purpose, is to serve as the tool for the technical services operations of cataloging and classification. In this function, the LCC serves as the intellectual basis for construction of the classed catalog or the shelflist, the latter with its own premier function as a record of books as they are arranged on the shelf in order of classification. This has been from the beginning a troubling aspect and has of late become a real challenge in the light of ever-broadening cooperation in the library community. Although LC never encouraged the use of the LCC by other libraries, and despite repeated statements by Library officials that the LCC is intended as a utilitarian classification of objects based on LC literary warrant (in particular, by Herbert Putnam at the inception stage of the LCC and by Luther Evans during the planning stage of Class K), LC could not prevent that the LCC has, in fact, become the preferred classification for libraries and educational institutions in the United States and for a great many institutions abroad.

2. Collection Development Tool

A lesser known fact is that at LC the classification system has been all along the policy framework for scientific collection development. The incremental implementation of the LCC during the long run of its development meant implementation of a complex set of policies that inherently governed future development and maintenance of collections and bibliographic data (on both the physical and the virtual shelf) at LC and at all other libraries adopting the LCC. It also set the demarcation line from one class to another and outlined provinces and governance for all subclasses within a class.

28. *Indexing Legal Materials*, ed. Elisabeth M. Moys, Anne P. Coles, Moira Greenhalgh & Ben Wynne. Society of Indexers Occasional Papers on Indexing, no. 2 (London: Society of Indexers, 1993), 2, 19.

One of the recent collection policy statements of the Collection Development Office, in this case dealing with Classes B–BJ and Z (Philosophy), clearly directs that collection building should be based on the existing classification schedule: "The collections policy . . . is closely linked to the treatment of Philosophy in the Library's classification scheme, which incorporates a traditional framework of categorizations and distinctions." This policy statement continues with an unambiguous acquisition mandate that "the Library shall acquire all of the important current reference works . . . as outlined in the Library of Congress Classification (Class B)."²⁹

3. Reference and Retrieval Tool

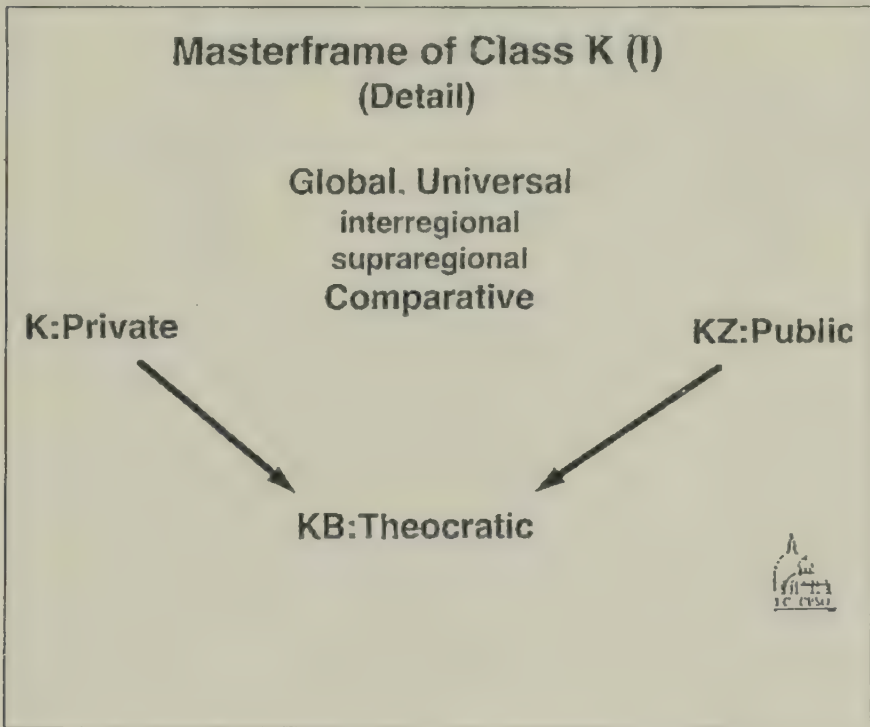
The least-recognized and still not fully explored function of the LCC is that of a superior reference work. This is true particularly for the schedules for foreign, comparative, and international law, which are ready to be used as an outline of the field of law and, since the recent conversion to the electronic (MARC) format, as a tool for systematic accessing of electronically stored information.

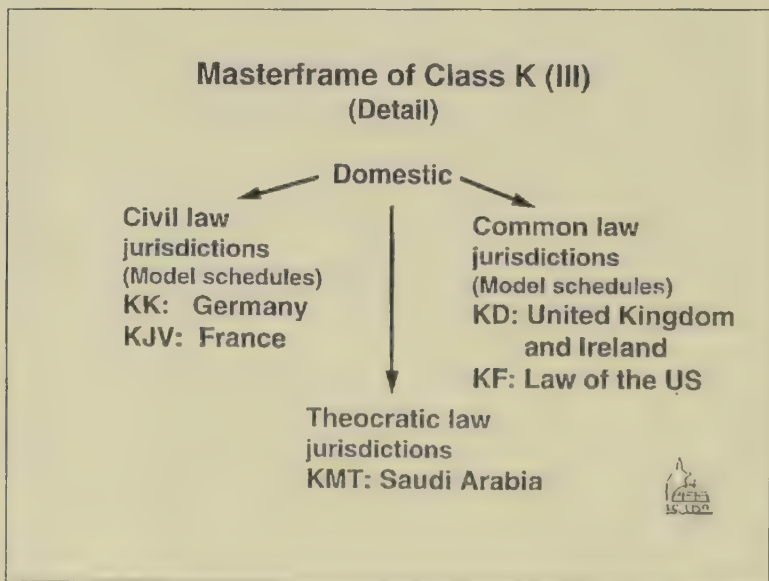
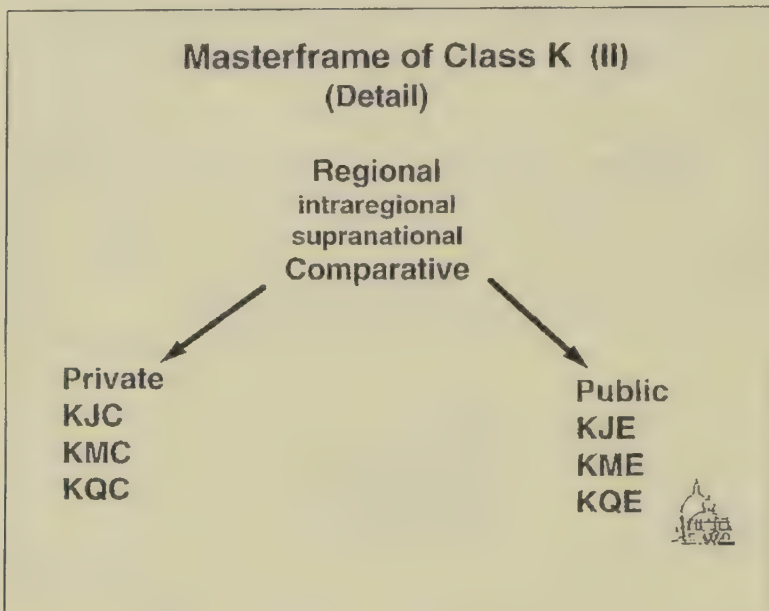
There are several reasons for this, primarily the way in which these schedules are constructed. They are the product of comparative research. They have been enriched with a wealth of information, mostly stemming from processed data itself. Recently, during substantial revisions triggered by the conversion process to the online format, a mass of information from the database that typically had never been enumerated in the older schedules but was hidden in "General works" numbers has been added to the text of the schedules. Particularly in the international and older regional schedules, essential reference materials such as intergovernmental congresses, organizations and their document sets and major treaties were not represented in the text, but as general works arranged on the shelf only by form.

29. *Library of Congress Collections Policy Statements. Series A. Philosophy (Classes B, BC, BD, BH, Bj, and Z7125–Z7150)* (Mar. 1, 1995) (emphasis added).

IV. Comparative Law, Comparative Classification: Access to Foreign and International Law

For successful use of the classification for orientation in a particular area of foreign or international law and for accessing the databases, one needs to understand both the patterns and the rules governing the structure of the class with its subclasses.





A. Class K and K Subclasses

Law classification sets the perimeter to non-law classes and delineates within Class K the provinces of its subclasses. The main class (first caption in the hierarchy) is represented by the single letter K for Comparative and Uniform Law, which is universal in scope. This class is broken down further into subclasses with two or three letters, representing regions and jurisdictions within, for example:

K: Law	[Main Class]
KJ: Law of Europe	[Subclass Region Europe]
KJV: Law of France	[Subclass Jurisdiction in Europe]
1-9999:	General to specific topics (expressed by integral numbers)

B. Regional Classification Schedules for Europe, Latin America, Asia, Africa, Pacifica, and Antarctica: Interpretation, Analogy, and Abstraction

Customarily, a region has been defined as a geographic area in which underlying historic, religious, and ethnic patterns, as well as socio-economic conditions are commonly shared, as reflected in laws in the area; and where cultural, scientific, and economic interests have led to regional integration and organization. The schemes or uniform tables are the result of comparative legal analysis of such patterns, concepts, or conditions identified as common to the largest number of jurisdictions in a region.

The regionalism principle had been adopted for the first time during the simultaneous development of the schedules for the Law of Latin America and the Law of Europe,³⁰ and for the first time fully borne out for European regional intergovernmental organizations (IGOs) and the European treaty law. The earlier released schedule KDZ, KG-KH contains only an abbreviated version of a regional classification schedule for the OAS. This area has to be revisited during the ongoing revision of the online law classification.

30. Jolande E. Goldberg, "Library of Congress Law Classification: The Regional Schedules," 79 *L. Libr. J.* (1987), 69-72.

The schedule for the Law of Europe consists of:

- KJ: European History with the body of sources of Roman and Germanic Law. Source collections are important for the study of comparative law, since they provide an overview and the pattern catalog for many of the modern legal doctrines.
- KJC: Comparative law of the region Europe
- KJE: Regional Organizations. IGOs, divided into EC/EU and non-EC/EU

List of European Jurisdictions

Subject Tables A and B

The sources of the EC are enumerated in the schedule KJE as they are present (by doctrine) in this hierarchy: primary legislation (constitutive treaties), secondary legislation (decisions and regulations), and general principles (*principes généraux du droit*). For example, decisions of the European Court of Justice on the question of finding general legal principles common to all civil law systems—the essence of comparative interpretation, analogy, or abstraction—are quite numerous.

An excellent example for translation of comparative research methods into classification techniques is the treatment of the EC in the frame of established subject order. The whole section KJE4441+, Organization law. Constitution of the EC, is placed in the same position of order as reserved in all other law classification schedules for Constitutional Law of the country, and thus reflects the analogous application of doctrines or principles otherwise associated with federally organized jurisdictions.

The same harmonization and approximation technique was applied for the development of the second regional schedule KL–KWX (Law of Asia, Africa, Pacifica); for construction (derivation) of the schedule for regional organizations; and further refined for the Antarctic Treaty System and other international organizations, in particular the

United Nations.³¹ By these methods, second and third generations of schedules or tables could be derived from one model.

C. Treaties and Other International Agreements

For the distribution of legal materials, in particular treaties and materials relating to IGOs, intergovernmental conferences, and international/regional courts, guidelines have to be observed strictly. Since 1979, LC policy is to class works on the law of two or more jurisdictions with the region to which such jurisdictions belong, and in Subclass K (Comparative and Uniform Law) when these jurisdictions belong to different regions. Such works can be parallel presentations without actual comparisons (for example, the collected constitutions of countries in a region), or they can appear as true comparative investigations of legal systems, branches of the law, or subjects. In-depth studies of this nature are often conducted during the treaty-making process, during the legislative process (harmonization or law unification efforts), or during the juridical process.

At LC this policy has been extended since 1982 for treaties between two or more countries or regional organizations in the region. At the same time, it was decided not to create a special section or subclass for regional treaties since, like statutes, they govern a subject or establish and govern an IGO. For all treaties belonging in the realm of public international law, as well as for treaty collections of individual countries regardless of region or subject, Class KZ (Law of Nations) will provide the arrangement (KZ235–KZ2000).

1. Law of Europe

For the distribution of legal materials emanating from the region Europe (EC and EU) between the subclasses KJC and KJE, the following rules have to be observed: (1) All treaties concluded by countries in a region, including EC/EU member states, are classed by subject; (2) all treaties concluded by regional organizations, or

31. Jolande E. Goldberg, Introduction, Library of Congress, Cataloging Policy and Support Office, *Classification: Subclass KL-KWX, Law of Asia and Eurasia, Africa, Pacific Region and Antarctica* (1993); Jolande E. Goldberg, "Antarctica: Economic War Zone or World Patrimony? Festschrift Dr. Walter Witzemann," in *Konstanten für Wirtschaft und Gesellschaft* (Konstanz: Labhard Verlag, 1993), at 2, 88–133.

treaties to which regional organizations are a party (for example, Council of Europe), are classed in KJC (treaties of the EC/EU are exceptions); (3) all treaties concluded by the EC/EU are considered secondary law of the EC/EU and are classed in KJE; and (4) all treaties establishing and governing the organizations are classed in KJE as organization law.

2. *Law of Asia, Africa, Pacífica, and Antartíca*

The regional schedule KL–KWX is a structure and content derivative of KJ–KKZ. The following guidelines may be of help in using the schedule. KJC (Regional Comparative and Uniform Law) served as number and subject base for Table B, the Comparative and Uniform Law for the regions of Asia, Africa, and Pacífica including several subregions (for example, the Middle East). KJE served for derivation of the schedule KWX for the Antarctic Treaty System. For the distribution of regional legal materials and treaties, the rules that apply for classification of materials in one of the European schedules or tables are also to be applied in the corresponding (derived) schedules or tables here.

3. *Class K and External (non-K) Classes*

The classification for Law, which is traditionally viewed as part of the Social Sciences, has from inception set the demarcation lines to such neighboring subject fields as Class H (Social Science) and Class J (Political Science), the “twin sister” of Class K. There are other neighboring classes, however, that always need to be considered, for example, PJ (Oriental Philology and Literature) in connection with KL (Ancient law); DS (History of Asia) for the full outline of Chinese historic periods and historic materials in connection with KNN (Law of China) since, for example, the ancient codes are part of the Annals and are classed in DS; BL (Concepts of Hinduism and Sanskrit literature) in connection with KNS (Law of India); and PA (Classical Philology and Literature) in connection with KJA (Roman Law).

It is in the overlap areas of classes, in the “grey zones” of classification, that policies emerge as a consequence of, or prelude to, periodic major changes in the classification as new knowledge fields emerge or established ones mature. Such occurrences have been handled in the past not only by revision of the scope of a class, or by expansion of a particular class, for example in this numeric expansion:

KJE 4444.31951 (= KJE 4444.3[date])
.A2
1994

[EU Organization Law. Treaty of Paris 1951. Unannotated edition. Published 1994]

but also by major shifts of whole subclasses, or of subject clusters from one subclass to another (systematically expressed by bracketing of blocks of numbers in a particular area or schedule and referencing to the redevelopments in the preferred class or section of the same class).

Although such operations were always communicated to the outside through various established channels and media, concerns voiced by the outside prompted LC regularly to caution the user that the particular aspects of the development, revision, and applications of LCC would have to be understood.³² Nonetheless, these concerns for stability of classification, echoing throughout the library community,³³ have markedly inhibited inventive revisions of the classification schedule until recently.

V. Electronic Version of LC Classification for International Law

Recently, several factors have made new in-depth study of the LCC necessary and, indeed, have lead to a better understanding of the system. These include development of the USMARC format for classification, conversion of the LCC to the electronic online format, linkage of classification with other electronic authority files (in particular the Library of Congress Subject Headings list (LCSH), which had grown independently from classification), the search for intellectual and technical solutions for constructing the electronic

32. William J. Welsh, "Considerations on the Adoption of the Library of Congress Classification," 61 *L. Libr. J.* (1968), 242-45. These statements were made during his years as Director of the Processing Department at LC.

33. Most recently, Lois M. Chan, *Report on the Library of Congress Classification* (delivered to Cataloging Policy and Support Office, Library of Congress, 1996), 9.

integrated index for Classes A–Z, and the breaking out of the index of an individual class.

A. Preparation of Class K for Conversion to the Electronic Format

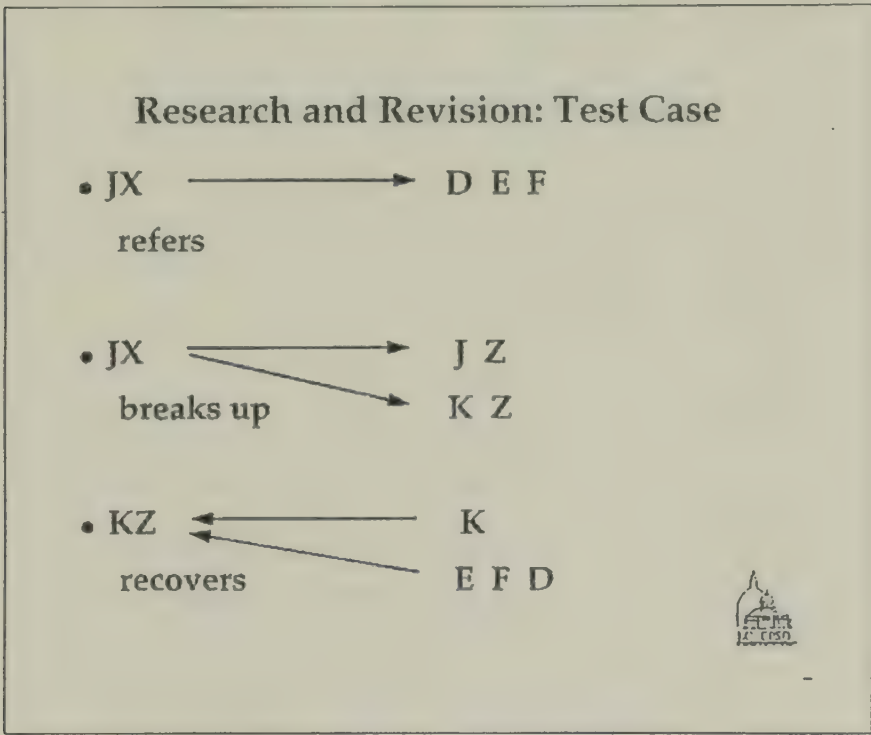
Very important during the conversion of LCC Class K to the electronic format was the evaluation of existing and projected classification strategies, such as model creation for common divisions (form, geographic, or period) and concept/subject divisions, based on experience gained by the recent developments of the K classes, in particular identification of old, commonly underlying patterns and their harmonization with new patterns to achieve pattern conformity; re-alignment of hierarchies in related schedules or groups of schedules during revision, in preparation for conversion to the online format, or for reclassification purposes; standardization or elimination of form division tables, or incorporation of such tables into the text of the schedules; removal of Cutter subarrangements from the text of the schedules; the standardization and updating of terminology; generous introduction of LC subject headings into the captions; and standardization of indexing procedures, all particularly critical since successful searches and retrieval will rely on the quality of the subject data supplied by the schedules.

Most of these operations do not effect in general the number structures of older existing collections. The combination of LC efforts to bring the schedules up to current knowledge standards before implementation of the electronic classification format and massive reclassification projects underway at major law libraries, which are adopting LCC Class K for the first time, have prompted the search for new classification techniques, however. Will the electronic classification lend itself to novel access strategies, and will it be able to bridge the gap between the original arrangement of the physical collection and new systematic electronic data?

B. Class JX and KZ/JZ: International Law and Relations

These were some of the questions associated with restructuring or recovering the old Class JX, which will finally correct classification practices rooted in the ideological perception of history dating back

to 1901. Both the concepts of Class JX and the policies first implemented in 1910 stayed fixed by prevailing philosophy in the period before World War I. Thus, the class was not kept in compliance with current events but had been laid bare of many pertinent subjects that were since incorporated in the History Classes D-E-F due to old instructions that were never reviewed.



For example, the “regime theory” developed by international relations specialists since the mid-1970s has been adopted by the international legal community as the theoretical framework for the foundation of the international legal regimes. Such regimes, created for a wide range of intergovernmental activities, have become increasingly powerful instruments for institution building, international cooperation, collective conflict management, and enforcement of international rules of conduct in the community of nations.

Quite a number of these have from their very inception broken down the lines of demarcation between traditional subject fields. Here one sees crossovers from the public law to the private law sector, and regulatory aspects relating to both. Most remarkable are

the regimes that govern the International Commons of the Oceans, Air and Space, and Antarctica. Not static, these regimes have, in turn, generated a growing number of secondary institutions, secretariats, and task forces. These bodies have been created to protect the environment in its broadest definition and to guard against reckless exploitation of the world's resources through negotiated conservation and management, while striving to assure equal access and shared responsibility towards the environment.

Following patterns suggested by the broad and multifaceted Regime of the Oceans, the unique hybrid class KZA, the first subclass of KZ, has been created. It provides the space for future discretionary placement of information, borrowed from Class K (Comparative and Uniform law. Jurisprudence), such as commercial Maritime Law, Marine Ecology, and the regulatory aspects of Maritime Transportation.

The two new classes, KZ (Law of Nations) and JZ (International Relations), will upon implementation at LC substitute for the Class JX (International Law. Foreign Relations. Diplomacy), the last subclass of J (Political Science). To finalize the design of the new classes, cross-class research techniques have been applied which allow for comparative classification and approximation either of two classes (J and K) or of particular subject fields (subdivisions) in related classes; parallel arrangement of approximate patterns; and to some degree complete parallel developments. Also possible is the navigation of blocks of information into the hierarchy of different classes in the same order, under harmonized terminology if similar in concept and under identical integral number but distinct by class.

Comparative Classification Patterns (strictly parallel)

JZ		KZ
200		200
203		203
205		205
207		207
220		220



Policy and Pattern Analysis (Test Case)

J-JZ ←————→ K-KZ

J Legislative and executive papers
JA-JC

Political science
The State
Political theory

JN-JQ

Constitutional history, *see* K
Constitutions, *see* K

Political institutions and
administration

JZ

International relations and
diplomacy
IGO's
Universal
UN documentation

K Official Gazettes
K-KWX

Public law
The State
Theory, Philosophy

Constitutional law
Constitutional history
Constitutions
Legislative papers, *see* J

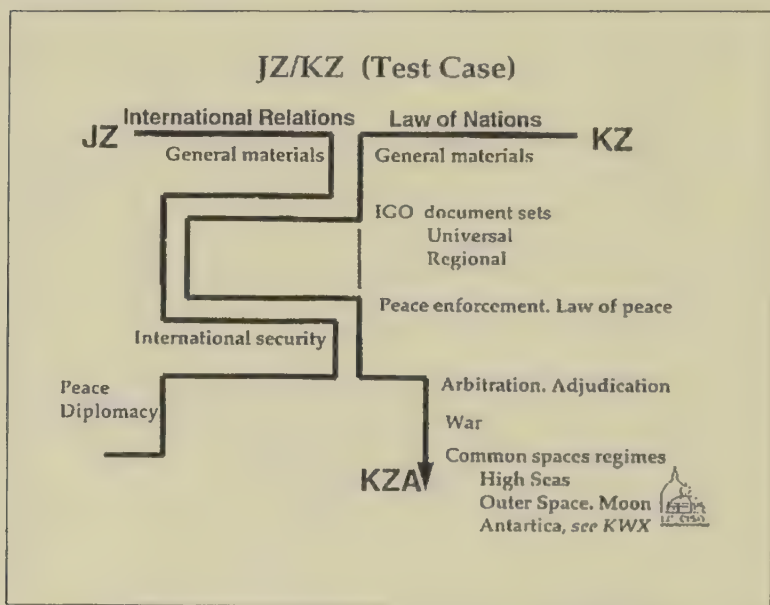
Administrative law
Executive papers, *see* J

KZ

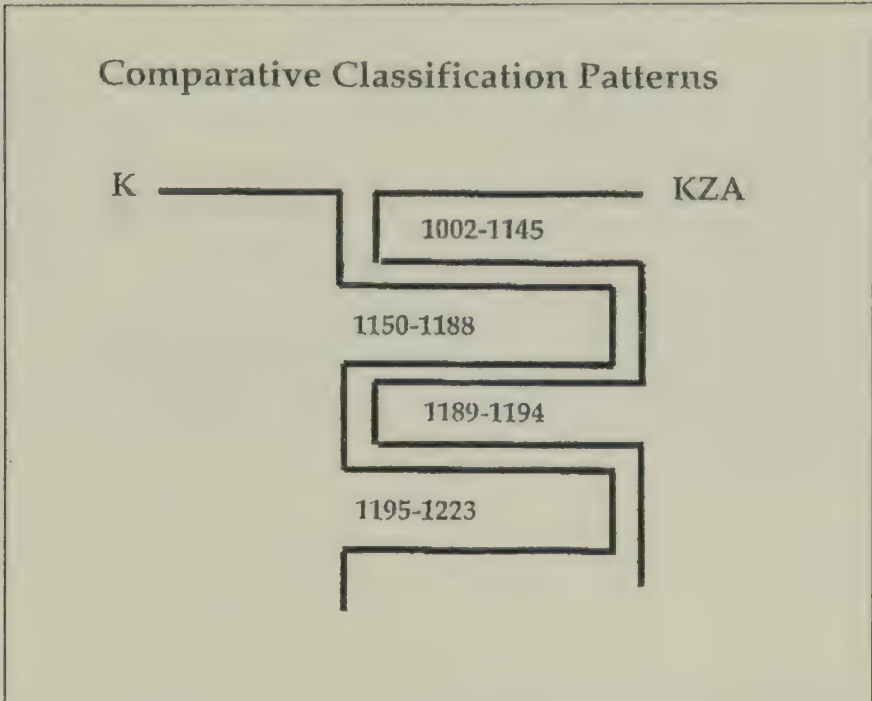
Law of Nations
Subject of Law of Nations
IGO's
Universal
UN documents, *see* JZ



Comparative working techniques such as analytical exegesis, approximation, harmonization, analogous interpretation, and synthetic construction (guided by references to parallel hierarchies), freely borrowed from legal scientists, were kindred methods adopted for the development of the entire Class K, including the recent twin Classes KZ/JZ. The two classes are devised in subject arrangement and number structure so as to complement each other, allowing for discretionary placement of works, especially document collections, in either class depending upon an individual library's point of emphasis or collection policy.



While all the described operations can be, and are, managed in the conventional way, the interactive electronic system will enhance the quality, speed and cost-effectiveness of the tasks of maintenance, revision or restructuring classifications by navigating blocks of information (here, concepts or topics) either within a class or across classes.



The same functionality has been envisioned by research libraries as a technique for customizing collections by cross-class information integration. In fact, the electronic classification format is capable of creating the *virtual* library for facility of research by separating or merging subjects and phenomena, similar or related by concept but distinct by class. Even a permanent cross-classification data merger would not have to concern the physical collection. Here, one would resort to duplicate numbers assigned to the bibliographic record, the original one for shelf location, the new one for the systematic (class number) search for topic or concept.

Reclassification of the *JX* collection to *JZ* and *KZ* probably will be a country-wide effort. At LC it will be the first complete reclassification of a *legal* collection. Since it is not in the plans to re-label and move this old and very large collection, the obsolete Class *JX* will serve as a concordance. For this purpose, the Cataloging Policy Office issued very recently the "Multiple 050 Policy." The new *JZ* and *KZ*–*KZD* class numbers will be in the first 050 field allowing for systematic data retrieval; the original (*JX*) call numbers will remain on the bibliographic record in the second 050 field as shelf locator.

VI. Conclusion

Of course, to realize the full potential of the electronic LCC as a data retrieval tool, the last and most important piece is still missing at LC—the online shelflist. This enormous project, including linkage of the LCC to all authority files, is currently in the research stage.

Ultimately, all efforts will have to concentrate on the envisioned function of the electronic LCC as an online retrieval tool. For online browsing and navigation of electronically stored information, including the segregation of whole portions of one class and transfer to another, a knowledge-based, field-specific structure of the classification is of utmost importance. So, also, is the separation from the shelving function.

Part II—Foreign and Comparative Law

Chapter
Three

Introduction to Foreign and Comparative Law¹

by *THOMAS H. REYNOLDS*

Comparative law is the study and comparative evaluation of the differences and similarities in several legal systems.² As used in the United States, “foreign law” generally refers to the domestic law of a non-United States jurisdiction. What follows is a broad, bird’s-eye view of comparative law, looking at the legal systems that are different from the United States system. To illustrate the two major legal systems, civil law and common law, this chapter focuses on the domestic law systems of France and Germany on the one hand, and England, Canada, and Australia on the other.

Just as Gaul was divided into three parts, so are the world’s legal systems. The three legal systems are the civil law system, dominant in continental Europe, Latin America, and the nations of Africa and Asia formerly colonized by continental powers; the common law, in

1. © 1998 Thomas H. Reynolds.

2. Jan Kropholler, “Comparative Law,” in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, consolidated ed., vol. 1 (Amsterdam: North Holland, 1992), at 702.

effect in the United States, the United Kingdom, most of the states of the British Commonwealth, including Canada and Australasia, and the Anglophone nations in the Caribbean, Africa, and Asia; and, finally, "everything else," essentially a disparate collection of "mixed" legal systems, colored, even dominated to varying degrees, by Islam.

A series of great comparativist scholars has striven to categorize these systems. The most successful perhaps was the French scholar René David who developed the concept of "legal families." To the main families he added Islamic and Eastern religious-oriented systems (actually these are mixed). He was, alas, intellectually flummoxed into acknowledging the derivative and pathetically empty economic/political systems dysfunctioning in Central and Eastern Europe as the "Socialist family of laws."⁵ As a "rule of law" socialist law ceased to function almost overnight.

Law and legal systems are cultural products of a society passed on through norms of conduct developed over centuries. Cultural values are relevant to the legal system; they influence and mold it, although they may not be a distinguishable part of it. Particularly in the western experience, one can perceive certain cultural values inherent (or at least identifiable) in the formulation of legal norms. These cultural values are support for and acceptance of the rule of law; a general regard for the principle of neutrality of law (that whatever role law plays, it is neutral, universal, and equal for all); and respect for individual liberty as essential and of paramount importance in the design of law.

In general, no legal system is pure; they are all mixed in one form or another, a society taking the legal elements best suited to its societal or economic needs and fitting them into its pre-existing structure. The difference from one mixed system to another is the degree to which the several elements have blended or remain discernible. As the turn of this century nears, it is possible to gauge varying rates of transition in these mixed legal systems. The most apparent and consistent examples are the emerging and evolving

5. René David & John E.C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, trans. John E.C. Brierley, 5d [English] ed. (London: Stevens, 1985), 17–29; originally published as *Les grands systèmes de droit contemporains*, now in the 10th ed. by René David & Camille Jauffret-Spinosi (Paris: Dalloz, 1992).

democracies in Central and Eastern Europe. All of these nations are embracing different models from both the civil law and the common law that must be fitted into different spheres of their own legal systems now under review, revision, and construction. Law, as we know in America, is a product of historical development.

I. Civil Law Systems: The Romano-Germanic Family

The "civil law system" or "civilian tradition" refers to civil law as opposed to common law, not as opposed to criminal law. There is not a single civil law system, but many variations that have developed in the long evolution of the civil law tradition. Nor is there a single perfect example. By "civil law" is meant the all-encompassing legal system or structure, all aspects of law, public and private, that have been developed and are in place in the nations of Europe and in their former colonies. It is "civil" because there is in almost every case a civil code regulating legal and societal relationships, both personal and commercial. The civil code is almost always the basic legal instrument of the jurisdiction and frequently in practice it takes precedence over the constitution in determining the structure and function of the laws. The Nordic states also fit the civil law mode, even though they do not have civil codes (they do have codes of procedural and criminal law). Finally, the emerging nations of Central and Eastern Europe, at one time all second-rate reflections of civil law systems, now are in the process of reconstructing and repositioning themselves in a legal continuum from which they were torn away between 1940 and 1948. They are all restoring and then modernizing the codes developed between 1920 and 1940. The former Russian republics are having the hardest time because they are the furthest removed from an effective historical, cultural, and legal structure: The imperial system in place in 1917 was neither efficient nor effective, nor even generally relevant.

A. Codes in Civil Law Systems

The civil law system is a code system. It depends on the creation and use by all strata of society of splendid, symmetrical, unified

compilations or "codes" intended to lay out all of the primary, substantive law in a relational format ranging from three or four hundred pages for the French model to a thousand pages for the German model. All nations will have five basic codes: civil, civil procedure, commercial, criminal, and criminal procedure.

Civil codes form the legal systems; they govern persons, both natural and juristic, and family law and domestic relations. They govern inheritance, succession, and obligations, both contractual and delictual (although often commercial obligations are spun off to commercial codes), and finally they govern property, both rights and ownership. These are codes that aim to be complete, in a single overall document, based on a common ideology, reflecting a unified and identifiable culture, and dealing with intertwined concepts. For example, although property is in a separate book, usually book four, it cannot be regarded without access to the books on family law and inheritance. The codes have been adopted in all sorts of societies and jurisdictions, but seem to function most smoothly in free enterprise and capitalist-oriented societies.

As the society becomes more complex, a nation adds carefully structured and all-encompassing instruments to cover labor, administrative law, social security, and other aspects of modern life. The needs of commercial life tend to change so rapidly, for example, that for some jurisdictions the commercial code serves as a shell containing new, separate laws related to commerce and business. Always, though, there is a basic code. The former Soviet Union and its satellite nations of Central and Eastern Europe took family law out of their civil codes and promulgated separate family codes, quickly copied by the socialist states in Africa. It turns out that this was not a new system of law (that is, socialist law), but just family law separately codified.

The civil law system as we know it today is the Romano-Germanic family and traces its origins back to common roots and sources, with perhaps France as the most accessible model. In the development of French law one sees the evolution of how and by whom laws are made in a civil law system, and how they are applied, interpreted, and published.

Western legal traditions have their roots in ancient civilizations; for the present purposes the actual, discernible sources lay in the Middle Ages. After the fall of Rome, Justinian, the ruler of the

surviving Eastern Empire, supervised the first overall codification of law. In the sixth century his scholars went far beyond the early Romans in trying to unify law, organizing it into a rational and coherent whole. Variations of Justinian's codes prevailed in southeastern Europe and parts of the Middle East up to the fourteenth century.

In the rest of Europe, as long as the papacy remained the dominant, unifying institution, law was not something that was made or promulgated by particular rulers; rather it was part of the natural and social order, developed along universally accepted principles. Well into the Middle Ages, Christian morality governed human relationships in the social order, with divine or natural law giving form to ideal justice. It was the duty of government, kings, and princes to apply this preexisting law, not to make new law. The codification of Justinian was known in the west, but had little influence; however the idea of codifying legal knowledge in applicable blocks was preserved and studied within the church where the code of canon law governed.

In the twelfth to fourteenth centuries, it became apparent that the old law—or absence of law—had to be replaced to cope with geographically and socially expanded relationships. Legal scholarship and practice merged the theory and structures of Roman law with religious canon law in the first effort at universally acceptable rules governing man's social and legal relationships.

"Reception of law" implies that one or another legal system is so appealing and suitable for regulating human behavior that an entire nation (a "mini-civilization") will recognize and embrace it. Roman law, the Italianized, modernized, and even canonized law of eleventh- through thirteenth-century scholarship, was "received" in Italy by the 1300s. In France, Roman law was received in the north, but met resistance in the south where local, customary law was stronger. In the Germanic regions, a vast area that encompassed all of northern and eastern Europe, Roman law was received or imposed in 1495 by a single imperial edict resulting in the unification of what had been a disparate legal system.

During the sixteenth and seventeenth centuries, French scholars succeeded in the complex task of unifying both customary and Roman law. Revolutionary France (1789–1799) was the scene of violent and dramatic alterations of the social order. As the institutions of the *ancien régime* were toppled and replaced by theories of

the eighteenth-century Enlightenment, the authority of monarch, church, guild, feudal, and family relationships was obliterated. In 1799, Napoleon, as First Consul, derailed a movement for a "revolutionary" codification when he appointed a commission of relatively conservative scholars to draft a code.

At the turn of the nineteenth century, the civil law system took shape with codes as the basic element. There had long been "codes," but they were poorly organized, unsystematic, fragmented, and clearly not up to the challenge of regulating a fluid, secular, nationalist, mercantile society on the eve of the Industrial Revolution. Napoleon's codes were brilliant and rational works for their time. The civil code of 1804 was followed over a six-year span by a criminal code, codes of civil and criminal procedure, and a commercial code. Codification in France was a logical development in the Romanic continuum, nothing revolutionary in and of itself.

The Napoleonic codifications were the models and also displayed the essential elements of any civil law system: the existence of basic, organic codes regulating all aspects of human, and governmental endeavor, developed in a uniquely scholarly process that is standard in civil law systems. The process is accomplished in a relatively rapid manner, without legislative give and take or generations of court interpretations, but with careful analysis, proposal of new law, study of comparable legislation from other jurisdictions, and enactment. In Austria the *Allgemeines Bürgerliches Gesetzbuch*, begun under Maria Theresa and promulgated for the Austro-Hungarian Empire in 1811, had a similar development, although it was the code of a contracting, rather than an expanding nation. It was revised and supplemented between 1914 and 1916. The German civil code of 1900 was the last of the old responses to the challenge of codification, again the product of years of careful analysis, study, and drafting, and like the Austrian and French codes of a century before, it is a conservative document, both intellectually and socially, designed to appeal to the middle class. The same could even be said of the new Russian civil code of 1995–1996 (the first two parts), which was developed substantially by German and Dutch scholars for a suddenly mercantile society.

The French codification remains today the dominant achievement in the development of the civil law tradition. The clarity and comprehensibility of the language was designed to make it understandable

to Napoleon (himself a layman), not just to lawyers and legal scholars. Although times have changed, for much of the world's legal development this was intellectually the most significant and historically the most fertile of the nineteenth-century codes. It interweaves the whole gamut of personal relationships into fewer than 2300 brief and clear articles, a set of splendid, immutable principles, of broad maxims and legislative guidelines that can be followed and applied in situations undreamed of by the drafters. It is this suppleness that distinguishes the French code from the more detailed, less fluid, and more verbose Germanic counterparts.

All these classic civil codes were drafted as national reflections of new law, but written by people steeped in the older Romanist tradition. In each of the thrusts at European codification, the compilers aimed to produce clear and understandable handbooks of the law, devoid of conflicting articles, and unified by commonly held principles. The codifiers had before them the dreary example of the 1794 Prussian civil code which had 1700 articles and failed of its own weight. Certainly the French code succeeded and influenced other drafters, just as did the German code of 1896. The difference was that the French applied essentially new law, while the Germans unified old law in a new instrument.

The nineteenth-century codes are conservative, emphasizing property rights, freedom of contract, stability of the family and the social order, and the maintenance of a strong central government and a consistently functioning legal system. Some codes are more portable and mobile than others. In the nineteenth and twentieth centuries, the whole body of applicable French law could fit into a dozen fat little books and be carried anywhere by a colonizer. The criminal codes have been revised in all jurisdictions, the French version having been especially harsh. The criminal procedure code was also finally revised in France in 1957. The civil procedure codes remain truer to the original format; the original French civil procedure code was replaced only in 1975. The French *Code de commerce* of 1808, drafted on the eve of the Industrial Revolution, has not been so much reworked or revised, as ignored; new legislation has been enacted and appended to it, until the appendix is dozens of times larger than what remains of the 1808 code. The German commercial code is a more receptive document. It was drafted between 1860 and 1871 and later amended to conform to

the civil code of 1896. As such, it survives today, governing modern commercial enterprise.

All of these codifications have been influential throughout the rest of the world. The French directly influenced legal development in Quebec and Louisiana as well as throughout much of Latin America where the archaic Spanish and Portuguese compilations were not well regarded by the former colonial subjects.

Italian and Spanish codes were developed using the French model, but with extensive German scholarly input. The German civil code is quite different, greatly influenced by the revival of Roman law study in the nineteenth century. It is distinguished by a "General part" that seeks to define persons, natural and juridical; this would normally be treated in substantive parts of other civil codes. It is a scholarly, enormously detailed and more complex work than the French, Austrian, or Spanish approaches. It has, nevertheless, held great appeal to more recent legal draftsmen, and the societies they represent, in Greece, Switzerland, Turkey, and even Japan, Taiwan, and Thailand.

The codes of civil law countries are quite different from American federal and state codes, which are arbitrary collections of laws lumped together by subject. Some states (particularly Louisiana, California, and Texas) have been more influenced by the rational civil law tradition and so their codifications have a more unified, rational flavor, but except for the Louisiana civil code, they are American codifications.

Most of the civil law jurisdictions in the world today are unitary states, and the average American lawyer need delve no further than the national level. Spain is an exception, where some provinces have the right to make laws on a range of subjects denied other provinces. Switzerland is a trilingual confederation with unified civil, criminal, and commercial law; civil procedure and criminal procedure, however, are matters for the twenty-six individual cantons. Similar conditions prevail in Brazil, Argentina, and South Africa. In Mexico, only commercial law is officially unified, but in fact all legislation tends to follow the model of the Federal District.

Civil law systems continue to evolve and change more formally and discernibly than common law systems. In 1942 the Italians completely revised their civil and commercial codes, producing a single code governing all personal and economic relations, covering

civil, commercial, and even labor-related matters. This important and reasonably successful effort was closely copied in the 1980s by Paraguay and Bolivia. Since the late 1960s, the Netherlands has been in the process of a carefully structured revision and unification of all of its civil, commercial, and copyright law. This will be completed before the end of the century and is likely to influence legislation throughout the world. In 1989, Italy promulgated a new criminal procedure code that replaced the traditional inquisitorial method with the Anglo-American adversarial approach.

B. The Hierarchy of Legislation in Civil Law Systems

In civil law jurisdictions, legislation (codes, laws, and regulations) is paramount to case law. There is also a hierarchy within legislation. After the constitution come the codes (*code* in French, *Gesetzbuch* or *Ordnung* in German, *código* in Spanish, *codice* in Italian), and the civil code always governs in case of conflict. Next come laws (*loi*, *Gesetz*, *ley*, *legge*).

In civil law systems, the law tends to expand beyond the basic codes. There are labor codes in nearly all civil law jurisdictions, and often judicial codes, insurance codes, intellectual property codes, and others. In fact, these more specialized codes are really "laws." Laws on major subjects might be enacted as an integrated whole, but for the most part the legislators lose sight of the goal of a complete code that would encompass all law on a subject in a single rational and organized instrument. Thus, the labor code, a major unified law, is likely to be supplemented by laws on worker participation in management, rights of unions, employees' salaries, and other related subjects. If, as in the case of the French labor code, there is a broad, receptive structure, new laws tend to be folded into the code. If there is no agreeable framework, as with the now fossilized commercial code, the French fit what they can into the civil code, such as partnership law and company law in general, and then erect new laws, in effect as important as books of codes, but always termed "law of [date]." For example, the 1996 law of corporations and limited liability companies is part of the extensive appendix to the commercial code. In Germany the practice is similar, except that the commercial code permits insertion of such legislation within the structure of the commercial code.

Often, when the legislature is not in session, or in less democratic nations where it is hardly ever in session, laws made by the president will appear as a decree (*décret* in French, *Verordnung* in German, *decreto* in Spanish and Italian) or ordinance. In theory these will eventually be ratified by a legislative body. These laws do not emerge from committees or legislative discussion and debate; instead they tend to be carefully drafted comprehensive works presented by the government and subject to subsequent legislative scrutiny and correction.

Usually, laws do not take effect immediately, within a specified period, or on a certain date. Even after they have been officially published, they are not effective until implemented by the executive through regulations, the drafting of which may be simple and done in a week, or detailed and span ten or twelve months. If the regulations are extensive, then it is a good bet that the flavor of the applicable law cannot be discerned without reading it together with the regulations.

C. Finding Legislation in Civil Law Systems

The codes, the basic handbooks of all the important law, are easily found. They are regularly published by private trade publishers, and certain versions are standard and accepted. An unfortunate concomitant is that because the codes are universally available in a few portable volumes, there is no single code similar to the *United States Code*, *Deering's California Codes*, or *McKinney's Consolidated Laws of New York Annotated*. There exist substantial codifications for some jurisdictions, containing most laws (not always the ones needed), such as the *Codes Larcier* (F. Larcier) or the competing *Codes belges* (Bruylant) for Belgium and two looseleaf publications for Austria. Monaco has a five-volume looseleaf publication, *Codes et lois de la Principauté de Monaco* (Editions du Juris-Classeur), that is up to date, but after all Monaco is a very tiny jurisdiction. The Netherlands has the looseleaf *Nederlandse wetboeken en aanverwante wetten* (Kluwer) that has most laws. The large and important jurisdictions (France, Germany, Spain, and Italy) have enormous looseleaf editions that contain everything, but these forty- or fifty-volume versions are hardly for the casual user; not easy to file and maintain, they are kept in patented binders that are beyond the ability of most engineers or rocket scientists to open.

Even with the law in hand (more often than not from a private publisher), one must be sure that it is up to date, and this is handled commonly in separate looseleaf indexes. Next, it is necessary to search for any controlling regulatory material. There will be regulations made by the executive and/or by the responsible ministry, usually in the form of a decree or regulation. There will also be secondary legislation issued by ministries or departments within ministries, which may be very specific or may be focused specifically on the area of law in question. These will usually be orders, notices, or circulars. All these pieces of legislation will be cited or footnoted, even in non-annotated editions of the codes or laws.

Access to secondary legislation and regulations is not always assured, and even standardized access to law in a consistent fashion is not always guaranteed. Many civil law nations do not publish session laws, but they all issue them. The Scandinavian nations consistently publish all primary and secondary legislation in session law pamphlets and volumes. Beyond Scandinavia, civil law jurisdictions publish official gazettes containing all laws, regulations, notices, circulars, treaties, and the like, usually on a daily basis. These can be enormous, but are frequently available, broken down into sections containing laws and regulations, as is the case with Germany, France, Italy, Spain, Taiwan, and Egypt, but not with Belgium, Turkey, the Republic of South Africa, and others. Legislation of any sort will always be cited to the official gazette, which is the one consistent source to cite if at all possible.

The saving grace is that laws, and even regulations, are made to last in civil law systems. Generally, if there is a recent enactment (within the last five or six years), it still will be valid, roughly in the same form as enacted, and amendments are going to be minor. Exceptions will be investment codes from Third World nations and investment, privatization, and business-related legislation from anywhere in Central and Eastern Europe.

D. Case Law in Civil Law Systems

In civil law systems, legislation is accepted universally as the basic source of the law. Next in importance is "jurisprudence," which is the accepted term for "case law" and does not mean "legal philosophy" as it does in American legal research. Civil law systems saw

their formative periods in times of strict separation of powers, of legal institutions more separate than balanced. Today, in theory, legislators still make law and judges interpret it, and courts are expected to find a basis for deciding any given case within the code or the law. Furthermore, disputes are decided on a case-specific basis, without reference to other judicial decisions. Individual cases, even today, have no precedential value, and in many nations any application of *stare decisis* (following prior judicial decisions) is forbidden by the civil codes.

In actual practice, whether from the influence of the common law or from the exigencies of dealing with complex modern problems, an increasing degree of importance and precedential value is creeping into the jurisprudence of the civil law. This is generally only discernible in the jurisprudence of a nation's highest court. In Francophone systems the court of cassation (*Cour de cassation*) is the judicial body that can reverse a decision on a question of law (questions of fact are left to lower courts). The typical French decision contains a few succinct, elegantly crafted, and carefully structured paragraphs devoid of explanation or justification. In the Germanic countries, the supreme courts can and do tend to write more verbose opinions supported by legal reasoning. While one could never fix on an instance of case law as having precedential value, one can look for a line of decisions, all applying or interpreting the law in the same way. This *jurisprudence constante* would all have to come from the same court and would only establish a sort of precedent for the courts below it.

The idea of constitutional review is quite unusual and exists only where there is a separate constitutional court, as in Germany, Austria, and Italy, and increasingly in the new democracies of Central and Eastern Europe. In France, the Council of State (*Conseil d'Etat*), which is the supreme administrative court, does, to a limited extent, decide on the constitutionality of legislation, as does the new constitutional court (*Conseil constitutionnel*).

Strangely, for systems that in theory place so little reliance on court decisions, all civil law jurisdictions generate a phenomenal number of reported cases. Exasperatingly, this tends to be uncontrolled, since there is no statutory requirement that any case be officially published, except for councils of state and constitutional courts. Beyond this, for a truly vast range of municipal, regional,

state, and national courts, many with their own reporters, there is no systematic or even coherent format for judicial publication, especially for lower courts. Except for the highest courts, all publication is unofficial or commercial. In Italy, the major reporters *Giurisprudenza italiana* (Unione Tipografico Editrice Torinese) and *Il Foro italiano* (Società Editrice Il Foro italiano), both commercial, can only skim the top, publishing a big percentage of the decisions of the high courts. The bulk of reporting is contained in more than 100 privately published journals, often of very limited circulation. Germanic (including Austria and the Netherlands) and Scandinavian jurisdictions have better control of publications of the higher courts, but even here one must be aware of many alternative and only partially overlapping sources.

It is difficult to gauge the importance of case law in these jurisdictions and even harder to explain its increasing relevance, in the face of accepted theory and legislative fiat to the contrary. It is safe to recommend that serious interpretations of law based on jurisprudence should be approached warily and supported by opinions of local experts or scholarly writings. The explosion in case law is a particular phenomenon in European nations and the major Latin American nations (Mexico, Brazil, and Argentina), and also Japan. In most nations of the Third World, few decisions, other than those of the highest court, ever find their way into print.

E. Scholarly Writings and Commentaries

A final source of law in civil law systems is doctrine, *la doctrine*, which is not doctrine in the American sense at all, but consists in descending order of treatises (often multivolume and in endless editions), monographs on specific subjects, and finally, journal articles. A lawyer in the civil law world would eagerly cite to and rely on reasoning and interpretation in a major treatise from his or her own jurisdiction. And for historical reasons, a Brazilian could rely on French doctrine, an Argentine on Spanish or Italian, a Turk on Swiss, and a Japanese or Taiwanese on German scholarship. Certain nations, particularly Germany and Switzerland, in addition to treatises have *Kommentars*, or massive commentaries on the various codes. These are far more than the equivalent of American annotated statutes: a German or Swiss comment on a single paragraph

could run to fifty pages of footnoted scholarly exegesis. A treatise in the fifth edition, or a commentary, perhaps unfinished after seventy years of publication, is very likely to contain beautifully crafted statements of the law far more persuasive than the opinion of a single judge.

F. France

Constitutions, for many countries, are regarded as the supreme law and basis of the legal system. Not so for France, where the constitution (currently the constitution of 1958) is easily amended and is equal to any other law and probably not as important as the civil code.

The French civil code, covering persons, property, obligations, and inheritance, is available in a reliable 1995 English translation (*The French Civil Code (as amended to 1 July 1994)*, Rothman). Since 1804, about 1000 of the 2,300 sections have been amended, and about 200 articles have been added. If a section is abrogated it is left blank and perhaps filled in by a new section in the future. One should always compare the most recent translation with the latest available French version.

The code of civil procedure was entirely revised and restructured between 1975 and 1981, and earlier versions should not be used. Parts of this code have been translated, but the latest books are only in French, although translations were in progress as of this writing.

The French commercial code as such is no longer important. Modern company and business laws have been enacted in the post-war years and no longer fit into the necessary rational scheme; they will usually be found in the commercial code appendix.

The penal law has been changed greatly since 1810 and is reliable only in French. The code of criminal procedure of 1811 was replaced in 1958 and is available in an English translation as of 1987.

Codes in France are regularly published; the most commonly used are the red leatherette bound *Petits codes Dalloz* which appear in annual or biannual editions with annotations to jurisprudence and also texts of related and governing regulations. These also reprint all sorts of laws not contained within the structure of the code but on the same subject. Thus, the civil procedure code volume will have the code of judicial organization and regulations governing the courts, the practice of law, legal aid, and related topics. The commercial

code volume is supplemented with the basic laws and regulations on companies, unfair competition, stock exchange, consumer protection, and other subjects.

The Dalloz publishing house also issues volumes for the tax code, the labor code (really an official consolidation of labor laws), social security code, insurance code, and others. Dalloz, for convenience, publishes its own unofficial compilations, such as the administrative code, which is in fact a collection of administrative law and procedures.

The true French codes are more highly regarded than laws, and confusingly, some laws are casually mistitled "codes." The Dalloz codes are the most convenient and comprehensive, although one must be able to read fine print. Other firms issue competing editions, but the only other one to note is a looseleaf edition of the basic codes, *Codes français usuels*. There are also major annotated editions on various subjects.

The French *Juris-Classeur: codes et lois* (Editions du Juris-Classeur) is a looseleaf set of more than thirty volumes of different colored flimsy tissue paper with a detailed index volume. Generally, only French practitioners use it, but it is most reliable for its subject-organized access to regulatory material. Otherwise one has to deal with the official gazette, which is an even less attractive alternative: the *Journal officiel de la République française*, in all sections, now approaches fourteen linear feet annually.

Each nation has developed its own legislative nomenclature; in France, codes are cited by the name and section. Prior to the Second World War, laws were known just by the date of enactment; since then laws and decrees have been numbered by the last two digits of the year and then a sequential number. A further modern variation has been to introduce letter designations: "L" followed by section number for the actual legislation, "R" for general regulation, "D" for decree, "A" for order, and "C" for circular, as the hierarchy of secondary legislation descends.

France does not have encyclopedias equivalent to the American *Corpus Juris Secundum* (West) or an American case law digest. It does have a series of *répertoires* covering in encyclopedic fashion most subjects, including commercial, civil, penal, procedure, and labor. These are major works of scholarship containing signed articles by experts covering legislation and jurisprudence and providing the best

access to French law and practice. The Dalloz firm has grouped these under the broad title *Encyclopédie juridique Dalloz: répertoires*, annually supplemented by large pamphlets with an overall index to the alphabetic arrangements and a volume containing looseleaf updates on the usual tissue paper. This is as much access to French law, regulation, and case law as anyone would need. Even more comprehensive research tools exist such as the *Juris-Classeur Encyclopédie juridique* in more than 200 looseleaf binders, a full-time maintenance job beyond any but a French law firm.

France supports a number of subject-oriented looseleaf reporters, their equivalent of the Bureau of National Affairs (BNA) and Commerce Clearing House (CCH) services, mostly on commercial subjects or areas of law particularly dependent on detailed regulation, such as housing, taxation, environment, and labor.

French case law is not easily approached. Except for the Constitutional Court since 1958 (*Conseil constitutionnel*), the Council of State (*Conseil d'Etat*), and the Supreme Court (*Cour de cassation*), there are no official reports. Everything is handled by the commercial sphere. There is a vast and uncontrolled mass of reportage, decisions having been published since 1799, and this lack of system and organization is typical of almost any large civil law jurisdiction.

The reports of the *Cour de cassation* have been published officially since 1799. Even for this court, since there is no statutory requirement for publication, probably not more than half of the decisions appear in print, and then after a delay of months. Summaries of decisions are contained in a separate and current *Bulletin des arrêts de la Cour de cassation*.

There are thirty or forty unofficial, commercial sources for case law, obscure local or regional reporters, specialized journals, and the major law journals. In fact, almost all judgments, and certainly most of the important decisions, from the full range of courts, civil and criminal, local and national, are covered by three publications: the *Recueil Dalloz-Sirey de doctrine, de jurisprudence et de législation* (Editions Dalloz), a massive legal journal that, allowing for title changes, traces its origins back to 1808 and is exasperatingly cited by the single letter "D"; the *Gazette du Palais* (Editions Gazette du Palais) since 1881; and the *Semaine juridique: Juris-classeur périodique* (Editions du Juris-Classeur) since 1927. These all are weekly, or even more frequent, and contain articles and reports of

cases, sometimes in full with notes, sometimes only in summary. The three cover the same ground: the supreme courts, courts of appeal, regional tribunals, and local and municipal courts. About half of the time there is duplication. On the other hand, frequently an unpublished decision of the Supreme Court will appear only in a journal. These three are recommended because of their detailed chronological and subject indexes as well as indexes by court or tribunal. French cases are not ever cited by the names of the parties, except for the few from the Council of State. Cases cannot be found unless one knows the date of the decision and the court that issued it, or at least the precise subject and year (there are also five-year indexes); therefore, the generally high quality of the commercial indexing is important.

French reports are typical of many civil law jurisdictions. Decisions in the lower courts are full, with explanations of reasoning based on law and a statement of the facts. As one gets to the higher courts, the decisions become more laconic, and the court of cassation is satisfied with a few succinct paragraphs, a bit of good fortune since the various chambers of this court produce about five times the number of decisions of the U.S. Supreme Court.

With these examples, one can access French legislation and jurisprudence if the subject matter is known, keeping in mind that for France, and any non-English-speaking jurisdiction, serious research requires some familiarity with the language.

The electronic legal databases for France are about average. Everything is controlled by the mammoth database vendor Téléconsulte and some can be accessed from the United States. LEXIS-NEXIS⁴ has a French database that provides full texts in French of codes (various dates), the *Journal officiel* (1955–), and decisions of the *Cour de cassation* (1959–) and the *Conseil constitutionnel* (1958–). Searches can be done in typical LEXIS-NEXIS fashion, although the command language must be in French. The government-sponsored legal database *ORT-Juridial* has full text of all laws

4. LEXIS-NEXIS, a division of Reed Elsevier, Inc., and WESTLAW, a service of West Information Publishing Group, which is now owned by Thomson, are the two commercial databases of full-text legal materials most widely used in the United States. Each has material useful for researching foreign and international law, although LEXIS-NEXIS tends to have more files in these areas, particularly in foreign legislation and case law.

and regulations since the 1930s. There is also a conglomerate of databases available through the international telecommunications system Questal that concentrates on civil and commercial law. It can be accessed in the United States but is not easy to use, having its own arcane command language.

G. Germany

The German legal system, the second major civil law system, is similar to the French. German law occupies a continuum dating back to 1870. The Nazi period, 1932–1945, produced little of lasting value, but its legislation and jurisprudence remain part of the German legal tradition. On the other hand, the imprint made on present-day Germany by East German law of the period between 1945 and 1989 is so faint as to be almost invisible. The sources of German law are the same as for French law: a series of basic codes, although the Germans tend to call fewer things “code” (*Gesetzbuch* or *Ordnung*) than the French, at least beyond the standard five. As with France, the official gazette (*Bundesgesetzblatt*) is the one essential source. Of its three different sections, the most important are parts 1 and 2, which contain all legislation and a great deal of regulation, treaties, and agreements. Official publication of legislation pretty much stops there.

Germany, even West Germany alone, has long been a major market for legal publishers. This means a wide range of commercial sources for laws and regulations. As with France, there is a single, enormous, overwhelming compilation of all law and regulations with annotations. This set, *Das Deutsche Bundesrecht* (Nomos Verlags-Gesellschaft), consisting of more than 200 looseleaf binders, is an astonishingly well organized and thoroughly indexed work, but it is unusual to find it outside of Germany. The standard German collections of laws, known by the names of their editors, provide in a few looseleaf binders the texts with very brief annotations, in a sense almost everything one would need for coverage of legislation. *Sartorius* (C.H. Beck) has all constitutional and administrative law; *Schönfelder* (C.H. Beck) provides civil and criminal law; and the looseleaf index to all legislation in force is known as *Schlegelberger* (Verlag Vahlen). With the merger of East Germany into the German legal system, some German Democratic Republic law from the period

of 1945–1989 still prevails until reformed. With typical efficiency the Beck publishing house quickly produced special looseleaf equivalents called *DDR Sartorius* and *DDR Schönfelder*.

Germany is the home of the annotated code. There are publications (either looseleaf or multivolume hardbound books) constantly in re-edition, that provide exhaustive and scholarly annotated versions of legislation in force. All the codes are covered, from the civil code to the corporations code (actually *Aktiengesetz* or joint stock company law) and the quite separate limited liability company law, to the wine law and the prescription drugs law. Often these appear in competing looseleaf or hardbound editions.

German court reporting is as tangled and confusing as French, Italian, or Spanish. There is no official publication of reports and none is required although major courts license their reportage. In practice, nearly all higher court decisions find their way into print, whether in one of the standard semi-official series of reports published since the 1880s, in an equally respected commercial collection, or in any of the hundred or so general and specialized legal journals. No single set of publications could hope to contain this mass of reported case law, and in any event none of it is of absolute precedential value. The reason for much of this publication is simply to enable the bar to see how courts approach the interpretation and application of legislation.

H. Foreign Law in English Translation⁵

German law is perhaps the most accessible of any foreign law to English-language researchers. Because of the attraction of Germany for transnational business and legal practice, and the fact that so many German legal scholars know English, an extraordinary amount of German law is translated into English.

In general, however, language is a real problem in approaching foreign law, especially civil law systems. Although a great deal of foreign legislation does exist in English, either in full translation or in summary, locating it can sometimes be “hit or miss” or

5. See Chapter Four, “Finding Foreign Law,” by Jeanne Rehberg & Mirela Roznovschi, *infra* p. 87.

serendipitous. Translations are costly, both to produce and to purchase, and they are market driven. Fortunately, English is becoming the *lingua franca* of international legal practice (less so in France than any place else). On the European continent, because of the importance of England to the European Communities and the importance of the American market in general, an increasing volume of material is finding its way into English translations. One must bear in mind that the consumer market will dictate. Much German, French, Italian, and Spanish legislation is available in English translation; for smaller states, hardly anything is available in English. It is the same for *which* laws are translated; many American and English lawyers and companies would buy an English version of a corporation or foreign investment code, but there is less commercial motivation for translations of criminal law or obscure procedural laws.

There are English versions of particular laws and even regulations in many commercial sources. Failing that, there are summaries (some of the latter being more reliable than others). To take one example, taxation—corporate, personal, income, rates for VAT—for any jurisdiction in the world, from Benin to the twenty-six jurisdictions in Switzerland, is comprehensively summarized in English in some two dozen looseleaf sets published by the International Bureau of Fiscal Documentation, a widely regarded source of foreign and international law materials in this specialized area. This will not provide everything for complete research, but it will lay out the law in broad terms. There are also various sets that taken together translate all tax treaties of all the countries of the world. For translation of laws into English in a comprehensive and timely way, commercial publishers probably cover taxation better than any other subject.⁶

Purists frequently complain about inattention to nuances in translations, especially rapidly generated, non-scholarly ones, but the only other option is to be able to read the law in the original language. Translations are often quite good, especially considering the pressure for timeliness under which they are produced. In any case, translations should be only the starting point: ultimately the official

6. For discussion of specific titles that cover tax laws of foreign jurisdictions, see Chapter Ten, "International Taxation: Major Topics and a Bibliographic Guide," by Radu D. Popa, *infra* p. 231.

language must prevail, and serious researchers must always have access to the original for comparison.

II. Theocratic-based Legal Systems

Increasingly there is demand for information about legal systems and for texts of law from jurisdictions outside of the civil and common law traditions. Here lies the "rest of the world," or the other legal families. Actually, the scope of this inquiry is generally limited to one major legal family. The predominant feature coloring these other legal systems (now that socialist systems find themselves in the dustbin of history) is Islam, and what is collectively known as "Islamic law."

There are a number of theocratic-based legal systems in existence in the world. The system of the Roman Catholic Church, which had great influence on the development of civil law and even tangentially on English chancery jurisdiction, is now limited to ecclesiastical matters. Orthodox canon law in Central and Eastern Europe, long under the fell sway of Communist authority, now has only marginal import. Buddhism and Hinduism have produced relatively little that could be considered of broad legal impact beyond something limited to ritual or perhaps familial connection. In Israel, biblical or Hebraic law is controlling but only in a lesser respect.

Islam, however, is another separate and very important concept that affects all walks of life, all aspects of human endeavor in the Middle East, parts of Africa and some of Asia. Islam is a totality, an all-embracing world view from which law cannot be separated, but there is, of course, Islamic law (also called Qur'anic law since it is based on the teachings and morality of the Qur'an, the actual sayings of the Prophet as interpreted by scholars through the centuries). Islamic law is not particularly accessible to western users because the basic texts are in Arabic. Most western scholarship has been in German or French, but the important and controlling commentaries, decisions, and interpretations are only in Arabic.

The basic distinctions among Islamic law systems are as follows: For those nations, either fundamentally or more nominally Islamic (Saudi Arabia, Oman, Mauritania, Morocco, Pakistan, Iraq, and others) or partially Islamic (such as Indonesia), where the application of law depends on a person's ethnic background, Islamic law is

centered around personal relationships (marriage, divorce, inheritance), or criminal law and procedure.

For the nations long under French or Dutch influence (Algeria, Syria, Lebanon, or Indonesia), the basic legal system is the civil law tradition mixed with or almost dominated by Islamic law. For Anglophone jurisdictions, including Pakistan, the dominant tradition governing commercial relationships is the common law. Islamic law and the teachings of the Prophet and his interpreters are not particularly conducive to modern commercial intercourse, and either directly or by various subterfuges, western legal approaches have been adopted.

Thus, throughout the rest of the world, whether the legal system be that of sophisticated and advanced states such as South Korea or Taiwan, developing nations such as Vietnam, or emerging nations such as Yemen, the controlling model will remain civil law or common law, with admixtures of local custom, religious influences, and even ethnic traditions and cultures.

III. Common Law Systems

A discussion of common law systems outside the United States is most easily focused on those states that are or were members of the British Commonwealth of Nations. As with those jurisdictions governed by the civil law, this encompasses a variety of different legal systems, all having similar roots or having opted at some point in history to receive (or have imposed upon them) the common law and principles of equity. There are a few major exceptions: the Republic of South Africa and the Republic of Sri Lanka, two nations with mixed legal systems that never fully abandoned the Roman Dutch law imposed by or received from an earlier group of colonizers; Pakistan, which is now turning determinedly to an Islamic legal system; and the Canadian province of Quebec, which has consistently maintained a French civil law system throughout its history. There also are miscellaneous small jurisdictions, former British colonies in Africa, Asia, and the Caribbean, that have successfully combined common and civil law into a workable system. These are all beyond the scope of this chapter, as is the half common and half civil law system in Scotland, not mixed so much as bifurcated.

A. Development of the Common Law in England

The common law—historically English law—requires some review of its origins, if for no other reason than its close ties to the past. English law is an indigenous institution, its historical continuum quite unsullied (until recent years) by outside legal influences. The last foreign influence was that of William the Conqueror who brought with him the Norman feudal system. Innovations in the administration of justice and maintenance of fiscal control ultimately led in the following centuries to a unification of English law and the concomitant fading away of local custom. A rudimentary version of the “common law,” or of a common law, arose hundreds of years before comparable civil law systems developed in Europe.

The early common law was based substantially on procedure, that is, the “how” of justice, how it was obtained and from whom. Litigation grew up around an elaborate system of writs, the proliferation of which soon developed into a form of legislation, with much of it aimed at asserting or protecting personal and property rights. This was dependent on how a plaintiff proceeded and how a document was obtained, and it resulted in a system that by the fourteenth century had become obsessed by procedure and form, rather similar to that of the older Roman law on the continent.

With the rise of the Tudors and certainly beginning in the early 1500s, the rigidity and uneven enforcement of the old law became apparent. Royal institutions subsequently were developed to bypass the existing structure and permit judges to make decisions based on “morality and good conscience,” after a review of all the facts and testimony of witnesses. This system eventually developed its own complex of special rules known as “equity,” in which a Chancellor decided all matters of law and fact without a jury. In time this particular equity jurisdiction developed its own rules and doctrines, fluid and uncertain at first, becoming fixed over time by the institution of precedent, now applied by equity judges as well as common law courts.

It is possible to view the common law as something separate from equity, but as the entire system has been combined, if not unified, and the practice has transported them as a whole to new states, the English version has to be regarded as a total system. The common law is law, equity is remedies and trusts, and they are bound together, with equity supplementing and softening the common law. It has remained

a particularly English creation. Despite a challenge by the absolutist Stuarts in the seventeenth century who preferred the Roman-canon law, or the civil law, England never received the Roman law and regarded the common law as the essential guarantee of each citizen's freedom, in effect a constitution, now comprising a substantial part of England's "unwritten constitution."

The divisions of English law, where they can be perceived, are less evident than in other legal systems. The law has grown in bits and pieces, responding to challenges and needs over centuries on an *ad hoc* basis, nothing is thrown out, everything is added to a pre-existing structure. There are many reasons explaining the development of what is essentially a rather formless creation. The courts are unified and the jurisdiction of the higher courts covers all matters, public and private, civil and criminal. There are no codes that would lead lawyers and scholars to think that the law is divided in certain ways. The English law is seamless, the English lawyer pragmatic and more concerned with result than method, with actual function than theory.

The common law and principles of equity grew up in England as separate and separately administered concepts. The two systems were fused between 1873 and 1875 and since then the divisions are less clear, although in concept there remains on the one side order and law, and on the other justice and mercy (equity), with equity less easy to define and describe and now somewhat altered by legislation. English law succeeds in functioning; even though, to an outside viewer it lacks both order and orderliness, this patchwork of legislation and judicial interpretation has to be viewed as an operational whole. The broad structure consists of law, divided only nominally into public and private law, especially when compared with theory and not divided in any controlled way as would be the case in a civil law jurisdiction. Public law consists of constitutional law (there is no constitution in a single document for England or New Zealand, although constitutions exist for the rest of the Commonwealth) and administrative law. In practice, there are in the major jurisdictions no constitutional courts nor any tradition of judicial review. Although administrative law is an expanding field, there are no separate public law courts, and appeals from administrative tribunals move into the general court systems. Naturally, the citizen has the same recourse against abuses by the Crown as in any legal system. English courts

subject government agencies to detailed scrutiny, and now with the expanded jurisdiction of the European Union and the European Court of Human Rights, this scrutiny is extended. The same holds true in other common law countries. The larger systems are federated and their constitutions permit judicial scrutiny, but the court structures, with federal courts at the apex, do not encourage the development of an independent public law.

Private law is not noticeably divided as it is in the civil law system into civil law and commercial law. Historically, the topics existed separately (merchants were accorded special procedures and even special courts), but the division had become blurred and abolished by the nineteenth century, and private law in England today is a unified body of civil and commercial law applied by the same courts. Even in the Commonwealth jurisdictions where the federal governments have been given the power to legislate in commercial matters, the courts, state or provincial or federal, apply the more local civil law and the unified commercial law as one type of law. This is equally the case in the smaller states in Africa, Asia, and the Caribbean.

The common law was spread throughout the world by conquerors and colonizers who, simply as a matter of normal, unthought action, brought their own legal system with them for application by and to their own colonists, and then generally for reasons of administrative convenience applied it to, or had it received by, the local inhabitants. All these nations (except the United States) have in their basic legislation or constitution a sentence reading that "the common law, the doctrines of equity and the statutes of general application which were in force on [date, usually the date of meeting of the first colonial legislature] are now in force." This partly explains the increasing variations in the common law. Thus the English Sale of Goods Act of 1893 does not apply in Ghana; because Ghana received English law in 1874, any subsequent English law would have to be re-enacted by the local legislature. The same for Australia, whose dates are 1829 to 1834. On the other hand, this specific English law designed for Englishmen did take effect in Kenya, Uganda, and Tanganyika whose dates are 1897, 1902, and 1920, respectively. In fact, many countries later adopted the Indian Contract Act of 1872, which was a colonial effort greatly resembling the English Sale of Goods Act, but more suited to the local needs.

At this point it is sensible to recognize the limits of the reception of the "pure" common law. It has dictated the structure of law and the court system, how laws are made (in theory) and interpreted (in theory) and applied (even more so in theory) in lands as disparate as Uganda, Papua New Guinea, Canada, and Australia. Under the English colonial approach, the theory of indirect rule had always encouraged a degree of recognition of pre-existing customary laws, such as Islamic law, "so long as they were not repugnant to natural justice and morality." In fact, legal development in Africa and Asia confirms that in the smaller nations, a good deal of non-English civil law has been forced into the framework of the common law, although English commercial law and often civil procedure law still govern. Partly because of the mixed nature of the common law in many jurisdictions, a discussion of the "typical" common law jurisdictions has to be limited to the United Kingdom, Canada, and Australia, with particular attention to the United Kingdom.

The source of English and Commonwealth law is the same as for any modern legal system, historical development aside. The overarching source is the constitution. In spite of the fact that there is no such written document in the United Kingdom, equity and the fundamental principles of justice, written or not, are assumed. All the other states have a written constitution, except New Zealand where constitutional acts are not compiled into a single written document. In general the judiciary does not exercise control over the constitutionality of statutes.

Legislation is pre-eminent, and here can be seen the unique approach of the common law. In the civil law systems, the driving concept has always been to present the totality of the law, organized in a conceptual whole in the form of codes and statutes. In the common law tradition it has not been thought necessary or desirable that the legislature should aspire to this, but instead that the legal system should be permitted to develop without the support of comprehensive written codes in the civil law sense. Until the late nineteenth century, English law avoided any effort at complete and comprehensive regulation even of subdivisions of the law and relied instead on *ad hoc* enactments designed to correct individual situations that were deemed inconvenient or unsatisfactory by government or the governing powers. This parliamentary approach of curing imperfections as they occur was displaced in the commercial and personal law field by

a spate of legislation in the late nineteenth century. Procedure, even more perplexing and barely comprehensible to the expert, was reformed in 1875.

All nations have "codes," but in common law states these are really statutes. Common law statutes now have the same authority as those in other legal systems, but they are constructed differently and certainly interpreted differently. English and common law statutes tend to be more detailed and prolix, often aimed at perceived or imagined fact situations. In this regard, they are extensive supplementary rules of law and a far cry from the broad, splendid organized codes of continental legal systems. This responsive aspect of legislation is taken for granted in America, but it is not understood by many lawyers outside of common law systems.

Regulation or secondary legislation has perhaps greater importance in the common law systems than statutory law. For the most part, is not merely delegated law, subject to continual judicial and legislative review. Commonwealth jurisdictions generally accord a freer hand to regulatory power, subject to ultimate judicial control in the general court system. Naturally, all legislation depends on statutory interpretation. Administrative tribunals, created by legislation, have proliferated in the Commonwealth as elsewhere to interpret regulations. The decisions of administrative tribunals ultimately are subject to review and interpretation by the higher courts, but courts traditionally have construed administrative regulations very narrowly to avoid the issue of whether the delegated power was exceeded.

Court decisions are the second major source of Commonwealth law. Indeed, as in the United States, these are a viable source of law due to the precedential value that has always been accorded English and Commonwealth decisions. Even more than in the United States (where there is a greater abundance of law and overlapping jurisdiction), the binding force of precedent colors the operation of the Commonwealth legal system. Today, precedent in both law and equity stands almost in the same position as codes do in other legal systems, providing points of reference and departure for legal reasoning, even if they fail to enunciate clear solutions or even rules. (The term "common law" is also used in the narrower sense to refer to law that stems from custom, usage, and the decisions of courts, as contrasted with law made through the legislative process.)

In Commonwealth nations precedent can only be made by the superior courts; in the United Kingdom these are the House of Lords, the Court of Appeal, and the High Court of Justice, whose precedents bind inferior courts in that order. (The Judicial Committee of the Privy Council was set up to take appeals from colonies and other Commonwealth states and it was not an English court. It still exists, although now ever fewer overseas states permit appeals to it.) In 1966 the House of Lords issued a Practice Statement on judicial precedent recognizing that too-rigid adherence to precedent by the House of Lords may lead to injustice. This permitted the Lords to "depart from a previous decision when it appears right to do so." In fact, it has rarely appeared right to do so and the Lords' decisions continue to bind all lower courts as well as themselves. Overseas judiciaries view precedent more loosely and will deviate both from English precedents and their own.

B. Finding Legislation for the Commonwealth

Where is the best place to start research in English law or in any Commonwealth jurisdiction? There are many digests, encyclopedias, and annotated sets available. It cannot be emphasized too strongly, however, that wherever possible the best, easiest, and most direct approach is through a recent edition of a major treatise on the subject. These publications exist for every aspect of the law. They are in effect encyclopedias. Often these works, begun for U.K. law, are now published in Australian or Canadian editions as well, or comparable works have been developed for these jurisdictions. Treatises are especially important, indeed essential, for those sectors of Commonwealth law where in the absence of legislation the "common law," which is not always easy to discern, much less understand, is the controlling legal environment.

As examples, contracts are governed in England by a range of laws, from the 1677 Statute of Frauds to a collection of legislation from 1990. Rather than researching all of these in the statutes and probably missing some important if misnamed laws, one should start with the two-volume *Chitty on Contracts* (Sweet & Maxwell) or *Cheshire, Fifoot and Furmston's Law of Contracts* (Butterworths), each in its current edition. English family law is truly a hodgepodge of two dozen or more pieces of legislation, supplemented by bits and

shards from other broader enactments. This is not going to be conveniently put together in a handy civil code, nor even all assuredly located in a statutory compilation. Instead, begin with a treatise, for example, Cretney and Masson's *Principles of Family Law* (Sweet & Maxwell), or perhaps a looseleaf, such as *Clarke Hall and Morrison's Law Relating to Children and Young Persons* (Butterworths), or Rayden and Jackson's *Law and Practice in Divorce and Family Matters* (Butterworths). These would not be in their 15th or 20th editions if they had not stood the test of time as legal reference sources. Chitty, Rayden, and Cheshire have been long dead, but their work is carried on by the publishers and edited in an environment of very responsible scholarship.

These works are analyses and syntheses of what the law is, not what it should be, nor are they accompanied by much unrelated opinion; they carry great weight, especially in areas where there is really no guiding legislation. In a question of conflict of laws⁷ one would first consult *Cheshire and North's Private International Law* (Sweet & Maxwell), or *Dicey and Morris on the Conflict of Laws* (Sweet & Maxwell) in the latest edition. The closest U.S. equivalents of this genre may be *Corbin on Contracts* (West) or *Wright and Miller's Federal Practice and Procedure* (West). Because English law deals with more cohesive jurisdictions and looks at legal questions with more specificity, the English treatises are less sprawling. *Muir Hunter on Personal Insolvency* (Stevens & Sons) is a one-volume looseleaf, as opposed to the countless volumes of *Collier on Bankruptcy* (Matthew Bender). A closer equivalent for some areas of the law such as family law would be the Witkin books on California law.

As this sampling of titles illustrates, all English and all Commonwealth legal publication is dominated by two international combines, Butterworths (now owned by Reed Elsevier), which publishes under its own name in England, Canada, Australia, and also South Africa, Asia, and elsewhere; and Sweet & Maxwell, actually the English legal branch of the Thomson Corporation, which publishes as

7. "Conflict of laws," also referred to as "private international law," is the branch of the law that deals with situations in which the laws, jurisdiction or court judgments of more than one jurisdiction or country are implicated, such as divorce and transnational business matters. Robert L. Bledsoe & Boleslaw A. Boczek. *The International Law Dictionary* (Santa Barbara, CA: ABC-Clio, 1987), 8.

Carswell in Canada, the Law Book Company in Australia, Juta in South Africa, and Sweet & Maxwell elsewhere. Other companies, including the Canada Law Book Company and Kluwer and its CCH divisions, play lesser roles. Competition is effective in that each publisher tries to produce an equivalent for nearly everything. So far, this has not spread, however, to price wars. One must bear in mind that these nations, even England, are "small jurisdictions" compared to the United States or the European Union. The potential lawbook consumers for a western Australian state or a Canadian prairie province do not make for any economies of scale; the legal market is, indeed, constricted.

In England, there are no codes. If something is called a code it is most likely just a compiled collection of statutes, often arranged alphabetically. For example, the divorce act will be in volume three and the matrimonial causes act will be in volume seven. Sometimes acts will be arranged in a classified system that may further mystify the user, and official indexes are rarely satisfying to use. Having made these observations, there is perhaps the equivalent of an English code of civil procedure. The *Supreme Court Practice* (Sweet & Maxwell), commonly known as "The White Book," is a two-volume compilation (published biannually with interim supplements) of all the rules of civil procedure in force in all the higher courts. It is impossible to practice in England without it.

The main English statutory compilation is *Statutes in Force: Official Revised Edition*, a collection of pamphlets originally published between 1972 and 1981 and regularly revised. The full set runs to about 200 binders. Each binder is arranged to group together the statutes on broad subjects and has a second-rate index. There are also, in the typical aggravating British fashion, supplementary binders containing amendments not yet incorporated in the basic pamphlets. The best official index is the separately published *Index to the Statutes in Force*, hardbound and issued annually. Always update these official sources by session laws (officially the *Public General Acts and General Synod Measures*) and even more current commercial publications. Citations in English and Commonwealth law are always to chapter number and the name of the act, so it does not matter whether one uses official or unofficial sources.

The best compilation for English legislation is *Halsbury's Statutes of England and Wales*, 4th ed. (Butterworths) (note from

the title that *Halsbury's* does not cover Scotland). This edition, which began in 1985, is still in process of publication, requiring one to consult the third edition also. This is a comprehensive collection of all legislation in force, with valuable annotations to subsidiary legislation and case law. *Halsbury's* is organized internally as if it were a massive codification, a good idea in theory, but this means that a single multifaceted act may be broken up under several different rubrics and spread across several volumes. The hardbound volumes are revised or replaced as the need arises, but most supplementation is contained in hardbound continuation volumes. Current statutes with annotations are found in *Current Statutes Service*. Each title or rubric has its own index, and there is a good overall index. Finally, this set includes the *Noter-Up Service*, the equivalent of a *Shepard's* citator for American law,⁸ and a final service simply entitled *Is It in Force?* This last is necessary since the English practice is to bring legislation into force piecemeal, as specific regulations or decrees are drafted. The Education Reform Act of 1988 (a major legislative effort), for example, came into force between 1990 and 1992, depending on the section. Since *Halsbury's* is published by Butterworths and Reed Elsevier owns Butterworths and LEXIS-NEXIS, the *Halsbury's* texts are available on LEXIS-NEXIS.

Secondary legislation, called statutory instruments in the United Kingdom, appears officially only in annual volumes of the statutory instruments for the year. In 1948 the government published a compiled edition of all secondary legislation in force, but then gave up this herculean effort, so that there is no official U.K. equivalent to the annually updated *Code of Federal Regulations* in the United States. There are six annual volumes per year, a biennial index, *Index to Government Orders*, and a *Table of Government Orders*. *Halsbury's* continues its unofficial work with *Halsbury's Statutory Instruments* (Butterworths), a compilation of all secondary legislation in force (some only in summary) with looseleaf supplementation.

8. Shepard's, owned and operated by Times Mirror and Reed Elsevier, Inc., produces finding tools for American law called citators, which track the subsequent history of cases and statutes and list cases that cite prior cases on the same topic. *Shepard's* citator services are also available on LEXIS-NEXIS and WESTLAW.

The other basic access point to legislation and case law is through an encyclopedia. Here the one essential source is *Halsbury's Laws of England* (Butterworths). The fourth edition began in 1973 and can be regarded as the pre-eminent English legal encyclopedia, certainly more highly regarded than *American Jurisprudence 2d* (Lawyers Co-operative) or *Corpus Juris Secundum* (West) for American law. *Halsbury's* does the same thing as an American encyclopedia, but with more scholarly articles on broader topics. It has a good index and is kept up to date in the usual fashion.

In recent years there has emerged a new phenomenon of separate encyclopedias on specific subjects. Mostly published by Sweet & Maxwell, these range from consumer law to environmental law, competition law, housing, and other fields, and combine the *Halsbury's* treatment with the reporter approach taken by Commerce Clearing House (CCH) in its looseleaf sets for American and some foreign law. The subjects covered tend to be those controlled by legislation and administrative regulations. These sets provide access to statements of the law and legislation and case law all in one handy source.

C. Finding Case Law for the Commonwealth

After legislation and the accompanying annotations, encyclopedias, and digests, the remaining source of U.K. and Commonwealth law is case law. Fortunately, it is characteristic of precedent-based common law systems to function within a discrete body of reported case law. One could never maintain control of precedent with the volume of reporting that exists in, for example, Germany, Italy, or France. (Indeed, one wonders how control of precedent is maintained in India, a common law jurisdiction characterized by a prolific body of case law.)

There is no statutory requirement that decisions be reported in the United Kingdom or in any Commonwealth jurisdiction, with the odd exception of an administrative tribunal here and there. English reports have their origin in the Year Books of the fifteenth and sixteenth centuries. Nearly all the English reports, from the first dated case in 1220 up to 1872, including nearly all the "nominate" reports (named after the judges who reported them), are contained in the nearly two hundred volumes of the *English Reports, Full*

Reprint (originally published by W. Green, now available in a later reprint from Professional Books Limited, 1980), which has a valuable and comprehensive table of cases if one does not have a citation to a specific volume.

Since 1865, English reports have been semi-officially reported in *The Law Reports* (Incorporated Council of Law Reporting for England and Wales), which is broken up into a complex and changing set of series and subseries. "Appeal cases" is consistent for the House of Lords and "Kings Bench" and "Queens Bench" are consistently titled, but the extent of their coverage varies. Other parts of the series continue to evolve. This is the preferred source for English case law and contains a good percentage, perhaps 50 to 60 percent, of all decisions issued. The pamphlets are slow to appear, and a more timely source, from the same publisher, is the *Weekly Law Reports*. A consolidated index and table of cases covers both sets; but the subject index is less than satisfactory. The third major current source for case law is the *All England Law Reports* published by Butterworths and part of the English case files in LEXIS-NEXIS.

None of these three sets is comprehensive for all courts, nor are they necessarily duplicative. A High Court decision may be in the *All England Law Reports* and not in the other two, or it may be in all three. Conversely, an important criminal decision from the High Court may not be in any of the three major reporters, but only in *Criminal Appeal Reports* (Sweet & Maxwell). This is even more likely for matters of administrative law where specialized reporters on subjects such as tax, industrial property, immigration, and local government continue to proliferate.

Another approach to English and Commonwealth law is through a digest. For the United Kingdom it is entitled, typically and laconically, *The Digest*, with the subtitle *Annotated British, Commonwealth and European Cases* (Butterworths). This is still known by its old title *English and Empire Digest*. The current edition commenced in 1981. It organizes all English case law and important case law from other jurisdictions in the Commonwealth and European Union in the same code format as *Halsbury's* and provides the same sort of information as an American case digest. It is kept up to date with the usual peculiar assortment of replacement volumes, continuation volumes, and cumulative supplements.

Inevitably, however, every case that finds its way into print, even cases reported in the special law reports pages of the *Times* and the *Telegraph*, will be cited, requiring the researcher to track down a copy. Case reports are controlled in the normal indexing and digesting sources, as well as in other commercially based indexing media that are more inclusive. *Legal Journals Index*, published by Legal Information Resources, Ltd. since 1978, is a comprehensive index to U.K. law journals and newsletters. In addition to articles, it covers reported cases from England, Scotland, and the Commonwealth and offers a document delivery service. (It also covers obscure journals that are generally not held in U.S. libraries.) *Daily Reports Index* (Legal Information Resources, Ltd.) covers only reports in newspapers.

Current Law is Sweet & Maxwell's version of a comprehensive current awareness service for English law. It is very useful and not overly complex. *Current Law Monthly Digest* comes close to covering all cases published anywhere, with a cumulated index and table of cases. It is entirely cumulated at the end of the year in a *Current Law Year Book*. A separate *Citator* appears monthly and annually, permitting one to "Shepardize" cases, statutes, and statutory instruments from 1947, and its *Current Law Statutes* contains analyses and often annotations of currently enacted legislation.

Faced with this array of sources, it is easy to see why it is recommended to start research, wherever possible, with a major up-to-date treatise.

D. Electronic Sources of Commonwealth Law

Electronic control of legal information for the United Kingdom is presently evolving into a valuable and comprehensive system in spite of some false starts. The market is limited, and combined with the absence of any government support, this has forced commercial vendors to move cautiously. The most comprehensive, intelligible, and useful database is LEXIS-NEXIS, which, like Butterworths, is owned by Reed Elsevier. The only real competitor, Eurolex, formerly owned by the Thomson Corporation, was purchased by Butterworths in 1985 and was closed down, leaving LEXIS-NEXIS alone in the field. Lawtel is a smaller online database competitor. A comprehensive CD-ROM database is available from JUSTIS.

LEXIS-NEXIS has in its "English General" library the most comprehensive collection of all case law, reported cases since 1936, and many "unreported" cases since 1980. Additionally, a great number of Commonwealth decisions by various commercial services are folded into LEXIS-NEXIS, such as *Fleet Street Reports* (European Law Centre at Sweet & Maxwell). A separate LEXIS-NEXIS library holds the consolidated statutes in force and the consolidated statutory instruments. There is a specialized library on U.K. taxation. LEXIS-NEXIS also provides databases of Scottish, Irish, and New Zealand cases. (The expansion of LEXIS-NEXIS into Australian and Canadian law has been somewhat limited by the restrictive licensing of the Australian and Canadian governments with regard to foreign enterprises.)

E. Canada

The situation is similar for the rest of the Commonwealth. When dealing with the large federal jurisdictions of Canada, Australia, and India, it is essential to understand how lawmaking is apportioned between the federal and the provincial or state jurisdictions. The Canadian system more closely resembles the United States, with administrative, trial, appellate, and supreme courts at the federal level, and separate provincial courts and tribunals similarly arranged. (In Australia and India the court systems are merged, so that state courts can apply federal laws and federal courts can exercise state jurisdiction.)

For these large nations, the physical and theoretical structure of legislation is complex. In Canada, the American analogy breaks down at the delegation of powers. Federal law unifies some aspects of commercial law, such as taxation and inter-provincial commerce, but not all. Unlike in the United States, criminal law and procedure are federal, as is divorce, although the rest of family law is provincial. There is a strong movement towards further unification of Canadian law using, for instance, Ontario corporation and securities legislation as models for laws in the other provinces. As with any Commonwealth jurisdiction, a wide range of subjects will be governed not by statute but by English (and Canadian) "common law."

Canada relies on legislation more than the United Kingdom. There is more Canadian legislation and it is less accessible. Only

official editions of statutes are published, whether federal or provincial. The idea of supplementation has never been clearly understood in Commonwealth jurisdictions, and when it has been appreciated, it has been applied in antiquated formats. Provincial statutes come out in new editions, ten or fifteen bound volumes, every ten to fifteen years. They have to be brought up to date with annual session laws. The federal statutes, bilingual English and French, are available in both looseleaf and hardbound volumes. The looseleaf *Revised Statutes of Canada, 1985*, is irregularly supplemented in separate looseleaf volumes, not following the main sequence. The hardbound set appears to get identical supplements. Both versions are cumbersome and difficult to use, because of the necessity of having the French and English texts in parallel columns. It would take charts and graphs to explain the provincial statutory arrangements; suffice it to say, they exist and are important and equally inconvenient.

Canadian case law is more confusing and casually controlled than that of the United Kingdom. While supreme court reports and appellate court reports on the federal level are available in official publications, most provincial reports are published by commercial vendors under license. Nothing is complete, except for the *Canada Supreme Court Reports*, which reprints all decisions. Its companion, the *Canada Federal Court Reports* (formerly Exchequer Court) is not complete. Most people rely on the *Dominion Law Reports* (Canada Law Book Inc.), which embraces all Canadian courts, federal and provincial, but probably not more than 50 percent of the decisions. In addition to the separate provincial reports, there are regional reporters that have died and are regularly resurrected, currently *Atlantic Provinces Reports* (Maritime Law Book Limited) and *Western Weekly Reports* (Carswell).

Legislation and case law in Canada can be approached through two or, really, three sets. The *Canadian Abridgment* (Carswell) is essentially a digest of all published decisions and is similar in format, if not organization, to an American digest. The second edition, begun in 1982, is nearly complete. Its table of cases, the *Canada Case Locator*, is the best source for citations. The separate *Canadian Case Citations* and *Canadian Statute Citations* serve as noter-ups, equivalent to *Shepard's*, and the *Index to Canadian Legal Literature* provides citations to secondary sources. The entire set is kept up to

date with the monthly *Canadian Current Law*. Although invaluable for research in Canadian law, this publication, actually a collection of a dozen titles grouped under the umbrella *Canadian Abridgment*, is notoriously difficult to use.

There are two encyclopedias of Canadian law, similar to *Halsbury's Laws of England*. The *Canadian Encyclopedic Digest (Ontario)*, 3d ed. (Carswell), covers federal law and Ontario law; the *Canadian Encyclopedic Digest (Western)*, 3d ed. (Carswell), covers case and statute law in the four western provinces. These encyclopedias (forget the "digest" in the title) are updated with looseleaf supplements in special volumes and occasional replacement volumes.

As with the United Kingdom, a back-door approach is also recommended for Canada and Australia (and India, for that matter). Look for a major Canadian or jurisdiction-oriented treatise. A few examples are Di Castri's *The Law of Vendor and Purchaser* (Carswell) in three looseleaf volumes for Canada; Sykes and Pryles, *Australian Private International Law* (Law Book Co.); a three-volume looseleaf, *Law of Banker and Customer in Australia* (Law Book Co.); *The Law of Dismissal in Canada* (Canada Law Book, Inc.); *Mining and Petroleum Service*, a fifteen-volume looseleaf covering Australian federal and state law. Failing these, look for an annotated statute service on the topic. There are no Commonwealth sets of all statutes annotated, but separate volumes are published for important laws in both Australia and Canada. As a last resort, one could look for Commonwealth annotations in a general British treatise, such as the 17th edition of *Clerk & Lindsell on Torts* (Sweet & Maxwell, 1995), but one would prefer here the 9th edition of Fleming's *Law of Torts* (Law Book Co., 1997).

Electronic research tools for Canada have been developed despite, not necessarily because of, fierce competition. The most important is *Quicklaw* from QL Systems Limited. It is certainly the most comprehensive, providing online full-text access to both federal and provincial statutes and case law. The Canada Law Book Company's *Can/Law* provides online access to summaries and headnotes from its publications with full text available by fax. Carswell's *Canadian Law Online* is based on the material in the *Canadian Abridgment*. Carswell also markets a separate *Canadian Tax Online*. LEXIS-NEXIS has case files for Canada, but some are not full text.

F. Australia

When it comes to Australia, the situation has been even dimmer and more daunting. Australia's distance from the mother country, its own unique conditions, and the attitude of its legislating bodies have tended in recent years to encourage development of substantive and procedural legislation substantially different from English law and yet remaining within the framework of a common law jurisdiction. The division of powers is just as pronounced between federal Australia and its states as between federal Canada and its provinces, although the powers may be divided differently. As with Canada, there is more legislation on more subjects than in England, although major divisions remain governed by the "common law."

The publication of Australian legislation does not necessarily present an attractive picture. Australia is a small jurisdiction, in terms of law book publishers and the legal market, and there is as yet not enough money available to produce a comprehensive edition of its statutes in force, although commercial publishers are now moving into this field. Australia long was regarded as some kind of overseas appendage to English and Commonwealth practice, but not any longer.

The Australian equivalent to the English *Statutes in Force* is a compilation, *Acts of the Australian Parliament, 1901-1973* (Canberra: Australian Government Pub. Service, 1974-75), an alphabetical arrangement of everything in force up to the later date. Since 1973, many of the acts have been recompiled; along with new acts these appear in supplementary looseleaf volumes. An irregularly published *Table of Acts* combines everything to the date of publication in one reference sequence, brought up to date by an indexing, a simplified noter-up in the annual statutes (session laws) and monthly sheets. An annually revised *Index to the Acts of the Australian Parliament* brings things up to the last year or so. Beginning in 1974 two of the lawbook publishers began issuing their own better-organized and easier-to-use updates to the 1973 edition which clearly tell the user what is still in force and what has been superseded. The Law Book Company publishes an annual *Commonwealth Statutes Supplement* brought up to date by its monthly *Australian Legal Monthly Digest*. Butterworths does the same with its *Federal Statutes Annotations* and *Federal Statutes Annotations*

Repealed Legislation, 1992- (various other titles covered 1981-1992), and the monthly *Australian Current Law*.

The legislation of the Australian states proves even tougher to access. The Australians have developed a fascination with reprinting or incorporating legislation as an alternative to revision or consolidation. A procedure has developed of amending legislation by simply inserting new provisions into sections of the pre-existing enactment. Ultimately, when the string of amendments causes such fragmentation as to render efficient tracking and assimilation impossible, the old act is simply repealed and a new act replaces it. An alternative Australian approach is the consolidated act, whereby the original act is repealed and then reenacted into a more orderly organized arrangement.

On the horizon are two encyclopedic treatments of Australian law and jurisprudence now currently in process of publication. Both represent major efforts of legal analysis and scholarship, and although competitive, they offer considerable similarity of coverage. Nothing similar for Australia has ever been attempted. *Halsbury's Laws of Australia*, published by Butterworths, is, as its title suggests, an encyclopedic treatment of all aspects of Australian law in the pattern of *Halsbury's Laws of England*. The alternative is the equally scholarly and comprehensive *Laws of Australia* published by the Law Book Company.

LEXIS-NEXIS has legislation and case files for Australia, but some of the case files are summaries and not full text. Australian legal materials are also available on the Internet at the AUSTLII site <<http://www.austlii.edu.au/>>, a website maintained by the Australasian Legal Information Institute of the Faculties of Law at the University of New South Wales and the University of Technology at Sydney. AUSTLII is perhaps the best model to date of a free, full-text source of foreign law on the Internet.

IV. Sources for Further Reading

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Chapter
Four

Finding Foreign Law¹

by JEANNE REHBERG & MIRELA ROZNOVSCHI

Of all the challenges of foreign and international law research (and many would say that there are equally as many moments of enjoyment), foreign law is the “moving target” *par excellence*. The labyrinthine documentation system of an international organization such as the United Nations can be challenging, but at least those documents fit within a single system, albeit a multi-layered system. By contrast, there is no single, coordinated system for publishing all the laws of the nations, nor is there any comprehensive index for identifying them. For many individual jurisdictions, in fact, the publication and distribution systems do not facilitate the acquisition of legal materials by American law libraries, even if money is no object. Chapter Three of this book describes how the world’s countries can be categorized into three major types of legal systems, but to approach a specific question of foreign law, it only matters that one know which system operates in that particular jurisdiction. Thus, each time the research problem involves the domestic law of a different nation, in theory the research game begins anew.

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Chapter Three describes the types of legal publications generally found in non-U.S. jurisdictions. The present chapter suggests a plan for addressing foreign law research and presents a list of essential research tools and a broad sampling of sources for specific jurisdictions.

I. First Step: Know Your Local Options

Whether this step is accomplished incrementally under the on-the-job pressure of searching for foreign law, or at a more leisurely pace through collection development and continuing education, it is always advisable to know what tools are available locally and the strengths and weaknesses of each. This applies not only to the home library collection, but also to the collections of other local libraries to which one has access. It also means keeping up to date on electronic sources—and how to use them efficiently—and perhaps building one's own virtual library home page of links to useful sites.

This background knowledge can be a time-saver. Many of the titles described in this chapter have multiple functions. For example, it is essential to know that the Reynolds and Flores service described below not only identifies the titles of major codes and other legal publications for a jurisdiction, but in many cases also gives a citation to the basic pieces of legislation on particular subjects. Knowing the local resources helps in other ways. Often when the obvious methods and sources yield nothing, the researcher may resort to browsing any book, journal, or electronic source that holds a remote possibility of providing a clue (depending, of course, upon the time and priority that the project merits). In that situation, it saves time to know in advance what sources hold the most potential. Additionally, knowing the jurisdictions and subject areas that are *not* covered locally will also mean time saved in responding to questions such as "Do you have the laws of Malawi?" or "I need the criminal law of several South American countries."

II. Second Step: Tell Me What You Really Want

Define clearly what the researcher wants and get all the information that the researcher has before starting the search. Every piece of information is potentially useful. Some examples are presented below.

A. Is it essential to find the full text of the law or case, and if so, can the researcher read languages other than English?

The search for the text of a foreign law is sometimes a lesson in realistic expectations. It is unrealistic to expect always to find the full text of the law, in an authoritative English translation, along with all related decrees and ordinances, citations to relevant case law on the subject, and any applicable regulations. This seldom happens, at the very least because a library that may have all the sources that it would take to produce such a result for a particular jurisdiction probably does not have all those sources *in English*. Translations of major codes exist for the well-known civil law jurisdictions, but this generally is not the case for other codes and legal materials. Moreover, finding aids (indexes, digests, encyclopedias), if they exist, may not be in English. Or, the translation may not be "official" (sanctioned by the state) or even "quasi-official" (produced by the UN or some other trustworthy organization), but only "commercial/unofficial" (good enough for a high school student, a law student, and maybe for a scholarly researcher, but not acceptable to take to court).²

B. Will a summary or a discussion be adequate for the purposes?

Often it is the case that the library does not have access to the texts of the "primary" law of the jurisdiction, but only to books and articles that discuss the law in general, or the specific legislation or

2. For a practical discussion of finding and using translations, see Amber Lee Smith, "Foreign Law in Translation: Problems and Sources," in *Introduction to Foreign Legal Systems*, ed. Richard A. Danner & Marie-Louise H. Bernal, sponsored by the American Association of Law Libraries (New York, NY: Oceana, 1994), at 267-326. For a discussion of the inherent issues of language and meaning in foreign and international law research, see Chapter One, "The Unambiguous Rightness of Meaning," by M. Kathleen Price, *supra* p. 3.

case in question. A satisfactory middle-ground approach may be to consult a source about the law of the country, or about a particular legal subject viewed across a number of jurisdictions, with either summaries of legal texts or exact citations to the original texts.

C. Will an electronic version be acceptable to a practitioner who needs an official translation?

Another result is that the full text of the law may be available on the Internet or in some other electronic format (not necessarily in English), but the service may not measure up to the task in terms of authenticity, reliability, timeliness, accuracy, cost, and convenience of downloading and printing.

D. What type of law is needed—a constitution (the preliminary question is whether the jurisdiction has a constitution), a code (is it a civil law jurisdiction?), a separate piece of legislation, a new decree, a regulation, a reported case?

There exist collections of foreign constitutions. Large research libraries specializing in civil law jurisdictions tend to buy major codes, but they are not necessarily in English. Official texts of new laws and decrees may appear only in the national gazette, which can be hard to locate and impossible to locate in English.⁵ Regional and national law journals and other periodicals published in English for some regions and countries may discuss, summarize, reprint, or cite selected new laws and cases.

3. A promising trend emerged in 1997 with government-sponsored Internet sites offering full-text access to national gazettes in the vernacular. Examples include France (*Journal officiel* at <<http://www.journal-officiel.gouv.fr/>>), Germany (*Das Bundesgesetzblatt* at <<http://www.uni.jura.uni-sb.de/BGBl/index.html>>), Italy (*Gazzetta Ufficiale* at <<http://www.vol.it/ipsoa/html/gazzetta>>), Mexico (*Diário Oficial de la Federación* at <<http://148.246.247.95/DofAsp/Dof.asp>>), Portugal (*Diário da República* at <<http://www.incm.pt>>), Spain (*Boletín Oficial del Estado* at <<http://www.boe.es>>), and Uruguay (access all official publications from *La Prensa en Internet* at <<http://www.parlamento.gub.uy>>). Some of these databases also offer English summaries of laws.

E. Does the researcher have an exact citation to the case or law (name of case and court, title of code, date, article or section number)?

Knowing the names of the parties but not the citation or date of a case from a court in a Central or Eastern European country, for example, is not enough for purposes of an interlibrary loan request. There are no handy indexes or digests to the collected cases of those jurisdictions, assuming such sets exist, and even good intentions will not help the lending library find the case.

F. What dates are important?

Obviously, dates may distinguish one law or case from another on the same subject. Additionally, Internet sources of foreign law tend to grow retrospectively from latest laws to earliest. Names of codes and sets of laws may have changed over time—before conducting a search in RLIN or library catalogs, it helps to verify the exact title for the date range in question.

G. Where did the researcher get the information in hand?

By looking at the source of the researcher's information, one may often find that the researcher has ignored some vital information. Additionally, a source that only *indexes* texts may indicate that a separate full-text document delivery service is also available.

H. What is the specific subject area at issue?

The researcher who begins by asking generally for the tax laws of Taiwan may find that a more specific question will yield subject-oriented materials that discuss, for example, the corporate tax structure of Taiwan. As a very general rule, there are more business and commercial-related sources on foreign law than there are sources on criminal law, domestic relations, and other non-commercial subjects, but this varies by jurisdiction and by library.

III. Step Three: Identify the Source

For searching the local library collection, the catalogs of other libraries, or the Internet and other electronic tools, the most efficient approach is to know the exact title of the source that is likely to contain the text. Closely linked to this step is identifying the legal system in place for the jurisdiction; as Chapter Three points out, for example, there is likely to be a separate labor code in civil law jurisdictions.

In reality, because most libraries have a seemingly limited number of foreign law sources, the temptation is to browse those sources without doing any background research. Instead, however, even experienced foreign law researchers begin their search by consulting one or more of several invaluable tools that describe the legal system in place in particular jurisdictions and identify sources of laws on specific subjects. Such a tool will confirm, for example, that the Code of Civil Procedure of Egypt contains articles that govern arbitration that have been translated into English. These tools also can lead the researcher to journals, books, and other sources that, at first glance, were not likely candidates for containing the text of a foreign law.

While none of the tools in this category can be truly comprehensive, *Foreign Law* by Reynolds and Flores and *Modern Legal Systems Cyclopedia* come very close, and it is almost foolhardy to begin a foreign law research project without consulting one or both of them for the countries that they cover. Both identify not only the legal system and the basic codes and other applicable sources, but also laws on specific subjects.

Except for these two titles, the following works are not listed in any order of priority. Experience and circumstances will determine which one to try first, or whether to go straight to a subject- or jurisdiction-specific source such as those listed in Part IV. Certainly the Internet is now a high-priority source where it is the *only* choice or the least expensive choice, *provided that texts found on the Internet have indicia of reliability*.

A. *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*

Thomas H. Reynolds & Arturo A. Flores. AALL Publication Series, no. 33. Littleton, CO: Fred B. Rothman & Co., 1989-. Looseleaf or CD-ROM.

This is the indispensable guide to finding foreign law. In country-by-country chapters, it identifies the legal system of more than 150 jurisdictions. Each chapter includes an introductory essay about the historical development of the legal system, citations to the major codes, national gazettes and collections of laws and jurisprudence, including any English translations, and citations to the major laws or code articles on a wide range of specific subjects.

B. *Modern Legal Systems Cyclopedia*

Ed. Kenneth Robert Redden. Buffalo, NY: William S. Hein & Co., 1984-.

Country chapters describe the legal system with citations to specific laws. General chapters on subjects such as commercial transactions in the Middle East, the GATT dispute panel system, and law and religion are a bonus in this valuable guide.

C. *International Law Digest*

Martindale-Hubbell Law Directory. Summit, NJ: Martindale-Hubbell. Annual.

In many cases, these brief summaries of laws, arranged by subjects, provide specific citations to the text of the law.

D. *Germain's Transnational Law Research: A Guide for Attorneys*

Claire M. Germain. Ardsley-on-Hudson, NY: Transnational Juris Publications, Inc., 1991-.

In addition to chapters on transnational research in all major topics, this looseleaf has bibliographies of books and articles on the legal systems of seventeen major jurisdictions.

E. Introduction to Foreign Legal Systems

Ed. Richard A. Danner & Marie-Louise H. Bernal. Sponsored by the American Association of Law Libraries. New York, NY: Oceana, 1994.

F. Szladits' Bibliography on Foreign and Comparative Law

Comp. and ed. Vratislav Pechota. New York, NY: Parker School of Foreign and Comparative Law, Columbia University; Oceana, 1990– . Formerly edited by Charles Szladits, 1955–1989.

This extensive bibliography of books and articles on foreign and comparative law generally, and on specific subjects and jurisdictions, also cites translations and reprints of codes, laws, and regulations. Not useful for finding very recent laws.

G. Country-specific Treatises and Guides to Legal Systems

These may summarize, quote, reprint, or cite legislation. Examples include *China Laws for Foreign Business* (Chicago, IL: CCH Australia Ltd., 1985–), which reprints laws in Chinese and English; *Business Transactions in Germany*, ed. Bernd Rüter (New York, NY: Matthew Bender; Munich: C.H. Beck, 1983–), a treatise with a supplementary volume of important laws in English translation; *Doing Business in Japan*, ed. Zentaro Kitagawa (New York, NY: Matthew Bender, 1980–), a treatise with two volumes of laws in English translation; *Doing Business in France* by the law firms of Siméon & Associés and Moquet Borde Dieux Geens & Associés (New York, NY: Matthew Bender, 1983–); and *Introduction to Turkish Law*, eds. Tuğrul Ansay & Don Wallace, Jr. (The Hague: Kluwer Law International, 1996).

H. Yearbooks, Surveys of Legal Developments, and Other Journals Covering Particular Jurisdictions, Regions, or Subject Areas

These identify and discuss recent laws and cases. Examples include the *Italian Yearbook of Civil Procedure* (Milano: Giuffrè, 1991–); the *Annual Survey of South African Law* (Cape Town: School of

Law of the Univ. of the Witwatersrand, Johannesburg, by Juta & Co., 1947–); and the *Journal of African Law* (Oxford, U.K.: Oxford Univ. Press, 1957–). Journals covering international law, such as the *Netherlands Yearbook of International Law* (Leiden: A.W. Sitjhoff, 1971–), review national law and practice in international law.

I. Library Catalogs and Periodical Indexes

Use these to identify books and articles that discuss specific areas of the law and provide supporting citations to legislation and cases. In addition to determining library holdings through RLIN, OCLC, and other bibliographic utilities, library catalogs can be accessed on the Internet through <<http://www.einet.net/hytnet/SITES1.html>>, <<http://www.lib.uchicago.edu/LibInfo/Catalogs/OtherCatalogs>> and Gabriel, the Gateway to Europe's National Libraries, at <<http://www.konbib.nl/gabriel/en/union.html>>.

The most useful index to relevant periodicals is the *Index to Foreign Legal Periodicals* (Berkeley, CA: Univ. California Press, 1964–) (also available through the RLIN Eureka databases), which indexes periodicals covering public and private international law, comparative law, and foreign law for countries other than the United States and the common law jurisdictions of the British Isles and the British Commonwealth; important foreign collections of legal studies (for example, *Rudolf Bernhardt* and *Kodifikation gestern und heute*); the *Recueil des Cours* of the Hague Academy of International Law; all of the *Festschriften* in the field; and the proceedings and national reports of the International Academy of Comparative Law.

J. General Reference Tools

Tools such as the *Europa World Year Book* (London: Europa Publications, 1989–) (formerly *Europa Year Book*, 1959–88), and one of its companion publications such as *The Middle East and North Africa* (London: Europa Publications, 1964–) (formerly *Who's Who in the Middle East and North Africa*, 1948–63); and *Statesman's Year-Book* (New York, NY: St. Martin's Press, 1864–) can provide information that is needed for searching in more specialized

sources, such as the correct name of a country, its form of government, and the date of adoption of the current constitution.

The embassy home page of a country can be a similarly valuable source of information on new legal developments. The Electronic Embassy at <<http://www.embassy.org/>> has links to home pages of embassies in Washington, DC, and is building links between the embassies and their constituents in business, industry, education, the press, and government. The GODORT International Documents Task Force and Northwestern University Library maintain links to foreign government ministries at <<http://www.library.nwu.edu/govpub/idtf/foreign.html>>.

K. Current News Sources

These can yield information with which to launch a search in more traditional legal sources, even though a news report probably will not quote the text of new laws, decrees, ordinances, or cases in full (but sometimes one gets lucky). In addition to standard newspaper and periodical indexes in paper, CD-ROM, or online, it is valuable to have access to newswires and newspapers, such as the Reuters services and Agence France Press in the NEWS files in LEXIS-NEXIS (CURNWS and ARCNWS contain news files for the current two years and the previous two years respectively); DIALOG through direct subscription or through WESTLAW; and FBIS,⁴ the NTIS *World News Connection* (home page at <<http://www.fedworld.gov/ntis/online.htm>>), or the NewsBank *Global NewsBank* (home page at <<http://www.readex.com>>).

L. The Internet

As a source of foreign law in full text, the Internet has gained much credibility in the last few years at least for fairly recent material. Some of the sites that had proved trustworthy and useful at the time of this writing are described throughout this chapter. Its relative worth is still minimal, however, in comparison to the total quantity of legislation, case law, and regulations promulgated around the

4. Described in Chapter Ten, "International Taxation: Major Topics and a Bibliographic Guide," by Radu D. Popa, *infra* p. 231.

world and in comparison to the rich historical and current paper collections held by large research libraries.⁵

As a means for learning about foreign legal systems and foreign law, a finding tool for identifying foreign law sources, and a medium for communicating with government agencies, international organizations, courts, law libraries, and librarians and information specialists, the Internet has revolutionized the day-to-day work of librarians and researchers specializing in foreign law. Exploiting the Internet to its best potential involves several systematic steps.⁶

1. Ensure reliable e-mail capability and Internet access

These should include, ideally, a graphic-based web interface and efficient, reliable downloading and printing capacity.

2. Subscribe to listservs or discussion groups

These should be related to law and foreign and international law in particular. By subscribing, one receives all messages sent to the central address by other subscribers who are asking for advice about research and sharing information, and sometimes full-text documents, by e-mail. A listserv is an "electronic academy" of subject specialists with a common commitment to the open and mutual exchange of information.

A comprehensive list of listservs and their subscribing protocols is available at Lyonette Louis-Jacques' *Law List* on the Internet at

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5. This chapter lists a relatively large number of Internet sites as compared to traditional paper sources. By listing these sites, the authors do not mean to imply that the Internet or electronic sources generally are supplanting paper sources for foreign law research. On the contrary, thorough research in the law of most foreign jurisdictions requires access to the paper resources of a large research library. Even those Internet sites that are listed here should be reevaluated periodically in terms of their usefulness as archives of older legal texts and their pricing structure. Not all of the sites listed here are free of charge. The number of paper and CD-ROM titles listed here is relatively small also because those resources, including primary sources of legal texts as well as secondary books and journals, are easier to identify through traditional bibliographies, guides, and library catalogs than are Internet resources.
 6. The Internet also has become an essential tool for international law research, as is evident from other chapters in this book. The mechanics of e-mail, searching the Internet, and building home pages are beyond the scope of this book and are best learned from the prolific literature and the many (and greatly appreciated) experts in the field.

<<http://www.lib.uchicago.edu/~llou/lawlists/info.html>>. The archives of listservs are treasure chests for the novice researcher or the experienced researcher facing unknown territory. Archives can be read without subscribing to the lists. For example, INT-LAW, the listserv of librarians and others engaged in foreign and international law research, is archived at the Internet home page of the *Law Journal Extra* at <<http://www.ljextra.com/maillinglists/forintl-l>>. Current postings can be found at <<http://www.ljx.com/public/maillinglists/intlaw-l/index.html>>. Both sites can be accessed from the Internet home pages of the Foreign, Comparative & International Law Special Interest Section of the American Association of Law Libraries at <<http://www.lawsch.uga.edu/fcil/fcil.html>> and the American Society of International Law at <<http://www.asil.org>>.

3. Build a home page

Provide links to other home pages and sites that contain full-text documents, guides to foreign law, Internet search tools, and links to and lists of other valuable sites. A few of the best sites for foreign and international law are listed below.

The *Cornell Legal Information Institute* site has links and full-text documents at <<http://www.law.cornell.edu/source.html#foreign-and-intl>>.

Foreign and International Materials, maintained by New York University School of Law Library at <<http://www.law.nyu.edu/library/forint.html>>, contains annotated links to reliable legal databases and secondary sources.

Hieros Gamos (HG) at <<http://www.hg.org/internat.html>> has links to subject-specific legal documents in full text, and news and secondary sources.

The House Internet Law Library. United States House of Representatives Internet site at <<http://law.house.gov>> has three paths to links related to foreign and international law: Laws of Other Nations, Treaties and International Law, and Laws of All Jurisdictions (arranged by subject).

Law Library index by Bradley J. Hillis lists law-related information for various countries at <<http://www.wolfenet.com/~dhillis/lawlib.htm>>.

RefLaw: The Virtual Law Library Reference Desk at Washburn University is at <<http://lawlib.wuacc.edu/washlaw/reflaw/>>

reflaw.html>, and the law library's foreign and international web is at <<http://lawlib.wuacc.edu/forint/forintmain.html>>.

The World Law Resource List is a guide to non-U.S. sources edited by Makoto Ibusuki at <<http://www.law.osaka-u.ac.jp/legal-info/worldlist/worldst.htm>>.

World Wide Web Virtual Law Library at Indiana University, <<http://www.law.indiana.edu/law/v-lib/lawindex.html>>, has a section on foreign and international laws and links to the Law Library of Congress GLIN project.

4. Understand the limitations of open-ended and free-text searching of the Internet

Keeping those limitations in mind, develop skills for searching the Internet when none of the pre-packaged sites, lists, and indexes answer the question. The following search engines offer ways to narrow a search to a particular country or region:

FindLaw at <<http://www.findlaw.com>>.

Infoseek at <<http://www.infoseek.com>>.

LawRunner at <<http://www.ilrg.com/>>.

5. Develop a systematic policy about Internet resources

This policy should include guidelines for evaluating electronic sources for authenticity, reliability, timeliness, accuracy, cost, and convenience of downloading and printing, and for incorporating them into the collection and into research and reference services. Based upon local needs and local area network capacity, a library might decide, for example, to use CD-ROM and Internet databases largely as indexes to foreign and international law documents, and only occasionally as sources of full texts, and to continue to subscribe to full-text sources in paper while monitoring future developments in electronic tools.

M. Additional Resources

Use other means to locate and communicate with information professionals who are willing to assist with foreign law questions.

A list of sources of assistance compiled by Daniel L. Wade appears in *Introduction to Foreign Legal Systems*, ed. Richard A. Danner & Marie-Louise H. Bernal, sponsored by the American

Ass'n of Law Libraries (New York, NY: Oceana, 1994), at 379–405. Library catalogs, RLIN, and OCLC also provide some indication of which libraries have strong collections for particular jurisdictions. If all else fails, the logical choice is a major research library in a geographic area where interest in the foreign jurisdiction is strong for reasons of business or proximity. The language ability of the researcher is always an issue: Whether a sister library collects only in the vernacular or also in other languages (including English) varies by the needs of that library's patrons.⁷

N. Last Resorts

Other contacts to consider: (1) the information officer of the foreign consulate or embassy in the United States; (2) the U.S. Department of State Country Desk for the jurisdiction, or the Office of the Legal Advisor (phone: (202) 647-2044); (3) foreign branch offices of U.S. law firms or the U.S. embassy in the foreign country to inquire if they can assist with English translations of new laws; (4) the U.S. House of Representatives Legal Support Project Leader (phone: (202) 226-6456).

IV. Sources of Full-Text Documents, Summaries, and Citations

A. Constitutions

As a distinct type of law, constitutions are collected in full text in several trustworthy sources.

Constitutiones Africae. Bruxelles: Bruylant, 1988– .

Constitutions of the Countries of the World. Ed. Gisbert H. Flanz.

Dobbs Ferry, NY: Oceana, 1971– . Looseleaf. English translations of constitutions, each with an essay on the chronological

7. Contemporary budget constraints and the historically persistent difficulty of acquiring materials from some regions of the world mean that collecting levels for some jurisdictions may have wavered at some libraries. It is always best to confirm actual holdings before visiting a library.

development of the constitution, and a bibliography. Three types of texts are included: current constitutions and historical constitutions in the main set, and constitutions of dependencies and special sovereignties in a companion set.

The *International Constitutional Law Project* at the University of Würzburg, on the Internet at <<http://www.uni-wuerzburg.de/law/index.html>>, provides English texts of constitutions and background materials about constitutional documents.

B. Selected Sources by Subjects

The following are examples of sources that provide commentary on or citations to the law of specific jurisdictions and sources that reprint selected full-text legislation.

1. Agriculture and Food

Food and Agriculture Legislation. Rome: Food and Agriculture Organization of the United Nations, 1952– . Annual since 1988. Selected legislative texts are reproduced in full, in extract, or in summary form, or listed by title with or without comment. Available in English, French, and Spanish editions. The FAO Web site at <<http://www.fao.org/>> reports on recent developments around the world.

2. Business and Taxation

Business Operations in [jurisdiction]. Tax Management Portfolios, Foreign Income Series. Washington, DC: Bureau of National Affairs. Written for practical application to the establishment and operation of a business overseas, these guides outline the political, economic, and legal structure of the country and then focus on tax aspects of doing business. Most contain the English text of portions of relevant laws or a summary. Regularly updated.

Commercial Laws of the World. Ormond Beach, FL: Foreign Tax Law Pub., 197?– . English translations of selected major company- and commercial-related statutes from more than 100 countries.

Digest of Commercial Laws of the World. Ed. Lester Nelson. Dobbs Ferry, NY: Oceana, 1981– . Looseleaf in four parts. Includes summaries of the commercial laws of more than 100 countries,

and the *Digest of Intellectual Property Laws of the World*, 1975– (various titles).

TaxBase. A service of Tax Analysts, *TaxBase* is a collection of databases covering U.S., foreign, and international taxation. The *Worldwide Tax Daily* database follows U.S. developments related to international tax and contains news and analysis from more than 120 nations. For a fee, full-text documents can be obtained from the *Worldwide Tax Daily* database of new laws, decrees, administrative rulings, policy papers, and studies. The home page of *TaxBase* is at <http://www.tax.org/default.htm>.

Tax Laws of the World. Ormond Beach, FL: Foreign Tax Law Pub., 1968– . English translations of selected major tax laws and regulations of more than 100 countries.

For a bibliography on foreign laws regulating transnational business, see Victor Essien, "Bibliographic Guide to Doing Business in Foreign Countries," in *Introduction to International Business Law: Legal Transactions in a Global Environment*, ed. Gitelle Seer & Maria I. Smolka-Day, sponsored by the American Association of Law Libraries (New York, NY: Oceana, 1996), at 27–65.

See also Chapter Nine, "Research in Transnational Business Law," by Victor Essien, *infra* p. 207, and Chapter Ten, "International Taxation: Major Topics and a Bibliographic Guide," by Radu D. Popa, *infra* p. 231.

3. *Civil Procedure*

International Encyclopaedia of Laws. Civil Procedure. Ed. R. Blanpain. Deventer: Kluwer Law and Taxation Publishers, 1994– . A looseleaf collection of scholarly chapters analyzing, summarizing, and providing citations to the national law of each country. Includes to date France, Hellas (Greece), Israel, Morocco, South Africa, Sweden, and Hungary.

4. *Environmental Law*

International Environment Reporter. Washington, DC: Bureau of National Affairs, 1978– . Volume 3 of this looseleaf (which is described more fully in Chapter Eleven, "International Environmental Law," by Radu D. Popa, *infra* p. 255) contains for each country covered a commentary, a directory of

environmental-related agencies, and a list or description of selected laws and regulations with citations.

International Encyclopaedia of Laws. Environmental Law. Ed. Marc Boes. Deventer: Boston, MA: Kluwer Law and Taxation Publishers, 1991– . A looseleaf compilation of scholarly chapters analyzing, summarizing, and providing citations to the national law of each country. Includes to date the People's Republic of China, Czech Republic and Slovak Republic, Denmark, Finland, Hungary, Indonesia, Israel, Nigeria, Poland, South Africa, United Kingdom (England and Wales), and Uruguay.

5. Family Law and Related Issues

Annual Review of Population Law. New York, NY: United Nations Population Fund and Harvard Law School Library, 1974– . Several years behind in publication. Each volume begins with a review of developments and trends. The two main sections of each volume are a digest of international resolutions and decisions, constitutional provisions, laws and amendments, regulations, and judicial decisions, with copies of shorter texts; and an appendix of longer documents in full text. Subjects covered range from abortion and family planning to child support and family health care.

6. Health

International Digest of Health Legislation. Geneva: World Health Organization, 1948– . Quarterly (in English and French editions). Selected legislative texts are reproduced in full, in extract, in summary form, or are listed by title with or without comment.

7. Intellectual Property

Copyright Laws and Treaties of the World. Paris: United Nations Educational, Scientific and Cultural Organization; Washington, DC: Bureau of National Affairs, 1956– .

Industrial Property and Copyright: Monthly Review of the World Intellectual Property Organization. Geneva: World Intellectual Property Organization, 1995– . Formerly *Industrial Property and Copyright*. Two supplements appear with each issue. *Copyright and Neighboring Rights Laws and Treaties* reproduces national and regional laws and amendments and multilateral and bilateral treaties dealing with literary and artistic property.

Industrial Property Law and Treaties does the same for six subject areas: general, inventions and innovations, marks, industrial design, unfair competition and geographical indications, and technology transfer.

For a bibliography of sources covering foreign laws on competition, copyright, trademark, and patents see Ralph F. Gaebler, "International Competition Law and Intellectual Property Law," in *Introduction to International Business Law: Legal Transactions in a Global Environment*, ed. Gitelle Seer & Maria I. Smolka-Day, sponsored by the American Association of Law Libraries (New York, NY: Oceana, 1996), at 139–60.

8. Labor Law

International Encyclopaedia for Labour Law and Industrial Relations. Ed. R. Blanpain. Deventer: Kluwer Law and Taxation Publisher, 1977– . This looseleaf set begins with volumes that compile scholarly chapters on the labor law of each nation. Full-text legislation and cases are reproduced in English in two separate groups of volumes.

Labour Law Documents. Geneva: International Labor Office, 1990–95. Formerly *Legislative Series*. 1919–89. The ILO is no longer publishing this series, which compiled the texts of national labor law legislation.

9. Securities and Investments

International Securities Regulation (five volumes). Ed. Robert C. Rosen, Irving M. Pollack & Efrat Levy. *Stock Exchanges of the World: Selected Rules and Regulations* (two volumes). Ed. Robert C. Rosen & Wayne Simon. Dobbs Ferry, NY: Oceana, 1986– . Commentary on securities laws and the securities market around the world, as well as reprints of selected national laws, regulations and stock exchange rules in English.

Investment Laws of the World: The Developing Nations, Compiled and Classified. Comp. The International Centre for Settlement of Investment Disputes (ICSID). Dobbs Ferry, NY: Oceana, 1972– . Volumes I–X contain investment laws arranged alphabetically by country, most (but not all) in English.

C. Selected Sources for Regions of the World and Individual Jurisdictions

This highly selective list excludes the standard codes, compilations of laws and legislation, collected jurisprudence, and other sources of "primary" law such as those discussed in Chapter Three, the titles of which can generally be identified by using the tools listed under step three above. Instead, this list is intended to acquaint the reader with samples of (1) sources that routinely follow legal developments in a jurisdiction or region and that provide citations, summaries, excerpts, or texts of laws, cases, and other documents; (2) Internet sources that are already well regarded for their coverage and accuracy (or that show promise in that regard), including national government sites and other virtual libraries; and (3) LEXIS-NEXIS and WESTLAW (the cost and scope of electronic services are always subject to change and should be verified with the provider).

1. Argentina

Sistema Argentino de Informática Jurídica (SAIJ) is a comprehensive fee-based Internet database in the vernacular supervised by the Argentinian Minister of Justice on the Internet at <<http://www.saij.jus.gov.ar>>.

2. Africa

Annual Survey of African Law. Cape Town: Published for the School of Law of the University of the Witwatersrand, Johannesburg, by Juta & Co., 1947- .

Journal of African Law. School of Oriental and African Studies, University of London. Oxford: Oxford University Press, 1957- .

SANGONET, the South African Government home page is free on the Internet at <<http://wn.apc.org/opengov/>>. The extent of documents available on the site suggests that the South African government is as committed to making its documents available to the public as is the Australian government with AUSTLII.

3. Asia

East Asian Executive Reports. Washington, DC: International Executive Reports, 1979- . Monthly journal that follows legal and business developments and reproduces selected texts of new legislation.

The Laws of Hong Kong (BLIS), published by the Hong Kong Department of Justice and available at no cost at <<http://www.justice.gov.hk>>, is an excellent, comprehensive source of laws, decrees, and ordinances.

WESTLAW: VIETNMOG, Vietnam Official Gazette, 1996– .
Yearbook Law & Legal Practice in East Asia. The Hague: Kluwer Law International, 1995– .

4. *Australia*

AUSTLII: Australasian Legal Information Institute. An extensive, and growing, free source of full-text laws, cases, treaties, and much more on the Internet at <<http://www.austlii.edu.au/>> .

5. *Western Europe, United Kingdom, and Scandinavia*

Bulletin of Legal Developments. London: British Institute of International and Comparative Law, 1966– . A fortnightly survey of legal events worldwide with particular focus on Europe and the EU. Contains notices and summaries of recent cases and new and proposed legislation.

Commercial Laws of Europe. London: Sweet & Maxwell, 1978. English texts of selected laws of European nations.

European Current Law: Monthly Digest. London: European Law Centre, Sweet & Maxwell, 1992– . Cumulated annually in *European Current Law Yearbook*. Based on information from official gazettes, this periodical summarizes laws from most of the European countries.

Germany. German case law is available at no cost on the Internet at <<http://www.uni-wuerzburg.de/glaw/>>. The Law-Related Internet Project of the University of Saarland at <<http://www.jura.uni-sb.de/english/>> is available in an English version.

Information Sources in Law. 2d ed. Ed. Jules Winterton & Elizabeth M. Moys. Guides to Information Sources. London: Bowker-Saur, 1997. Covers more than thirty jurisdictions in Western Europe, Scandinavia, the United Kingdom, and Central and Eastern Europe.

Scottish Current Law Year Book. Edinburgh: W. Green, 1949– .
 United Kingdom. The free Internet site of Her Majesty's Stationery Office includes the full text of the Acts of Parliament beginning with 1996 at <<http://www.hmsso.gov.uk/acts.htm>>, and the

Statutory Instruments beginning with 1997 at <<http://www.hmso.gov.uk/stat.htm>>.

6. Central and Eastern Europe

Central and Eastern European Legal Materials. Ed. Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990-. Looseleaf. Tax, privatization, and foreign investment-related laws are published in English translations for all the countries in the area, six to nine months after their enactment.

Central and Eastern Europe: Legal Texts. Washington, DC: U.S. Department of Commerce. East Europe Business Information Center. Springfield, VA: Distributed in cooperation with NTIS, 1991-. A legal text translation service for selected laws of commercial interest, available from NTIS in paper format for purchase of individual texts or on subscription for particular countries, as well as on LEXIS/NEXIS usually within two weeks of publication. In most cases, the texts are translations of official versions or unofficial translations transmitted to the U.S. government from the respective governments. Geographic coverage is complete for the region. Covers selected laws from 1988 forward.

The Current Digest of the Post-Soviet Press. Columbus, OH: The Current Digest of the Soviet Press, 1992-. Summaries and quotes from the press regarding recent developments in a wide range of not strictly legal subjects, but including "State and Law." Continues *The Current Digest of the Soviet Press*.

Foreign Investment in Central & Eastern Europe. Ed. Vratislav Pechota. Ardsley-on-Hudson, NY: Transnational Juris Publishers, 1992-. This looseleaf analyzes the laws of all the Eastern European countries and the Baltics and reprints the full text of selected laws.

Information Sources in Law. 2d ed. Ed. Jules Winterton & Elizabeth M. Moys. Guides to Information Sources. London: Bowker-Saur, 1997. Covers over thirty jurisdictions in Western Europe, Scandinavia, the United Kingdom, and Central and Eastern Europe.

Review of Central and East European Law. Ed. John N. Hazard & Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY:

Juris Publishing, Inc., 1990– . Publishes a broad range of business- and trade-related laws from the former republics of the Soviet Union in English translation. Continues the *Review of Socialist Law* (1975–91).

Russia and the Republics Legal Materials. Ed. John N. Hazard & Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990– . Full-text translation of laws from Armenia, Azerbaidjan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tadhikistan, Turkmenistan, Ukraine, Uzbekistan, and the Russian Federation.

WESTLAW: INT-EEUROPE file, Commercial Laws of Eastern and Central Europe, 1990– .

Yearbook of Polish Labour Law and Social Policy. Cracow: Jagiellonian University Press, 1989– .

7. Latin America and South America

Brazil. AMATRA. This site, maintained by the Associação dos Magistrados da Justiça do Trabalho da Décima Região at <http://www.solar.com.br/~amatra>, has links to all the web sites for Brazilian law.

Brazil. INFOLEGIS at <http://www.infolegis.com.br/> provides a free service in the vernacular that lists and summarizes recent legislation. A fee-based document delivery service is also available.

Brazil. *Legislação Online (CD-GRAF)* is a free Internet site at <http://www.cd-graf.com.br/legis.htm> with Brazilian codes, legislation, and jurisprudence in the vernacular.

Inter-Am. National Law Center for Inter-American Trade. This fee-based Internet database at <http://www.natlaw.com> provides selected laws of Latin American and South American countries, especially Mexico. Some English translations are included, as are materials about the laws of the region and an English-Spanish list of key terminology. The Center also has copies of other documents, which it will supply for a fee upon request. Call (800) LAW-FIND or e-mail natlaw@natlaw.com.

Taxation in Latin America. Amsterdam: International Bureau of Fiscal Documentation, 1987– . Country-by-country chapters discuss the law, summarize specific provisions, and provide

citations. The IBFD also publishes *Latin American Taxation Database on CD-ROM* (1991–), which offers the most complete library of Latin American tax legislation available.

8. Various Regions

The *Cornell Legal Information Institute* site has links and full-text documents at <<http://www.law.cornell.edu/source.html#foreign-and-intl>>.

Foreign Broadcast Information Service (FBIS). Described in Chapter Ten, "International Taxation: Major Topics and a Bibliographic Guide," by Radu D. Popa, *infra* p. 231.

GLIN. The Global Legal Information Network of the Law Library of Congress. A free database on the Internet at <<http://lcweb2.loc.gov/glin/glinhome.html>>. The GLIN project is making legislative texts and information provided by governments around the world available electronically in a database with searchable abstracts in English for non-members and some full texts (in the vernacular languages) accessible only to member nations. Coverage goes back to 1976 for some laws. The GLIN site also offers the *Guide to Law Online*, a hypertext guide to sources of information worldwide on government and law for those nations whose legal texts have not yet reached the level of quality required for a full link in GLIN.

Hieros Gamos (HG) at <<http://www.hg.org/internat.html>> has links to subject-specific legal documents in full text, and news and secondary sources.

The House Internet Law Library. United States House of Representatives Internet site at <<http://law.house.gov>> has three paths to links related to foreign and international law: Laws of Other Nations, Treaties and International Law, and Laws of All Jurisdictions (arranged by subject).

International Legal Materials. Washington, DC: American Society of International Law, 1962– . Bimonthly. This is also available in the ILM file in WESTLAW. It reproduces the full text of very recent documents of international law. Occasionally includes translations of recent national legislation if the subject matter is of wide interest.

LEXIS-NEXIS: Check a current directory for scope and exact file identifiers. Coverage varies by country. Examples: Europe

Libraries: News, Country Files, Company Information, CELEX (EC); French Libraries: Laws and Regulations, News, Cases; Codes Library: Australia, EC, England, France; English General Library; INTLAW Library: Canada, France, Australia, China, EC, Mexico, Russia.

New York University School of Law Library maintains annotated links to foreign and international materials at <<http://www.law.nyu.edu/library/forint.html>>.

WESTLAW: Check a current directory for scope and exact file identifiers. Coverage varies by country. Examples: Bermuda and Cayman Islands insurance laws; Commercial Laws of Eastern and Central Europe, 1990- ; Mexican Civil and Commercial Codes (West translation 1995); Russian legislation; Vietnam Official Gazette, 1996- .

Washburn University Law Library has a foreign and international web site at <<http://lawlib.wuacc.edu/forint/forintmain.html>>.

The World Wide Web Virtual Law Library at the University of Indiana is on the Internet at <<http://www.law.indiana.edu/law/v-lib/lawindex.html>>. It contains sections on foreign and international law and listservs, and a link to GLIN and other relevant sites.

Part III—International Law

Chapter
Five

Introduction to International Law¹

by THOMAS H. REYNOLDS

I. Public International Law

The term "international law" refers generally to *public international law*, or the law that governs the relations between or among nations.² The first modern treaties, the peace treaties of Westphalia of 1648, marked the end of the medieval era and the beginning of the age of sovereign, independent nation states conducting their relations with each other as equals.³ Traditionally, and certainly

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1. © 1998 Thomas H. Reynolds.
 2. Inexperienced researchers may use the term "international law" to refer to any law that is not U.S. law, blurring the distinction between international law and foreign (national) law. For the research process, it is important simultaneously to distinguish between the two and to understand, as other chapters in this book point out, that a transnational or cross-border matter may require knowledge of both international and foreign law.
 3. Alfred-Maurice De Zayas, "Westphalia, Peace of (1648)," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, vol. 7 (Amsterdam: North-Holland, 1984), at 536.

through the nineteenth century, face-to-face relations developed between nations through formal treaties negotiated and administered by heads of state, foreign secretaries, and foreign ministries, with the goal of controlling conflict (war) and facilitating commerce and peaceful relations.

The nineteenth and twentieth centuries have seen dramatic changes in the subject matter, the actors, and the processes of public international law. It now affects arms control, humanitarian law, criminal law, intellectual property, the sale of goods, the environment, the seas, and many other aspects of modern transactions, most recently, outer space and international regimes beyond the limits of national jurisdictions, such as Antarctica. The rights and obligations established under international law now extend not only to nations vis-à-vis each other by way of treaties. Additionally, through multilateral agreements called "conventions," the rights of *persons*, both natural (individuals) and juristic (corporations and organizations) vis-à-vis nations and international organizations are established and protected in areas such as human rights and health. For example, a person who believes that his or her rights have been violated by a national court in the United Kingdom can petition the European Commission of Human Rights because the United Kingdom is a party to the European Convention on Human Rights. The individual has a right against the United Kingdom not under national law, but under public international law.

II. The Sources of International Law

The classic statement of the sources of modern international law is contained in article 38 of the Statute of the International Court of Justice, which is annexed to the Charter of the United Nations and sets forth the sources of law that the Court shall apply to disputes before it. The first two sources listed in article 38 are "international conventions, whether general or particular, establishing rules expressly recognized by the contesting States," and "international custom, as evidence of a general practice accepted as law."

The classic form of *international convention* is the *treaty*. Simply put, a treaty (or convention or other form of international agreement) is a written text that expresses the agreed-upon rights and

obligations of the parties to the treaty (and only those parties) regarding the specific subject covered by the treaty. These agreements may be bilateral or multilateral; treaties are generally bilateral and conventions are generally multilateral. Chapter Six, "Treaties," by Jeanne Rehberg, *infra*, p. 123, describes the major published sources of treaties. The law of treaties, their interpretation and application is a complex subset of international law. Only two principles are noted here. The first is that once a nation accepts a treaty, that treaty takes precedence over national law on the same subject. (For this reason, the treaty or national law or both may require that before the treaty enters into effect, each signatory nation will analyze the treaty by whatever process is specified under its own national law, such as ratification by the United States upon advice and consent of the Senate.) The second important principle is the distinction between self-executing and non-self-executing treaties. If a treaty is self-executing, it is in effect and binding as soon as it is accepted or ratified. If a treaty is non-self-executing, then it does not become the law of the land until it is implemented by national laws or regulations.

International custom or customary law is unwritten law that has developed over time in "a lengthy process of usage together with a conviction of the existence of a legal obligation (*opinio juris sive necessitatis*)" that impels states to comply.⁴ In modern times, treaty law and customary law have a symbiotic relationship. Customary law may be codified in written texts, which may include treaties.⁵ Customary law may be identified during the process of treaty negotiation, at which point it may be documented in a declaration, for example, a declaration of the United Nations General Assembly,

4. Sir Robert Y. Jennings, "International Law," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, consolidated ed., vol. 2 (Amsterdam: North-Holland, 1995), at 1166 (hereinafter Jennings).

5. Customary law also may be evident in uniform laws such as the work of the International Law Commission, and in the record of a nation's practice of international law such as the *Digest of United States Practice in International Law* (Washington, DC: Office of the Legal Advisor, Department of State, 1974-); the *German Yearbook of International Law* (Berlin: Duncker & Humblot, 1976- ; German language edition, 1948-); or the *Annuaire français de droit international* (Paris: Centre National de la Recherche Scientifique, 1956-).

even if no binding treaty results. In turn, a treaty, while still binding only on the parties to the treaty, may contain law that is applied by non-parties by virtue of being accepted custom and practice.⁶

Article 38 specifies "general principles of law recognized by civilized nations" as the third source of international law. *General principles of law* are principles "now firmly embedded in the legal system of those States having a common legal evolution," such as the principle that laws should not apply retroactively to acts committed before the passage of the law.⁷

These two sources, international custom and general principles of law, tend to be elusive, both in definition and in research. Even discounting for the potential difficulties presented by the distinction implied in the phrase "civilized nations," neither concept can be approached through a body of generally accepted sources. Customary law in the international sense consists largely of the evidence of conduct of states, "the rules of law derived from the consistent conduct of States acting out of the belief that the law required them to act in that way."⁸

Last in the article 38 sources of international law are "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law." *Judicial decisions* on international law come not only from international tribunals, most importantly the International Court of Justice, but also from national courts and arbitral tribunals. Judicial decisions interpret treaties and may help to identify or elaborate customary law.⁹ Pursuant to article 59 of the Statute of the International Court of Justice, these decisions are fact-specific and are not precedential or binding except on the parties. Others will study them, however, to try to predict how a court may rule in other disputes. Decisions on international law from the major

6. Jennings, *supra* note 4, at 1166–68.

7. Riccardo Monaco, "Sources of International Law," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, vol. 7 (Amsterdam: North-Holland, 1984), at 429.

8. Shabtai Rosenne, *Practice and Methods of International Law* (Dobbs Ferry, NY: Oceana, 1984), at 55.

9. Jennings, *supra* note 4, at 1168.

international tribunals and from national courts are published in established reporter series, such as the *Reports of Judgments, Advisory Opinions and Orders of the International Court of Justice* (The Hague: ICJ, 1947–); the *Publications of the European Court of Human Rights* (Strasbourg: Council of Europe, 1974–); *International Law Reports* (Cambridge: Press Syndicate of the Univ. of Cambridge, 1956–); and national case reporters.

Decisions of arbitral panels generally are not required to be published and may be more difficult to locate.¹⁰ At the same time, demand for information on private, commercial arbitration awards has increased since the enactment and implementation of a number of multilateral conventions dealing with enforcement of arbitral awards and judgments and since the creation of the dispute panel processes of the World Trade Organization and the North American Free Trade Agreement. While these arbitral decisions are essentially devoid of precedential value, the international bar regards them, whether published, leaked, or confidential, as sources of guidance in the expanding fora of transnational litigation.

In the United States, international law is almost exclusively within the jurisdiction of federal courts. U.S. case law on international law can be tracked through standard encyclopedias and digests and also through specialized compilations such as the *Digest of United*

10. Two excellent sources for researching international arbitral decisions are *Répertoire de la jurisprudence arbitrale internationale. Repertory of International Arbitral Jurisprudence*, ed. Vincent Coussirat-Coustère & Pierre Michel Eisemann (Boston, MA: Martinus Nijhoff, 1989–91), which presents excerpts from the text of decisions from 1794 to 1988, arranged by subject and with citations to published texts; and A. M. Stuyt, *Survey of International Arbitrations, 1794–1989*, 3d ed. (Dordrecht: M. Nijhoff; Norwell, MA: Kluwer Academic Publishers, 1990), which consists of descriptions of the decisions in chronological order, including parties, award, underlying treaties, and citations to published texts. Sources for research in international *commercial* arbitration specifically are described in Claire M. Germain, "Arbitration (International Commercial Arbitration)," in *Germain's Transnational Law Research: A Guide for Attorneys* (Ardsley-on-Hudson, NY: Transnational Juris Publications, Inc., 1991–), at IV–34 to IV–50; and Amber Lee Smith, "Finding Information about International Commercial Arbitration," in *Introduction to Transnational Legal Transactions*, ed. Marilyn J. Raisch & Roberta I. Shaffer, sponsored by the American Association of Law Libraries (Dobbs Ferry, NY: Oceana, 1995), at 335–63.

States Practice in International Law and the Restatement of the Law (Third), the Foreign Relations Law of the United States (St. Paul, MN: American Law Institute Pub., 1987-).

The teachings of the most highly qualified publicists of the various nations, generally referred to as *la doctrine*, provide evidence of how experts define international law. These writings include treatises and monographs, scholarly articles, encyclopedias, and other repertoires on international law. Beyond the accepted "classics of international law,"¹¹ there will often be disputes over who is a "highly qualified publicist." Eventually, custom performs the deciding function. Also not to be overlooked is the value of these texts and commentaries as "secondary" literature that leads the researcher to other relevant sources.

III. Private International Law

Private international law concerns disputes between private parties (individuals or juristic persons) in which the laws, jurisdiction, or court judgments of more than one jurisdiction or country are implicated, such as divorce or transnational business matters.¹² It is the practice of domestic law across international boundaries. No legal order or system exists above national law to govern transnational situations involving private parties. For this reason, each nation develops its own "conflict rules," national laws used to decide which nation's domestic law will be applied to a given transnational dispute.¹³ (In the United States, private international law often is

11. See, e.g., the collection of early classics of international law reprinted in *Classics of International Law* (Washington, DC: Carnegie Institution of Washington, 1911-1950), and the works of modern scholars such as Georg Schwarzenberger, Lassa Oppenheim, Ian Brownlie, and James Leslie Brierly.

12. Robert L. Bledsoe & Boleslaw A. Boczek, *The International Law Dictionary* (Santa Barbara, CA: ABC-CLIO, 1987), 8.

13. Ulrich Drobnig, "Private International Law," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, vol. 10 (Amsterdam: North-Holland, 1987), at 330-31 (hereinafter Drobnig).

called "conflict of laws."¹⁴) As a practical matter, private international law rules determine where and by which national rules a controversy involving persons of different nations will be resolved and how foreign judgments will be recognized and enforced. The primary sources of private international law are national laws¹⁵ and, more recently, multilateral conventions. Beginning with the establishment of the Hague Conference on Private International Law in the nineteenth century, efforts began to regulate particular aspects of private international law through multilateral conventions negotiated in public international law fora.¹⁶ Examples include the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The recognition and enforcement of foreign judgments is very often controlled by bilateral treaties.¹⁷

IV. The Language of International Law

If the question arises in the context of the U.S. practice of international law, the source material will be in English. In the broader academic forum, other languages will be encountered. Generally, the languages for public and private international law are English, French, German, Italian, and others, in that order. In-depth research into customary international law, the practice of international law by other nations, or scholarly writings will require material in other

14. For a treatise on the U.S. practice of conflict of laws, see, e.g., *International Judicial Assistance* (Washington, DC: International Law Institute, 1984-), a looseleaf manual with full-text documents and conventions reproduced in appendices. Volumes 1-2 (by Bruno A. Ristau) cover civil and commercial practice. Volumes 3-6 (by Michael Abbell & Bruno A. Ristau) cover criminal practice.

15. See, e.g., *Dicey and Morris on the Conflict of Laws*, ed. Lawrence Collins (London: Sweet & Maxwell, 1993), a treatise on conflict of laws under British law. In the British Commonwealth, conflicts generally are governed by the common law or by judicial decisions. In 1996, the United Kingdom, following the continental tradition of specific legislative guidelines for application of private international law rules, enacted the first major British law specifically devoted to conflict of laws.

16. Drobnig, *supra* note 13, at 334-35.

17. *Id.* at 335.

languages. Multilateral treaties and judicial decisions appear in the "official" language(s) of the international organization responsible for the treaty (which languages usually include English) or of the court that issued the decision. Bilateral treaties are difficult to find in English if neither party is an English-speaking nation. Subject to the inherent problems of translations noted in Chapter One, "The Unambiguous Rightness of Meaning: The Search for Precision in Foreign, Comparative, and International Law Research," by M. Kathleen Price, *supra* p. 3, it is also possible to find selected materials translated into English by commercial publishers.

V. International Organizations

Since the establishment of the United Nations in 1945, the practical administration and development of public international law has shifted from the hands of foreign secretaries and ministries to the fora of international organizations. *International organizations* are organizations "whose chief function is the promotion of cooperation among states by furnishing a forum where decisions or agreements can be reached and multinational tasks carried-on."¹⁸ International organizations include intergovernmental organizations and non-governmental organizations. An *intergovernmental organization* (IGO) is "an association of States established by and based upon a treaty, which pursues common aims and which has its own special organs to fulfil particular functions within the organization."¹⁹ The primary global IGO is the United Nations. Chapter Seven, "United Nations: Lawmaking Activities and Documentation, by Jeanne Rehberg, *infra* p. 151, describes the UN structure and its documentation system. Examples of regional IGOs include the Organization of American States (OAS) and the Association of South East Asian Nations (ASEAN).

18. James R. Fox, *Dictionary of International & Comparative Law* 2d ed. (Dobbs Ferry, NY: Oceana, 1997), at 159.

19. Rudolf L. Bindschedler, "International Organizations, General Aspects," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, consolidated ed., vol. 2 (Amsterdam: North-Holland, 1995), at 1289 (defining "international organization" in the sense of "intergovernmental organization").

There also are *supraregional* or *supranational* (governmental) organizations, most notably the European Union. The structure of a supraregional organization combines states and supranational organs so that the whole has power to promulgate rules that directly bind the states and individuals within the state. In the case of the EU, the Council of Ministers consists of members representing the various national governments. The Commission is composed of persons not subject to the instructions of the state governments, and the Parliament consists of individuals elected by general and popular elections who are also not subject to government instructions.²⁰ Chapter Eight, "European Union: Basic Legal Sources," by Marylin J. Raisch, *infra* p. 187, describes the legislative process in the EU and the resulting documentation.

Finally, there are *non-governmental organizations* (NGOs), which are "private organizations (associations, federations, unions, institutes, groups) not established by a government or by intergovernmental agreement." Examples include the World Council of Churches and the International Chamber of Commerce. NGOs may have formal arrangements with IGOs, such as the UN, to observe meetings, provide expert advice, represent public views, or propose agenda items.²¹

VI. Sources for Further Reading

- Archer, Clive. *International Organizations*. 2d ed. London: Routledge, 1992.
- Buergenthal, Thomas. *Public International Law in a Nutshell*. 2d ed. St. Paul, MN: West, 1990.
- Contemporary Practice of Public International Law*. Ed. Ellen G. Schaffer & Randall J. Snyder. Sponsored by the American Association of Law Libraries. New York, NY: Oceana, 1997.
- Dixon, Martin. *Textbook on International Law*. 3d ed. London: Blackstone, 1996.

20. *Id.* at 1295–97.

21. Hermann H. K. Rechenberg, "Non-Governmental Organizations," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, vol. 9 (Amsterdam: North-Holland, 1986), at 276–80.

- Encyclopedia of Public International Law*. Ed. Rudolf Bernhardt. Amsterdam: North Holland. Twelve-volume original ed., 1981–90. Consolidated ed., 1992– .
- Germain, Claire M. *Germain's Transnational Law Research: A Guide for Attorneys*. Ardsley-on-Hudson, NY: Transnational Juris Publications, Inc., 1991– .
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- Janis, Mark W. *An Introduction to International Law*. 2d ed. Boston, MA: Little Brown, 1993.
- Menon, P.K. *The Law of Treaties between States and International Organizations*. Lewiston, NY: Edwin Mellen Press, 1992.
- Reuter, Paul. *Introduction to the Law of Treaties*. 2d rev. ed. London: Pinter Publishers, 1989.

Chapter
Six

Finding Treaties and Other International Agreements¹

by *JEANNE REHBERG*

This chapter first describes the “vital statistics” of treaties in the context of the search for a treaty text. Following that introduction are charts of selected full-text sources, finding tools, and updating tools for finding U.S., multilateral, and selected bilateral and regional treaties. The chapter concludes with descriptions of the sources in the charts and suggested strategies for some typical research questions.

1. Why Look for Treaties in the First Place?

If a treaty, convention, or other international agreement might be relevant to a matter of international law or a transnational legal transaction, then research into the controlling law must begin with the text of that treaty, convention, or agreement. As noted in Chapter Five, “Introduction to International Law,” by Thomas H.

1. © 1998 Jeanne Rehberg. This chapter is based upon a guide compiled by Radu D. Popa.

Reynolds, *supra* p. 113, article 38 of the Statute of the International Court of Justice, which contains the classic modern statement of the sources of international law, gives first place to "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states."

II. The "Vital Statistics" of Treaties and the Search for a Treaty Text

Treaty research has both a micro and a macro level. On the micro level, the researcher, and the information specialist who may assist the researcher in the library, know that they are looking for a treaty text, even if they must work from the sometimes limited or ambiguous information that they have about the treaty. An understanding of the basic characteristics of published treaties will help on the micro level because most of the "vital statistics" of treaties translate into significant research and bibliographic retrieval issues.

On the macro level, the researcher and the information specialist may not realize at first that the researcher needs to look for a treaty. The research strategy in this case is really no different from research into any unfamiliar legal topic: begin with background reading.

If the researcher does not ask specifically for a treaty, then the information specialist will first try to evaluate the sophistication of the researcher. It may appear that the researcher is sophisticated in legal research, or in international or transnational law particularly ("My U.S. tax client has income from a business in Canada." "My client has a plant in Mexico."), for example, and this may be confirmed upon further discussion. Then the information specialist might assume that the researcher knows enough to research the existence of a relevant treaty, or might ask the researcher if he or she has considered the possibility. The threshold of required knowledge is the ability to recognize an international or transnational law issue and to know which areas of law might be governed by treaties. Lacking this, background reading is probably advisable for both the researcher and the information specialist.

If the researcher is unsophisticated in legal research (for example, an art history graduate student writing a paper on the treatment of stolen cultural property under international law), then the information

specialist would be wise to point the researcher to background reading that itself may cite relevant international agreements. Needless to say, assisting an inexperienced legal researcher in the highly specialized area of international law implies the same issues and limitations as assisting any inexperienced legal researcher. The needs and expectations of the graduate student may be vastly different from those of the lay person, or from those of the attorney who has a real client but no experience whatsoever with international law.

Before reviewing the vital statistics of treaties, a word about terminology is in order.² Many terms are used in English to refer to international agreements—treaty, agreement, act, convention, arrangement, pact, covenant, declaration, accord, charter, guidelines, protocol, final act, principles. The use of one term instead of another does not necessarily carry any legal weight. Very generally speaking, “treaties” tend to be face-to-face agreements of a contractual nature between nations. “Conventions” tend to be multilateral. “Declarations” and “principles” tend to express “soft law,” or the non-binding intent to follow certain guidelines or customs of conduct. For convenience, this chapter uses the term “treaty.”

On the other hand, the use of a particular term may be significant to the process of legal research. Under U.S. law, for example, “treaties” (as contrasted with other types of agreements) can be ratified only after receiving the advice and consent of two-thirds of the Senate. Congressional action implies the existence of congressional documents that may contain the text of the treaty and supporting legislative history. To take another example, before the advent of publications such as *International Legal Materials* (Washington, DC: American Society of International Law, 1962–) and Internet sites for international organizations, soft law

2. This discussion of treaty characteristics is based upon the Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331; “Notes for the Reader,” in *Multilateral Treaties: Index and Current Status*, comp. & annot. M. J. Bowman & D. J. Harris (London: Butterworths, 1984–); Robert L. Bledsoe & Boleslaw A. Boczek, “Treaties,” ch. 9 in *The International Law Dictionary* (Santa Barbara, CA: ABC-CLIO, 1987); Mark W. Janis, “Treaties,” ch. 2 in *An Introduction to International Law* (2d ed. Boston, MA: Little Brown, 1993); and Frederic L. Kirgis, “International Agreements and U.S. Law,” *ASIL Insight* No. 17 (Washington, DC: American Society of International Law, 1997) (hereinafter Kirgis).

documents such as guidelines and protocols were somewhat more difficult to locate than treaties. If they were not published in standard treaty collections, the best place to look for them was in a treatise or a collection of documents related to a particular area of international law.

One overriding trait of treaties is that they tend to change over time (they enter into force, new parties accede to the treaty, parties denounce the treaty, the treaty may terminate), making it essential that the researcher look for the most current information that is available. In general, treaties also share the traits described below.

A. Negotiation

Travaux préparatoires, memoranda of understanding, exchange of letters, and other documents may result from treaty negotiation. In the case of major treaties such as the NAFTA, there may exist a compilation of documents from the negotiation.⁵ Researching the negotiation of a treaty may also be easier if the treaty was negotiated under the auspices of an international organization that systematically distributes some of its working documents, such as the United Nations. (The same is true for the ongoing implementation of a treaty that will be the subject of periodic conferences and judicial interpretation, such as the United Nations Convention on the Law of the Sea.) In other cases, these documents may be much more elusive.

B. Adoption

Adoption generally refers to the conclusion of the negotiation process at which time the text of the treaty is fixed. The place where and date when a treaty was concluded can be significant to treaty research. Because the place may figure in the name (or popular name) of the treaty, as in the Treaty of Rome, treaty finding tools may index the place of conclusion in subject and keyword indexes. The phrase "done at" also refers to the place of conclusion. The date

5. See, e.g., *The North American Free Trade Agreement (NAFTA): Documents and Materials including a Legislative History of the North American Free Trade Implementation Act, Public Law 105-182*, by Bernard D. Reams Jr. & Jon S. Schultz (Buffalo, NY: William S. Hein & Co., 1994).

of adoption is not necessarily the date of signature nor the date of entry into force. The date of adoption may be necessary to distinguish two treaties with similar names. It often is used in chronological lists of treaties and can dictate a choice among treaty research tools that cover different time periods.

C. Authentic Text

Authentic text is the only authoritative source for treaty interpretation, for example, in the case of a dispute between the parties. The text may be designated authentic in more than one language. Especially for bilateral treaties involving non-English-speaking countries, the information specialist must know what languages the researcher can read, and the researcher must not expect that an American law library will have English translations of all treaties.

D. Name

The cited name of a treaty is generally a shortened form of a longer title. If this is the only information that the researcher has, then subject or keyword searching (or an index of names, if available) must be used.

E. Signature

The official representatives of the negotiating parties affix their signatures to express the intent of the parties to be bound, or to be bound subject to any required ratification or other acceptance process. If the treaty is not subject to a subsequent event such as ratification, then the signature expresses the definitive consent of a party to be bound. If subsequent requirements must be met (e.g., ratification with the advice and consent of two-thirds of the U.S. Senate), then the signatory is not yet bound. Furthermore, the treaty might not enter into force until a specified number of parties have ratified. Thus, the fact of signature is not necessarily synonymous with the entry into force of the treaty as a whole or for that signatory.

F. Ratification

Ratification is the act whereby a party establishes its definitive consent to be bound by a treaty. Ratification is indispensable for a party whenever the treaty itself or the negotiating states otherwise require ratification. How a state party ratifies depends upon the domestic law of treaties.⁴ The process of ratification may result in documents that are useful for researching the negotiating history, the purpose, and the intended interpretation of the treaty.

G. Parties

Parties are the sovereign powers (states or other subjects of international law) that have accepted to be bound by the treaty by signature, ratification, or other required act. The date often given with each party's name may be the date when the party accepted to be bound, not necessarily the date when the treaty entered into force for that party. A party may accept to be bound before the treaty enters into force, or a party may accede to the treaty after it enters into force. See also section J. Entry into Force or Effective Date, *infra* p. 129.

H. Accession

Accession is the formal acceptance of a treaty by a state not involved in the original negotiation and conclusion of the treaty. Accession is possible only if the treaty provides that it is "open to" later accessions.

I. Reservations and Declarations

When it signs, ratifies, accepts, or accedes to a treaty, a state may make a unilateral reservation to exclude or to alter the legal effect of certain provisions with regard to that state. Reservations (and

4. For the U.S. process, see, e.g., Erwin C. Surrency, "How the United States Perfects an International Agreement," 85 L. Libr. J. (1993), 345; and "Treaties and Other International Agreements: The Role of the U.S. Senate," prepared by the Congressional Research Service, Library of Congress, for the Senate Foreign Relations Committee, 103d Cong., S. Prt. 103-53 (1993).

declarations, in which a state sets forth policy that it will follow in applying the treaty) are not necessarily printed along with the full text of the treaty.

J. Entry into Force or Effective Date

Entry into force or effective date refers to the point in time at which a treaty becomes binding upon the parties and can be enforced against them under international law.⁵ At that time, rights and obligations under the treaty go into effect. The rule for determining the date of entry into force for the treaty will be specified in the treaty or by applying the general law of treaties set forth in the 1969 Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331. A contracting party may accept to be bound by a treaty before the treaty has entered into force, and multilateral treaties usually specify that a certain number of ratifications or accessions must occur before the treaty comes into force. The treaty should also specify what rules apply to determine the date of entry into force for a party that accedes after the treaty has come into force. The question may also arise whether new states that have succeeded to earlier states also become parties to the treaty. Basic treaty finding tools alone will not answer all of these questions; in many cases, the researcher must consult the text of the treaty for specific rules, and the research could also lead to the general law of treaties as interpreted in other sources of international law.

K. Territorial Scope

Territorial scope refers to the geographical applicability of the treaty.

L. Registration or Deposit

Registration is the public recording of treaties, instruments of ratification, and other information about changes in the status of treaties, such as new parties and entry into force. Members of an international organization may be required to register with that

5. The question of whether a treaty will be given effect as domestic law raises its own particular issues. See, e.g., Kirgis, *supra* note 2, at 2-3.

organization all new treaties that they enter into. Article 102 of the UN Charter imposes such a requirement. The *depositary* of a treaty holds custody of the original text and performs a recording function that is dependent upon the reporting of information by the signatories and parties. For some conventions, a separate *secretariat* may be established. Knowing where the treaty is registered or deposited may determine which treaty sources to consult or where to request information that cannot be found in the library.

M. Protocol

Protocol may be synonymous with “treaty” or “agreement.” If not, then it is a supplemental document to a convention that is drawn up by the same negotiators, explaining or interpreting the provisions of the convention. Indexes and finding tools may list the protocol separately from the original treaty.

N. Amendment

If all parties adopt a change in the treaty by consent and intend to be bound by the change, then the change becomes an amendment. The parties may amend individual provisions or revise the entire treaty. Amendment may be done by an international organization or by later treaty, protocol, or other instrument that may or may not require acceptance by the parties to the original treaty. Depending upon which process is used, the amendment could be listed as a separate treaty in treaty finding tools.

O. Duration

Duration relates to the termination of a treaty.

P. Denunciation

Denunciation is a declaration by a party that it no longer recognizes the treaty as binding. Unless the treaty contains a clause providing for unilateral termination, all parties must agree to the denunciation before it is effective.

Q. Termination

Termination is the end of the operation of a treaty. All parties are deprived of the rights and relieved of the obligations under the treaty. Most treaties specify the duration of the treaty or the date upon which or condition whereby the treaty will terminate.

R. Location

Location, as used in Bowman and Harris, *Multilateral Treaties: Index and Current Status*, is the published source of the full text of a treaty. Choosing a treaty source depends upon what information the researcher knows and what the library owns or can access in a timely fashion. Treaty publications vary by scope, arrangement, indexing, and timeliness, and fall into the categories described below. (Examples are taken from the charts and descriptions of selected treaty sources that appear in this chapter.)

1. Traditional Paper and Microform Sources

(a) **Individual treaties** tend to be slow in publication and have little or no indexing. Examples include slip treaties, or pamphlet publications of individual treaties (TIAS); national/official gazettes, which also may contain the full text but in the vernacular language; and other official notices of treaty ratification, which may not contain the full text (U.S. Department of State *Dispatch*).

(b) **Compilations of treaties** often contain indexes by subject, party, and date, but tend to be very slow in publication. Examples include national treaty series (UST, UKTS, BFSP); regional or supranational treaty series (OJ, EU, ETS); and multilateral/international compilations (UNTS, LNTS, CTS/PARRY).

Both national and regional/supranational treaty series may contain bilateral and multilateral treaties in force for the country or IGO or IGO member state. Bilateral treaties often are arranged by country then by subject. Multilateral treaties usually are arranged by subject or chronologically.

(c) **Commercial versus official treaty sources.** As in other areas of legal research, treaty researchers will most often benefit from unofficial,

commercial sources because they are more timely and contain more useful indexing. Examples include Hein, ILM, CTS/PARRY.

Special subject compilations include:

Basic Documents of International Economic Law. Ed. Stephen Zamora and Ronald A. Brand. Chicago, IL: CCH, 1990.

Documents in International Environmental Law. Vols. IIA and IIB in *Principles of International Environmental Law*. Ed. Philippe Sands, Richard Tarasofsky & Mary Weiss. Manchester: Manchester University Press, 1994.

Extradition Laws and Treaties: United States. Comp. I. I. Kavass & A. Sprudz. Buffalo, NY: William S. Hein & Co., 1979- .

Netherlands International Law Review. Dordrecht: Martinus Nijhoff, 1975- . Contains annual status report on the Hague Conventions on Private International Law.

Serials that follow treaty developments include ILM and *Yearbook of the United Nations* (The Hague: Martinus Nijhoff, 1947-).

2. Electronic Sources

Electronic treaty sources are increasing in number. Examples include USTREATIES in WESTLAW, the CIESIN Environmental Treaties and Resource Indicators (ENTRI) maintained by the Consortium for International Earth Science Information Network at <<http://sedac.ciesin.org/entri/>>, the United Nations Treaty Collection at <<http://www.un.org/Depts/Treaty/>>, and the Australian Treaties Library at <<http://www.austlii.edu.au/dfat/treaties/>>.

III. Charts of Selected Treaty Sources⁶

These charts are divided between treaties to which the United States is probably a party and treaties to which the U.S. might not be a party (multilateral, bilateral and regional/supranational organizations, special subject), and then by date range. Not every source listed in a category includes all treaties in that category.

6. To choose the most appropriate treaty source, it is necessary to read these charts in conjunction with section IV. Description of Selected Treaty Sources, *infra* p. 137.

A. If the United States Is a Party

Date	Full-text Sources	Finding Tools*	Updating Tools**
Treaty signed but awaiting Senate advice and consent	USTREATIES (WESTLAW S. Treaty Doc. 1993/94-) S. Treaty Doc. 1981/82- and earlier titles	USTREATIES (WESTLAW) CCH 1937/38- MOCAT 1895- CIS 1789- LEG-CAL 1979- Senate Journal 1828-	USTREATIES (WESTLAW) CCH 1937/38- Pres. 1965- Dispatch 1939- LEG-CAL 1979- Senate Journal 1828- US-DOS
New treaty or executive agreement in force	USTREATIES (WESTLAW TIAS 6/18/79- and S. Treaty Doc. 1993/94-) S. Treaty Doc. 1981/82- and earlier titles CTIA 1990- TIAS 1950- UST 1950- Hein	USTREATIES (WESTLAW) TIF 1955- Guide 1982- KAV 1776- MOCAT 1895-	USTREATIES (WESTLAW) Dispatch 1939- TIF 1955- Guide 1982- KAV 1776- CCH 1937/38- Pres. 1965- LEG-CAL 1979- Senate Journal 1828- Shepard's US-DOS
* Finding Tools are in addition to any indexes contained in the full-text sources. ** For current status, use the latest issue of the Updating Tools.			

Date	Full-text Sources	Finding Tools*	Updating Tools**
Older treaty or agreement still in force or previously in force	USTREATIES (WESTLAW TIAS 6/18/79 and S. Treaty Doc. 1993/94-) TIAS 1950- UST 1950- Stat. 1778-1950 Hein Bevans 1776-1949	USTREATIES (WESTLAW) TIF 1955- Guide 1982- KAV 1776- MOCAT 1895-	USTREATIES (WESTLAW) TIF 1955- Dispatch 1939- Guide 1982- KAV 1776- Shepard's US-DOS

* Finding Tools are in addition to any indexes contained in the full-text sources.

** For current status, use the latest issue of the Updating Tools.

B. If the United States Might Not Be a Party

	Date	Full-text Sources	Finding Tools*	Updating Tools**
<i>Multilateral:</i> UN is (or League of Nations was) depositary	10/24/45-	UNTS 1945- ILM 1962-	UN-Multi. 12/31/67- BH 1868- World 1900-1980	UN-Multi. 12/31/67- BH 1868- ILM 1962- UN
<i>Multilateral:</i> Filed or registered with UN	1945-	UNTS 1945- ILM 1962-	UN-Stat. 1946/47- UN-Multi. 12/31/67- BH 1868- World 1900-1980	UN-Stat. 1946/47- BH 1868- ILM 1962- UN

* Finding Tools are in addition to any indexes contained in the full-text sources.

** For current status, use the latest issue of the Updating Tools.

	Date	Full-text Sources	Finding Tools*	Updating Tools**
<i>Multilateral:</i> Members of League of Nations	1920-45	LNTS 1920-45	BH 1868- UN-Multi. (if treaty now within UN custody) 12/31/67- World 1900-1980	BH 1868- UN-Multi. (if treaty now within UN custody) 12/31/67-
<i>Multilateral,</i> generally:		CTS/PARRY 1648-1919 ILM 1962- Also consult national treaty sources cover- ing states that may be parties to the multi- lateral treaty.	CTS Index 1648-1919 BH 1868- World 1900-1980	BH 1868- ILM 1962-
* Finding Tools are in addition to any indexes contained in the full-text sources. ** For current status, use the latest issue of the Updating Tools.				

	Date	Full-text Sources	Finding Tools*	Updating Tools**
<i>Bilateral, generally:</i>		CTS/PARRY 1648–1919 National treaty series, national gazettes, etc. by country. Check library catalogs, guides to foreign law, and Internet, e.g., BFSP 1812–1968, UKTS 1891– . AUSTLII LNTS 1920–45 UNTS 1945–	CTS Index 1648–1919 World 1900–1980 National treaty series, national gazettes, etc. by country. Check library catalogs, guides to foreign law, and Internet, e.g., IBT 1101–1988. AUSTLII UN-Stat. 1946/47– TIF (if United States was the other party) 1955–	National treaty series, national gazettes, etc. by country. Check library catalogs, guides to foreign law, and Internet, e.g., UKTS, 1891– . AUSTLII UN-Stat. 1946/47– TIF (if United States was the other party) 1955–
<i>Regional & Supra-National Organizations:</i> Examples:				
Council of Europe	1949–	ETS 1949–	Chart 1949–	Chart 1949–
* Finding Tools are in addition to any indexes contained in the full-text sources. ** For current status, use the latest issue of the Updating Tools.				

	Date	Full-text Sources	Finding Tools*	Updating Tools**
European Union, European Communities	Founding Treaties	EU OJ 1957– ENCY-B	OJ 1957– Guides and current development tools for EU Dir.	OJ 1957– Guides and current development tools for EU
	Treaties with non-EU states	OJ 1957– ENCY-B	Dir.	Dir.
Special Subject Treaties	Check library catalogs, online databases and Internet sites for compilations of treaties, books of basic documents, and journals that follow developments in the field.			
*Finding Tools are in addition to any indexes contained in the full-text sources. **For current status, use the latest issue of the Updating Tools.				

IV. Description of Selected Treaty Sources

Sources are listed alphabetically by the abbreviations used in the charts above.

AUSTLII—Treaty Library/Index <<http://www.austlii.edu.au/dfat/treaties/>>. Covers treaties from 1960 to present. This database, which contains full-text treaties and an online update of the *Australian Treaty List*, is perhaps the best example to date of a national treaty source on the Internet. The site is maintained by the Australasian Legal Information Institute of the Faculties of Law at the University of New South Wales and the University of Technology, Sydney, from data provided by the Australian Department of Foreign Affairs and Trade.

Bevans—*Treaties and Other International Agreements of the United States of America 1776–1949*. Comp. Charles I. Bevans. Washington, DC: U.S. Department of State, 1968–1976. Covers the time period before *Treaties and Other International Acts Series*

- (TIAS) and *United States Treaties and Other International Agreements* (UST), but *United States Statutes at Large* (Stat.) is the official source for this period. Contains the English text or official English translation. Annotations give historical information for the most significant treaties. Index in volume 13. Supersedes two other compilations, *Treaties and Other International Acts of the United States of America*, ed. Hunter Miller (Washington, DC: U.S. Department of State, 1931–48); and *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States of America and Other Powers*, comp. William M. Malloy (Washington, DC: G.P.O., 1910–38).
- BFSP—*British and Foreign State Papers*. London: James Ridgway and Sons, 1841–1977. Microfilm: Dobbs Ferry, NY: TransMedia, Oceana Group, 1982. 170 vols. covering 1812–1968. Compiles not only British treaties and documents of foreign relations, but also a number of bilateral treaties involving other nations. See also IBT.
- BH—*Multilateral Treaties: Index and Current Status*. Comp. and annot. M. J. Bowman and D. J. Harris. Nottingham: University of Nottingham Treaty Centre, 1984–. Covers 1868–. Not exhaustive, but very broad coverage. Indicates location (published source of full text), parties, signatories, and reservations, and provides a brief summary of the treaty if the subject is not evident from the title. Annual supplement is in two sections: a list of new treaties (with full information), and a list of updating information for the treaties listed in the main volume.
- CCH—*Congressional Index*. Chicago, IL: Commerce Clearing House, 1937/38–. Covers 75th Congress–. The Senate volume tracks all pending S. Treaty Doc. and cites any hearings and Senate Executive Reports.
- Chart—*Chart Showing Signatures and Ratifications of Conventions and Agreements Concluded within the Council of Europe*. Strasbourg: Council of Europe, Publications and Documents Division, 1988–. Covers 1949–. Status information on the treaties in ETS.

- CIS—*CIS/Index to Publications of the United States Congress*. Bethesda, MD: Congressional Information Service, 1970– . Also available on CD-ROM, and online as *CIS Compass*, 1997– . Indexes S. Treaty Doc., hearings, and Senate Executive Reports, which are reproduced in full text in the CIS microfiche set of U.S. congressional materials. CIS coverage begins with 1970 (check with vendor for scope of online coverage). Earlier indexes published by CIS cover congressional hearings on treaties from 1789– . For earlier executive documents and reports, use *CIS Index to U.S. Senate Executive Documents and Reports Covering Documents and Reports Not Printed in the U.S. Serial Set, 1817–1969* (Washington, DC: CIS, 1987).
- CTIA—*Consolidated Treaties & International Agreements. Current Document Service: United States*. Ed. Erwin C. Surrency. Dobbs Ferry, NY: Oceana, 1990– . Includes treaties and agreements within 180 days of deposit with the Senate. These documents are so current that TIAS numbers have not yet been assigned; therefore the editors list them by DOS (Department of State internal) numbers and CTIA numbers. Includes country index, list of multilateral agreements, topic index, and list of treaties cited in subsequent treaties. Covers treaties since 1990, DOS No. 90-1.
- CTS/PARRY—*Consolidated Treaty Series*. Ed. Clive Parry. Dobbs Ferry, NY: Oceana, 1969–1981. Includes the texts of world treaties, bilateral or multilateral, from 1648–1919, in their original languages in addition to any existing translations in English or French. Use with the CTS Index.
- CTS Index—*Index-Guide to Treaties: Based on the Consolidated Treaty Series*. Ed. and annot. Clive Parry. Dobbs Ferry, NY: Oceana, 1979–1986. Excellent tool to access the CTS/PARRY. Seven volumes of chronological lists and a five-volume party index.
- Dir.—*Directory of Community Legislation in Force and Other Acts of the Community Institutions*. Brussels: Office for Official Publications of the European Communities, 1984– . This list of EC legislation in force includes agreements concluded by the EC in connection with external relations. Provides citation to text in the *OJ*. Volume 1 has full information on legislation arranged

under broad subjects. Volume 2 contains chronological and alphabetical indexes.

Dispatch—*U.S. Department of State Dispatch*. Washington, DC: G.P.O., 1990–. Formerly *Department of State Bulletin*, 1939–89. Contains a periodic column, “Treaty Actions,” that gives status of bilateral and multilateral treaties of the United States, including official statement that treaty has entered into force. Also may include notices and commentary on Department of State activities such as negotiation and signing of treaties. Also available at <<http://www.state.gov/www/publications/dispatch/index.html>>.

ENCY-B—*Encyclopedia of European Community Law, Series B*. London: Sweet & Maxwell, 1973–1993. Series B of this very useful encyclopedia includes the text of the founding treaties and some treaties with non-EU states. Updating of *Series B* ceased in 1993, but the publisher is now issuing a new looseleaf entitled *Encyclopedia of European Union Law*. Part I of the new title is entitled *Constitutional Texts* (5 vols., Sweet & Maxwell, 1996–). It includes the text of the founding and accession treaties, association agreements with various nations, and basic documents of EU institutions. Also see LEXIS-NEXIS (INTLAW library; ECTY file).

ETS—*European Treaty Series*. Strasbourg: Council of Europe, 1971–. Covers 1949–. Official source of treaties concluded within the Council of Europe and opened for signature by member states. These separately numbered pamphlets are periodically compiled in order by ETS number and appear in bound form as *European Conventions/Agreements* (Strasbourg: Council of Europe, 1971–). Each bound compilation contains the full text of reservations and declarations and an updated status table covering all the treaties. For additional status information, use the *Chart Showing Signatures and Ratifications*

EU—*Treaties Establishing the European Communities*. Luxembourg: Office for Official Publications of the European Communities, 1987. Volume 1: Treaties establishing the EC, treaties amending these treaties, Single European Act, resolutions and declarations. Volume 2: Documents concerning the

accessions to the EC of Denmark, Ireland and the UK, Greece, Spain, and Portugal. Also available in an abridged one-volume edition, *Treaties Establishing the European Communities (ECSC, EEC, EAEC): Single European Act, Other Basic Instruments* (Luxembourg, 1987). See also LEXIS-NEXIS (INTLAW library; ECTY file).

Guide—*A Guide to the United States Treaties in Force*. Comp. Igor I. Kavass. Buffalo, NY: William S. Hein & Co., 1982– . Use this annual publication along with TIF (*Treaties in Force*) because it adds the indexing that is missing from that official index. The *Guide* is issued in three parts: Part I contains not only the full entries with citations to published texts of treaties, but also a numerical list (by TIAS and KAV numbers) of all the bilateral and multilateral treaties listed in the latest TIF; a numerical list of treaties that went out of force between the previous TIF and the latest one; a numerical list of treaties that are in the latest TIF but not in the previous one; and a numerical list of all treaties that entered into force after the date on the latest TIF. Part II has lists by country and subject. Part III has a chronological list of multilateral treaties and a list of treaties by country and international organizations. The full entries in Part I indicate those treaties reproduced in full text in the Hein microfiche service. The *Guide* is supplemented by the regular *Guide to United States Treaties in Force: Current Treaty Action Supplement*, which gives information about treaty developments after the cutoff of the latest TIF.

Hein—*Hein's United States Treaties and Other International Agreements: Current Microfiche Service*. Comp. Igor I. Kavass and Adolf Sprudz. Buffalo, NY: William S. Hein & Co., 1990– . Full text of U.S. treaties. Bimonthly updating. Very useful for recent treaties and also for older treaties (plans are for the set to include all U.S. treaties from 1776 to date). Arranged by KAV number. Companion sources KAV and Guide indicate which treaties are in the microfiche set.

IBT—*Index of British Treaties*. Volumes 1–3 comp. and annot. Clive Parry and Charity Hopkins. London: H.M.S.O., 1970. Volume 4 comp. and annot. D. J. Harris and J. A. Shepherd, 1991. Covers

1101 to 1988. This index in four volumes covers all the British multilateral treaties (indexed by subject) and bilateral treaties (indexed by country and by subject). Volume 1 indexes the treaties from 1101 to 1968, and volumes 2 and 3 contain a chronological list and full information on those treaties. Volume 4 updates the treaties in volumes 1–3 and adds new treaties from 1969 to 1988, excluding European Communities treaties.

ILM—*International Legal Materials*. Washington, DC: American Society of International Law, 1962– . This excellent bimonthly publication provides the texts of selected current treaties, draft treaties and other documents of international law. Annual index. Also contains a section reporting recent treaty actions. (For years before 1962, check the documents supplements that were published with the issues of the *American Journal of International Law*.) Documents from ILM are also available online in WESTLAW (ILM). Treaties and agreements and the recent treaty action section from ILM are available in LEXIS-NEXIS (INTLAW library; ILMTY file).

KAV—*United States Treaty Index: 1776–1990 Consolidation*. Ed. I. Kavass. Buffalo, NY: William S. Hein & Co., 1991– . With periodic bound revisions and supplements and the annual *Current Treaty Index* (two-volume supplement), this set covers treaties since 1990. This is a bound, cumulative edition that incorporates and expands five older indexes. Includes treaty number, subject, country, short title, description, signing date, source(s), amending and extending information, in force information, and legislative histories. Indicates which treaties are in the full-text Hein microfiche set. If official TIAS number is not yet available, the editors assign KAV numbers to the treaty texts, and these same KAV numbers are used in the *Guide*.

LEG-CAL—*Legislative Calendar (Cumulative Record)*. U.S. Congress. Senate Committee on Foreign Relations, 1979– . Includes complete status tables on treaties pending in the U.S. Senate and list of Senate Executive Reports. One cumulative issue per each congressional session, cumulated at the end of the Congress.

LNTS—*League of Nations Treaty Series*. London: Harrison & Sons, 1920–46. 205 vols. Official publication of treaties

entered into by any member of the League of Nations from 1920–1945 in original languages plus French and English translations. Periodic cumulative indexes cover all 205 volumes.

MOCAT—*Monthly Catalog of United States Government Publications*. Washington, DC: G.P.O., 1895– . Covers 54th Congress– . Indexes S. Treaty Doc., hearings, Senate Executive Reports, and new treaties published as TIAS. Also available on CD-ROM and online through various suppliers.

OJ—*Official Journal of the European Communities*. Luxembourg: Office for Official Publications of the European Communities, 1957– . Also in LEXIS-NEXIS (ECLAW or ECTY). Treaties between the EC and non-EC countries are published in the *Official Journal, L Series*, after deposit of the instrument of ratification. They are also published in *Collection of the Agreements Concluded by the European Communities* (Luxembourg, 1977–) (twelve volumes to date covering through 1982).

Pres.—*Weekly Compilation of Presidential Documents*. Washington, DC: Office of the Federal Register, 1965– . Includes statements, proclamations (announcing the ratification of a treaty), and executive orders.

S. Treaty Doc.—*Senate Treaty Documents*. United States Senate, Committee on Foreign Relations, 1981– . Also available in CIS and in USTREATIES (WESTLAW). Covers 97th Congress (1981/82–). After the negotiation and signing of a new treaty requiring Senate advice and consent, the president sends the text of the treaty to Congress, usually accompanied by a supporting report from the Department of State. The treaty is placed on the calendar of the Senate Committee on Foreign Relations and the president's transmittal is printed as an official *Senate Treaty Document* (numbered consecutively through a Congress, e.g., S. Treaty Doc. 104-25). The treaty document is the first widely available official source of the treaty text. Continues earlier series, including *Senate Executive Documents*. The process of Senate advice and consent may also result in congressional hearings and Senate Executive Reports. For finding tools and status, use CIS, USTREATIES, MOCAT, and CCH.

- Senate Journal—*Journal of the Executive Proceedings of the Senate*. Washington, DC: G.P.O., 1828– . Official record of parliamentary proceedings of executive sessions, including votes on treaties, status table for treaties received during a session, list of Senate Executive Reports, and status table on treaties from other sessions. One volume per session of Congress.
- Shepard's—*Shepard's United States Citations: Statutes*. 7th ed. Colorado Springs, CO: Shepard's Citations, 1986– . Use *Shepard's* to find court decisions that cite treaties, statutes that affect treaties, and later treaties that amend earlier treaties. Treaties published in the UST volumes can be shepardized by volume and page. Treaties published in Stat. until 1950 can be shepardized by the date of the treaty.
- Stat.—*United States Statutes at Large*. Washington, DC: G.P.O., 1789– . Official source for U.S. treaties from 1778 to 1950. For the years 1778–1845 all treaties are found in volumes 7 and 8. After 1845, treaties are included in parts 2 or 3. Volume 64, part 3 (pages B1107–B1182) has a cumulative list of treaties contained in volumes 1–64, arranged alphabetically by country and topic.
- TIAS—*Treaties and Other International Acts Series*. Washington, DC: U.S. Department of State, 1945– . Official source for all U.S. treaties and agreements after January 1, 1950. Dates of signature, ratification, and implementation, and text in official language(s) are included. These individual treaty pamphlets, which began with TIAS 1501, are later cumulated into UST in order by TIAS number. TIAS tends to be at least two to three years behind the date when the treaty was concluded. Use TIF, Guide, and KAV for citations to TIAS and status of treaties in force.
- TIF—*Treaties in Force: A List of Treaties and Other International Agreements in Force on January 1 [year]*. Washington, DC: G.P.O., 1955– . Annual. Official source for verifying the status of U.S. treaties currently in force. Part one lists bilateral treaties by country (then by subject) and part two lists multilateral treaties by subject. Citation to official published text in TIAS and UST. For treaty developments between the annual

revisions, use the U.S. Department of State *Dispatch*, CCH, CTIA, KAV, Guide, and USTREATIES.

UKTS or TS—*United Kingdom Treaty Series*. London: HMSO, 1892–. Official source of United Kingdom treaties from 1891 to present. Annual and cumulative indexes.

UN—*United Nations Treaty Section*. Room 3200 United Nations Secretariat. New York, NY 10017. Tel. (212) 963-7958. Should be called only after exhausting all library resources.

UN-Multi.—*Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December [year]*. New York: United Nations, 1982– (ST/LEG/SER.E/-). Covers 12/31/81– and continues *Multilateral Treaties in respect of which the Secretary-General Performs Depositary Functions*, 1968–80 (ST/LEG/SER.D/-), which covered 1967–79. May be used as an index for UNTS, the same way TIF is used for American treaties. For treaties deposited with the Secretary General, provides basic status information, citation to UN documents and other full-text sources, and full text of declarations and reservations. The paper UN-Multi. is published annually, but is not available in libraries until several months after the date in the title. A more frequently updated version is available from the United Nations Treaty Collection website on the Internet described *infra* under the UNTS entry.

UN-Stat.—*Statement of Treaties and Other International Agreements Registered or Filed and Recorded with the Secretariat During the Month of [month/year]*. New York, NY: United Nations, 1950–. Covers 1946/47–. This publication (meant to be issued as a monthly, but always very late) lists all agreements registered or filed with the UN Secretariat, whether or not included in the UNTS and UN-Multi.

UNTS—*United Nations Treaty Series*. New York, NY: United Nations, 1946–. Official source intended to contain every treaty, multilateral and bilateral, entered into by any member of the UN after the Charter came into force (October 24, 1945), in the original language(s) plus French and English translations. Use UN-Multi. for status of multilateral treaties in force. Periodic indexes. Volumes and indexes are always very late. As

of this writing, most volumes between 1 and 1448 were available at the United Nations Treaty Collection site on the Internet at <<http://www.un.org/Depts/Treaty/>>. The site requires registration and may be fee-based in the future. In 1996, William S. Hein & Co. began to issue the *United Nations Master Index on CD-ROM*, which is planned to be a comprehensive cumulative index to all treaties in UNTS. The first release covered volumes 1050–1053 of UNTS.

US-DOS—*Assistant Legal Adviser for Treaty Affairs*. U.S. Department of State Office of Treaty Affairs, Room 5420, 2201 C St., N.W., Washington, DC 20520. Tel. (202) 647-2044. Should be called only after exhausting all library resources.

UST—*United States Treaties and Other International Agreements*. Washington, DC: U.S. Department of State, 1950– . Annual official compilation of TIAS. Each volume has an index of countries and subjects. Treaties are in English and any other official languages. Publication lags many years behind. Use TIF, Guide, and KAV for citations to UST and status information.

USTREATIES (WESTLAW)—Full-text source covering all TIAS numbers from No. 10869 (June 18, 1979), S. Treaty Doc. from the 103d Congress (1993/94) to date, and U.S. Department of State documents from DOS90-1. For treaties in force, text is reproduced from TIAS or from the S. Treaty Doc. (If TIAS is not yet available, gives KAV number, which is the numbering system used in KAV.) For treaties not yet in force, gives S. Treaty Doc. For agreements not requiring Senate advice and consent, gives Dept. of State (DOS) numbers, which are also used in CTIA. Excellent source for very recent treaties and agreements. Search by words in text and by fields, including parties and signatories.

World—*World Treaty Index*. 2d ed. Ed. Peter H. Rohn. Santa Barbara, CA: ABC-CLIO Press, Inc., 1983–84. Multiple access points to multilateral and bilateral treaties from 1900 to 1980: keyword, parties, date, subject.

V. Suggested Strategies for Some Typical Research Questions

I need a copy of the law of the sea treaty. The “law of the sea treaty” probably refers to the 1982 United Nations Convention on the Law of the Sea. A basic reference tool in international law, such as *The Encyclopedia of the United Nations and International Agreements*, 2d ed., by Edmund Jan Osmanczyk (New York: Taylor & Francis, 1990), can provide background information. UN-Multi. (including the Internet version) lists this treaty and cites UN documents for the full text and related documents. To improve the chances of finding a copy of the treaty in a local library, search in BH, which cites ILM and *Basic Documents in International Law*, 3d ed., by Ian Brownlie (New York: Oxford University Press, 1983), both of which may be in law school libraries and larger general libraries that do not have UN collections.

When did the United States ratify the law of the sea treaty? TIF does not list the law of the sea treaty (search under “Maritime Matters” and “Fisheries” in the multilateral section). BH and UN-Multi., assuming your library has them, do not list the United States as a signatory or a party. The fall 1995 *Current Treaty Index* (supplement to KAV) lists the treaty under the subject “Law of the Sea,” assigns a KAV number, notes that the text is in ILM and the Hein microfiche, and provides the S. Treaty Doc. number (but no indication any further action).

Using the S. Treaty Doc. number cited in KAV, a search in CCH shows no developments in the Senate as of October 4, 1996. A review of the text of the S. Treaty Doc. in USTREATIES in WESTLAW shows that the president has asked the Senate for advice and consent for accession to the Law of the Sea Treaty, and for ratification of the Agreement Relating to the Implementation of Part XI of the Law of the Sea Treaty. The State Department, news services, and CCH and other congressional tracking services should announce any developments in subsequent Congresses. Additionally, a search for “law of the sea” in USTREATIES and in ALLNEWSPLUS (WESTLAW) shows that the United States has ratified the Agreement for the

Implementation of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. Thus, even though the United States has not yet ratified the UN Convention on the Law of the Sea, it is a party to a very significant related treaty.

If the researcher has access only to TIF, but not KAV, CCH, or WESTLAW, then the next step might be to search general newspapers and periodical literature for current developments related to the United States and the Law of the Sea treaty before contacting a library with an international law collection.

Did the law of the sea treaty apply to Costa Rica in 1987? Although Costa Rica signed the Law of the Sea treaty on December 10, 1982, it did not ratify it until September 21, 1992. This information is provided in both UN-Multi. and the latest supplement to BH. The research does not end there, however. Both UN-Multi. and BH note that the treaty as a whole did not enter into force until November 16, 1994. Costa Rica and other countries may have been following the guidelines of the treaty before it entered into force, but such an argument would require research into the custom and practice of international law by Costa Rica.

I think Costa Rica made some reservations or declarations to the law of the sea treaty, but they are not printed with the text of the treaty. The main volume of BH indicates with an asterisk that Costa Rica did indeed make reservations or other statements when it signed the treaty. Only UN-Multi. consistently prints the full text of reservations and declarations by signatories and parties to UN treaties.

I need to see all the treaties that France has signed related to telecommunications. Assuming the library does not have official sources of French law, the search could begin with BH (using the keyword "telecommunications"), UN-Multi. (chapter X on telecommunications), and World (covers only until 1980; use party or subject index) to see if France is listed as a party or signatory to any treaties on the subject. Because France is a member state of the European Union, however, the researcher should also be aware that there

could be EU treaties that bind France vis-à-vis non-EU countries, as well as EU legislation that operates among EU member states.

Where is your tax section? I'm researching an income tax question for a client who lives and works in Italy. This question may well involve more than the domestic tax law of the United States. TIF (in the bilateral section under Italy) lists a double taxation agreement between the United States and Italy. This treaty can also be identified using the CCH Tax Treaties looseleaf service (Chicago, IL: Commerce Clearing House, 1990–), USTREATIES (WESTLAW), and *International Tax Treaties of All Nations* by Walter H. Diamond and Dorothy B. Diamond (Dobbs Ferry, NY: Oceana, 1975–). Although basic research materials for domestic tax law might suggest the need for specialized research, identifying the relevant treaty and finding a copy of the text will probably require a referral to a library that specializes in international taxation. Chapter Ten, "International Taxation: Major Topics and a Bibliographic Guide," by Radu D. Popa, *infra* p. 231, also is important for this question because research in transnational tax law requires special sources and expertise.

I need a copy of the arbitration rules of the ICC. (Assume that you are unable to connect to the ICC Internet site). The ICC Rules of Arbitration, although they were negotiated by an international organization (the International Chamber of Commerce), are not necessarily indexed in the basic treaty indexes. In a law library that specializes in international business law, the Rules may be found in a looseleaf service such as *International Chamber of Commerce Arbitration* by W. Laurence Craig, William W. Park, & Jan Paulsson (Dobbs Ferry, NY: Oceana, 1984–). In a general library collection, the *Encyclopedia of Associations: International Organizations* (Detroit, MI: Gale, 1989–), might provide a lead. The entry for the ICC in the 37th edition (1997) lists the *ICC Handbook* as one of the ICC publications and gives the phone number and address of the UCC/UN Liaison Office in New York. *The Dictionary of International & Comparative Law*, 2d ed., a one-volume ready-reference work by James R. Fox (Dobbs Ferry, NY: Oceana, 1997), has an entry for the "International Chamber of Commerce Court of Arbitration" and a reference to 15 ILM 395, but this turns out to be the

text of the Rules only as of the 1975 revision. A search in WorldCat/FirstSearch reveals several records for the Rules in force as of January 1, 1998. Returning to ILM, the subject index to the 1997 volume, under "International Chamber of Commerce," refers to page 1604, where the rules are reproduced with a citation to the official ICC text, which also contains the latest Rules of Conciliation.

VI. Sources for Further Reading

The introduction or preface to a treaty index or collection of treaty texts not only will explain how to use it, but also may describe the process of treaty-making and treaty publication for the particular treaty-making jurisdiction or IGO.

- Bledsoe, Robert & Boleslaw A. Boczek. "Treaties." Chap. 9 in *The International Law Dictionary*. Santa Barbara: ABC-CLIO, 1987.
- Cohen, Morris C., Robert C. Berring & Kent C. Olson. "International Law." Chap. 15 in *How to Find the Law*. 9th ed. St. Paul: West, 1989.
- Janis, Mark. "Treaties." Chap. 2 in *An Introduction to International Law*. 2d ed. Boston, MA: Little Brown, 1993.
- Kavass, Igor. "Treaty Research Guide" (Aug. 7, 1996). File on the CD-ROM *Hein's U.S. Treaty Index*. Buffalo, NY: William S. Hein.
- Reuter, Paul. *Introduction to the Law of Treaties*. 2d rev. ed. London: Pinter Publications, 1989.
- Surrency, Erwin C. "Is a Universal Collection of Treaties Feasible? An Appraisal of the *U.N. Treaty Series*." *Law Library Journal* 90 (1998), 77.

Chapter
Seven

United Nations: Lawmaking Activities and Documentation¹

by *JEANNE REHBERG*

This chapter does not aim to supplant, improve upon, or even occupy the same field as the many excellent guides and annotated bibliographies that cover United Nations documents, or the scholarly dialogue on the functions and effectiveness of the UN as an agent in international law. Instead, it offers a sort of “floor plan” for UN research, a bare structure that the researcher can then furnish to a greater or lesser degree of detail and sophistication from readings in more detailed sources and from research experience.

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1. © 1998 Jeanne Rehberg. This chapter reflects the generous assistance of Jean Jablonski Davis, Reference Librarian and Adjunct Professor of Law, Brooklyn Law School, and Lilia Vázquez, Webmaster, United Nations Department of Public Information. Ms. Vázquez presented the lecture on the United Nations during the 1996 Palmer School Institute from which this book developed. Her contribution to this chapter is the result of her own research and does not necessarily represent the official views of any component of the United Nations system. The advice regarding electronic tools for UN research provided by Wiltrud Harms, Reference Specialist for the United Nations and Human Rights Law, Boalt Hall School of Law Library, University of California, Berkeley, is also gratefully acknowledged.

The chapter first suggests sources on the UN documentation system, sources for background information on UN activities, and current awareness sources. Next is a description of the basic structure of the UN and an outline of the UN documentation system. The chapter then describes the specific processes and documentation of the major UN bodies that are most significant for international law research: the General Assembly, the Security Council, the International Court of Justice, the International Law Commission, and the Secretariat. (Chapter Six, "Finding Treaties and Other International Agreements," by Jeanne Rehberg, *supra* p. 123, covers UN treaty sources and Chapter Twelve, "International Human Rights: A Guide to the Legal Literature of the United Nations and Selected International Organizations," by Radu D. Popa, *infra* p. 275, describes the UN human rights system.) Finally, the last section of this chapter suggests strategies for some typical research questions.

I. Guides and Bibliographies for UN Documentation

- Hajnal, Peter I. "The United Nations." Chap. 2 in *International Information: Documents, Publications, and Electronic Information of International Government Organizations*. 2d ed. Ed. Peter I. Hajnal. Englewood, CO: Libraries Unlimited, 1997.
- Introduction to International Organizations*. Sponsored by the American Association of Law Libraries. Ed. Lyonette Louis-Jacques & Jeanne S. Korman. New York, NY: Oceana, 1996. See especially, Paul Zarins, "Using United Nations Documents to Find Treaties, Resolutions and Decisional Material," 219-36; Wiltrud Harms, "U.N. Bibliographic and Background Tools in Hardcopy and Online: How to Use the Best Tools for Current Legal Research," 259-340; and Lilia Vázquez, "Electronic Sources of United Nations Information," 341-91.
- Jablonski (Davis), Jean M. "Overview of United Nations Materials Available at Brooklyn Law School Library (United Nations Overview)." *Brooklyn Journal International Law* 21 (1995), 537.
- Shaaban, Marian & Robert Goehlert. *UN Documentation: A Basic Guide*. Occasional Paper No. 16. Bloomington, IN: Indiana Univ., 1993.

Stölken-Fitschen, Ilona. "Brief Guide to United Nations Documents."

In *United Nations: Law, Policies and Practice*. Rev. Engl. ed. Ed. Rüdiger Wolfrum & Christiane Philipp. München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995.

United Nations Documentation: A Brief Guide. New York, NY: United Nations Dag Hammarskjöld Library, 1994 (ST/LIB/34/Rev.2). *United Nations Documentation: List of Basic Reference Sources*. New York, NY: United Nations Dag Hammarskjöld Library, 1995 (ST/LIB/34/Rev.2/Add.1). Request this title from the Head Librarian, Dag Hammarskjöld Library, United Nations, New York, NY 10017, or consult at a UN depository library.

United Nations Documentation: Research Guide. United Nations Dag Hammarskjöld Library. Available on the Internet at <<http://www.un.org/Depts/dhl/resguide/>>.

United Nations Publications Catalogue [year] and periodic Catalogue Updates. New York, NY: United Nations. Request this title from Chief, Sales and Marketing Section, Room DC2-870, United Nations, New York, NY 10017, or consult at a UN depository library.

Vázquez, Lilia. "Electronic Information Sources of the United Nations Family of Organizations." Chap. 8 in *International Information: Documents, Publications, and Electronic Information of International Government Organizations*. 2d ed. Ed. Peter I. Hajnal. Englewood, CO: Libraries Unlimited, 1997.

II. Background Sources for UN Activities

Annual Review of United Nations Affairs. Dobbs Ferry, NY: Oceana, 1949– . Organized into chapters on each of the six principal organs, the *Annual Review* reviews the work of the UN by focusing upon what each organ did as demonstrated by its most significant documents, many of which are reprinted. As such, this is a counterpart to the UN's own *Yearbook of the United Nations*, which is organized by subject. There is some delay in the publication of the *Annual Review*.

A Global Agenda: Issues Before the . . . General Assembly of the United Nations. Lanham, MD: University Press of America,

- 1991– . An annual compendium of the issues currently before the General Assembly, *A Global Agenda* can be used to update the information in the *Yearbook of the United Nations*. Provides citations to UN documents and related publications from non-UN sources. Earlier titles provide coverage back to about 1976.
- Max Planck Yearbook of United Nations Law*. Ed. Jochen A. Frowein & Rüdiger Wolfrum. London: Kluwer Law International, 1997– . Published by the Max Planck Institute for Comparative Public Law and International Law, this annual focuses on the impact of the United Nations on international relations and on the progressive development of international law.
- Ozmannczyk, Edmund J. *The Encyclopedia of the United Nations and International Relations*. 2d ed. New York, NY: Taylor and Francis, 1990.
- United Nations Handbook 1997*. 35th ed. Wellington: New Zealand Ministry of Foreign Affairs and Trade, 1997. A directory of information on the UN system: structure, membership, and functions of principal organs, subsidiary organs, committees, conferences, specialized organs, and budget.
- United Nations Juridical Yearbook*. New York, NY: United Nations, 1962– . (ST/LEG/SER.C/-). Although the *Yearbook* is not timely enough to cover recent law-related activities of the UN, it is a useful source for beginning historical research and for texts of legislation and treaties bearing on the legal status of the UN, summaries of the work of the International Court of Justice and the International Law Commission for the year, references to supporting UN documents, and bibliographic references.
- United Nations: Law, Policies and Practice*. Rev. Engl. ed., Ed. Rüdiger Wolfrum & Christiane Philipp. München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995. Two volumes of articles arranged in encyclopedia fashion on the major UN organs and specialized agencies and the legal processes of the UN.
- Yearbook of the United Nations*. The Hague: Martinus Nijhoff, 1947– . Within the subject chapters of the *Yearbook* are the texts of many resolutions, summaries of reports, and of the work of UN organs and specialized agencies, and citations to documents. An excellent starting point for any research project. Unfortunately, not always published in a timely manner.

III. Current Awareness Sources

UN Chronicle. New York, NY: United Nations Department of Public Information, 1964– (various other titles before 1964).

United Nations Internet home page at <<http://www.un.org>>. Description appears below.

United Nations Law Reports: Unofficial Reports Concerning Legal Matters in the United Nations. Ed. John Carey. New York, NY: Walker and Co., 1966– . Monthly report providing citations to UN documents and some excerpts of documents.

IV. The Charter of the United Nations

The Charter is the “constitution” of the United Nations. It sets forth the membership, powers, and voting rules of the principal organs. The text of the Charter appears in various sources, including *The Encyclopedia of the United Nations and International Relations*, the appendix to the *Yearbook of the United Nations*, collections of basic documents in international law, such as *Basic Documents in International Law*, 3d ed., ed. Ian Brownlie (New York, NY: Oxford University Press, 1983), and the UN Internet home page described later in this chapter.

Essential to research into the Charter is *The Charter of the United Nations: A Commentary*, ed. Bruno Simma (New York, NY: Oxford University Press, 1994), which provides “legislative history” and interpretation of the Charter and citations to relevant scholarly writings.

A list of charter members of the UN, a list of members admitted since 1945, and the status of ratification of amendments to the Charter are provided in *Multilateral Treaties Deposited with the Secretary-General: Status as at [date]* (New York, NY: United Nations, 1982–) (also available at the United Nations Treaty Collection site on the Internet at <<http://www.un.org/Depts/Treaty/>>), which tracks the status of UN treaties and is described in Chapter Six, “Finding Treaties and Other International Agreements,” by Jeanne Rehberg, *supra* p. 123.

V. The United Nations System

The United Nations system is a complex organization of decentralized bodies designed to work together through coordination and inter-relationships among the individual bodies.² The basic structure of the UN consists of six principal organs: General Assembly (GA), Security Council (SC), Economic and Social Council (ECOSOC), Trusteeship Council, International Court of Justice (ICJ), and Secretariat.

The General Assembly operates through six main committees corresponding to the major areas of UN responsibility (e.g., the Sixth Committee (Legal)); procedural committees (e.g., Credentials Committee); standing committees (e.g., Advisory Committee on Administrative and Budgetary Questions); subsidiary and ad hoc bodies (e.g., Committee on Information, Conference on Disarmament, International Criminal Court Preparatory Committee, Special Committee on the Charter); and expert bodies such as the International Law Commission (ILC) and the UN Commission on International Trade Law (UNCITRAL).

The General Assembly also has established numerous special agencies, funds, and programs that allow the UN to act in concrete ways in many and varied arenas. These include UNICEF, the UN Conference on Trade and Development (UNCTAD), the UN Development Programme (UNDP), and the UN Environment Programme (UNEP); bodies that report to the General Assembly under the terms of human rights treaties, such as the Human Rights Committee; bodies that were established under the United Nations Convention on the Law of the Sea; conferences that resulted from various environmental conventions; and peace-building and peacekeeping missions around the world. Each has its own documentation system.

Additionally, the UN also works with specialized agencies, such as the International Labor Organization (ILO), UNESCO, the World Bank Group, and the World Intellectual Property Organization (WIPO). These organizations, a number of which pre-date the

2. Klaus Hüfner, "UN-System," in *United Nations: Law, Policies and Practice*, ed. Rüdiger Wolfrum & Christiane Philipp (rev. Engl. ed., München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995), at 1561–68. This summary is based upon the Hüfner article as well as the *United Nations Handbook 1996* and *United Nations Documentation: A Brief Guide*.

founding of the UN, have their own governing bodies and structures and their own documentation systems; their documents are not sent through the UN depository library system.

VI. The United Nations Documentation System

United Nations Documentation: A Brief Guide (cited in section I. Guides and Bibliographies for UN Documentation, *supra* p. 152) is issued by the Dag Hammarskjöld Library to assist staff and researchers in maintaining and using UN documents and publications. No one who has ventured into UN documentation would question the opening statement in the *Guide* that "the work of the United Nations requires the publication of a substantial body of documentation." As the *Guide* sets forth, it is important to recognize both the general patterns and types of documentation produced by UN organs and the types and series produced by a specific UN organ. It is also important to have some understanding of the document symbols used by the UN, or to have access to a guide that explains the document symbols. With this knowledge, the researcher will at least know what type of document or publication might answer the question, and where to start looking for it. It is possible to begin research whether one knows the general subject, the name of the UN organ, or a document symbol because the three are interrelated.

United Nations Documentation: A Brief Guide and the *Research Guide on the Internet* (see entry *supra* p. 153) are the places to start for finding information about the types and formats of UN documentation, the document symbols, and the distribution and availability of materials. *A Brief Guide* contains a useful section entitled "Functions and Methods of Operation of United Nations Bodies and Document Production Derived Therefrom," which lists the major documentation of the six principal organs specifically and the special UN bodies generally. Both guides set out the principal elements of UN document symbols.³

3. The summary here is based upon *United Nations Documentation: A Brief Guide*; the *Research Guide*; Wiltrud Harms' excellent description of the document types in Appendix II to *U.N. Bibliographic and Background Tools in Hardcopy and Online: How to Use the Best Tools for Current Legal Research*; the

UN documents can be grouped into five categories: mimeographed or "masthead" documents; press releases; official records; sales publications; and periodicals.

A. Mimeographed ("mimeos")

Mimeographed ("mimeos") or masthead documents are the internal working documents of the UN and its organs. In format they are separately printed documents with a masthead indicating the title, issuing body, and document symbol, but generally without a title page or cover. Agendas, reports (of meetings, studies, and the work of subsidiary organs), notes, studies, drafts of reports, letters sent to the General Assembly or Security Council, resolutions and draft resolutions, provisional meeting records, and reports submitted by member countries as required under treaty obligations are published in mimeo form. Because these are working documents they may not appear to fall into any neatly classified subject arrangement, but it is necessary to look for them and read them in the context of related documents and the relevant agenda item of the particular UN body that issued them.

The UN classifies and distributes mimeos in three categories: (1) "General" distribution documents are fully circulated according to UN distribution protocol,⁴ sent to libraries that are full UN depositories, and sold to other libraries through the UN and commercial suppliers such as Bernan/UniPub and NewsBank/Readex; (2) "limited" distribution documents (with an "L" in the document symbol) include draft resolutions and draft reports; and (3) "restricted" documents ("R" in the document symbol) are confidential and not generally available. See also section VIII. Availability of Documents in United Nations Depository Libraries and Other Libraries, *infra* p. 164, and section XV. Indexes and Finding Tools, *infra* p. 178.

Stölken-Fitschen article; and Shaaban & Goehler's *UN Documentation: A Basic Guide*, all of which are cited in section I. Guides and Bibliographies for UN Documentation, *supra* p. 152.

4. See *United Nations Documentation: A Brief Guide*, *supra* p. 155, at 25-25.

B. Press Releases

Press releases are often the first UN-issued source of information on a timely topic. For example, press releases reporting on Security Council meetings at which there was a vote on a draft resolution will contain the draft text, summaries of statements from member representatives speaking during the consideration of the draft, and a statement announcing the adoption of the draft. Because press releases are not official UN documents, however, until recent years they were not readily available outside the UN before they were “old news.” Press releases are now available, shortly after release, at the UN Internet home page (described below). Of course, current information about UN activities can also be retrieved from indexes and online searching of non-UN periodicals, journals, and news services, but these sources generally do not provide the detailed coverage of speeches and meetings that appears in some UN press releases.

C. Official Records

Official records may contain three types of material:

1. *Verbatim (-PV./- procès-verbaux) or Summary (-SR./-) Records*

To determine the availability of meeting records for the GA, its main committees, the SC, and the ECSOC, consult the *Research Guide on the Internet* (see entry *supra* p.153).

2. *Annexes*

These contain, by agenda item, the text of important mimeographed working documents and reports from the session and checklists of these and other sessional documents not printed in the Annex.

3. *Supplements*

These contain annual or sessional reports of subsidiary organs and bodies. The quarterly supplements to the *Security Council Official Records* contain the text of important sessional documents.

D. Sales Publications

Sales publications are published and sold to make UN documents and materials available to the wider public. These include reports, proceedings of conferences, indexes of proceedings, bibliographic

indexes, yearbooks, studies, statistics, the *Official Records*, and the *United Nations Treaty Series* (see Chapter Six, "Finding Treaties and Other International Agreements," by Jeanne Rehberg, *supra* p. 123). Each sales publication carries a sales number on the reverse of the title page and on the back cover that indicates the language, year of issue, and category. Sales publications are categorized by UN organ or subject, and the categories are listed in *United Nations Documentation: A Brief Guide* and in the latest *United Nations Publications Catalogue*. (The *Catalogue* also explains the order plans available for mimeographed documents.) Sales publications can be ordered singly or on standing order (for series or for one or more categories of publications) from the United Nations or from commercial suppliers.

E. Periodicals

Periodicals published by the UN have ranged from the *UNDOC Current Index* and the *UN Chronicle* to the *Law of the Sea Bulletin*. Most periodicals have UN document symbols.

VII. UN Document Symbols

Systematic retrieval of UN documents (regardless of their document symbol) using subject indexes and other tools will produce the most comprehensive research. Understanding UN document symbols can be a useful component of a research strategy, however. Researchers may find that a library uses the UN document symbol to shelve UN materials or to file mimeographed documents. The fiche in the NewsBank/Readex *United Nations Documents* set is commonly filed by year and then by UN document symbol. If the researcher knows only the UN document symbol, some information about the nature and source of the document can be gleaned from the symbol.

The "User Guide" of *UNDOC Current Index* (see section XV. Indexes and Finding Tools *infra* p. 178), *United Nations Documentation: A Brief Guide* and the *Research Guide on the Internet* explain the UN document symbols. See also *United Nations Document Series Symbols 1946–1977*, its supplement for 1978–84 (ST/LIB/SER.B/5/Rev.3 and Add.1), and *United*

Nations Document Series Symbols, 1946-96 (ST/LIB/SER.B/5/Rev.5). The following overview of selected symbols is based upon those sources.

The UN symbol for a document is composed of a series of letters and numbers, separated by slashes. Each letter or number represents a different element in the identification of the document.

The first letters identify the issuing organ; however, the issuing organ is not always the author of the document. For example, the Secretary-General is required each year to submit an annual report on UN activities to the General Assembly, which then issues it along with documents it has received from other organs. The General Assembly is therefore designated as the issuing organ in the series symbol. It is also possible for a document symbol to have letters representing more than one organ. In sum, the document symbol manifests the hierarchical nature of the UN structure. If the researcher wishes to isolate a relevant series of documents to browse, it is helpful to know what type of work a particular organ does and which organ reports to which in the hierarchy.

Main Organs—Leading Symbols	
A/-	General Assembly
E/-	Economic and Social Council
S/-	Security Council
T/-	Trusteeship Council
ST/-	Secretariat

Documents of the International Court of Justice do not carry symbols but do carry the initials of the Court, -I.C.J.

Certain subsidiary organs have particular symbols, for example

AT/-	UN Administrative Tribunal
CCPR/-	Human Rights Committee

CERD/-	Committee on the Elimination of Racial Discrimination
DP/-	UN Development Programme

Following the first symbol(s) there may be a symbol from one or more of the three categories below, as applicable:

Subsidiary Organs	
-/AC. .../-	Ad hoc committee
-/C. .../-	Standing, permanent or main committee
-/CN. .../-	Commission
-/CONF. .../-	Conference
-/GC/-	Governing Council
-/PC/-	Preparatory Committee
-/SC. .../-	Subcommittee
-/Sub. .../-	Subcommission
-/WG. .../-	Working Group
-/WP. .../-	Working Party

Type of Document	
-/INF/-	Information Series
-/L. ...	Limited distribution documents
-/MIN. ...	Minutes
-/NGO/-	Statements made by NGOs
-/PC/-	Preparatory Committee

Type of Document	
-/PET/-	Petitions
-/PV. ...	Procès-verbaux (verbatim records of meetings)
-/RES/-	Mimeographed texts of adopted resolutions
-/SR. ...	Summary records of meetings
-/WP. ...	Working Paper

Modification of Original Document	
-/Add. ...	Addendum
-/Amend. ...	Amendment
-/Corr. ...	Corrigendum
-/Excerpt	Excerpt
-/Rev. ...	Revision
-/Summary	Summary

In general, for mimeographed documents of the General Assembly and the Security Council, the final elements in the document symbol are the number (for the GA since the 31st session (1976)) or year of the session (for the SC since 1994 and ECOSOC since 1978) followed by the number of the individual document within the series of documents. For a more detailed description of the documents symbols for the mimeographed documents and resolutions of the GA, SC, and ECOSOC, see paragraphs 37–40 of *United Nations Documentation: A Brief Guide*, the *Research Guide* on the Internet, and the sections on the General Assembly and the Security Council below.

VIII. Availability of Documents in United Nations Depository Libraries and Other Libraries

The UN depository system places UN documents and sales publications in libraries that agree to open those collections to the public during reasonable business hours. A list of depository libraries can be found at the UN Internet home page under UN Around the World. Partial depositories receive the official records of the General Assembly, ECOSOC, Security Council, Trusteeship Council, and Trade and Development Board; sales publications except category III; the *United Nations Treaty Series*; and mimeographed documents of the regional commission located in the area. In addition to these materials, full depositories receive all other mimeographed documents designated for general distribution. The UN depository system does not cover documents from the International Court of Justice.

Many libraries that are not UN depositories subscribe to UN documents in paper from the UN or a commercial supplier. In the spring of 1997, the UN began to market paid subscriptions for Internet access to the UN Optical Disk System on the Web (ODS), which is updated daily. The database contains documents (pre-session, in-session, and post-session) for the meetings and conferences of the General Assembly and its subsidiary bodies, Security Council, Economic and Social Council and its subsidiary bodies, and Trusteeship Council, in all official languages, dating from 1993 forward (partial coverage for 1992), and resolutions from 1946 forward. Search options range from simple searches of predefined fields such as publication date and document symbol (with a truncation option) to a combination of field and full-text searching. For information about the availability, scope, and cost of ODS access, contact the United Nations Sales and Marketing Section, Room DC2-870, New York, NY 10017, phone (212) 963-8302.

Many libraries also subscribe to one of the *United Nations Documents and Publications* microfiche sets produced by NewsBank/Readex, which include documents from 1945 to present. The "Comprehensive Collection" of fiche contains the full text of many of the UN documents indexed in the companion CD-ROM index produced by NewsBank/Readex, *Index to United Nations Documents and Publications with Full-Text Resolutions*. The index also is available on the Internet as *AccessUN*. Both versions are described in section XV.

Indexes and Finding Tools *infra* p. 178. A less comprehensive "Law Library Collection" of fiche is also available. Neither collection includes copyrighted sales publications. Some "limited" distribution documents may appear in the microfiche, and the companion index lists some "limited" and "restricted" documents. (The publisher's description of the microfiche set and the various collection options is available at <<http://www.readex.com>>.)

To support their collections of UN documents, research libraries (law, public, general academic) also hold scholarly treatises and journals related to the UN and international law and other commercially published materials that may contain the text of UN documents.

With limited but increasing access to UN materials via the United Nations Internet home page, some UN research can be done without access to a specialized library. In-depth research and historical research still require access to a major collection, however.

IX. The United Nations Internet Home Page

Electronic resources have in some respects, and for some categories of users, greatly improved access to UN materials. The availability of UN bibliographic records in the RLIN database (see section XV. Indexes and Finding Tools, *infra* p. 178) perhaps foreshadowed the ways in which electronic research would make UN materials more accessible, at least for researchers with access to the RLIN database. Indexes on CD-ROM (the NewsBank/Readex *Index to United Nations Documents and Publications* and the UN's own *UNBIS Plus*, both described in section XV. Indexes and Finding Tools, *infra* p. 178) have greatly simplified subject searching for libraries that can afford these products. Access to the UN ODS (described in the previous section) should facilitate UN research for subscribers. With the United Nations home page, UN documentation has become more transparent for any researcher who has access to the Internet.

Maintained by the UN Department of Public Information, the home page at <<http://www.un.org>> is the next generation after the UN gopher at <<gopher://gopher.undp.org/>>. One visit to the site and researchers will conclude that the Internet is a reliable and viable component of UN research, but it must be understood that not *all* UN documents are there and that it is most useful for finding

materials from the last few years and for full-text searching of certain categories of materials. As of this writing, the home page offered the following access points:

- ◆ About the UN
- ◆ Conferences and Events, including materials on recent conferences.
- ◆ Publications and Sales, including a searchable version of the *Sales Catalogue*.
- ◆ Databases, including the UN Treaty Collection (*Multilateral Treaties . . .* and the full text of many UNTS volumes).
- ◆ What's New? including press releases.
- ◆ UN News, including the *Daily Highlights* searchable from January 1, 1996, and the press releases searchable from January 1, 1995.
- ◆ UN Documents, including: Daily list of documents issued at UN Headquarters; selected General Assembly sessional documents from the latest two sessions, and resolutions for the current session with a link to the UN gopher for earlier GA resolutions; Security Council Resolutions (full text searchable for 1994 to the present, text only for 1974–93), Statements of the President of the Security Council from 1994 to the present, and Secretary-General reports to the Security Council from April 1994 to March 1996.
- ◆ Searching of full-text documents: In addition to an option to "Search all [Internet] documents," there are options for "Selected area search" of all Internet documents, GA documents, SC resolutions, economic and social areas (including relevant GA resolutions), press releases, or press briefings; and "Optimized search interface," which can be applied to SC resolutions, economic and social areas, press releases, or press briefings. Help screens are accessible by clicking on the phrases such as "How to search the UN" and "Advanced Searching Tips," which appear on the search template screens.
- ◆ UN Around the World. From this button the Departments link provides access to information and documents related to the work of particular UN departments, including the *Research Guide* and other products from the Dag Hammarskjöld Library. Additionally, there is a clickable World Map of United Nations System Web Sites.

- ◆ From the home page there are also links to subject-related materials under several categories including Peace and Security, International Law, Economic and Social Development, and Human Rights. As of this writing, for example, a summary of the work of the GA Sixth Committee (Legal) was accessible under the International Law section.

The UN gopher at gopher://gopher.un.org/ continues to serve as an archive of older materials.

Other non-UN electronic sources have also entered the mainstream of UN research. For example, the Pace University School of Law Institute of International Commercial Law maintains an international trade law database on the United Nations Convention on Contracts for the International Sale of Goods (CISG) at <http://cisgw3.law.pace.edu>. In addition to providing the text of the CISG, legislative history, and updates on the status of the convention, the site allows searching of the CISG case law.

X. General Assembly

A. Functions

The General Assembly may discuss any matters within the scope of the Charter of the United Nations or relating to the powers and functions of organs provided for in the Charter, and may make recommendations to the members of the UN or to the Security Council or both (Charter, art. 9). Specific matters within General Assembly power include the maintenance of international peace and security and general principles related thereto (art. 11) and violations of the Charter that would impair the general welfare and friendly relations among states (art. 14). In matters relating to the maintenance of peace and security, the General Assembly may make recommendations to the states involved or to the Security Council and may refer situations to the Security Council (art. 11). If the Security Council is exercising its powers in respect of any dispute or situation, the General Assembly refrains from making recommendations until the Security Council so requests (art. 12). The General Assembly also elects the ten non-permanent members of the

Security Council (art. 18), and with the Security Council, the members of the International Court of Justice (Statute of the International Court of Justice, art. 4).

In furtherance of its duties, the General Assembly initiates studies and makes recommendations concerning international cooperation in the political field, the progressive development of international law and its codification, and international cooperation in the economic, social, and cultural fields, education, health, and human rights (art. 13). The General Assembly also works through its six main committees, which consider agenda items referred by the General Assembly and make recommendations and draft resolutions for consideration by the General Assembly, standing committees and commissions, and special conferences and commissions convened to examine particular issues or to negotiate treaties and conventions.

The General Assembly meets in one regular session each year beginning on the third Tuesday in September and generally ending in December. Regular sessions are numbered consecutively. For example, the fifty-first session began in 1996. The General Assembly may also meet in special and emergency sessions.

B. General Documentation

The General Assembly receives study reports, committee reports, documents for discussion under agenda items, draft proposals, and annual and special reports from the Security Council and other organs of the UN (art. 16). Documents of the plenary Assembly (documents for discussion under agenda items, sessional committee reports) have the document symbol A/session number/sequential number. Special session documents have the symbol A/S-session number/sequential number, and emergency session documents have the symbol A/E-session number/sequential number.

Committee working documents have the symbol A/C. number or acronym of committee/General Assembly session number/sequential number. (C. indicates a standing, permanent, or main sessional committee; other subsidiary organs will be represented by an appropriate element in the document symbol.) Commissions, committees, and conferences established by the General Assembly produce general documents such as agendas, studies, and reports (sample symbols are A/AC.-/-; A/CN.-/-; and A/CONF.-/-); drafts of limited distribution;

sessional, annual, or final reports (issued as supplements to the *General Assembly Official Records*); and yearbooks (for example, the *United Nations Commission on International Trade Yearbook* (A/CN.9/SER.A/year)). Documentation of conferences includes preparatory committee documents, documents prepared for agenda items, and reports of the conferences, which may present recommendations, protocols, and other "final" documents.

The verbatim records of plenary meetings are issued as *Official Records of the General Assembly* (GAOR) (A/session number/PV. sequential number) sometime after the end of the session. *Annexes* to the GAOR contain copies of some of the working documents from the session, such as committee reports and checklists of documents related to an agenda item, and the *Supplements* to the GAOR contain the budget of the UN, annual reports of subsidiary organs, special major reports, and the resolutions and decisions of the GA (last supplement).

C. Resolutions and Decisions

Recommendations, statements, and procedural measures (such as the establishment of a subsidiary organ) of the General Assembly are documented in resolutions and decisions, which are covered in the following sources:

1. Press Releases

Press releases (GA/-) may contain a summary of the draft resolution, a report of debate on the draft, notice of adoption of the resolution, and voting chart.

2. Mimeographed Documents

Individual resolutions are issued as separate mimeographed documents with the document symbol A/RES/session number/sequential resolution numbers beginning again with each new session. (Before the thirty-first session (1976), General Assembly resolutions were numbered continuously from session to session, for example, A/RES/2145 (XXI), or Resolution 2145 (XXI), 27 October 1966.) Although the mimeographed version is the first paper version, mimeos do not reach libraries quickly enough to be used for "hot topic" research. Decisions are not issued as separate documents.

3. *Online via the UN Internet Home Page*

Described *supra* p. 165.

4. *Online via the UN Optical Disk System*

Described *supra* p. 164.

5. *International Legal Materials*

Washington, DC: American Society of International Law, 1962– . The bimonthly *ILM* reprints the text of selected resolutions. Documents from *ILM* also are available on WESTLAW.

6. *Resolutions and Decisions Adopted by the General Assembly During the . . . Session*

New York, NY: United Nations, 1972– . This is a timely but unofficial “press release” compilation of the resolutions. Resolutions from resumed or special sessions appear in separate compilations.

7. *UNBIS Plus (CD-ROM)*

Alexandria, VA: Chadwyck-Healey for and on behalf of the United Nations. Includes full text of General Assembly resolutions beginning with the 36th session (1981–). See section XV. Indexes and Finding Tools, *infra* p.178, for description.

8. *Index to United Nations Documents and Publications with Full-Text Resolutions*

(CD-ROM and on the Internet as *Access UN*) New Canaan, CT: NewsBank/Readex, 1990– . This index (described *infra* p. 178) gradually is adding the full text of resolutions and decisions. The companion microfiche set, *United Nations Documents and Publications*, is described *supra* p. 164.

9. *General Assembly Official Records (GAOR) Supplements*

Since 1950, the last numbered supplement to the *GAOR* for the session has contained the official texts of the resolutions and decisions.

10. *Yearbook of the United Nations.*

New York, NY: United Nations, 1947– . Many resolutions appear in full text in the appropriate subject chapters of the *Yearbook* which, unfortunately, is not issued soon enough for “hot topic” research.

11. Other Historical Compilations of GA Resolutions

These include *United Nations Resolutions: Series I, Resolutions Adopted by the General Assembly*. Comp. Dusan Djonovich. Dobbs Ferry, NY: Oceana, 1973–88.

Finding tools for resolutions include:

Index to Resolutions of the General Assembly, 1946–1970. New York, NY: United Nations, 1972 (ST/LIB/SER.H/1, parts I and II).

Index to Proceedings of the General Assembly. New York, NY: United Nations, 1953– (ST/LIB/SER.B/A. ...). Since 1975 the *Index* has included a voting chart.

UNDOC: Current Index. See p. 180, *infra*.

RLIN. See p. 179, *infra*.

“Declarations” of the General Assembly are resolutions that contain “particularly important political or legal principles.”⁵ “Declaration” generally is not synonymous with “treaty,” but rather is a unanimous statement of principle. Examples include the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992).

XI. Security Council

A. Functions

Article 24 of the Charter delegates to the Security Council the power to act on behalf of the members of the UN to maintain international peace and security. Specific powers are granted to the Security Council in the areas of the peaceful settlement of disputes (arts. 33–38); action with respect to threats to the peace, breaches of the peace, and aggression (arts. 39–51); and regional arrangements (arts.

5. Rainer Lagoni, “Resolution, Declaration, Decision,” in *United Nations: Law, Policies and Practice*, ed. Rüdiger Wolfrum & Christiane Philipp (rev. Engl. ed., München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995), at 1081–82.

52–54). Because the Security Council acts on behalf of all UN members to carry out the most important function of the UN, Security Council resolutions are binding on UN members (art. 25). The actions of the Security Council have included preventive measures; repressive measures; political pressure; interruption of economic relations, transport, or communication; requests for deployment of national troops; and peacekeeping forces.⁶ The Security Council also works through ad hoc committees, established by Security Council resolution, which monitor implementation of sanctions and other measures adopted in Security Council resolutions. Adoption of a resolution is also the means by which the Security Council has established peacekeeping forces, observer missions, commissions of inquiry, the International Criminal Tribunal for Rwanda, and the International Criminal Tribunal for the former Yugoslavia.

B. General Documentation

The Security Council sits in continuous session. It issues mimeographed documents on agenda items under the symbol S/year/sequential number. (Prior to 1994, the symbol was S/sequential number.) The president of the Security Council (which office rotates monthly through the members of the Security Council) issues many "Statements" on topics of current interest; from 1994 on, these have the symbol S/PRST/year/sequential number. The reports of the Secretary-General to the Security Council have the symbol S/year/number.

Verbatim records of Security Council meetings are issued in separate pamphlets (S/PV.-). The *Security Council Official Records (SCOR)* include quarterly supplements that contain the text of most documents from the meetings covered, a checklist of other documents, and special reports. The annual report of Security Council activities is published as Supplement No. 2 to the *GAOR*.

6. Thomas Bruha, "Security Council," in *United Nations: Law, Policies and Practice*, ed. Rüdiger Wolfrum & Christiane Philipp (rev. Engl. ed., München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995), at 1147–55.

C. Resolutions and Decisions

Resolutions and decisions of the Security Council are available in the following sources:

1. Press releases (SC/number)

These generally contain the draft of the resolution, a report of debate on the draft, and a notice of adoption of the resolution.

2. Mimeographed documents

Resolutions are issued as separate mimeographed documents with the symbol S/RES/sequential no./(year). Draft resolutions are issued under the general Security Council symbol S/sequential number. Decisions are not issued as separate documents.

3. Online via the UN Internet home page

Described *supra* p. 165.

4. Online via the UN Optical Disk System

Described *supra* p.164.

5. International Legal Materials

Washington, DC: American Society of International Law, 1962– . The bimonthly *ILM* reprints the text of selected resolutions. Documents from *ILM* also are available in WESTLAW.

6. Resolutions and Decisions of the Security Council

New York, NY: United Nations, 1946– . A compilation of the official texts of the resolutions and decisions is issued at the end of the year with the symbol S/INF/-.

7. UNBIS Plus. CD-ROM

Alexandria, VA: Chadwyck-Healey for and on behalf of the United Nations. Includes full text of Security Council resolutions beginning with the 29th session (1974–). See section XV. Indexes and Finding Tools, *infra* p. 178 for a description.

8. Index to United Nations Documents and Publications with Full-Text Resolutions

(CD-ROM and on the Internet as *Access UN*) New Canaan, CT: NewsBank/ Readex, 1990– . This index, which is described *infra* p. 179, gradually is adding the full text of resolutions and decisions.

The companion microfiche set, *United Nations Documents and Publications*, is described *supra* p. 164.

9. *Yearbook of the United Nations*

New York, NY: United Nations, 1947– . Many resolutions appear in full text in the appropriate subject chapters of the *Yearbook*.

10. *Other historical compilations of Security Council resolutions*

These include *United Nations Resolutions: Series II, Resolutions and Decisions of the Security Council*. Comp. Dusan Djonovich. Dobbs Ferry, NY: Oceana, 1988– ; and Karl C. Wellens, ed. *Resolutions and Statements of the United Nations Security Council (1946–1992): A Thematic Guide*. 2d enl. ed. Boston, MA: M. Nijhoff, 1993.

Finding tools for resolutions include:

Index to Resolutions of the Security Council, 1946–1996. New York, NY: United Nations, 1997 (ST/LIB/SER.H/5/Rev.1).

Index to Proceedings of the Security Council. New York, NY: United Nations, 1964– (ST/LIB/SER.B/A.-). Since 1976, the *Index* has included a voting chart.

UNDOC: Current Index. See p. 180, *infra*.

RLIN. See p. 179, *infra*.

XII. International Court of Justice

The UN Charter provides that the International Court of Justice (ICJ) shall be the principal judicial organ of the UN. Articles 92–96 and the Statute of the International Court of Justice establish the ICJ, its powers and procedures, and its jurisdiction. The Statute of the ICJ is annexed to the Charter; the text of the Statute is available in many print sources, on the UN home page under the About the United Nations button, and on the two ICJ Internet sites listed *infra* p. 176. (The ICJ is also commonly referred to as the “World Court.” Prior to the establishment of the United Nations, the League of Nations established the Permanent Court of International Justice (PCIJ), which functioned from 1922 to 1940. The literature of the PCIJ is not covered here.) The Court sits at The Hague in the Netherlands. As explained in Chapter Five, “Introduction to

International Law," by Thomas H. Reynolds, *supra* p. 113, article 38 of the Statute of the ICJ specifies the sources of international law that the Court shall apply to the disputes before it: international conventions, custom, general principles of law, judicial decisions, and the writings of publicists.

States that may bring disputes before the ICJ are (1) states that are members of the UN; (2) non-members of the UN which become parties to the Statute of the ICJ; and (3) states not parties to the statute but which make a specific or general declaration under Security Council Resolution 9 (1946) accepting the jurisdiction of the Court and agreeing to abide by the Statute and Rules of the Court. Non-member states that at present are parties to the Statute under the second category are Switzerland and Nauru.⁷ Depending upon the nature of the dispute, other international courts and tribunals are also open to UN member states, including the Court of Justice of the European Communities, the European Court of Human Rights, and other UN tribunals such as the International Labour Organization Administrative Tribunal.⁸ Upon request of the General Assembly or the Security Council, the ICJ may also issue advisory opinions for those organs, or at the request of the General Assembly for any UN organ or specialized agency.

ICJ publications are not distributed to UN depository libraries, but the following publications by and about the ICJ can be found in many libraries that specialize in UN materials:

Annual report of the ICJ to the General Assembly. Supplement No. 4 to the *GAOR*.

Bibliography of the International Court of Justice. The Hague: ICJ, 1947– . Lists materials about the ICJ and its jurisdiction and procedures generally, as well as references discussing specific cases before the ICJ.

Communiqué. The Hague: ICJ. Press releases that announce judgments and orders and print the operative portions of them. The

7. *United Nations Handbook 1997*, 35th ed. (Wellington: New Zealand Ministry of Foreign Affairs and Trade, 1997), 147–48.

8. Meinhard Sahröder, "ICJ—International Court of Justice," in *United Nations: Law, Policies and Practice*, ed. Rüdiger Wolfrum & Christiane Philipp (rev. Engl. ed., München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995), at 673.

press releases are available from the ICJ Registry at the Peace Palace, 2517 KJ The Hague (phone 070 392 44 41; fax 070 364 99 28).

Eyffinger, Arthur. *The International Court of Justice, 1946–1996*. The Hague: Kluwer Law International, 1996.

ICJ Internet sites. Two sites for ICJ material are under construction, the official site at <<http://www.icj-cij.org>> and the Cornell Law Library site at <<http://www.law.cornell.edu/icj/>>.

INT-ICJ file in WESTLAW provides online access to ICJ judgments, advisory opinions, and orders from 1947 to the present. The file includes decisions published in the *ICJ Reports* and decisions that have been released by the ICJ but not yet published.

International Law Reports. Cambridge: Grotius, 1950–. Reprints ICJ decisions as well as decisions from other tribunals and national courts that deal with public international law.

Mémoires, plaidoiries et documents. Pleadings, Oral Arguments, Documents. The Hague: ICJ, 1949–.

Recueil des arrêts, avis consultatifs et ordonnances. Reports of Judgments, Advisory Opinions and Orders. The Hague: ICJ, 1947–. Official reports of the decisions, in French and English. Individual decisions are reported in paper pamphlets and later compiled into bound volumes.

Répertoire de la jurisprudence de la Cour Internationale de Justice (1947–1992). Repertory of Decisions of the International Court of Justice (1947–1992). Ed. Guiliana Ziccardi Capaldo. Dordrecht: Martinus Nijhoff, 1995. This two-volume set is a “manual” of summaries and excerpts of the pronouncements of the ICJ, in a subject arrangement, with citations to the full texts in the *ICJ Reports*.

Rosenne, Shabtai. *The Law and Practice of the International Court, 1920–1996*. 3d ed. The Hague: Martinus Nijhoff, 1997.

Rosenne, Shabtai, comp. and ed. *Documents relatifs à la Cour Internationale de Justice. Documents on the International Court of Justice*. 3d (1st bilingual) ed. Dordrecht: Martinus Nijhoff, 1991.

Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice. New York, NY: United Nations, 1992 (ST/LEG/SER.F/1). The 1992 edition covers 1948–91. A supplement covers 1992–96 (ST/LEG/SER.F/1/ADD.1).

Yearbook. The Hague: ICJ, 1947/48– . Covers 1946/47– .
Reviews the work of the court during the year.

XIII. International Law Commission

To encourage “the progressive development of international law and its codification” (art. 13), the General Assembly, by Resolution 174 (II) (1947), established the International Law Commission (ILC). The members of the ILC are not government representatives but sit in their capacity as experts. The Statute of the ILC is reproduced as Annex 1 to *The Work of the International Law Commission*, 5th ed. (New York, NY: United Nations, 1996), with footnotes citing the GA resolutions that have amended the statute. Under the statute, the ILC has treated primarily public international law, but has worked on some projects in private international law. The ILC works in a complex and protracted process to study issues of international law, make recommendations to the General Assembly, and draft treaties for plenary consideration by UN members. Among the achievements of the ILC are the Vienna Convention on the Law of Treaties of 1969 and its ongoing work on the establishment of an international criminal court.⁹

The document symbol for the ILC is A/CN.4/-. The primary publication of the ILC is the *Yearbook of the International Law Commission*. New York, NY: United Nations, 1949– (A/CN.4/SER.A/year). Volume I for each year contains the summary records of the ILC meetings. In Volume II are the reports of special rapporteurs (who are assigned to study, report, and express a view on the topic at hand) and other documents considered at meetings. Volume III (also published as Supplement No. 10 to the *GAOR*) contains the report of the ILC to the General Assembly on the work of the session, and as such it is a source for the text of draft articles of law on various subjects and commentaries to draft articles by the special rapporteurs or the ILC members.

9. Christian Tomuschat, “ILC—International Law Commission,” in *United Nations: Law, Policies and Practice*, ed. Rüdiger Wolfrum & Christiane Philipp (rev. Engl. ed., München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995), at 705–13.

Before leaving the ICJ and the ILC, mention must be made again of the *United Nations Juridical Yearbook* discussed *supra* section II. Background Sources.

XIV. Secretariat

The Secretary-General and the staff required by the other principal organs form the Secretariat. The Office of Legal Affairs, the Department of Public Information and the Dag Hammarskjöld Library are in the Secretariat. The Office of Legal Affairs issues the *Reports of International Arbitral Awards* (previously compiled by the ICJ) and the *United Nations Legislative Series* (ST/LEG/SER.B-), a collection of national legislation and international treaties on subjects that the UN is considering. The Treaty Section is within the Office of Legal Affairs and issues the *United Nations Treaty Series* and *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December [year]* (ST/LEG/SER.E/-). The library issues indexes, bibliographies, and other documents under the symbol ST/LIB- .

XV. Indexes and Finding Tools

Fortunately for the researcher who does not have citations to specific UN documents, there exist excellent indexes and checklists that permit searching by subject, keyword, name of UN organ, and other access points. 1996 marked a watershed of sorts for the official indexing of UN documents. With the September 1996 issue (vol. 18, no. 3), the UN Dag Hammarskjöld Library published the last issue of *UNDOC: Current Index. United Nations Documents Index*. (At this writing, a more limited finding tool in paper was a possibility.) Headlining the current generation of officially produced indexes of UN documents is *UNBIS Plus* on CD-ROM. Because historical research still requires retrospective paper indexes, both generations are discussed here. (The document search options of the UN Internet site and the UN ODS are discussed above. The *Index to Proceedings . . .* and the *Index to Resolutions . . .* for the General Assembly and the Security Council are cited above and not repeated here.)

Index to United Nations Documents and Publications with Full-Text Resolutions (CD-ROM). New Canaan, CT: NewsBank/Readex, 1990-. This index covers UN documents (cf. *UNBIS Plus* additional coverage of non-UN materials), beginning as far back as 1966 for many documents. Retrospective indexing back to 1945 is underway. The publisher is gradually adding the full text of resolutions and decisions at the end of the corresponding bibliographic entries in the *Index*. Provides UN document symbol and list of Readex subject headings for each document. The companion NewsBank/Readex microfiche set of full-text documents is described in section VIII. Availability of Documents in United Nations Depository Libraries and Other Libraries, *supra* p. 164. In 1997 NewsBank/Readex began to market *AccessUN*, an online version of the index that also covers from 1966 to present. See the publisher's Internet site at <<http://www.readex.com>> for more information.

RLIN, the bibliographic database of RLG (Research Libraries Group), contains records from the UN Bibliographic Information System beginning with 1979 and covering UN documents and publications and non-UN materials received by the UN libraries. Although the UNDOC index in paper ceased in 1996 in favor of the *UNBIS Plus* CD-ROM, the bibliographic records continue to be loaded into the RLIN database. It is necessary to use searches carefully composed according to RLIN search protocols. For specific recommendations about how to compose searches for UN documents, see Wiltrud Harms, "U.N. Bibliographic and Background Tools in Hardcopy and Online: How to Use the Best Tools for Current Legal Research," in *Introduction to International Organizations*, sponsored by the American Association of Law Libraries, ed. Lyonette Louis-Jacques and Jeanne S. Korman (New York, NY: Oceana, 1996), 310-28.

UNBIS Plus. CD-ROM. Alexandria, VA: UN Dag Hammarskjöld Library and Chadwyck-Healey. Produced by the UN library from the UN Bibliographic Information System files, *UNBIS* contains (1) bibliographic citations, beginning with 1979, to UN documents and publications, covering the General Assembly, Security Council, the ICJ and other organs; (2) bibliographic citations, beginning with 1979, to UN monographs, serials, journal articles, and publications of governments, international

organizations, and other non-UN publishers that are held in the New York and Geneva UN libraries; (3) bibliographic citations to speeches in the General Assembly (38th session, 1983–), the Security Council (38th, 1983–), and other principal organs; (4) full-text resolutions of the General Assembly (36th session, 1981–), Security Council (29th, 1974–), and ECOSOC (1982–); (5) voting records; (6) thesaurus and authority files for *UNBIS*; (7) agenda items; and (8) details of UN document series (name of organ, dates, subject terms). *UNBIS Plus* is not provided free of charge to depository libraries.

UNDOC: Current Index. United Nations Documents Index. New York, NY: United Nations, 1979–96 (ST/LIB/SER.M/-). An index in paper format that was prepared from the UN Bibliographic Information System files, *UNDOC* lists documents and publications of UN organs throughout the system, including reports, decisions, draft resolutions, meeting records, but not press releases or restricted documents. Titles and document series are listed by subject, issuing organ, and title. Also contains a list of mimeographed documents reproduced in the official records of major UN organs.

There are several predecessors to *UNDOC*. When using the older indexes, it is often useful first to read background material in a yearbook or other source to determine what committee or organ may have worked on the issue.

- a. *UNDI. United Nations Documents Index.* New York, NY: United Nations, 1950–73. 24 vols.
- b. *United Nations Documents Index. United Nations and Specialized Agencies Documents and Publications: Cumulated Index, Vols. 1–13, 1950–62.* New York, NY: Kraus-Thomson, 1974. 4 vols. Cumulated annual indexes to *UNDI* for 1950–62.
- c. *UNDEX: United Nations Documents Index.* New York, NY: United Nations. Replaced *UNDI* in 1974. Series A: Subject Index, 1970–78 (ST/LIB/SER.I/A/. ...) Series B: Country Index, 1970–78 (ST/LIB/SER.I/B/. ...) Series C: List of Documents issued, 1974–78 (ST/LIB/SER.I/C/. ...) *UNDEX "Series C." Cumulative Edition, 1974–77.* White Plains, NY: UNIFO Publishers, Ltd., 1980.

UN-I-QUE: United Nations Info Quest. This online database is accessible through the UN Internet home page (click on UN Around the World, then Departments, then the Dag Hammarsköld Library). With keyword searching, UN-I-QUE provides quick access to document symbols and sales numbers for major ongoing publications such as annual and sessional reports, monographic series, journals, yearbooks, and reports of major conferences. Although the database does not provide full bibliographic data and is not a substitute for *UNBIS Plus* and other bibliographic tools, it is useful for ready reference questions, such as finding out the latest issue of a yearbook or determining the supplement number of a particular annual report in the *GAOR*.

XVI. Suggested Strategies for Some Typical Research Questions

I need the Security Council resolution that set up the criminal tribunal for Rwanda and the statute for the court. Among the various sources for finding Security Council resolutions, the electronic products are obviously the most efficient, depending, of course, upon the date of the resolution. For example, a search in the NewsBank/Readex CD-ROM *Index to United Nations Documents and Publications with Full-Text Resolutions* using the keywords "Rwanda," "tribunal," and "establish" will lead to S/RES/955 (1994). The CD-ROM entry contains the full text of this Security Council resolution. The Statute of the International Criminal Tribunal for Rwanda is annexed to the resolution. If indexes such as this CD-ROM are not available, current awareness sources should not be underestimated. For example, the December 1, 1994, issue of *United Nations Law Reports* (vol. 29, no. 4) reported the adoption of resolution 955 and summarized the statements made by selected nations before and after the vote. The June 1, 1995, issue reported on the election of the first six judges to the Tribunal, and this newsletter continues to report on the activities of the Tribunal.

What has the United Nations done regarding the problem of terrorism? This question also illustrates the value of current awareness sources. For example, the *UN Chronicle*, volume 33, no. 2 (1996), contains

a one-page article reporting on the Summit of Peacemakers on March 13, 1996, at which the leaders of twenty-seven nations pledged to combat terrorism. In his remarks, the Secretary-General cited actions to date by UN organs, including the Security Council Summit, a 1994 declaration, and a General Assembly resolution, and stated that the UN had yet to go beyond this stage. The article gives resolution numbers, a helpful lead that not every current news source will provide. One might also scan the table of contents to *Multilateral Treaties Deposited with the Secretary-General . . .*, but that approach would involve trying to prove that a general treaty on terrorism has *not* been adopted under UN auspices.

Beyond current news sources, this is essentially a question requiring subject access to UN materials. Sources to consult would include the UN indexes in paper and CD-ROM and the *Yearbook of the United Nations*. The 1994 *Yearbook* references "terrorism" in the subject index. The relevant article in the *Yearbook* cites a report of the Secretary-General and provides the text of a GA resolution to which is annexed the Declaration on Measures to Eliminate International Terrorism. If the researcher lacks specific information or document citations but the topic is likely to be on the UN agenda, another very useful source is the current edition of *A Global Agenda: Issues Before the . . . General Assembly of the United Nations*. The 1996–1997 edition cites relevant resolutions and indicates that the GA has requested that the Secretary-General consider a voluntary fund for victims of terrorism. Finally, because of the hint from the *UN Chronicle* article that the UN may never have taken any binding action, such as a Security Council resolution or treaty negotiation, it would also be necessary to consult library catalogs, bibliographic utilities, and indexes (such as *UNBIS Plus*, *Social Sciences Index*, and *Index to Legal Periodicals*) for books and articles on the more general subject of the international response to terrorism.

I think there was a protocol this year (and maybe a UN conference) on land mines. The Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II as Amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons . . . was reproduced at 35 *International Legal Materials (ILM)* 1206 (September issue, 1996). Footnotes in *ILM* provide citations to the Convention

and related documents, including the 1996 ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. The *Yearbook of the United Nations* for 1994 has an article on land mines and the text of a GA resolution urging further action. The UN Internet home page, the NewsBank/Readex Index on CD-ROM, and the 1996–1997 edition of *A Global Agenda* should also be consulted.

Where can I find the ILC Draft Code of Crimes Against the Peace and Security of Mankind? (Assume that this question arose in January 1992.)

The 1991 *Yearbook of the United Nations* lists “meetings” under the ILC heading in the subject index and at page 847 is an article with a citation to a sessional document containing the draft articles. The ILC session met from April 29, 1991, through July 19, 1991. The 1991 *Yearbook* was not published until 1992. The October 1991 issue of *UNDOC* contains entries related to the draft code. This issue of *UNDOC* may have been received by libraries by late 1991, but the documents cited were limited-distribution documents and the subject index to this issue of *UNDOC* may not have been received by libraries until after the main entry issue. *International Legal Materials* was probably the first source to publish the draft (in the November 1991 issue, which was probably in libraries by January 1992). Today, if one needed timely information on recent activity of the ILC, a search of the UN Internet home page might yield documents such as the 1996 *Report of the International Law Commission on the work of its forty-eighth session (A/51/10, Supplement No. 10 to the GAOR)*, which contains the text of and commentaries to articles 1–20 of the draft code as finally adopted by the ILC at its forty-eighth session (accessible from the International Law section on the home page, subheading Codification and Dissemination, or from the UN Around the World link to Departments, Office of Legal Affairs). The CD-ROM indexes would also be useful.

I need to research the activities of the UN in the 1960s with regard to former territories. (Assume that you have no electronic tools that cover this period of time.)

The *Yearbook of the United Nations* for 1963 has no subject heading for “territories,” but it does have an entry for “Colonial Countries and Peoples.” One of the general articles on this topic describes the activity of the GA Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The

Cumulative Checklist portion of the 1964 index lists documents issued by the Special Committee under the symbol A/AC.109/-. Additionally, the subject index portion of the *United Nations Documents Index* for 1964 has entries for various geographical names. The index to the *Annual Review of United Nations Affairs, 1964–1965* (Dobbs Ferry, NY: Oceana, by arrangement with New York University Press, 1966), provides references to “trust and non-self-governing territories.” One of the relevant chapters reviews the establishment and the work of this GA special committee and provides citations to UN documents.

I need the treaty that resulted from the conference on the status of women that took place in 1995. (Assume that the Yearbook of the United Nations for 1995 has not yet been published.) The UN home page has materials from the Fourth World Conference on Women (Beijing, 1995) under the heading Conferences and Events. Documents include the Declaration and Platform for Action that resulted from the conference. This document was available on the home page before it appeared in the mimeographed documents, although preparatory documents leading up to the conference were available in the mimeographs. A search in the NewsBank/Readex index on CD-ROM for keywords “Beijing,” “women,” “conference,” and “treaty” will produce a list of documents, including one that refers to and gives the document symbol for the Declaration and Platform for Action. The 1996–1997 edition of *A Global Agenda* also reports on the conference and cites related UN documents as well as non-UN materials on the implementation of the Platform for Action by various nations. From reading in these materials, it should become clear that no formal treaty resulted from the conference.

XVII. Sources for Further Reading

- Eyffinger, Arthur. *The International Court of Justice, 1946–1996*. The Hague: Kluwer Law International, 1996.
- McWhinney, Edward. *Judicial Settlement of International Disputes: Jurisdiction, Justiciability and Judicial Law-Making on the Contemporary International Court*. Dordrecht, Netherlands: M. Nijhoff, 1991.

- McWhinney, Edward. *United Nations Law Making: Cultural and Ideological Relativism and International Law Making for an Era of Transition*. New York, NY: Holmes & Meier, 1984.
- United Nations: Law, Policies and Practice*. Rev. Engl. ed. Ed. Rüdiger Wolfrum & Christiane Philipp. München: C. H. Beck; Dordrecht: Martinus Nijhoff, 1995.
- United Nations Legal Order*. Ed. Oscar Schachter & Christopher C. Joyner. Cambridge: Cambridge University Press and the American Society of International Law, 1995.

Chapter
Eight

European Union:
Basic Legal Sources¹

by *MARYLIN J. RAISCH*

1. The Treaty

The European Union has one basic constitutive instrument. It is the Treaty of Rome, as amended by the Treaty of Maastricht, which was signed in Maastricht in February 1992, under the name of the Treaty on European Union (TEU), and came into force on November 1, 1993. The TEU established the European Union (EU) and set forth the institutional and political arrangements of "the new Europe." The officially published text of the TEU is contained in *Treaty on European Union* (Luxembourg: Office for Official Publications of the European Communities,² 1992). The text is also available in EUROPA, the Internet platform of the European Union, by

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1. © 1998 Marilyn J. Raisch. Information about EC/EU Internet sources was contributed by Jeanne Rehberg.
 2. The OOPEC is also known as EUR-OP. Basic information about EUR-OP products can be found at <<http://eur-op.eu.int/>>.

clicking on ABC on the EUROPA home page, which is described *infra* p.192.³

In fact, this "new Europe" is governed by three other basic treaties in addition to the TEU. The original structure and institutions of what is now called the First Pillar of the EU were established and governed by the 1951 Treaty Establishing the European Coal and Steel Community (ECSC) (commonly known as the Treaty of Paris), the 1957 Treaty Establishing the European Atomic Energy Community (Euratom), and the 1957 Treaty Establishing the European Economic Community (EEC) (commonly known as the Treaty of Rome), and the amendments and ancillary legislation thereto.

The European treaties and institutions have evolved over time, as the names reflect. In the 1960s and 1970s, the economic organization was known in the press as the Common Market; it was basically a customs union trading in a variety of goods. Although the signing of the Treaty of Maastricht in 1992 was the most recent major change in the basic treaty, the process of greater political unification had begun earlier. In the 1967 Merger Treaty, the European Economic Community, the Coal and Steel Community, and the Atomic Energy Community came together in one common set of institutions. In 1986, a major amendment to the central treaty (again, the Treaty of Rome) came about through the Single European Act of February 17 and 28, 1986 (SEA). This was done to try to bring the institutions into clearer focus and to approximate a federal structure.

Another major aspect of the move towards a single European market is the planned Economic and Monetary Union (EMU), which includes goals for exchange rate policies, free movement of capital, price stability, budgetary discipline, and a single European currency unit (the euro). Attention to these goals has meant that the national deficits and GDPs of member states are often in the news. Also a frequent topic of news is the potential "enlargement" of the membership of the EU.

3. Other sources of the treaty text and commentary are listed in part III. A. of Marilyn J. Raisch, "The European Union: A Selective Research Guide," 1 Colum. J. Eur. L. (1994/95), 149, 162-63. To search for the titles of treaty commentaries in online catalogues locally or via RLIN, OCLC, and the Internet or Hynetnet, use the subject headings "European Federation" and "Treaty on European Union."

On October 2, 1997, the member states signed the Treaty of Amsterdam, which amends the existing treaties in an effort to prepare for the challenges of the year 2002 and beyond. Texts of the Treaty of Amsterdam and of consolidated versions of the Treaty of Rome and the TEU incorporating changes made by the Treaty of Amsterdam are available under ABC on the EUROPA home page. The TEU governs until the Treaty of Amsterdam is ratified.

The economic organization is now commonly referred to as the European Community. The three original organizations are referred to collectively as the European Communities (EC). Under the TEU, the EU has three "pillars." The first incorporates EC law, institutions, and activities.⁴ The Second Pillar of the EU is the Common Foreign and Security Policy, and the Third Pillar is Justice and Home Affairs. These two pillars operate through intergovernmental cooperation.

II. The Institutions

The most important administrative and policy-generating institutions for governance of the EC/EU are the Commission, the Parliament, and the Council.

The Commission, the executive and administrative institution, originates legislative proposals. Presently it consists of twenty members, but this number varies according to the number of members in proportion to the influence of the original six. With Austria there was a gain of two, and Scandinavian and Eastern European countries are waiting in the wings.

The European Parliament is composed of individuals elected by general and popular elections. The Parliament originally had a purely consultative function. With the coming into force of the TEU, the Parliament now has a stronger role in the approval of legislation.

Neither the Commission nor the Parliament is subject to instructions from member state governments. The Council of the EU, or Council of Ministers (the principal legislative institution), by contrast,

4. Barbara Sloan, "The European Union," ch. 3 in *International Information: Documents, Publications, and Electronic Information of International Government Organizations*, 2d ed., ed Peter I. Hajnal (Englewood, CO: Libraries Unlimited, 1997), at 53-55.

is composed of ministers sent from each of the member states. Its composition can change because the member states may dispatch different ministers to deliberate different questions. The foreign ministers are the most frequent representatives, but member states may send other cabinet ministers. On occasion the foreign ministers meet with the heads of state as the European Political Committee. The heads of state meet twice per year as the European Council

Because the treaty functions as a constitutional charter, the European Court of Justice (ECJ) was established along with these other institutions to review legislation to determine if it complies with the treaty, to interpret the treaty and legislation, and to see that Community law is applied uniformly within all member states. Among the issues most often before the Court are competition (or what we call antitrust in the United States) and the mergers and cross-border business transactions of large corporations.

As the docket of the ECJ became heavier, the Court of First Instance was established to provide docket relief. The Court of First Instance now hears any category of case transferred to it by the Council, except references for preliminary rulings, which are requests from national courts in member states seeking the opinion of the Court of Justice on the validity or interpretation of Community laws that the national courts may have to apply or to which a European citizen is subject.

In addition to these institutions, there is the Court of Auditors for financial matters; and two bodies that are consulted on legislative proposals in certain cases, the Economic and Social Committee, which represents the views of labor, employers, education, and other interest groups; and the Committee of the Regions, which deals with linguistic matters and the minority concerns of groups that consider themselves definable along ethnic lines.

III. Background Sources

Bright, Christopher. *The EU: Understanding the Brussels Process*. Chichester; New York: John Wiley, 1995.

The European Union [year]: Annual Review of Activities. Supplement to the *Journal of Common Market Studies*. Oxford, U.K.: Blackwell Publishers, 1994-. The issues for 1994, 1995, and

1996 contain an annotated bibliography of significant official documents for the year.

Folsom, Ralph H. *European Union Law in a Nutshell*. 2d ed. St. Paul: West, 1995.

General Report on the Activities of the European Union [year]. Brussels, Luxembourg: OOPEC, 1995– . Formerly *General Report on the Activities of the European Communities [year]*, 1968–94.

Hartley, Trevor C. *The Foundations of European Community Law: An Introduction to the Constitutional and Administrative Law of the European Community*. 3d ed. Oxford: Clarendon Press, 1994.

Lasok & Bridge. *Law and Institutions of the European Union*. 6th ed. Ed. D. Lasok & K.P.E. Lasok. London: Butterworths, 1994.

Steiner, Josephine. *Textbook on EC Law*. 4th ed. London: Blackstone Press, 1994.

IV. Current Awareness Sources

Bulletin of the European Union. Brussels, Luxembourg: Secretariat-General of the European Commission, 1994– . Formerly *Bulletin of the European Communities*, 1968–93. Reports on legislative activity. Ten issues per year, with an index in each issue and cumulative annual index. Irregular supplements reprint significant documents, reports, and speeches.

In addition to newspapers and journals, another excellent source for news of Europe are the Europe-related news files in the EUROPE and NEWS libraries of LEXIS-NEXIS. EUROPA, the European Union Internet platform, is also an excellent place to track very recent developments. The URL is <<http://europa.eu.int>>. The News heading on the EUROPA home page is a link to Press Releases (menu-searchable) and RAPID (text-searchable press releases). These press releases gather news from many sources in the Commission and other institutions and bodies. RAPID is also available in the EURCOM and EUROPE libraries in LEXIS-NEXIS.

V. Guides and Bibliographies for EC/EU Legislation and Documentation

- Jeffries, John. *Legal Research and the Law of the European Communities*. Rodmer Clough, Blackshawhead (W. Yorkshire), UK: Legal Information Resources, 1990.
- Raisch, Marilyn J. "The European Union: A Selective Research Guide," *Colum. J. Eur. L.* 1 (1994/95), 149. A guide to advanced legislative research. Part III is a bibliography of research and bibliographic guides, guides to electronic sources, and major textbooks, monographs, and periodicals.
- Sloan, Barbara. "The European Union." Ch. 3 in *International Information: Documents, Publications, and Electronic Information of International Government Organizations*. 2d ed. Ed. Peter I. Hajnal. Englewood, CO: Libraries Unlimited, 1997. Also available on the Internet as *Researching the European Union* at <<http://www.eurunion.org/infores/resguide.htm>>.
- Thomson, Ian. *The Documentation of the European Communities: A Guide*. London: Mansell, 1989. A pre-Maastricht guide that is still very useful (updated edition in preparation).

VI. Availability of EC/EU Documentation in Paper and Electronic Format

The European Commission supports a system of depository libraries around the world. A list of these depositories is available through the home page of the Delegation of the European Commission to the United States at <<http://www.eurunion.org>> under the heading Information Resources. Depository libraries generally receive one copy of most EU periodical and monograph publications and make these materials available to the public during normal library hours.

The European Union is supporting the ongoing development of Internet resources on an overall platform called EUROPA at <<http://europa.eu.int>>. Under four main options (News, ABC, Institutions, and Policies), EUROPA provides general information and current news about the EC/EU, and links to the home pages of EU institutions and specialized agencies. Under Information, EUROPA provides a link to the EUR-OP home page and to some of

the bibliographic and document databases described below. The Commission and other bodies maintain numerous electronic databases, some of which are available through EUROPA and permit bibliographic searching and limited access to documents. A detailed description of these electronic databases is available on the home page of the Delegation of the European Commission to the United States at <<http://www.eurunion.org>> under the heading Information Resources, subheading Electronic Information. As those pages explain, not all of these databases are available to the public and not all of them are free of charge. Depository libraries have access to some of the databases that are not available to the public.

At this writing, web versions of several databases that are useful for researching EC law were available. In some cases, these databases offer no-cost searching, with fee-based access to full-text documents; one may identify a document but any value-added services (including viewing a document or obtaining a copy) require a fee (or a visit to an EU depository or other library). CELEX, at <<http://europa.eu.int/celex/>>, is the official legal database of the EU. Use of CELEX is by subscription only. EUDOR, at <<http://www.eudor.eu.int/>>, is intended to be the comprehensive document delivery service and archive of documents. Searching in EUDOR is free, but viewing or ordering a document requires a fee. SCAD, at <<http://europa.eu.int/scad/>>, is a no-cost database of bibliographic references to official legislative documents and publications and secondary literature (no full-text documents).

A new free web service called EUR-Lex (found at <<http://europa.eu.int/eur-lex/>>) debuted in early 1998. EUR-Lex is designed to provide the wider public with access to certain legal documents in all official languages. At its debut, EUR-Lex contained the full text of the latest twenty days of the L and C Series of the *Official Journal* (see *infra* p. 196), links to other EU sites for the text of the treaties in force, and recent judgments of the European Court of Justice. According to a press release found at <http://europa.eu.int/abc/eur-lex/pr_en.htm>, subsequent phases of EUR-Lex are expected to add a directory of legislation in force with full-text legislation, and COM documents (see *infra* p. 198) and other preparatory texts of legislation.

EUROCAT, a CD-ROM product distributed by Chadwyck-Healey, contains the complete EUR-OP database of bibliographic

citations to all official publications issued by the EUR-OP and legislation published in the *Official Journal of the European Communities*, COM documents, Parliament reports, and Economic and Social Committee opinions (all discussed below). EUR-OP also licenses other vendors to sell database products. For example, the CELEX files in the EUROPE library of LEXIS-NEXIS come from the official CELEX database. (LEXIS-NEXIS also has documents in its EURCOM library. Specific files are noted throughout this chapter.) SCAD also is available on a CD-ROM called *European References* (London: Context Ltd.).

The Delegation of the European Commission to the United States maintains an information service (phone: (202) 862-9500). Because of the volume of inquiries received by the Washington office, the best policy is to exhaust local library resources and consult the Delegation Internet site at <<http://www.eurunion.org>.> before calling.

VII. Official Languages of EC/EU Documents

With the addition of each new member state, the basic treaties and other legal texts are translated into the new language, which becomes an official language of the organization.

VIII. EC Legislation

A. Types of Legislation

Before looking into the legislative process, it is important to understand the different types of legislation in the European Union. Beyond the treaties (the primary legislation), there are three types of secondary legislation:

1. Regulations

These are directly binding on member states. Regulations are an across-the-board determination by the governing institutions of what needs to be done for the union to achieve its goals.

2. Directives

These are framework statutes that bind through, and must be enacted into, the local law of the member states (by amendment of existing law or enactment of a new law). This process of implementing a directive into national law is known as *harmonization*. Directives outline goals and state a policy or a desirable type of law.

The directive on product liability provides a recent example. A concept fairly new to all legal systems, product liability law was also a new idea in Europe. The EC viewed it as a necessary step toward the uniformity and predictability that is good for the economy and for business transactions. The sub-text of every directive is that it states the desired result, but each member is to enact law to achieve that result within the structure and culture of its own legal system and in its own way. The case of product liability is of particular interest because it bridges what were separate areas in the common law of contracts and torts and because it illustrates two different ways in which a new legal concept can be implemented in the member states. To harmonize its law with the product liability directive, Germany enacted a separate law, but France amended its civil code. The choice of implementation was left up to the member state's democratic and legislative choice.

3. Decisions of the European Council or Commission

These bind only the member states or parties to which they are addressed, but they are indicative of the views of the body promulgating them and as such they point to general policy for member states. The TEU made a step forward in the democratization of the Union. Decisions made by the governing institutions have considerable impact on individual citizens in the EU. There is no exact U.S. equivalent, the closest being administrative agencies with cabinet officials and agency heads who are not elected by the people but appointed and empowered to pass regulations and make quasi-judicial decisions that have a great impact on many aspects of American life and economy. In Europe this kind of "federal" regulation became necessary to remove trade and tariff barriers between member states.

The Commission and Council make decisions when parties come before them for a determination of a rule violation. As these decisions accumulate, they are published and they are read as a key to the

direction of future determinations about the treaty and the regulations. The highest courts of member states also interpret EC regulations because, as noted above, regulations are law in member states.

B. Published Sources of Final Legislation

Once they are in final, adopted form, all three types of legislation are officially published in the *Official Journal of the European Communities* (Luxembourg: OOPEC, 1964–) (hereinafter *OJ*), which serves as the legal journal or gazette of the European Communities. Before 1973, when the United Kingdom joined the then European Economic Community, the *OJ* was published only in French, but there is now an *OJ* Special Edition that contains English translations of most of the legislation from 1964 through 1972. The Special Edition cross-references to the relevant volumes in the original French volumes. The regulations and many of the directives were translated.

The *OJ* is published in two different parts, the L series (Legislation—regulations, directives, and other binding acts) and the C series (Information and Notices—non-binding decisions and resolutions of Council, proposed legislation, opinions of committees, notices of recent decisions of the Court of Justice, texts adopted by Parliament, etc.).⁵ For each L series issue, the table of contents on the front cover lists all the documents printed in that issue, under two headings: I. Acts whose publication is obligatory (regulations and directives), and II. Acts whose publication is not obligatory. Regulations are numbered with a unique accession number followed by the year of enactment. Directives put the year first and then the accession number of the particular directive.

There is a monthly index to the *OJ*, cumulated annually, covering the L and C series in one index. The index is in two volumes. The Alphabetical Index (volume I) indexes each document by keywords derived from EC terminology and other terms unique to the document. The index cites the document by its number (e.g., Regulation 128/96) and by reference to the *OJ* issue where it is

5. There is also an S series of the *OJ*, which contains notices of invitations to tender for contracts within the EC/EU.

published (e.g., L1/20/19). The *OJ* reference indicates which part of the *OJ* (L1 contains acts that are required to be published), which issue (20), and which page (19). Within a monthly or annual index these references are to the *OJ* for that time period but, in general, citations to the *OJ* must include the year since the numbering of issues starts over again with the start of each calendar year. The Methodological Table (volume II) lists the documents (by type—regulations, directives, decisions, etc.) in numerical order with references to the *OJ* issue and page.

Locating legislation can be difficult using only the index to the *OJ* because it uses a very selective vocabulary derived from the language of the TEU. A somewhat easier way to locate legislation in the L-series is to use the official two-volume *Directory of Community Legislation in Force and Other Acts of the Community Institutions* (Luxembourg: OOPEC, 1984–). It is published twice a year, in December and June, and all the information is cumulated so that each semi-annual compilation includes all the legislation still “on the books.”

Volume I of the *Directory* is the *Analytical Register*, which lists all regulations, directives and decisions in force, arranged under subject categories that correspond to the text and subdivisions of the TEU. Volume II contains the *Alphabetical Index*, a list of all the terms in the subject structure of Volume I, and the *Chronological Index* of legislation. It is difficult to use the *Analytical Register* without some familiarity with EU terms. For example, an American-trained lawyer might not know at first that his own profession would be regulated under “freedom to provide services”; “right of establishment” refers to language that has long been in the treaty and is still a part of its vocabulary; “services” includes banking and insurance; and “internal market” derives from a 1992 “white paper” advocating a policy of closer union with easier transborder activities. All are “terms of art” in the EU vocabulary. More commonly used terms, and certainly non-EU terms, may be absent from the finding tools of official EU publications. Attention to the Treaty text and use of the *Alphabetical Index* can help.

Private, unofficial publishers also reproduce selected legislation and often provide more user-friendly indexing than the official sources. LEXIS-NEXIS provides texts from the *OJ* in English and other legislative history materials in the EURCOM library, ECLAW file, and

in the EUROPE library, CELEX files. LEXIS-NEXIS has the full text of the *OJ* in French in the EURCOM library, JOCE file. The *European Union Law Reporter* (Chicago, IL: Commerce Clearing House, Inc., 1962–), formerly the *Common Market Reporter* is especially helpful in the area of competition law and commercial topics generally. It has a topical index in volume 4, and it cites to the *OJ* and, for the years prior to 1973, to the English language Special Edition.

Sweet & Maxwell publishes a longstanding collection of the texts of the treaties and legislation. The original set, entitled *Encyclopedia of European Community Law* (London: Sweet & Maxwell, 1973–), contains, in three multivolume parts, United Kingdom sources, European Community treaties (this part is no longer updated), and Community secondary legislation (regulations, directives, etc.). In 1996 the publisher began the *Encyclopedia of European Union Law*, ed. Neville March Hunnings (London: 1996–), designed to present all of EC/EU law in six parts. To date, part one, "Constitutional Texts," has appeared. It contains the central treaties, documents related to the institutions, such as treaty provisions and rules of procedure, and ancillary and amending texts.

C. The Legislative Process and Resulting Documentation

The legislative process of the European Union and the resulting documentation is more complex than that of most individual countries, including the United States. Legislative initiatives and the participation of the European Parliament take place under a complex set of rules set out in article 189 of the TEU.⁶

When legislation is introduced, the Commission (the policy-making and agenda-setting institution) makes a proposal and presents draft legislation in the form of a Commission or "COM" document containing the text of the proposed law and a report explaining why the legislation was deemed important. As a

6. For more detailed descriptions of the process, see the works by Raisch, Sloan, and Thomson cited *supra* p. 192; and Richard Corbett, *The Treaty of Maastricht from Conception to Ratification* (Harlow, Essex UK: Longmans Group, 1995), an excellent manual that discusses the history of the Maastricht treaty and charts the documentation for each stage of the complex legislative processes mandated by the treaty.

policy-making body the Commission brings to the table issues that by consensus represent the agenda of member states. The Council of Ministers also designates issues that it deems important for legislative action. The Parliament does not originate legislation, but under a process called "co-decision" it plays an important role in the regulation of certain broad subject areas or sectors specified by the TEU. The free movement of workers and veterinary regulations such as the "mad cow" disease regulations are examples of topics that are in co-decision sectors.

Each COM document is numbered with an accession number that includes the last two digits of the year in parenthesis (e.g., COM(96) 606 final). It may also have a code such as CNS, SYN or COD that indicates the specific legislative procedure used for the particular type of legislation as prescribed in article 189 of the treaty. COD stands for co-decision, CNS for the consultation procedure, and SYN for the cooperation procedure. These designations indicate to the researcher what will be the involvement of Parliament and what documents will be issued in the course of the legislative history of the proposal. Each COM document is published as a separate document, and also in the C Series of the *OJ* but without the explanatory report. There will be two or three readings of the proposal, depending upon the type of legislative procedure applied to that category of legislation, and there may be more than one round of comments.

Almost every step in the process generates a document with a different document number. Most are to be found in either the L series or the C series of the *OJ*. The C series will track the readings in Parliament. After a reading, there may be a divergence between what the Commission said in a draft law and the wording preferred by the parliamentary committee assigned to consider it. These amendments are recorded, and the Council may have to arrive at a Common Position in the process of reconciling the wording. Since 1994 the texts of these Common Positions have appeared in the C series of the *OJ*.

Unfortunately, official print indexing for these supporting documents has been poor. Full-text searching of the *OJ* in LEXIS-NEXIS (EUROPE or EURCOM library/PREP and ECLAW files), has been the best "index" to this material. Commercial tools such as the *CCH European Union Law Reporter* and the *EUROCAT* and

European References CD-ROM products also have been favored over the official print sources, at least as a starting point.

A large research library or an EU depository library also will have other legislative history documents. The *Debates* of the European Parliament are published in chronological order as an Annex to the *OJ*, but they are not indexed (an index was published for 1977/78, but not since then). With the date of the debate, it is possible to locate it within the Annex. Debates often will refer to other relevant documents. Additionally, on the first page of the full text of a final enactment in the *OJ* are footnotes citing most of the important documents that preceded the legislation, such as the draft law and Common Positions. Oddly, however, the COM document is not always listed in those footnotes; this was especially true in the early years of the Community, but fortunately COM document reports from that period sometimes appeared in the older *Bulletin of the European Community* (now the *Bulletin of the European Union*). The usual recent practice is to place the COM document citation under the title of the final enactment on the first page of its publication in the *OJ*.

The "Session Documents" reprint the reports coming out of the various Parliamentary committees that are assigned to consider and report on legislative proposals in particular subject areas. Session Documents were formerly called "Working Documents" (prior to early 1987). The Session Documents are now issued only in microfiche. The documents published in the C series of the *OJ* under the heading Texts Adopted by the Parliament include parliamentary opinions, reports on legislation, and amendments to proposals.

The Parliament website at <<http://www.europarl.eu.int>> contains citations to parliamentary texts and some full-text documents. EPOQUE, which is not publicly available but may be available in an EU depository library, is an archive with more full texts than EUROPARL.

D. A Brief Example of Legislative Research

The mad cow disease legislation is used here to illustrate legislative research. Without knowing which sector of regulation covers this subject, it is difficult to know where to look in the *Analytical Register* of the *Directory of Community Legislation in Force*. There are a

variety of types of agricultural controls. The *Alphabetical Index* has an entry for "animal health and zootechnics." The term "zootechnics" relates to the bacterial testing that the EU is empowered to conduct to protect the health of livestock and foodstuffs. Under this term in the *Alphabetical Index* are referenced particular pages in the *Analytical Register*. Going to those pages, one finds listed all the regulations, directives, and decisions currently in force on this topic. Using a relevant date (which can be determined by using secondary sources such as news articles), the most likely entry can be chosen from the list. It is most probably Council Directive 90/425/EEC, OJ L 224/29 (1990), dated June 16, 1990, and "concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products. . . ." It was amended by 92/60/EEC, OJ L 268/73 (1993), dated June 30, 1992.

Armed with a citation, one could now read the text in the *OJ* to confirm that this is the relevant enactment and to look for a footnote citing legislative documents. Indeed, the footnotes on the first page of the legislation note that there were prior and related enactments and legislative history documents. Around that time there were debates and perhaps reports. Listed as references are the draft text of the Commission proposal, the opinion of the European Parliament, and the opinion of the Economic and Social Committee. Taking the reference to the parliamentary opinion at OJ C 326.28 (1988) (in this case there is a misprint—the reference should have been to page 288, which becomes evident upon scanning the table of contents), one would find there a reference to the COM document, COM(88)383 (final), also known as document C-144/88. The COM document also shows that the approval of Parliament came on November 18, 1988. A search in LEXIS-NEXIS (INTLAW or EURCOM libraries, ECLAW file), would produce the CELEX record mentioning approval by Parliament "without report" and the name of the committee to which it was referred, Agriculture, Fisheries, and Food, Colino Salamanca, then Chair.

We already know in this case that the approval was "without report," but had there been one, the *Debates* (in the Annex to the *OJ*) would refer to it as an "A" series document such as A-239/88. This would be a Parliamentary committee report, opinion, or Common Position. (The latter two would appear in the C series of the *Official Journal*. Or, going straight to the *Session Documents*, one

could look for the report in numerical, and roughly chronological, order in the *Session Documents*.

What about very recent action by the EC? What touched off the mad cow beef ban that was based upon this enacted power dating from 1990? A search in news and press releases using terms such as "BSE" or "mad cow" would identify a Commission decision from March 27, 1996, "Measures to protect against bovine spongiform encephalopathy," well before the *Directory of Community Legislation in Force* listed it. The full text could be found in the *OJ*. A researcher might follow a similar path using the Policies or News sections on the EUROPA home page, CELEX, the *CCH European Union Law Reporter*, and journals that cover EC developments.

IX. Basic Case Law on the Treaty: Decisions of the European Court of Justice and the Court of First Instance

The Court of Justice was established in 1952. Official case reports appear in the *Reports of Cases before the Court of Justice and the Court of First Instance* (Luxembourg: Court of Justice of the European Communities, 1959-). The reports are available in all official languages, including English, since 1973. Also included in these reports are the opinions of the Advocates-General, who are lawyers employed by the EC to evaluate cases and propose a solution in the context of EC law. The decisions of the Court of First Instance, which was established in 1989, also are reported in the *Reports of Cases before the Court*, but in a second section (separate volumes) of that official reporter. British legal publications refer to the set as the *European Court Reports*, abbreviated ECR. A second reporter, *Reports of European Community Staff Cases* (ECR-SC), covers staff cases in the Court of First Instance. The ECR and ECR-SC are held in many law libraries and large research libraries, whether they are EU depositories or not.

As with many official reports, the ECR and ECR-SC are slow to appear. Notices of cases accepted, decisions rendered, and a preliminary text of the operative portion of recent judgments will appear in the C series of the *OJ*. Some libraries also receive advance prints

of individual decisions in slip form, which include both full judgments of the Court and the opinions of the Advocates-General. Sometimes these advance prints, which can be ordered from the Court, are the quickest way to get full judgments if the case does not involve special problems of translation into English. The [*Bulletin on the] Proceedings of the Court of Justice and the Court of First Instance of the European Communities* is a publication in newsletter format that provides a short summary of the judgments of the Court and the opinions of the Advocates-General, as well as a list of new cases. It can be ordered for free from the Information Service of the Court. The court also publishes the [*Report of Proceedings (year):] Synopsis of the Work of the Court of Justice and of the Court of First Instance of the European Communities* (Luxembourg: Court of Justice) (title has varied).

The ECR contains indexing, including a chronological index and an alphabetical list of parties, but it is not always easy to use. Unofficial reporters offer better indexing. These include *European Community Cases* (Commerce Clearing House, 1989–), abbreviated CEC, a companion to the *European Union Law Reporter* mentioned above as a source of selected legislative texts. The CEC reprints selected cases, focusing on commercial matters and intellectual property. For selected texts of recent European Court cases, also consult the unofficial British-published *Common Market Law Reports* (London: European Law Centre, 1962–), abbreviated CMLR, and the companion *CMLR: Antitrust Reports* (1991–). Selected cases of the Court of First Instance are included in the *Common Market Law Reports*, as are cases construing EC law from national courts, primarily the UK High Court and House of Lords, but also some other national courts. Both of these commercially published sets have better subject indexing than the official ECR, and CCH uses terminology more familiar to American lawyers.

LEXIS-NEXIS (CASES file in EURCOM or EUROPE library) also provides access to the texts of these decisions. The LEXIS-NEXIS files seem to reflect the selection made by Sweet & Maxwell for the *Common Market Law Reports* and also include some early reports from the *Times* of London. LEXIS-NEXIS loads cases with about two to three months' delay at the most. CELEX contains full-text cases. CURIA, the website of the Court

(<<http://www.curia.eu.int/>>) provides unofficial texts of the cases, but it does not maintain older cases indefinitely.

X. Basic Periodical Sources

Periodical articles on specific legislation or cases can be located using the *European Legal Journals Index* (Hebden Bridge, UK: Legal Information Resources, 1993–). Another source for articles about EC law and national law in Europe is the *Index to Foreign Legal Periodicals*, (London: Institute for Advanced Legal Studies and AALL, 1964–) which is available on the RLIN Eureka databases and through WESTLAW non-educational accounts. Many articles about the EU appear in law reviews published throughout the English-speaking legal world, and indexed in the *Index to Legal Periodicals* (New York: H.W. Wilson Co., 1908–), and the *Current Law Index* (Los Altos, CA: Information Access Corp., 1980–).

XI. Basic Sources for Implementing Legislation

Because directives require implementation by member states and because EU member states retain sovereignty to legislate, complete research into EU law requires keeping track of national laws in many subject areas. *European Current Law* (London: Sweet & Maxwell, 1992–), is a useful abstracting service for laws of European countries generally, for national legislation implementing EC legislation, and for case law. It is a monthly publication cumulated annually. Also helpful is *Commercial Laws of Europe* (London: European Law Centre, 1978–), also a monthly, cumulated annually. It reprints full texts of commercial laws first in the vernacular and later in English. Another spin-off publication from the CCH *Common Market Reporter*, entitled *Doing Business in Europe* (CCH, 1972–), contains country-by-country chapters on legal developments in each member country, but it does not reprint the texts of laws. In CELEX on the Internet (described *supra* p. 193) there is a link from the text of each directive to a list of existing national implementing measures (not full text).

**Part IV—Specialized Topics
in International and Transnational Law**

Chapter
Nine

Research in Transnational
Business Law¹

by VICTOR ESSIEN

I. The Nature and Scope of
Transnational Business Law

A. Terminological Problems

The subject of transnational business law suffers from an embarrassment of terminology. It is variously referred to as international business law,² international commercial law,³ international business

1. © 1998 Victor Essien.

2. Richard Shaffer, Beverley Earle & Filiberto Agusti, *International Business Law and Its Environment* (St. Paul, MN: West, 1990) (hereinafter Shaffer).

3. Paul H. Vishny, *Guide to International Commerce Law*, International Practice Series (New York, NY: Clark Boardman Callaghan, 1995-) (hereinafter Vishny).

transactions,⁴ transnational law,⁵ international trade law,⁶ and the law of international trade and investment.⁷

Most writers have strong reasons for choosing one term over the other. Some writers, for instance, prefer the use of "transnational law" to "international law" because international law presupposes the law governing states, while transnational law reflects the cross-border nature of contemporary business transactions between non-state entities (individuals and corporations).⁸ Other writers consider "international trade law" too restrictive since it ignores the investment law aspect of the subject. The same is true of the term "international commercial law." The term "transnational business law" appears to capture the various aspects of the subject, as well as its cross-border nature.

B. Definitional Problems

If the subject suffers from terminological problems, it has a worse case of definitional problems. Treatises on the subject vary widely in their scope and emphasis.⁹ Part of the problem is that it is difficult to justify it as an autonomous body of law. Rather, it is, as Professor Clive Schmitthoff says, "a diffuse complex of substantive rules of

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4. Ralph H. Folsom & Michael W. Gordon, *International Business Transactions*, Practitioner Treatise Series (St Paul: West, 1995).
 5. Claire M. Germain, *Germain's Transnational Law Research: A Guide for Attorneys* (Irvington-on-Hudson, NY: Transnational Juris Publications, 1991-) (hereinafter Germain). At section 1.01.5 Germain also notes the confused nature of the subject.
 6. *Current Legal Aspects of International Trade Law*, ed. Patrick F.J. Macrory & Peter O. Suchman (Chicago, IL: American Bar Association, Sec. Int'l L., 1982).
 7. John H. Barton & Bart S. Fisher, *International Trade and Investment: Regulating International Business* (Boston, MA: Little Brown, 1986).
 8. Filip De Ly, *International Business Law and Lex Mercatoria* (Amsterdam: North-Holland, T.M.C. Asser Institute, 1992), at 7-8 (hereinafter De Ly). See also Germain, *supra* note 5, § 1.01.3, for a brief review of the origins and uses of the term "transnational law."
 9. Thomas E. Carbonneau, Book Review, 63 Tul. L. Rev. (1989), at 957, n.2 (reviewing George R. Delaume, *Law and Practice of Transnational Contracts*). He notes in particular that "teaching texts emphasize different aspects of the field and adopt variegated methodologies of presentation."

transnational origin which apply to international business transactions."¹⁰

The problem is often compounded by scholarly attempts to find the antecedents of this area of law in the *lex mercatoria*.¹¹ The *lex mercatoria* is the law that evolved as early as the medieval era in the special courts for merchants to govern transnational trade disputes. It is considered to have found resuscitation within Roman law as the *ius gentium* that governed the trade relations between Roman citizens and non-citizens as distinguished from the *ius civile* that governed the relations of Roman citizens *inter se*.¹²

The law merchant was absorbed in the common law in England and in America. Whether the *lex mercatoria* is the earliest form of transnational business law is still a debatable issue.¹³ In any case, it does not help in attempts to define the subject.

Most treatises on the subject shy away from defining it. Taking the unspoken counsel of others who have tried, this chapter does not make any pretense of defining it, but moves on to identify its scope.

C. The Scope of Transnational Business Law

In their 1990 work entitled *International Business Law and Its Environment*, Richard Schaffer, Beverley Earle, and Filiberto Augusto classify international business into three broad areas, namely (1) trade; (2) international licensing of technology and intellectual property (trademarks, patents, and copyrights); and (3) investment.¹⁴

International trade involves the import and export of goods and services,¹⁵ and it may be direct or indirect. Indirect exporting entails the use of domestic intermediaries like export trading companies or export management companies to market one's product abroad.¹⁶

10. See De Ly, *supra* note 8, at 37.

11. *Id.* at 8-20.

12. Berthold Goldman, *Lex Mercatoria*, Forum Internationale, no. 3 (Deventer, The Netherlands: Kluwer Law and Taxation Publishers, 1983), 3-4.

13. De Ly, *supra* note 8, at 18.

14. Shaffer, *supra* note 2, at 5.

15. *Id.*

16. *Id.* at 14.

Foreign intermediaries such as sales agents and distributors also help to reduce the risks in international trade.¹⁷

With international licensing, the holder of a patent, trademark, copyright, or other intellectual property grants certain rights in that property to a foreign concern for an agreed period of time for an agreed amount and upon special terms and conditions.¹⁸

International franchising is a form of licensing that gives the franchisee, in return for a fee, the right to use a trade name or trademark in offering goods or services to the public.¹⁹

The choice of either of these forms of doing business has significant legal consequences. Engaging in trade means that one has to contend with duties, quotas, government subsidies to local producers, tariffs, and other forms of trade barriers. International trade also means one has to be aware of problems of anti-dumping, countervailing duties, and other forms of trade regulations and controls. A businessman may avoid most, if not all, of these problems by electing to license or franchise his goods or services. Of course, licensing or franchising usually means one loses a significant amount of control or even ownership over one's product or technology.²⁰

The third form of doing transnational business may entail either direct investment or portfolio investment.²¹ Foreign direct investment involves the ownership and control of an ongoing business in

17. *Id.*

18. *Id.* at 14–15.

19. See generally John Ratliff, "International Franchising," in *International Trade: Law and Practice*, ed. Julian D. M. Lew & Clive Stanbrook (London: Euro-money Pubs., 1990), at 163–64.

20. See generally Steven C. Nelson, "Negotiating and Drafting Agency, Distribution and Franchise Agreements" in *Negotiating and Structuring International Commercial Transactions: Legal Analysis with Sample Agreements*, ed. Shelly P. Battram & David N. Goldsweig (Washington, DC: American Bar Association Sec. Int'l L. & Practice, 1990), at 189; Vishny, *supra* note 3, at 2–81.

21. Robert Pritchard, "Introduction: The Contemporary Challenges of Economic Development," in *Economic Development, Foreign Investment, and the Law: Issues of Private Sector Involvement, Foreign Investment, and the Rule of Law in a New Era*, ed. Robert Pritchard (London: Kluwer Law International, International Bar Ass'n, 1996), at 3 (hereinafter Pritchard).

a host country.²² It includes investment in manufacturing, mining, farming, assembly operations, and other production facilities.²³ The investor may wholly own the foreign investment, or he or she may enter into a joint venture relationship or even a service contract with the locally owned facility.²⁴

Portfolio investment, on the other hand, usually comes in the form of a minority interest in a foreign venture from which income is derived through dividends.²⁵ The investor usually does not take part in the management of the foreign venture.²⁶

II. Sources of Transnational Business Law

Where does one turn to look for the law that governs transnational business transactions? The sources of transnational business law are international and national law, and the transnational mercantile community.

The international sources include international conventions or agreements. Examples are the United Nations Convention on Contracts for the International Sale of Goods of 1980, and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 1965. As with all treaties, only an entity or individual who is a citizen of a state party to the treaty can invoke its terms and only against similarly situated entities or individuals.

The national sources of transnational business law include municipal (national) legislation, judicial decisions, and governmental policies. These sources will apply to a given transaction because the parties have agreed that they will, or as a result of choice of law rules in a given forum (actually an aspect of private international law).

22. *Id.* at 4.

23. See generally Piero Bernardini, "Development Agreements with Host Governments," in *Economic Development, Foreign Investment, and the Law: Issues of Private Sector Involvement, Foreign Investment, and the Rule of Law in a New Era*, ed. Robert Pritchard (London: Kluwer Law International, International Bar Ass'n, 1996), at 161.

24. *Id.*

25. Pritchard, *supra* note 21, at 3.

26. *Id.*

Like its predecessors in medieval and more modern times, the contemporary transnational mercantile community is a major source of transnational business law. A significant part of the body of transnational business law has its source in the contract practices and common understandings of the business community, the decisions of arbitral panels and the regulations developed by trade associations and other instruments of self-government. A typical example of these trade associations is the International Chamber of Commerce. Examples of regulations include the ICC Incoterms and the ICC Rules of Conciliation and Arbitration.

III. Selected International Conventions and Standards Dealing with Trade and Intellectual Property

A. Uniform Law

- ◆ The United Nations Convention on Contracts for the International Sale of Goods, Vienna, Apr. 11, 1980, entered into force Jan. 1, 1988. 19 ILM 671 (1980).
- ◆ The United Nations Convention on the Limitation Period in the International Sale of Goods, New York, June 14, 1974, 13 ILM 952 (1974), amended by protocol, Apr. 11, 1980, entered into force Aug. 1, 1988. 19 ILM 696 (1980).
- ◆ International Institute for the Unification of Private Law. UNIDROIT Convention on Agency in the International Sale of Goods, Geneva, Feb. 17, 1983, not yet in force. 22 ILM 249 (1983).
- ◆ United Nations Convention on International Bills of Exchange and International Promissory Notes, New York, Dec. 9, 1988, not yet in force. 28 ILM 170 (1989).

B. Private International Law/Conflict of Laws

- ◆ Convention on the Law Applicable to Contracts for the International Sale of Goods, The Hague, Oct. 30, 1985, not yet in force. 24 ILM 1575 (1985).
- ◆ European Convention on the Law Applicable to Contractual Obligations, Rome, June 19, 1980, entered into force, Apr. 1, 1991. UKTS 2 (1992), 19 ILM 1492 (1980).
- ◆ Convention on the Law Applicable to Agency, The Hague, Mar. 14, 1978, entered into force May 1, 1992. Cmnd. 7020. 26 *American J. Comparative Law* 438 (1978).
- ◆ European Convention on the Law Applicable to Products Liability, The Hague, Oct. 2, 1973, entered into force Oct. 1, 1977. 1056 UNTS 187.
- ◆ Convention on the Law Applicable to the International Sale of Goods, The Hague, June 15, 1955, entered into force Sept. 1, 1964. 510 UNTS 147.

C. Trade

- ◆ North American Free Trade Agreement, Washington, Ottawa and Mexico, Dec. 8, 11, 14, and 17, 1992, entered into force Jan. 1, 1994. 32 ILM 605 (1993).
- ◆ Marrakesh Agreement Establishing the World Trade Organization (WTO), Marrakesh, Apr. 15, 1994, entered into force Jan. 1, 1995. 33 ILM 1125 (1994).
- ◆ Related Agreements on Agriculture, Technical Barriers to Trade, Settlement of Disputes, GATT, Implementation of Articles VI and VII of GATT, 1994, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), Preshipment Inspection, Rules of Origin, Safeguards, Application of Sanitary and Phytosanitary Measures, Trade Services, Subsidies and Countervailing Measures, and Textiles and Clothing, Marrakesh, Apr. 15, 1994, entered into force Jan. 1, 1995. 13 ILM 1154 (1994).
- ◆ Arrangement Regarding International Trade in Textiles, with annexes, Geneva, Dec. 20, 1973, entered into force Jan. 1, 1994, except for Article 2, paragraphs 2, 3 and 4, which entered into force Apr. 1, 1974. 25 UST 1001, TIAS 7840.

- ◆ Agreement on Technical Barriers to Trade (Standards Code), Geneva, Apr. 12, 1979, entered into force Jan. 1, 1980. 31 UST 405, TIAS 9616, 1186 UNTS 276.
- ◆ Agreement on Interpretation and Application of Articles VI, XVI and XXIII of GATT (Subsidies and Countervailing Duties Code), Geneva, Apr. 12, 1979, entered into force Jan. 1, 1980. 31 UST 513, TIAS 9619, 1186 UNTS 204.
- ◆ Agreement on Implementation of Article VI of GATT (Anti-Dumping Code), Geneva, Apr. 12, 1979, entered into force Jan. 1, 1980. 31 UST 4919, TIAS 9650, 1186 UNTS 2.

D. Industrial Property

- ◆ Paris Convention for the Protection of Industrial Property, Paris, Mar. 20, 1883, entered into force July 6, 1884. USTS 379, 25 Stat. 1372 (1887–89), 1 Bevans 80. Revised in 1900, 1911, 1925, 1934, 1958, and 1967.

E. Patents

- ◆ International Convention for the Protection of New Varieties of Plants (UPOV), Geneva, Dec. 2, 1961, entered into force Aug. 10, 1968, 815 UNTS 89, UKTS 74 (1969), as revised Oct. 23, 1978, entered into force Nov. 8, 1981. 33 UST 2703, TIAS 10199, UKTS 11 (1984). 1991 revision not yet in force.
- ◆ Patent Cooperation Treaty, Washington, D.C., June 19, 1970, entered into force Jan. 24, 1978. 28 UST 7645, TIAS 8733, 1160 UNTS 231. Frequently amended.
- ◆ Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, Budapest, Apr. 28, 1977, entered into force Aug. 19, 1980. 32 UST 1241, TIAS 9768, 17 ILM 285 (1978).
- ◆ Convention on the Grant of European Patents (with Protocols), Munich, Oct. 5, 1973, entered into force Oct. 7, 1977. 13 ILM 270 (1974), UKTS 20 (1978).

F. Trademarks

- ◆ Arrangement Concerning the International Registration of Marks (With Protocol), Madrid, Apr. 14, 1891, entered into force July 15, 1892. 18 Martens (2d) 842, 175 CTS 57, 96 *British and Foreign State Papers* 839. Revised 1900, 1911, 1925, 1934, 1957, 1967, amended Oct. 2, 1979, Protocol June 28, 1989.
- ◆ Arrangement for the Prevention of False or Deceptive Indications of Origin on Goods, Madrid, Apr. 14, 1891, entered into force July 15, 1892. 18 Martens (2d) 839, 175 CTS 53, UKTS 13 (1892), 96 *British & Foreign State Papers* 837. Revised 1911, 1925, 1934, 1958. Additional Act July 14, 1967.
- ◆ Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, Lisbon, Oct. 31, 1958, entered into force Sept. 25, 1966, revised 1967, amended 1979. *Journal officiel de la République française*, Apr. 6, 1968.
- ◆ Trademark Registration Treaty, Vienna, June 12, 1973, amended 1980, entered into force Aug. 7, 1980. Cmd. 5749.

G. Copyright and Neighboring Rights

- ◆ Berne Convention for the Protection of Literary and Artistic Works, Berne, Sept. 9, 1886, entered into force Dec. 5, 1887, revised 1908, 1914, 1928, 1948, 1967, 1971, amended 1979. 12 Martens (2d) 173, 168 CTS 185, 77 *British & Foreign State Papers* 22.
- ◆ Universal Copyright Convention (And Protocols), Geneva, Sept. 6, 1952, entered into force Sept. 16, 1952, revised 1971. 216 UNTS 132, 6 UST 2731, TIAS 3324.
- ◆ International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), Rome, Oct. 26, 1961, entered into force May 18, 1964. 496 UNTS 43, UKTS 38 (1964).
- ◆ Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Convention), Geneva, Oct. 29, 1971, entered into force Apr. 18, 1973. 866 UNTS 67, 25 UST 309, TIAS 7808.
- ◆ Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels Convention), Brussels,

May 21, 1974, entered into force Aug. 25, 1979. 1144 UNTS 3, 13 ILM 1444 (1974).

- ◆ Treaty on the International Registration of Audiovisual Works, Geneva, Apr. 20, 1989, entered into force Feb. 27, 1991. 1989 *Copyright: Monthly Review of the World Intellectual Property Organization*, 176.
- ◆ Treaty on Intellectual Property in Respect of Integrated Circuits, Washington, D.C. May 26, 1989, not yet in force. *Industrial Property Laws and Treaties, Multilateral Treaties, 1-011* (WIPO—World Intellectual Property Organization, June 1989), 28 ILM 1484 (1989).
- ◆ WIPO Copyright Treaty, Geneva, Dec. 20, 1996, not yet in force. 36 ILM 65 (1997).
- ◆ WIPO Performances and Phonograms Treaty, Geneva, Dec. 20, 1996, not yet in force. 36 ILM 76 (1997).

H. Industrial Design

- ◆ The Hague Agreement Concerning the International Deposit of Industrial Design, The Hague, Nov. 6, 1925, entered into force June 1, 1928. 74 LNTS 343. Revisions and protocol.

I. Classification Treaties

- ◆ Nice Agreement Concerning the International Classification of Goods and Services to which Trademarks Apply, Nice, June 15, 1957, entered into force Apr. 8, 1961. 550 UNTS 45, 23 UST 1336, TIAS 7418. Revised 1967, 1977, 1979.
- ◆ Locarno Agreement Establishing an International Classification for Industrial Designs, Locarno, Oct. 8, 1968, entered into force Apr. 27, 1971. 23 UST 1354, TIAS 7420.
- ◆ Strasbourg Agreement Concerning the International Patent Classification, Strasbourg, Mar. 24, 1971, entered into force Oct. 7, 1975. 26 UST 1793, TIAS 8140.
- ◆ Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, Vienna, June 12, 1973, entered into force Aug. 9, 1985. III *Manual of Industrial Property Conventions* (WIPO).

J. Organizations

- ◆ Convention Establishing the World Intellectual Property Organization, Stockholm, July 14, 1967, entered into force Apr. 26, 1970. 828 UNTS 3, 21 UST 1749, TIAS 6932.

K. Arbitration

- ◆ New York Convention: Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958, entered into force June 7, 1959. 330 UNTS 3, 21 UST 2517, TIAS 6997.
- ◆ European Convention on International Commercial Arbitration, Geneva, Apr. 21, 1961, entered into force in part Jan. 7, 1964, and in part Oct. 18, 1965. 484 UNTS 349.
- ◆ Inter-American Convention on International Commercial Arbitration, Panama, Jan. 30, 1975, entered into force June 16, 1976. 14 ILM 336 (1975).
- ◆ United Nations Commission on International Trade Law. UNCITRAL Model Law on International Commercial Arbitration, adopted June 21, 1985. 40 GAOR, Supp. No. 17 (A/40/17), Annex 1, 81-93, 24 ILM 1302 (1985).

L. Arbitration Rules

- ◆ UNCITRAL Arbitration Rules, Apr. 28, 1976. 15 ILM 701 (1976).
- ◆ ICC Rules of Conciliation, entered into force Jan. 1, 1988, and Rules of Arbitration, entered into force Jan. 1, 1998. ICC Publication No. 581 (1997), 36 ILM 1604 (1997).
- ◆ London Court of International Arbitration Revised Rules, effective Jan. 1, 1985. 24 ILM 1137 (1985).

M. Litigation

- ◆ Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, entered into force Jan. 1, 1988. WESTLAW document IEL VIII-N (International Economic Law Documents).

- ◆ Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, The Hague, Nov. 15, 1965, entered into force Feb. 10, 1969. 658 UNTS 163, 20 UST 361, TIAS 6638.
- ◆ European Economic Communities Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, Brussels, Sept. 27, 1968, entered into force Feb. 1, 1973. 1978 *Official Journal of the European Communities* (L304) 77, 8 ILM 229 (1969).

N. Private Standardization

- ◆ International Chamber of Commerce. INCOTERMS, 1990, entered into force July 1, 1990. ICC Publication No. 460 (Paris: ICC Publishing, 1990).
- ◆ International Chamber of Commerce. Uniform Customs and Practice for Documentary Credits, 1993, entered into force Jan. 1, 1994. ICC Publication No. 500 (Paris: ICC Publishing, 1993).

IV. Selected Instruments Relating to International Investment

A. Comprehensive Instruments

- ◆ Draft UN Code of Conduct on Transnational Corporations (under negotiation). 23 ILM 626 (1984).
- ◆ Organization for Economic Cooperation and Development. OECD Declaration on International Investment and Multinational Enterprises, adopted June 21, 1976.²⁷
- ◆ Andean Foreign Investment Code: Common Regime of Treatment of Foreign Capital and Trademarks, Patents, Licenses and Royalties (Decision 220), adopted May 12, 1987.

27. See *The OECD Declaration and Decisions on International Investment and Multinational Enterprises: 1991 Review* (Paris: OECD 1992).

- ◆ OECD Multilateral Agreement on Investment. Under negotiation, proposed date of adoption, May 1997.²⁸

B. Specific Issues

- ◆ OECD Code of Liberalization of Capital Movements, adopted Dec. 19, 1961, incorporating changes to Aug. 31, 1986 (Paris: OECD, 1986).
- ◆ OECD Code of Liberalization of Current Invisible Operations, adopted Dec. 13, 1961, incorporating changes to May 31, 1988 (Paris: OECD, 1988).
- ◆ International Center for the Settlement of Investment Disputes. ICSID Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Washington, Mar. 18, 1965, entered into force October 14, 1966. 575 UNTS 159, 17 UST 1270.
- ◆ Convention on a Code of Conduct for Liner Conferences, Geneva, Apr. 6, 1974, entered into force Oct. 6, 1983. 13 ILM 917 (1974).
- ◆ OECD Model Tax Convention on Income and on Capital, Sept. 1, 1992.²⁹
- ◆ United Nations Model Double Taxation Convention between Developed and Developing Countries, New York, 1980, ST/ESA/102, UN Sales No. E.80.XVI.3 (New York, NY: UN Department of International Economic and Social Affairs, 1980).
- ◆ ILO Tripartite Declaration of Principles Governing Multinational Enterprises and Social Policy, adopted Nov. 16, 1977. 17 ILM 422 (1978).
- ◆ OECD Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data Adopted Sept. 23, 1980. 20 ILM 422 (1981).

28. For a discussion of the proposed agreement, see *OECD Observer*, no. 202 (Oct.–Nov. 1996), at 6. For an update on the status of the negotiations, see 143 *Cong. Rec.* E1777 (daily ed. Sept. 17, 1997).

29. The text of this Model Convention, together with commentary, appears in Philip Baker, *Double Taxation Conventions and International Tax Law: A Manual on the OECD Model Taxation Convention on Income and on Capital of 1992*, 2d ed. (London: Sweet & Maxwell, 1994).

- ◆ United Nations Conference on Trade and Development. UNCTAD Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. General Assembly Resolution 35/63, adopted Dec. 5, 1980, A/RES/35/63 and A/C.2/35/63, Annex, 19 ILM 813 (1980).
- ◆ World Health Organization. WHO International Code of Marketing of Breastmilk Substitutes, Resolution of the World Health Assembly, adopted May 21, 1981. 20 ILM 1004 (1981).
- ◆ Fourth African, Caribbean and Pacific States-European Economic Community Convention, Lomé, Dec. 15, 1990. 29 ILM 783 (1990).
- ◆ United Nations Guidelines for Consumer Protection. General Assembly Resolution 39/248, adopted Apr. 9, 1985. A/RES/39/248, Annex.
- ◆ World Bank Convention Establishing the Multilateral Investment Guarantee Agency, Seoul, Oct. 11, 1985, entered into force Apr. 12, 1988. UKTS 47 (1989), 24 ILM 1598 (1985).
- ◆ Draft UN Code of Conduct on the Transfer of Technology, May 6, 1980. 19 ILM 773 (1980).
- ◆ OECD Council Recommendation on Bribery in International Business Transactions, adopted on May 27, 1994. 33 ILM 1389 (1994).
- ◆ ICC Rules of Conduct on Extortion and Bribery in International Business Transactions, adopted Mar. 26, 1996. 35 ILM 1307 (1996).
- ◆ Inter-American Convention Against Corruption, Caracas, Mar. 29, 1996. 35 ILM 724 (1996).

V. National Regulation of Transnational Business

Anyone engaged in transnational business must perforce look also to municipal (national) sources of law to determine the full range of law that affects the transaction. Municipal law may apply to part or all of a given transaction. This may be as a result of the party autonomy principle whereby the parties have agreed that a given municipal law shall apply to the deal. At other times municipal law may apply because of the operation of conflict of law rules in a given forum (private international law). Consequently, researching transnational

business law may lead to the municipal laws of foreign countries as well as the laws of the United States.³⁰

Some of the relevant United States laws are listed here:

- ◆ For regulation of imports, the Harmonized Tariff Schedule of the U.S., implemented pursuant to section 1204 of P.L. 100-418, the Omnibus Trade and Competitiveness Act of 1988, 102 Stat. 1148, codified at 19 U.S.C. § 3004.
- ◆ For the regulation of exports, the Export Administration Act of 1979, P.L. 96-72, 93 Stat. 503, and its amendments, codified at 50 U.S.C. §§ 2401-20.
- ◆ The Foreign Corrupt Practices Act, P.L. 95-213, 91 Stat. 1494 (1977), as amended by P.L. 100-418, 102 Stat. 1415 (1988), codified at 15 U.S.C. § 78dd-1.
- ◆ Section 337 of the Tariff Act of 1930, Chap. 497, 46 Stat. 703, which deals with unfair import competition.
- ◆ Section 301 of the Trade Act of 1975, P.L. 93-618, 88 Stat 2041, as amended by P.L. 100-418, § 1301, 102 Stat. 1164 (1988), codified at 19 U.S.C. § 2411, which provides the United States with remedies for dealing with trade restrictions by its trading partners.
- ◆ The Foreign Sovereign Immunities Act of 1976, P.L. 94-583, 90 Stat. 2891, codified at 28 U.S.C. §§ 1330, 1602-1611.
- ◆ The Foreign Assistance Act, P.L. 87-195, 75 Stat. 424 (1961), P.L. 89-171, 79 Stat. 653 (1965), and amendments.

30. The appendix to this chapter lists electronic sources of legislation and case law for selected foreign jurisdictions. For a bibliography on municipal laws regulating international business, see Victor Essien, "Bibliographic Guide to Doing Business in Foreign Countries," in *Introduction to International Business Law: Legal Transactions in a Global Environment*, ed. Gitelle Seer & Maria I. Smolka-Day, sponsored by the American Association of Law Libraries (New York, NY: Oceana, 1996), at 27-65.

Appendix A

Foreign Legislation Online

Country	Database	File Name/ Site Address	Type of Legislation	Period Covered	Language
Australia	LEXIS	AUST (COMACT) (CONACT)	Federal Acts	1901 to present	English
Australia	Australasian Legal Infor- mation Institute	http://www.austlii.edu.au/	Legislation	1947 to present	English
Bermuda	WESTLAW	BUIN-ST BUIN-ADC	Insurance Statutes Insurance Admini- strative Code	Current	English
Brazil	WESTLAW	ENFLEX-BR	Environmental, health, and safety regulations	Current	English
Canada	Virtual Canadian Law Library	http://www.droit.umontreal.ca/doc/biblio/en/index.html	Legislation		English
Cayman Islands	WESTLAW	CIIN-ST CIIN-ADC	Insurance Statutes Insurance Admini- strative Code	Current	English
China	LEXIS	INTLAW (CHINAL)	English version of Chinese Law	1960 to present	English

Country	Database	File Name/ Site Address	Type of Legislation	Period Covered	Language
China	Sponsored in part by the Univ. of Maryland School of Law	http://www. qis.net/ chinalaw/	Translation of Chinese Law		English
Eastern Europe	WESTLAW	INT- EEUROPE	Newly issued com- mercial laws and regulations provided to NTIS by govern- ments of Poland, Hungary, Czech, Slovak, Romania, Bulgaria, Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyztan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, Ukraine	1990 to present	English
France	LEXIS	LOIREG (CODES)	All Codes	Variable	French
France	LEXIS	JO	Laws published in the <i>Journal officiel</i>	1955 to present	French
France	WESTLAW	ENFLEX-FR	Environmental, health, and safety regulations	Current	English
Hungary	LEXIS	INTLAW (HULAW)	Legislation	1990 to present	English
Indonesia	WESTLAW	ENFLEX-IO	Environmental, health, and safety regulations	Current	English
Italy	WESTLAW	ENFLEX-IT	Environmental, health, and safety regulations	Current	English
Mexico	LEXIS	INTLAW (MXFED)	Federal Legislation	1900s to present	Spanish

Country	Database	File Name/ Site Address	Type of Legislation	Period Covered	Language
Mexico	WESTLAW	MEXCODE CODMEX	Civil & Commercial Codes	Current to 1995	English Spanish
Mexico	WESTLAW	ENFLEX-MX	Environmental, health, and safety regulations	Current	English
Russia	WESTLAW	RUSLINE	Laws & Regula- tions enacted in Russia & other former Soviet Countries	1988 to present	English
Russia	LEXIS	INTLAW (RFLAW) (RUSLEG)	Economic laws Legal texts	Current	English
Spain	WESTLAW	ENFLEX-SP	Environmental, health, and safety regulations	Current	English
United Kingdom	LEXIS	ENGEN	Current Public General Acts of England & Wales, current Statutory Rules, Regulations & Orders of Eng- land & Wales pub- lished in <i>Statutory Instruments Series</i>	1927 to present	English
United Kingdom	WESTLAW	ENFLEX-UK	Environmental, health, and safety regulations	Current	English
United Kingdom	Her Majesty's Stationery Office	http://www. hmso.gov.uk/ acts.htm	Legislation	1996 to present	English
Vietnam	WESTLAW	VIETNMOG	<i>Official Gazette</i>	1996 to present	English
Multi- national	Findlaw	http://www. findlaw.com	Miscellaneous legal resources	Variable	English
Multi- national	Internet Legal Resource Guide	http://www. ilrg.com	Miscellaneous legal resources arranged by country	Variable	English

Country	Database	File Name/ Site Address	Type of Legislation	Period Covered	Language
Multi-national	Prof. Makoto Ibusuki's World List	http://law.osaka-u.ac.jp/legal-info/worldlist/worldlst.htm	Miscellaneous legal resources arranged by country	Variable	Mostly English
Multi-national	Emory Law Library Resource Guide	http://www.law.emory.edu/LAW/refdesk/toc.html	Miscellaneous legal resources arranged by country	Variable	English
Multi-national	U.S. House of Representatives Internet Law Library	http://law.house.gov	Miscellaneous legal resources arranged by country including case law and statutes	Variable	Mostly English

Appendix B

Foreign Case Law Online

Country	Database	File Name/ Site Address	Scope	Period Covered	Language
Australia	LEXIS	AUST	Decisions from commonwealth courts, administrative tribunals and the Supreme Courts of New South Wales, the Australian Capital Territory, the Northern Territory and Tasmania	Varies by court	English
Australia	Austral- asian Legal Informa- tion Institute	http://www.austlii.edu.au/	Court Decisions	1947 to present	English
Canada	LEXIS	CANADA	Full text and summary case law from all jurisdictions in Canada as well as decisions of the Ontario Court of Appeal & Ontario Court of Justice	Full text from 1987	English

Country	Database	File Name/ Site Address	Scope	Period Covered	Language
England	LEXIS	ENGGEN (CASES)	Full text of cases reported in the major English law reports of cases decided by most courts	1936 to present	English
France	LEXIS	PUBLIC PRIVE	Public law decisions from Constitutional Council, Tribunal of Conflict, Council of State, Administrative Appeals Courts of Bordeaux, Lyon, Nancy, Nantes & Paris. Private law decisions from Cour de Cassation & selected Courts of Appeals decisions	Varies by court	French
Hong Kong	LEXIS	COMCAS (HKCAS)	All Hong Kong cases	1947 to present	English
Malaysia	LEXIS	COMCAS (SMBCAS)	Decisions from Federal Supreme Court & High Courts of Malaysia; also cases reported in <i>Malayan Law Journal</i>	1992 to present	English
Mexico	LEXIS	MEXICO (MXJUR)	Supreme Court decisions	1990s to present	Spanish
New Zealand	LEXIS	COMCAS (NZCAS)	Decisions reported in <i>New Zealand Law Reports</i>	1970 to present	English
Northern Ireland	LEXIS	COMCAS (NIRCAS)	Decisions reported in <i>Northern Ireland Reports</i>	1945 to present	English
Republic of Ireland	LEXIS	COMCAS (IRECAS)	Cases reported in <i>Irish Reports</i>	1950 to present	English
Singapore	LEXIS	SING (SINGLR)	Decisions reported in <i>Singapore Law Reports</i>	1992 to present	English

Country	Database	File Name/ Site Address	Scope	Period Covered	Language
Scotland	LEXIS	COMCAS (SCOCAS)	Decisions reported in <i>Scottish Law Times</i> , <i>Session Cases</i> , <i>SCCR</i>	1950 to present	English
South Africa	LEXIS	INTLAW (SACLR)	Decisions reported in <i>Butterworths Constitu- tional Law Reports</i>	1994 to present	English

Chapter
Ten

International Taxation: Major Topics and a Bibliographic Guide¹

by *RADU D. POPA*

I. Introduction

A. Why International Taxation?

One of the most striking features of the contemporary economic and trade environment is that it is not restricted to the territory of one state or region only, as it used to be in the past. Activities such as import and export of goods and services, international mobility of labor and capital, and foreign investment raise many issues of international trade and economic law and also of the jurisdiction of states in regard to tax matters. In the global economy, there is almost no

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1. © 1998 Radu D. Popa. For a complete bibliography and a glossary of key terms in international taxation, see Radu D. Popa, "International Taxation: Navigating the Legal Literature in English: A Basic Guide and Glossary," in *Introduction to International Business Law: Legal Transactions in a Global Economy*, ed. Gitelle Seer & Maria I. Smolka-Day (New York, NY: Oceana Pubs., Inc., 1996), at 185–284.

activity that does not involve international tax aspects. The legal issues resulting therefrom are dealt with by the law of international taxation.

B. What Is International Taxation?

International taxation law derives from the general sources of public international law. Correctly defining international taxation is very important for researchers and information specialists. A comprehensive definition of the field is required to understand the complexity of sources and materials that cover this major aspect of international business transactions. Perhaps the broadest definition of international taxation is to be found in a book by Rutsel Silvestre J. Martha, *The Jurisdiction to Tax in International Law: Theory and Practice of Legislative Fiscal Jurisdiction* (Deventer; Boston, MA: Kluwer Law and Taxation Publishers, 1989). International taxation is defined there as "national tax practices involving an international element." Under this broad definition, international taxation relies on major principles of international law and especially treaty law as contained in double taxation agreements.

On the other hand, especially in the United States, international taxation is very often considered only as U.S. taxation as it applies to transactions with an international element. Using this narrow definition, international taxation would not encompass more than U.S. taxation of non-resident aliens and foreign corporations; U.S. taxation of foreign income; foreign corporations, Controlled Foreign Corporations Subpart F, Foreign Sales Corporations; and income tax treaties, bilateral or multilateral, having the United States as a party. U.S. international taxation is extremely important to many individuals and corporations; nevertheless, this narrow definition ignores the significant variety of tax aspects that may exist in transnational trade and financial matters. Taxation, as a chapter of public international law, implies much more than U.S. foreign business transactions. For instance, a tax treaty between Germany and Brazil is an element of international taxation, without involving the United States in any respect.

Finally, international taxation is to be distinguished clearly from the study of foreign tax systems and legislation. Knowledge of foreign tax laws might be essential, however, in many situations

involving international taxation, both under the broad and the narrow definition.

Taking into account the complexity of the subject, the main goal of any bibliographic and research guide on international taxation is to evaluate and recommend some basic sources, and sources of sources, that will answer the greatest variety of questions. In fact, however, no library needs to own all the materials mentioned in the following bibliography, for some of them might not be used very often and others can be quite expensive (especially foreign tax sources, services covering more than one jurisdiction, specialized journals, and looseleaves). It is necessary, however, for any information specialist who works with researchers in the legal, business, or any other related field to know about these basic tools and to know where to access those not owned by the local library.

Generally, there is almost no predictable scenario for research problems involving international taxation. Unlike other subjects such as the international sale of goods or international transportation law, research in international taxation very rarely follows the same pattern twice. One time, for instance, the research may lead to a recent tax treaty matter in conjunction with some particular tax legislation of a foreign jurisdiction, available in the vernacular only; another time avoidance of double taxation in two countries not having a tax treaty in force might be the problem; finally, one may imagine a complex transnational business question involving tax treaties aspects, domestic and foreign tax legislation, as well as pronouncements of an international trade organization. The only way to face these challenges successfully is with a thorough, in-depth knowledge of the available sources.

II. International Taxation in General

This section emphasizes some basic materials covering different topics of international taxation in general, such as international tax planning, foreign tax credits, international tax avoidance and evasion, transfer pricing principles, juridical double taxation of income, and nondiscrimination in international tax law. Most of the general books are concerned mainly with whether and how the tax law of a particular state is to be applied to an international tax case, whether

relief from double taxation is possible, and how one nation's tax administration cooperates with another in such cases.

Butterworths International Taxation of Financial Instruments and Transactions. 2d ed. Jeremy Bradburne et al. eds. London, Dublin & Edinburgh: Butterworths, 1994. This is the second edition of a three-volume set providing an outline of the tax treatment of financial transactions in the three leading financial markets of the world: New York, London, and Tokyo.

Hussey, Ward M. & Donald C. Lubick. *Basic World Tax Code and Commentary: A Project Sponsored by the Harvard University International Tax Program. 1996 Edition.* Arlington, VA: Tax Analysts, 1996. The BWCT was initiated as an attempt to provide an example of the laws that are needed for an efficient and effective tax system. Intended to assist former colonies or former socialist countries in transition to the market economy by providing to tax policy and legal experts a framework or a checklist of what is needed for a system that is compatible with the developed countries and the world economic community at large.

International Personal Tax Planning Encyclopaedia. Ed. R. C. Lawrence. Austin, TX: Butterworths, 1990—. This looseleaf service deals with concepts such as domicile, residence, applicable jurisdiction at the time of client's death, and basis for taxing inheritance. Separate chapters are dedicated to foreign legal systems, but full text of legislation is not provided. Especially useful for the international tax practitioner.

Martha, Rutsel Silvestre J. *The Jurisdiction to Tax in International Law: Theory and Practice of Legislative Fiscal Jurisdiction.* Deventer; Boston, MA: Kluwer Law & Taxation Publishers, 1989. This study, written as a doctoral thesis, emphasizes the jurisdiction to tax in public international law. The author analyzes several major elements of the theory of international taxation and focuses in the last part of the book on the nature and causes of international double taxation. In-depth analysis of the relationship between national sovereignty and fiscal jurisdiction.

Picciotto, Sol. *International Business Taxation: A Study in the Internationalization of Business Regulation.* New York, NY: Quorum Books, 1992. The book aims to provide a survey of the development and operation of international business taxation. It

is sufficiently detailed to offer an adequate understanding of the complexities of the subject, yet analytical enough to bring out the important policy issues. Very useful historical background, full analysis of the tax treaty system and the international tax system as a whole, and detailed discussion of major international tax issues such as international tax avoidance, tax havens, and transfer pricing. In the appendix are reproduced both the OECD/UN Model Double Taxation Conventions and the U.S. Treasury Department Model Income Tax Treaty. Also contains a bibliography.

Pires, Manuel. *International Juridical Double Taxation of Income*. Deventer; Boston, MA: Kluwer Law & Taxation Publishers, 1989. Analysis of one of the most striking contemporary international tax phenomena. As tax systems are tending to abandon taxation based on nationality in favor of taxation based on the principle of territoriality, taxation itself evolves towards global patterns. In Pires' view, international double taxation is one of the consequences of this process. The book thoroughly illustrates the phenomenon, focusing on both measures designed to eliminate double taxation and the means of preventing it. Extensive bibliography.

Qureshi, Asif H. *The Public International Law of Taxation: Text, Cases and Materials*. London; Boston, MA: Graham & Trotman, 1994. This is a unique casebook intended to highlight for tax practitioners and scholars the issues of taxation from the perspective of public international law. The first part is an overview of the public international law aspects of taxation. The subsequent chapters refer to cases and the texts of international agreements, as well as to secondary sources.

Raad, Cornelius Kees van. *Nondiscrimination in International Tax Law*. Deventer; Boston, MA: Kluwer Law & Taxation, 1986. Basic introduction to one of the key concepts of international taxation: the nondiscrimination principle. The author reiterates his 1978 thesis, enriching the material with new elements in the field of international nondiscrimination with respect to taxes on income and capital. Van Raad clearly shows that nondiscrimination clauses applicable to transnational taxation are found in international law instruments, especially in treaties for the

avoidance of international double taxation. He bases his demonstration on the OECD Model Treaty text.

Tax Treatment of Transfer Pricing. Ed. Hubert Hamaekers, Maurice H. Collins & Wilhelmina A. Comello. Amsterdam: International Bureau of Fiscal Documentation, 1987-. This looseleaf service includes country surveys, overviews of corporate taxation and transfer pricing, as well as excerpts or full text of relevant documents such as laws, regulations, and treaties. Covers the United States, Japan, almost all the European countries, and major countries in Africa, Latin America, Asia, and the Pacific.

Taxation of Permanent Establishments. Ed. Irene J.J. Burgers & Rijkele Betten. Amsterdam: International Bureau of Fiscal Documentation, 1993-. Looseleaf. Typical of the high-quality IBFD services, this one presents the most in-depth and comprehensive treatment of the practical and theoretical aspects of permanent establishments. It is also the only country-by-country study of their role in international tax law and their impact on international business.

III. International Aspects of U.S. Federal Taxation

This section focuses upon those treatises and works that cover basic aspects of U.S. international taxation. There are several major works in this area. Selecting one title as opposed to another requires careful evaluation, and the choice may depend upon the intended audience—practitioner or academic/scholarly. The best sources usually respond to both needs.

American Law Institute. Federal Income Tax Project. *International Aspects of United States Income Taxation: Proposals on United States Taxation of Foreign Persons and of the Foreign Income of United States Persons. Adopted by the American Law Institute*. Philadelphia, PA: American Law Institute, 1987-.
Cumulative Changes in the 1986 Tax Code and Regulations Reconstructed. New York, NY: Research Institute of America, 1987-. Looseleaf.

Doernberg, Richard L. *International Taxation in a Nutshell*. 2d ed. St. Paul, MN: West, 1993. Fine, concise introduction to all the major aspects of U.S. international taxation.

- Feinschreiber, Robert. *Tax Reporting for Foreign-Owned Corporations*. New York: Wiley, 1992-. Kept up to date by pocket parts.
- Feinschreiber, Robert. *Transfer Pricing Handbook*. New York, NY: J. Wiley, 1993-. Kept up to date by supplements. Comprehensive analysis of many transfer pricing issues that affect taxpayers and tax collectors alike. Much of the book deals specifically with transfer pricing developments taking place during the nearly ten years between the enactment of the statutory changes to IRC section 482 in 1984 and the promulgation of temporary regulations in 1993.
- Isenbergh, Joseph. *International Taxation: U.S. Taxation of Foreign Taxpayers and Foreign Income*. 2d ed. Boston, MA: Little, Brown, 1996. This leading work examines the application of U.S. income taxation to transactions with an international aspect. Three main areas are addressed: U.S. taxation of nonresident individuals and corporations, U.S. taxation of income from foreign countries, and income tax treaties. Equally useful to practitioners, students, and scholars.
- Kaplan, Richard L. *Federal Taxation of International Transactions: Principles, Planning and Policy*. St. Paul, MN: West, 1988.
- King, Elizabeth A. *Transfer Pricing and Valuation in Corporate Taxation: Federal Legislation vs. Administrative Practice*. Boston, MA: Kluwer Academic Publishers, 1994.
- Kuntz, Joel D. & Robert J. Peroni. *U.S. International Taxation*. Boston, MA: Warren, Gorham & Lamont, 1992-. Looseleaf. A basic treatise in two parts. Volume 1 covers general matters and taxation of U.S. persons with foreign activities. Volume 2 covers taxation of foreign persons with U.S. activities and U.S. taxation relating to possessions. The authors attempt to blend both academic and practical concerns. They focus on the policies and theories underlying the law as it is and as it should be. At the same time, experience with real transactions and tax controversies leads them to discuss the details of the law as it now operates.
- McDaniel, Paul R. & Hugh J. Ault. *Introduction to United States International Taxation*. 3d rev. ed. Deventer; Boston, MA: Kluwer Law & Taxation, 1989. Very useful presentation of basic principles and rules of the U.S. system of international taxation. Topics such as international taxation of corporations and individuals in the U.S. and income taxation of non-resident

aliens and foreign corporations are fully covered. Additionally, there is a section on taxation of foreign source income of U.S. individuals and foreign business by U.S. individuals. The book appeals to both American and foreign tax practitioners.

- McIntyre, Michael. *The International Income Tax Rules of the United States*. Stoneham, MA: Butterworths, 1989-. Two-volume looseleaf. This is the basic reference work on the international aspects of U.S. income taxation. It is intended for both U.S. practitioners and scholars, and foreign tax specialists. The structure of international aspects of U.S. taxation is highlighted and analyzed through references to the Code, Treasury regulations and other relevant authorities, and practical examples. The U.S. Model Treaty as well as the IRS Treaty Tables are reproduced in the Appendices. Includes an up-to-date bibliography.
- Postlewaite, Philip F. & Tamara L. Frantzen. *International Taxation: Corporate and Individual*. 2d ed. Colorado Springs, CO: Shepard's/McGraw Hill, 1994-96. This looseleaf treatise discusses in detail the international tax consequences, from a U.S. perspective, of transactions carried out by individuals, partnerships, and corporations, as well as those occurring between partnerships and corporations and their owners. The text focuses on two situations: (1) the United States taxation of United States individuals and corporations with respect to income arising from sources outside the United States (i.e., foreign source income) and (2) the United States taxation of their foreign counterparts on both their United States and foreign source income. This title is no longer updated. *See instead* Dolan, D. Kevin, *U.S. Taxation of International Mergers, Acquisitions, and Joint Ventures* (Boston: Warren, Gorham & Lamont, 1995-).
- Rhoades, Ruffus & Marshall J. Langer. *Income Taxation of Foreign Related Transactions*. New York, NY: Matthew Bender, 1971-. Five-volume looseleaf. The leading treatise in the area of international tax laws in the United States. Volumes 1 and 2 contain the basic principles of international taxation, such as taxation of U.S. citizens abroad, foreigners in the United States, and foreign tax credits. One of the greatest assets of this set is the full collection of annotated texts of United States income tax treaties in volumes 3 and 4. Volume 5 contains unratified treaties, tax agreements with U.S. possessions, and other

international tax materials such as the OECD Model Tax Treaty with commentaries, the U.S. Model Tax Treaty, and a reference section. The index in volume 5 covers the entire set.

Streng, William P. & J. Salacuse. *International Business Planning: Law and Taxation*. New York, NY: Matthew Bender, 1982-. Six-volume looseleaf. One of the most important treatises on corporate taxation. Appeals especially to practitioners through chapters such as "Forming the Foreign Business Organization—U.S. Tax Planning," "Taxation of Foreign Earnings and Losses," and "Controlled Foreign Corporations."

U.S. *Taxation of International Operations*. Consulting editor, R. Feinschreiber. Boston, MA: Warren, Gorham & Lamont, 1972-. Looseleaf.

United States. *The Complete Internal Revenue Code: All the Income, Estate & Gift, Employment, Excise Procedure and Administrative Provisions*. New York, NY: Research Institute of America, 1996-.

IV. Tax Treaties

A. Reference Works

1963 and 1977 OECD Model Income Tax Treaties and Commentaries. 2d ed. Compiled and partially edited by Kees van Raad. Deventer; Boston, MA: Kluwer Law & Taxation, 1990.

American Law Institute. Federal Income Tax Project. *International Aspects of United States Income Taxation II: Proposals on United States Income Tax Treaties. Adopted by the American Law Institute, at San Francisco, California, May 13, 1991*. Philadelphia, PA: The American Law Institute, 1992-. Kept up to date by pocket parts.

Baker, Philip. *Double Taxation Conventions and International Tax Law: A Manual on the OECD Model Taxation Convention on Income and on Capital of 1992*. 2d ed. London: Sweet & Maxwell, 1994. The publication of this second edition of Baker's book was clearly prompted by the appearance of the 1992 OECD Model. The book contains the model as published in

- 1992, together with the Commentary and with the French text. The notes under each of the articles contain a short description of the major changes from the 1977 Model to the 1992 Model. Jacob, Friedhelm, David M. Crowe & Hans Zschiegner; with the guidance of Helmuth Debatin & Otto L. Walter. *Handbook on the 1989 Double Taxation Convention Between the Federal Republic of Germany and the United States*. Ed. Joseph L. Amico. Amsterdam: International Bureau of Fiscal Documentation, 1990-. Looseleaf.
- Legislative History of United States Tax Conventions: Roberts & Holland Collection*. Reprinted ed. Comp. and ed. Sidney I. Roberts. Buffalo, NY: William S. Hein & Co., 1986-. Looseleaf. Sixteen volumes plus a binder covering full legislative history of all U.S. tax treaties.
- Macdonald, Ross J. *Annotated Topical Guide to U.S. Income Tax Treaties*. Clifton, NJ: Prentice Hall Law & Business, 1988-. Six-volume looseleaf. A convenient reference source for interpreting and applying U.S. income tax treaties. Comparisons of a provision contained in one U.S. treaty with analogous provisions in other U.S. tax treaties. References to legislative histories of U.S. income tax treaties. References to all U.S. judicial and administrative interpretations of a provision (case law, Revenue Rulings, Private Letter Rulings, General Counsel Memoranda). Complete amending information. Unfortunately, the publisher no longer updates this excellent service.
- Model Income Treaties: A Comparative Presentation of the Texts of the Model Double Taxation Conventions on Income and Capital of the OECD (1963 and 1977), United Nations (1980), and United States (1981)*. 2d ed. Comp. & ed. by Kees van Raad. Deventer; Boston, MA: Kluwer Law & Taxation, 1990.
- OECD. Committee on Fiscal Affairs. *Model Tax Convention on Income and on Capital*. Paris: Organization for Economic Cooperation and Development, 1994-. This looseleaf service is a must for any international tax and business library because it provides the full text of the Model Convention with all the historical background and article-by-article commentary. Appendix 1 has the complete list of Tax Conventions on Income and on Capital between OECD member countries. Updated yearly and whenever needed.

Tax Treaty Interpretation. The International Tax Treaties Service. Ed. Michael Edwardes-Ker. Dublin: In-Depth Publishing, 1994-. This looseleaf companion to the *International Tax Treaty Service* analyzes the basic principles that should govern the interpretation of tax treaties. Treaties are considered in their dual status: as conventions or agreements between states but also as laws that can affect the domestic rights of taxpayers. This is the most elaborate treaty interpretation service. It also offers an overall bibliography.

U.S. Tax Treaty Reference Library Index: U.S. Tax Treaties in Force and Their Legislative Histories. Arlington, VA: Tax Analysts, 1990-.

United Nations. Department of International Economic & Social Affairs. *United Nations Model Double Taxation Convention Between Developed and Developing Countries.* New York, NY: United Nations, 1980-.

Vogel, Klaus. *Klaus Vogel on Double Taxation Conventions.* Deventer; Boston, MA: Kluwer Law & Taxation, 1991. This is a leading work featuring a commentary to the OECD, UN, and U.S. Model Conventions for the avoidance of double taxation of income and capital. Particular reference is made to German treaty practice.

Vogel, Klaus, Harry A. Shannon, Kees van Raad & Richard L. Doernberg. *United States Income Tax Treaties.* Deventer; Boston, MA: Kluwer Law & Taxation Publishers, 1989-. Looseleaf. Exhaustive analysis of U.S. tax treaties. Very comprehensive historical study of the process of making tax treaties. In-depth commentaries and comparisons with both OECD and UN Model treaties. Excellent appendices and tables of treaties.

Worldwide Tax Treaty Index. Arlington, VA: Tax Analysts, 1993-.

B. Full-text Services

European Taxation. Supplementary Service. Amsterdam: International Bureau of Fiscal Documentation, 1963-. Fourteen-volume looseleaf. This very impressive service features the full English text of every single treaty for the avoidance of double taxation of income, capital, and inheritance concluded by European countries.

Complementing the treaties are extensive summaries of the taxation of corporations and individuals in almost all the European countries. Extensive worldwide bibliography.

Federal Tax Treaties and Related Matters. Boston, MA: Warren, Gorham & Lamont, 1958– . Looseleaf. This set and the CCH set are the most commonly owned sources for the full text of U.S. tax treaties.

International Tax Treaties of All Nations. Ed. Walter H. Diamond & Dorothy B. Diamond. Dobbs Ferry, NY: Oceana, 1975– . Bound volumes and looseleaf. This is the most comprehensive full-text tax treaty service. Series A contains English text of all tax treaties in force between two or more nations (started in 1975). Series B contains tax treaties not yet published by the United Nations, printed in English and, in many instances, in the original languages of the signatories (started in 1978). The two sets share a common index and a looseleaf supplement. From time to time, the supplements are cumulated in new bound volumes. Updating is irregular.

International Tax Treaties Service. Ed. Michael Edwardes-Ker. Dublin: In-Depth Publishing Limited, 1977– . Looseleaf. Fully annotated and commented collection of tax treaties based on the 1977 OECD Model Double Taxation Convention and its successor, the 1992 Model.

International Taxation: United States Tax Treaties. Comp. Philip F. Postlewaite & Tamara Frantzen. Colorado Springs, CO: Shepards/McGraw Hill; New York, NY: McGraw Hill, 1993– . Looseleaf.

Tax Treaties: Full Texts of U.S. Bilateral Treaties with Foreign Countries. New ed. Chicago, IL: Commerce Clearing House, 1990– . Very popular looseleaf service providing the full text of income, estate, and gift tax treaties entered into by the United States with other countries. Also includes reports of the U.S. Department of State and Senate Foreign Relations Committee on the treaties, regulations, rulings, and court decisions related to U.S. tax treaties.

U.S. Tax Treaty Reference Library on Microfiche. Arlington, VA: Tax Analysts, 1982– . Excellent source for full text of treaties and their legislative history.

United Nations. Department of Economic and Social Affairs. *International Tax Agreements*. New York, NY: United Nations, 1948– . Looseleaf (UN Doc. E/CN.8/30; ST/ECA/Ser.C). This irregular publication includes the agreements made between all nations regarding taxation.

V. Other International Tax Topics

This section mainly is dedicated to regional matters and foreign tax laws. Clearly, the standouts are the excellent looseleaf services produced by the International Bureau of Fiscal Documentation (IBFD). They are probably the most complete and current services on tax systems of different regions and countries throughout the world. The major titles cover Western and Eastern Europe, the Middle East, Africa, Latin America and the Caribbean, and Asia and the Pacific.

A. Africa

African Tax Systems. Amsterdam: International Bureau of Fiscal Documentation, 1970– . Looseleaf. Five binders updated four times a year. Virtually every country in Africa is covered, from Algeria to Zimbabwe (South Africa is covered in a separate binder). Detailed country chapters follow a consistent outline for easy reference use. The full English texts of tax treaties concluded by African countries are also included.

Doing Business in Sub-Saharan Africa. Ed. Peter W. Schroth. Washington, DC: American Bar Association, Sec. Int'l L. & Practice, 1991.

B. Asia and the Middle East

Anti-Avoidance and Tax Treaty Policies and Practice in the Asian-Pacific Region: Papers Presented at the Joint Conference of the Asian-Pacific Tax and Investment Centre and Institute of Policy Studies, Victoria University, Wellington, New Zealand, 9–12 June 1989. Singapore: Pacific Tax and Investment Research Centre, 1990.

Tax Reforms in Selected Countries in Asia and the Pacific: Trends and Perspectives. Prepared by the Research and Information Office, Department of Finance, Republic of the Philippines. Manila: SGATAR, 1990.

Taxation and Economic Development Among Pacific Asian Countries. Ed. Richard A. Musgrave, Ching-huei Chang & John Riew. Boulder, CO: Westview Press, 1994.

Taxation in Asia and the Southwest Pacific. New York, NY: Deloitte Touche Tohmatsu International, 1992.

Taxes and Investment in Asia and Pacific. Amsterdam: International Bureau of Fiscal Documentation, 1978– . Ten looseleaf binders, updated twelve times a year. The service is divided into country chapters, providing detailed information on taxation and investment opportunities in forty Asian and Pacific countries, from American Samoa and Australia to Vanuatu and Vietnam. Full English text of the more than 350 tax treaties concluded by countries in the region. Detailed bibliography.

Taxes and Investment in the Middle East. Amsterdam: International Bureau of Fiscal Documentation, 1978– . Looseleaf. Practical guide to legal, administrative, and tax measures governing trade and investment in the Arab countries of the Middle East and Iran. English translations of tax treaties are included. Israel was added to the guide in 1995. Two binders updated four times a year.

C. Europe

Supplementary Service to European Taxation: Information on European Taxes and Tax Treaties. Amsterdam: International Bureau of Fiscal Documentation, 1963– . Looseleaf. A. Corporate Tax Rates. B. Individual Tax Rates. C. Tax Treaties. D. Abstracts from Official Reports. E. Current Bibliography.

Taxation & Investment in Central and East European Countries. G. Erdos, managing ed.; W. Kuiper & J. Wheeler, editorial advisors. Amsterdam: International Bureau of Fiscal Documentation Publications, 1992– . Looseleaf. This is volume V in the IBFD series *Guides to European Taxation*. Two binders, updated three times a year. Comprehensive descriptions of the tax systems and legal framework of all the major Central and Eastern European countries, from Albania to the Ukraine.

Uzbekistan was included in 1996. Complete chart of double taxation treaties, but unfortunately the service does not provide the full text of the treaties.

Taxation and Foreign Direct Investment: The Experience of the Economies in Transition. Paris: Organization for Economic Co-Operation and Development, 1995.

Taxation of Companies in Europe. Amsterdam: International Bureau of Fiscal Documentation, 1972– . Looseleaf. Volume II in the IBFD series *Guides to European Taxation*. Five binders updated six times a year. This country-by-country survey examines all taxes applicable at each stage of a company's life. Also included are full English texts of EU directives (including drafts) on corporate and tax law and an extensive bibliography.

Taxation of Individuals in Europe. Ed. Catherine S. Bobbett. Amsterdam: International Bureau of Fiscal Documentation Publications, 1991– . Looseleaf. This is volume VI in the IBFD series *Guides to European Taxation*. Two binders updated twice a year. Provides a country-by-country analysis of the taxation of resident and non-resident individuals in Europe. The taxation of both personal and business matters is covered. Each country is dealt with in an individual chapter, using the same outline to allow comparisons between systems.

Taxation of Patent Royalties, Dividends, Interest in Europe. Amsterdam: International Bureau of Fiscal Documentation, 1979– . Looseleaf. Volume I in the IBFD series *Guides to European Taxation*. One binder, updated three times a year. A systematic guide to withholding and income taxes on inter-corporate cross-border payments in eighteen European countries. Relevant corporate issues are also addressed to give a complete picture of the effect of taxation on the international flow of income. Each country chapter covers transactions with the other seventeen countries in the service, plus some information on the United States and Canada.

Taxation of Private Investment Income. Amsterdam: International Bureau of Fiscal Documentation, 1967– . Looseleaf. Volume III in the IBFD series *Guides to European Taxation*. One binder updated three times a year. A detailed analysis showing the effects of direct and indirect taxation on dividends and interest received by individuals. Country chapters follow a consistent outline. The

guide also includes a country-by-country list of dividends and interest income that qualify for tax exemptions or special treatment, including tax-exempt governmental bonds.

Value Added Taxation in Europe. Amsterdam: International Bureau of Fiscal Documentation, 1971-. Looseleaf. Volume IV in the IBFD series *Guides to European Taxation*. Three binders, updated four times a year. This service outlines the different national VAT systems in European countries. Each country's VAT system is covered in detail. Also includes a description of the transnational VAT system of the European Union. A documentation section gives full English texts of relevant EU directives and an extensive bibliography of relevant documents and publications.

D. Latin America

Taxation in Latin America. Amsterdam: International Bureau of Fiscal Documentation, 1987-. Three looseleaf binders, updated four times a year. A complete source of information on the legal and taxation systems in the countries of Latin America. A general economic survey introduces each chapter, including political and economic systems, types of business organization, foreign investment, and regional agreements. This is followed by a summary in chart form, highlighting the most important aspects of the taxation system. All tax treaties in force, or about to become effective, are reproduced in English translation.

Tuller, Lawrence W. *Doing Business in Latin America and the Caribbean: Including Mexico, the U.S. Virgin Islands, and Puerto Rico, Central America, South America.* New York, NY: AMACOM, American Management Association, 1993.

VI. Tax Havens

This section lists books and services covering those countries with low or no taxes. Timely, accurate information in this field may be of most interest to business and law firm libraries because tax havens offer investment opportunities.

- Diamond, Walter H. *Tax Havens of the World*. New York, NY: Matthew Bender, 1974-. This is the most comprehensive current service on tax havens. Three looseleaf binders provide complete, up-to-date and detailed information on some seventy jurisdictions. Excellent glossary of tax haven terms.
- Ginsberg, Anthony Sanfield. *Tax Havens*. New York, NY: New York Institute of Finance, 1991. The book is divided into three parts. Part One focuses on the general elements of the tax havens system. Part Two is a more specific discussion of ten representative tax havens and their attributes. Part Three examines considerations of specific interest to U.S. taxpayers and how the U.S. tax system affects the use of tax havens.
- Grundy's *Tax Havens—Offshore Business Centres: A World Survey*. 6th ed. London: Sweet & Maxwell, 1993. Brief coverage of more than fifty jurisdictions.
- Mooney, F. Bentley, Jr. *Preserving Your Wealth: Expert Advice You Can Use to Protect Your Estate from Risks of Litigation & the Ravages of Taxes, Inflation & Declining Asset Values*. Chicago, IL: Probus Pub. Co., 1993.
- Starchild, Adam. *Using Offshore Havens for Privacy and Profits*. Boulder, CO: Paladin Press, 1994.
- Tax Havens Encyclopaedia*. Ed. Barry Spitz. London: Butterworths, 1981-. Looseleaf. Up-to-date information on almost all tax haven jurisdictions in the world. General overview of the legal system, including useful addresses.
- Trident Practical Guide to Offshore Trusts*. London: Eurostudy, 1991. This is a special Eurostudy Report covering twelve of the most popular trust jurisdictions. The report provides the key information that advisers require on the trust and related laws. The guide is carefully structured to allow for easy access to each topic. The sections can be cross-referenced across the different jurisdictions covered. There is also a chapter on the Hague Convention on Trusts and a list of statutes.
- Turpen, Larry. *How and Why Americans Go Offshore: Profit, Privacy, Protection*. Cupertino, CA: Haynes & Associates Pub., 1994.

VII. Foreign Tax Laws: Basic Sources

This section includes not only full-text sources of tax laws but also valuable guides and introductory surveys. Excellent services are produced by Matthew Bender for selected countries such as Germany, Japan, and France. Full analysis of the tax system and the appropriate international tax rules are provided and sometimes even the translation (in full or part) of the tax code. A very popular series is the Bureau of National Affairs (BNA) *Business Operations in . . .* series of the *Tax Management Portfolios*. Particular countries (such as China, South Africa, and lately Mexico) are covered in depth by fine looseleaf services produced by the International Bureau of Fiscal Documentation. Unlike other areas of foreign law, such as environmental statutes, civil, or criminal procedure, tax and business laws of foreign countries are now widely available in English translation. See also Chapter Four, "Finding Foreign Law," by Jeanne Rehberg & Mirela Roznovschi, *supra* p. 87, for more details about finding English-language foreign law sources.

Arthur Andersen & Co. *Tax Guide to [country]*. [N.p.]: Arthur Andersen & Co, 19—.

Business Operations in . . . Washington, DC: Bureau of National Affairs, 1967— . (Tax Management Portfolios—Foreign Income Series). Each portfolio deals with one area of international tax law or the tax system from a particular country. Coverage so far includes twenty-eight countries. Generally divided into three sections: analysis and in-depth commentary of the tax law, working papers (including appropriate laws, regulations, forms), and a bibliography.

Central and Eastern European Legal Materials. Ed. Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990— . Looseleaf. Tax, privatization, and foreign investment-related laws are published in English translations for all the countries in the area, six to nine months after their enactment.

Diamond, Walter H. *Foreign Tax and Trade Briefs*. Albany, NY: Matthew Bender, 1965— . This looseleaf service does not provide the full text of tax legislation, but does present tax information for more than one hundred countries in Africa,

Central America, the Far East, the Middle East, North and South America, the West Indies, and Western Europe. Each country report is divided into eleven sections. Subscribers also receive a monthly newsletter, *Foreign Tax and Trade Winds*, which reports on current developments in the foreign and international tax area.

Doing Business in New York, NY: Price Waterhouse, 19—.

Doing Business in New York, NY: Matthew Bender, 19—. Looseleaf.

European Current Law: Monthly Digest. London: Sweet & Maxwell, 1992—. This journal, cumulated annually in the *European Current Law Yearbook*, bases its information on official gazettes. Includes digests of tax treaties and tax laws for most of the European countries.

European Taxation Data Base on CD-ROM. Amsterdam: International Bureau of Fiscal Documentation, 1989—. Updated three times a year, this is the world's most comprehensive database on taxation in Europe. Virtually every country in Europe is included. Information ranges from detailed descriptions of tax systems to relevant documentation such as major tax legislation in English and/or the original language.

European Taxation Supplementary Service. Amsterdam: International Bureau of Fiscal Documentation, 1961—. Monthly. In addition to the full text of tax treaties, this service also offers, in its five special sections, extensive information on European taxation (corporate and individual), abstracts from original documents, and an excellent bibliography.

Foreign Investment in Central & Eastern Europe. Ed. Vratislav Pechota. Ardsley-on-Hudson, NY: Transnational Juris Publishers, 1992—. This looseleaf service explores business and trade-related legal developments in all the Eastern European countries and the Baltics. Emphasis is on the organization of foreign investment, the tax system and tax legislation, procedures for establishing companies with foreign investment, financing and foreign currency controls, profit, and profit repatriation. Country-by-country coverage.

Latin American Taxation Database on CD-ROM. Amsterdam: International Bureau of Fiscal Documentation, 1991—. Updated once a year. Compiled in conjunction with The American Center of Tax

Administrators, this CD-ROM is the most complete Latin America tax library. A legislative module presents the original texts of the legislation of Latin American countries (in Spanish or Portuguese, as applicable). This is complemented by comprehensive studies on particular tax topics in both Spanish and English.

Review of Central and East European Law. Dordrecht: Kluwer Law International, 1992–. This bimonthly continues the *Review of Socialist Law* (1975–91) and focuses on tax, business, and trade-related laws.

Reynolds, Thomas H. & Arturo A. Flores. *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*. AALL Pub. Series, no. 33. Littleton, CO: Fred B. Rothman & Co., 1989–. Looseleaf or CD-ROM. Described in Chapter Four, "Finding Foreign Law," by Jeanne Rehberg & Mirela Roznovschi, *supra* p. 87, and Chapter Eleven, "International Environmental Law," by Radu D. Popa, *infra* p. 255.

Russia and the Republics Legal Materials. Eds. John N. Hazard & Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990–. Looseleaf. Covers all the former republics of the Soviet Union. A broad range of business and trade-related laws are published in English translation. Among them, taxation and foreign investment enactments are covered for most of these countries.

Tax Laws of the World. Ormond Beach, FL: Foreign Tax Law Publishers, 1968–. Provides English translations of the texts of the income tax, companies, profit taxes, value-added or sales tax laws, social security laws, estate, gift and inheritance tax rates, and import/export duties. Covers more than one hundred countries. Regulatory material also is included. Updated separately for each country whenever major changes take place. An excellent service.

Taxation in New York, NY: Deloitte, Haskins & Sells, 19—.

VIII. Selected Periodicals

American Business Law Journal. Gettysburg, PA: American Business Law Ass'n, 1963–. Quarterly.

- Asian-Pacific Tax and Investment Center Bulletin*. Singapore: Asian-Pacific Tax and Investment Research Center, 1952– . Monthly.
- Australian Tax Review*. Sidney: Law Book Company, Limited, 1971– . Quarterly.
- British Tax Review*. London: Sweet & Maxwell, 1956– . Six times a year.
- Bulletin for International Fiscal Documentation*. Amsterdam: International Bureau of Fiscal Documentation, 1946– . Monthly.
- Canadian Tax Journal*. Toronto: Canadian Tax Foundation, 1953– . Monthly.
- EC Tax Review*. Deventer: Kluwer Law and Taxation Publishers, 1992– . Monthly.
- East Asian Executive Reports*. Washington, DC: International Executive Reports, 1979– . Monthly.
- European Taxation*. Amsterdam: International Bureau of Fiscal Documentation, 1961– . Monthly.
- International Business Lawyer*. London: International Bar Ass'n, Sec. Business Law, 1973– . Eleven times a year.
- International Financial Law Review*. London: Euromoney Publications, Limited, 1982– . Monthly.
- International Fiscal Association. *Cahiers de droit fiscal international—Studies on International Fiscal Law*. Deventer: Kluwer, 1939– . Annual.
- International Lawyer*. Chicago, IL: American Bar Ass'n, Sec. Int'l L., 1966– . Quarterly.
- International Tax and Business Lawyer*. Berkeley, CA: Boalt Hall, University of California, 1983– . Semiannual.
- International Tax and Trade Briefs*. Chicago, IL: Arthur Andersen & Co., 1975– . Irregular.
- International Tax Digest*. London: Eurostudy Publishing Co.; New York, NY: Ernst & Young International, 1989– . Monthly.
- International Tax Journal*. Greenvale, NY: Panel Publishers, 1974– . Bimonthly.
- International Tax Letter*. Chicago, IL: Arthur Andersen & Co., 1981– . Irregular.
- International Tax Report*. London and Washington, DC: Institute for International Research, 1972– . Biweekly.
- International Tax Review*. London: Euromoney Publications, 1989– . Ten times a year.

- International Tax Summaries*. New York, NY: Wiley, 1982– . Annual.
- Intertax: The European Tax Review*. Deventer: Kluwer, 1973– . Monthly.
- Journal of International Taxation*. Boston, MA: Warren, Gorham & Lamont, 1990– . Bimonthly.
- Journal of Taxation*. Boston, MA: Warren, Gorham & Lamont, 1954– . Monthly.
- Middle East Executive Reports*. Washington, DC: Middle East Executive Reports, Ltd., 1978– . Semimonthly.
- New York University. *International Institute on Tax and Business Planning*. New York, NY: Matthew Bender, 1974– . Annual.
- Tax Adviser*. New York, NY: American Institute of Public Certified Accountants, 1970– . Monthly.
- Tax Executive*. Washington, DC: Tax Executives Institute, Inc., 1949– . Quarterly.
- Tax Law Review*. Boston, MA: Warren, Gorham & Lamont, 1945– . Quarterly.
- Tax Lawyer*. Washington, DC: American Bar Ass'n, Sec. Taxation, 1967– . Four times a year.
- Tax Management International Forum*. London: BNA International, Inc. 1980– . Quarterly.
- Tax Management International Journal*. Washington, DC: Bureau of National Affairs, 1972– . Monthly.
- Tax Notes International*. Arlington, VA: Tax Analysts, 1989– . Weekly.
- Tax Notes Microfiche Data Base*. Microform. Arlington, VA: Tax Analysts, 1991– . Weekly.
- Tax Planning International Review*. London: BNA International, Inc., 197?– . Monthly.
- Taxation*. London: Taxation Publishing Co., Ltd., 1927– . Weekly.
- Taxes—The Tax Magazine*. Chicago, IL: Commerce Clearing House, 1923– . Monthly.
- World Tax Report*. London: Financial Times Business Information, Ltd., 1975– . Monthly.

IX. Selected Bibliographies

- Bulletin for International Fiscal Documentation*. Amsterdam: International Bureau of Fiscal Documentation, 1946– . Monthly bibliography of books and looseleaf services, arranged by world region and by country. Both national and international publications are covered.
- Dale, Harvey & Eleonora DiLorenzo. *International Tax Bibliography for the Decade of the 1980s*. Arlington, VA: Tax Analysts, 1991. This is a compilation from the English-language bibliographies of *Tax Notes International*. Includes only articles. Author and subject index.
- European Taxation Supplementary Service*. Amsterdam: International Bureau of Fiscal Documentation, 1961– . Monthly. Worldwide bibliography with references to materials on the tax and business laws of European countries in their original languages.
- Germain, Claire. *Germain's Transnational Law Research. A Guide for Attorneys*. Ardsley-on-Hudson, NY: Transnational Juris Publications, Inc., 1991– . Looseleaf. In terms of guidance and bibliographic research this work is a must for any library. The chapter on international taxation covers all the major sources for both U.S. international operations and foreign tax systems.
- Owens, Elizabeth A. & Gretchen A. Hovemeyer. *Bibliography on Taxation of Foreign Operations and Foreigners: 1976-1982*. Cambridge, MA: International Tax Program. The Law School of Harvard University, 1983. Excellent bibliographic work, the most complex and detailed in the field. Unfortunately, there has been no updating of this unique bibliography.
- Popa, Radu D. "Selected English-Language Bibliography of Books and Serial Sources on International Taxation," in *Tax Notes Int'l* 2 (1990), 1080. Very comprehensive bibliography of books and serials published after 1980.
- Tax Notes International*. Arlington, VA: Tax Analysts, 1989– . Weekly. For more than five years the journal published separate monthly columns on international tax literature in English and in foreign languages, covering the most important books, looseleaf services, and articles in the field. Since July 1994, there has been a weekly column combining English and foreign sources. The

foreign part is still fine, but the English part covers mostly peripheral sources. A short abstract is provided for each entry.

X. Online Sources

LEXIS/NEXIS has a very comprehensive tax library. In the field of international taxation, the most relevant libraries and files are:

◆ FEDTAX Library:

- TMFOR file (BNA Tax Management Portfolios, Foreign Income Series)
- TREATY file (U.S. Tax Treaties)
- TXNINT file (Tax Notes International from 1984 on)
- WLDTAX file (World Tax Report from 1988 on)
- NEWS (mega-files providing information on developments in international tax and business)

WESTLAW. The most relevant files for international taxation are:

- ◆ TM-FOR (BNA Tax Management Portfolios, Foreign Income Series)
- ◆ USTREATIES (U.S. International Treaties)

Chapter
Eleven

**International
Environmental Law¹**

by RADU D. POPA

**I. Introduction:
What is International Environmental Law?**

Environmental protection is probably one of the most difficult areas of the law. This complex field raises critical scientific and technical questions. The goal of protecting the environment very often collides with other interests such as economic development and trade. Consequently, legal rules in this field have to be sufficiently abstract to take into account the development of knowledge about environmental degradation, but also sufficiently concrete to be effective. It is not easy to accomplish this very delicate balance.

International environmental law may be defined as a corpus of rulings designed to provide the conditions required for the continuation of life and the survival of species. Environmental protection

1. © 1998 Radu D. Popa.

comprises the protection of the air, waters (inland waters, groundwater, and oceans), and soil against pollution. Also included are the protection of nature against destructive and unreasonable use, the protection of cultural monuments against destruction, the protection of people and the environment against dangerous substances such as radiation, the protection of people and animals against noise, the protection of plants and animals against eradication, and the protection of natural resources, both living and non-living, against uncontrolled use and depletion.²

Because it must cover such a variety of topics, the literature of international environmental law may be scattered throughout many departments of a library. This creates a serious challenge for the researcher and the information specialist. Even in the same law library, international environmental materials may be located in many different sections: from public international law to transnational business law, from the law of the European Union to the comparative law collection, from health law to international human rights and humanitarian law.

II. Building an International Environmental Law Collection

The process of building a collection in this area raises a major question: What is the "must" of an international environmental law collection?

No doubt, treaties and conventions are the most important sources of international environmental law. They now number more than 1000, but not all of them are entirely concerned with environmental provisions. There are many treaties, conventions, and constitutional amendments that contain environmental provisions along with unrelated provisions. Environmental treaties span a great range of geographic and topical areas. This is conditioned not only by the specific objects of environmental regulation, but also by the particularity of the norm-creating process in the environmental field. In

2. See Lothar Gündling, "Environment. International Protection," in *Encyclopedia of Public International Law*, ed. Rudolf Bernhardt, consolidated ed., vol. 2 (Amsterdam: North-Holland, 1995), at 97.

fact, environmental provisions can be found in a great diversity of international instruments, from those dealing with natural resources, to business and trade regulations, to humanitarian law and international human rights instruments.

This diversity of sources makes research in the field of international environmental treaties and conventions sometimes very difficult. This chapter attempts to send the researcher not to standard treaty collections and basic finding tools (available in any international law library and described in Chapter Six, "Finding Treaties and Other International Agreements," by Jeanne Rehberg, *supra* p. 123), but instead to specialized compilations of treaties and documents in the field of the environment.

The most comprehensive of the compilations described below is *The International Protection of the Environment: Treaties and Related Documents*, edited by Bernd Ruster and Bruno Simma, in two series, thirty bound volumes covering 1784 to 1981, and a looseleaf series continuing from 1981 to present. This service, which covers both bilateral and multilateral conventions, defines the environment very broadly. Because the second series is in a looseleaf format, the information regarding the status of treaties with respect to their contracting parties is much more up to date than in other standard sources such as *UNTS*. For official status information, however, it is always advisable to check *Treaties in Force* and the *Dispatch* (if the United States is a party) or *International Legal Materials and Multilateral Treaties: Index and Current Status* by Bowman and Harris (if the United States is not necessarily a party).

Also of particular note is the multivolume set *Agenda 21 & the UNCED Proceedings*. This ongoing collection focuses on those documents that help to explain the evolution of Agenda 21 and the Declaration of Rio de Janeiro as fundamental contributions to international environmental law. If the treaties on climate and on biological diversity are generally recognized as hard law, surely Agenda 21 and the Declaration of Rio de Janeiro must be admitted to be "soft law," a kind of international law that is still in the process of further development, but nonetheless acknowledged to be at least morally binding. The Rio Declaration, as many scholars have pointed out, is not exactly what it was intended to be. It ended up with twenty-two general legal principles concerning natural resources and environmental interferences, but also with thirteen recommendations, mainly

on institutional matters. These recommendations eventually may constitute elements for a Draft Convention on Environmental Protection and Sustainable Development. It is very important to have access to these documents because they very well may forecast the main trends in environmental protection and serve as the sources of potential new international legislation. *Agenda 21 & the UNCED Proceedings* may also be used as a collection of *travaux préparatoires*, a kind of legislative history of the treaty-making process.

Last but not least, it is well to emphasize the Bureau of National Affairs (BNA) *International Environment Reporter*, an excellent source not only for the full text of major environmental treaties and conventions, but also an effective tool for updating treaty information. The service also contains outlines of the environmental legal systems of more than twenty-five countries, a list of their current laws in this field, and a digest of major court decisions. The reporter is available online, in both WESTLAW and LEXIS/NEXIS.

But treaties and conventions are not the only source of international environmental law. Next in the traditional scheme of public international law are customary international norms, which are not very easy to identify in a relatively new field such as international environmental law. As many scholars today acknowledge, however, it is possible to discern among current norms evidence of a general practice, accepted as law. For effective legal research, it is recommended that the researcher evaluate the customary international norms in relation to the third source of international environmental law, the so-called general principles of law recognized by civilized nations. Civilized or not, states are now issuing an abundance of legislative instruments in the field of the environment. And it is precisely this global proliferation of legislative texts concerning the environment—perhaps more than 30,000 to date—that will identify and consolidate customary norms and general principles of law.

This brings the discussion to foreign law, national enactments in the field of the environment. These are not always easy to access, for they may be available only in the vernacular. The section of this chapter dedicated to foreign law points to sources (in general, commercially produced) and tools to access environmental legislation in English translation even for those countries that are printing their laws only in the vernacular. As a matter of basic tools, every information specialist working with foreign law must have access to the

looseleaf service *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*, by Thomas Reynolds and Arturo Flores, the most comprehensive and accurate annotated bibliography of primary and secondary sources in foreign law (described later in this chapter). For full-text sources, the *International Digest of Health Legislation* is a very useful service because it reproduces major foreign legislation in full text and the publisher will also provide, upon request, the full text of laws that are only digested or mentioned in the *Digest*. Another good choice (at least for retrospective research) might be the *Foreign Broadcast Information Service*, which provides translations of foreign news broadcasts and occasional texts of laws from practically all the geographic regions of the world. Foreign environmental legislation in English may also appear in a wide range of periodicals and looseleaf services.³

Next in the traditional scheme of public international law comes international jurisprudence in the field of the environment and teachings of the most qualified publicists of the various nations. Although the Statute of the International Court of Justice defines jurisprudence as a subsidiary source for determining rules of law, in reality judgments and advisory opinions of national and international tribunals are quite important. Some of them, like the arbitration in the *Trial Smelter* case or the famous *Corfu Channel* case, are widely considered to have laid the foundations of international environmental law. As with treaties, the problem with international jurisprudence in environmental matters is that decisions and awards very often are scattered throughout several international reporters, due to the many interactions and implications that environmental law shares with other fields. National courts also issue opinions and judgments in this area, but they are not always available in English, and sometimes not even in the vernacular. There are not many reporters purposely dedicated to international environmental cases. Therefore, it is necessary to use the standard sources of international jurisprudence that an international law collection would commonly include, especially the *International Law Reports*, which reports both international and national courts cases.

3. For more suggestions about finding foreign law in English translation, see Chapter Four, "Finding Foreign Law," by Jeanne Rehberg & Mirela Roznovschi, *supra* p. 87.

Related to case law, it is necessary to understand what is generally meant by the term "enforcement." This term can be quite confusing because it has different meanings in Europe and the United States. In Europe, the concept of enforcement is often talked about in terms of "implementation," that is the process of going from a written statute to actually bringing the law into operation (for example, the regime of environmental directives in the countries of the European Union). On the other hand, in the United States, "enforcement" implies the back end of the process, as in bringing "enforcement proceedings" against someone for violating a statute. Under either of these meanings, in the field of the environment the researcher faces difficulties in finding timely, firsthand information sources. Beyond this, it is also very important to realize the difference between the two meanings because they imply completely different approaches and sources. The first involves legislation and the way it is implemented, and the second, case reporting, jurisprudence, and enforcement of judgments.

As far as scholarly writings are concerned, their expansion and proliferation, especially in the last twenty-five years, has been quite exceptional. Evaluation of them accordingly has become more and more difficult. Perhaps the best tool is *World Environment Law Bibliography: Non-Periodical Literature in Law and the Social Sciences Published Since 1970 in Various Languages with Selected Reviews and Annotations from Periodicals*, by Virginia Evans Templeton and Howard Jack Taubenfeld (Littleton, CO: Fred B. Rothman & Co., 1987). It covers a wide variety of printed materials and computer files, in several foreign languages, from documents of international organizations and foreign governments to a wide range of monographs and treatises. This unique bibliographic work meets the needs of both the researcher trying to identify materials of interest and the librarian trying to build a collection in this field. The bibliography is annotated and citations to book reviews are always provided when available. Unfortunately, the bibliography covers only up to 1987, and there is no other product of a similar complexity and usefulness for the period of time after 1987.

There are, of course, some other very valuable bibliographies, including:

Szekely, Alberto. "The International Law of Natural Resources and the Environment: A Selected Bibliography." *Natural Resources J.* 30 (1990), 765; *Natural Resources* 31(1991), 265.

Kudej, Blanka. *International Environmental Law: Selected Bibliography*. N.Y.U. J. Int'l L. & Pol. 20 (1988), 825.

Publishing in this area has become so intensive, however, that printed bibliographies can barely keep track of what is new and significant. Periodic searches in RLIN and other bibliographic utilities and journal indexes, and a subscription to Peter Ward's *Catalog of New Foreign and International Law Titles* (Ann Arbor, MI: Ward & Associates, 1989-), especially the "Hot Sheets" section, will help with both evaluation and selection of materials.

Finally, whether one is researching international environmental law or building a library collection in the field, it must be recognized that an exhaustive collection is an ideal, not a reality. No library in this country or elsewhere would be able to cover all the jurisdictions of the world or to collect all the significant public international legal instruments regulating the environment. The researcher must also be aware that collections are built with the needs of the library's primary constituency in mind, be it an academic community with a narrowly tailored curriculum in environmental law, or a law firm practitioner with real-life cases. To accommodate needs that are not met in the local library, effective networking has to be in place. In this field as in almost any other, a shift is occurring from the self-sufficient, traditional *ownership* of the information to a pragmatic and much more effective practice of sharing access to information. The future—with digitizing documents, CD-ROM touting, and Internet navigation—may see the dream come true of an international environmental law library, conceived not only as a collection of books or documents in a fixed physical location, but also as a huge server distributing information on demand.

There is still a long way to go, but lately the ideal is becoming less of a dream and much more a matter of smart fundraising policies, gathering of information, application of new technology, and basic networking. One fine example in this field is CIESIN, the Consortium for International Earth Science Information Network. As a component of its Internet site, CIESIN maintains ENTRI, the Environmental Treaties and Resource Indicators database, at

<<http://sedac.ciesin.org/entri/>>. ENTRI allows searching and retrieval of full-text treaties and information about the current status of resources in a particular nation, using a search template tailored to the basic characteristics of treaties.

III. Treaty and Document Collections in the Field of the Environment

Commission of the European Communities. Directorate-General XI. *European Community Environment Legislation*. Luxembourg: Office for Official Publications of the European Communities, 1992. This seven-volume collection has been compiled on the basis of the official texts in force and is published in the Danish, Dutch, English, French, German, Greek, Italian, Portuguese, and Spanish. Up to date as of September 1, 1991. A 1996 edition adds additional texts through June 1994. It is an excellent and very comprehensive set, covering practically all the enactments in the field of the environment. Volume 1: General Policy; Volume 2: Air; Volume 3: Chemicals, Industrial Risks and Biotechnology; Volume 4: Nature; Volume 5: Noise; Volume 6: Waste; Volume 7: Water. The laws are presented in chronological order of adoption, as amended by subsequent legislation. The Annex contains the amending legislation, in chronological order of the principal legislation. Whenever technical annexes have been deleted, because of their length or highly technical content, these deletions are indicated at the end of the act. For regulations, the date of publication in the *Official Journal of the European Communities* is always mentioned (they generally enter into force on the twentieth day following their publication in the *OJ*). For directives and decisions, the notification dates are indicated in the footnotes. International treaties generally come into force when they have been ratified by a certain number of states. The dates upon which such treaties came into force in the EC are indicated in the footnotes.

International Environment Reporter. Washington, DC: Bureau of National Affairs, 1978-. Looseleaf. Volume 1 and 2: Reference File, which contains the full text of major international environmental conventions. In the first binder, Section 21

includes multilateral treaties on subjects such as ozone depletion, oil pollution, ocean dumping, endangered species, and transboundary movement of hazardous wastes. Section 31 includes bilateral agreements between individual governments on coordination of environmental programs. Section 35 includes European conventions, specialized multinational agreements on controlling pollution in the North Sea, the Baltic, the Mediterranean, the Rhine, and on transportation of hazardous materials by road. Section 41 covers the United Nations and international organizations (directories, programs, policies). As finding aids, the service provides a table of contents listing all of the material in each binder and a Master Index covering topically all the reference binders. Excellent source to update treaty information. Monthly releases. See also the *Current Reports* described under *International Environment Reporter*, *infra* p. 267, and the Reference File on national laws described in section VII. Sources for Foreign Law under *International Environment Reporter*, *infra* p. 272.

International Environmental Law: Multilateral Treaties. Droit international de l'environnement: traités multilatéraux. Internationales Umweltrecht: multilaterale Verträge. Ed. W. E. Burhenne. Comp. Robert Muecke, 1974-. Berlin: E. Schmidt. Looseleaf. Parallel text in English, French, and/or German of the most important multilateral environmental treaties. Official citation, sources, topical index.

International Environmental Soft Law: Collection of Relevant Instruments. Ed. W. E. Burhenne. Selected and comp. Marlene Jahnke. Dordrecht: Martinus Nijhoff, 1993-. This is a loose-leaf collection devoted exclusively to guidelines or decisions related to the environment that, while generally accepted, are still in the process of further development, but nonetheless acknowledged to be at least morally binding (so-called "soft law"). Chronological and subject indexes. Because it tries to keep up with the rapidly developing body of international environmental law, this service, without being as comprehensive as Agenda 21, is quite useful.

International Protection of the Environment: Agenda 21 & the UNCED Proceedings. Ed. Nicholas A. Robinson, with Parvez Hassan & Françoise Burhenne-Guilmin. Under the Auspices of

the Commission on Environmental Law of the World Conservation Union—The International Union for the Conservation of Nature and Natural Resources (IUCN). Third Series, *International Protection of the Environment*. Ed. Bernd Ruster & Bruno Simma New York, NY; London; Rome: Oceana, 1992-. Rather than reproduce all texts, this series focuses on those documents that help to explain the evolution of Agenda 21 and the Declaration of Rio De Janeiro as fundamental contributions to environmental law. Within the scope of Agenda 21 are recommendations essential for the negotiation of protocols to the framework environmental treaties, directives for the UN and other multilateral agencies, and the basic materials for new agreements among states. This ongoing set (six volumes have been published) is much more than a collection of *travaux préparatoires*; it is a comprehensive compilation of official and unofficial documents of major value for the continuing treaty-making process.

International Protection of the Environment: Treaties and Related Documents. Comp. and ed. Bernd Ruster, Bruno Simma & Michael Bock (commencing with volume XVIII). Dobbs Ferry, NY: Oceana, 1975–1983. Thirty volumes plus index cover 1874–1981. Continued by *International Protection of the Environment: Treaties and Related Documents, Second Series*.

International Protection of the Environment: Treaties and Related Documents, Second Series. Ed. and comp. Bernd Ruster and Bruno Simma. Assisted by Alke Schmidt & Gerda Marx-Zimmerer. Dobbs Ferry, NY: Oceana, 1990-. This is the most comprehensive collection of international treaties and conventions in the field of the environment. Contains more than 1,000 treaties, some 1,000 acts of international organizations, and more than 200 municipal laws and decisions. Both bilateral and multilateral treaties are included. Defining the environment broadly, this compilation reaches many peripheral (although important) issues such as plant and animal diseases, food purity and the use of chemical fertilizers, the exploitation of animal resources, development projects and foreign aid, scientific research, and nuclear power. Each treaty or convention text includes the official citation, with an indication of other sources of the text and some additional material (documents, resolutions, proposals) in full text. Three

indexes cover the first series: an index of broad subject matter, a chronological index, and a keyword index. For the sake of completeness, international agreements not yet in force at the time of publication were included. Inevitable gaps have to be mentioned for materials covering socialist countries and several states in the Third World and East Asia, but the subject index includes some references to materials covering those areas but not included in the collection. Because the first series is not in looseleaf format, the authors had to forego giving comprehensive information on the status of multilateral treaties with respect to their contracting parties. Instead they refer to the index volumes of the *United Nations Treaty Series*. Dates of entry into force are found in the chronological index and, as far as was known at the time of publication, with the text of each treaty. The second series has only a subject index.

Sands, Philippe et al. *Principles of International Environmental Law*. Manchester; New York, NY: Manchester Univ. Press. Distributed exclusively in the United States and Canada by St. Martin's Press, 1994–95. Volume I: Frameworks, Standards and Implementation. Volume II (in two books): Documents in International Environmental Law. Volume III: Documents in European Community Environmental Law. This impressive work, coordinated by one of the most outstanding scholars in the field, provides a basic treatise on international environmental law (volume I) and a very comprehensive collection of documents (volumes II and III).

Selected Multilateral Treaties in the Field of Environment. Ed. Alexandre Charles Kiss. Volume 1. UNEP Reference Series No. 3. Nairobi: United Nations Environment Programme, 1983. Volume 2, ed. Iwona Rummel-Bulska & Seth Osafo. Cambridge: Grotius Publications, Ltd., 1991. This two-volume set closely follows those treaties and conventions included in the *Register of International Treaties and Other Agreements in the Field of the Environment*, first published by UNEP in 1977 and then updated on a yearly and biennial basis. Each volume is divided in two parts. The first part provides a summary of relevant provisions of each convention, including its full official title, date and place of adoption, date of signature, and date of entry into force. The second part reproduces the texts of the

conventions and their protocols in the same chronological order as the summaries. The second volume includes a classification of the treaties in both volumes, dividing the legal instruments into comprehensive categories such as biological diversity, marine environment, ozone layer protection, and toxic and hazardous substances. There also is a chronological index for both volumes.

IV. Judicial Decisions in General International Reporters

A. International Court of Justice

Recueil des arrêts, avis consultatifs et ordonnances. Reports of Judgments, Advisory Opinions and Orders. The Hague: International Court of Justice, 1947– . Series A/B.

Pleadings, Oral Arguments, Documents. Mémoires, plaidoiries et documents. The Hague: International Court of Justice, 1947– .

International Law Reports. Ed. E. Lauterpacht. London: Butterworth, 1950–1986; Cambridge: Grotius Publications, 1987– . Reports decisions from international and national courts related to international law. The indexes are detailed and easy to use. A table of cases, table of names, digest of subjects, and subject and keyword indexes are provided in each volume. Periodically, cumulative indexes are issued.

B. Court of Justice of the European Communities

Reports of Cases before the Court. Recueil de la jurisprudence de la cour. Luxembourg: Court of Justice of the European Communities, 1959– .

C. European Court of Human Rights

Publications of the European Court of Human Rights. Publications de la Cour européenne des droits de l'homme. Strasbourg: Council of Europe. Series A (1974–) contains the official texts of judgments and decisions of the court. Each decision is numbered and

separately published, but with no index. In Series B (1975–) are oral arguments, pleadings, documents. Cited as ECHR.

European Human Rights Reports. London: European Law Centre, Sweet & Maxwell, 1979– .

D. Inter-American Court of Human Rights (Organization of American States—OAS)

Inter-American Court of Human Rights. San Jose, CA: Court Secretariat. *Series A: Judgments and Opinions. Fallos y opiniones* (1982–). *Series B: Pleadings, Oral Arguments, Documents. Memorias, argumentos orales y documentos* (1983–). *Series C: Contentious Cases. Resoluciones y sentencias* (1987–). *Series D: Oral Arguments and Documents* (1994–).

V. International Environmental Law Reporters

Environmental Law Reports. Ed. Richard Wade-Smith. London: Sweet & Maxwell, 1992– . Quarterly. Covers all the important environmental cases from the United Kingdom and Europe, principally those decisions emanating from the European Court of Justice and from the United Kingdom. Decisions also include those of the magistrates courts and Secretaries of State. The *Reports* contain full text of cases, with full headnotes, facts, judgment, table of cases cited, and detailed, expert commentary.

International Environment Reporter. Washington, DC: Bureau of National Affairs, 1978– . Looseleaf. Volume 4: Current Reports. Although in a newsletter format, the *Current Reports* often report or digest important international environmental law decisions. Biweekly.

International Environmental Law Digest: Instruments for International Responses to Problems of the Environment and Development, 1972–1992. Ed. Andronico O. Adede. Amsterdam: Elsevier, 1993. Significant cases are reproduced in full with commentary.

VI. Source for Both Treaties and Cases

International Environmental Law. Eds. William Weiner, David S. Favre & Sudhir Chopra. Detroit, MI: Lupus Publications, Ltd., 1994. The authors of this book have provided a set of core teaching materials for all the major topics in international environmental law. This is much more than a case book, however, because it also includes almost all of the key primary materials, from international treaty provisions to court decisions, arbitral awards, and resolutions at the Rio Convention. It is the intention of the authors and the publisher to update these materials on a regular basis.

VII. Sources for Foreign Law

According to an authoritative source (Alexandre Kiss & Dinah Shelton, *International Environmental Law* (New York, NY: Transnational Publishers, Inc., 1991)), the number of national legislative texts from around the world concerning the environment may exceed 30,000. As comprehensive as a library would like to be, it is almost impossible to cover all the jurisdictions of the world. The problem is compounded when it comes to finding English translations of foreign laws. Of course, for a jurisdiction for which authorized English versions of laws are generally available (countries such as Singapore, Japan, China, South Africa, and Hong Kong), it is simply a matter of finding the environmental laws and regulatory material within the set of laws. The purpose of this section is to point out some useful tools for accessing environmental legislation in English even for those countries that publish their laws only in the vernacular. Chapter Four, "Finding Foreign Law," by Jeanne Rehberg & Mirela Roznovschi, *supra* p. 87, contains more detail about how to find foreign law in English translation.

Central & East European Legal Materials. Ed. Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990– . Looseleaf. Full-text English translation of laws from Albania, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovak Republic, and

Yugoslavia. There are not very many environmental laws yet, but environmental provisions often appear in the constitution and in laws on topics such as trade, agriculture, mining, natural resources, forests, trade, and water regulation. The translations are of high quality. Irregularly updated.

Central and Eastern Europe: Legal Texts. Washington, DC: U.S. Department of Commerce. East Europe Business Information Center. Springfield, VA: Distributed in cooperation with NTIS, 1991– . A legal text translation service, available from NTIS in paper for purchase of individual texts or on subscription for particular countries, as well as on LEXIS/NEXIS usually within two weeks of publication. In most cases the texts are translations of official versions or unofficial translations transmitted to the U.S. government from the respective governments. Geographic coverage is complete for the region. Because many former socialist countries enacted new laws in the field of the environment and became parties to international environmental treaties after 1989, this service is very useful. The type of material translated includes constitutions, selected bilateral treaties in the field of the environment, environmental laws and regulations, trade and economic agreements, and commercial legislation. The selection of materials dates mainly from 1988 and after, but also includes some earlier laws and regulations that are still in force.

Constitutions of the Countries of the World. Ed. Gisbert H. Flanz. Dobbs Ferry, NY: Oceana, 1971– . Looseleaf. Many countries include environmental provisions in their constitutions. This long-established service covers more than 140 countries. Texts are in English and the vernacular, with citations to the sources. Sometimes includes even the most recent amendments. Also contains detailed constitutional chronologies and annotated bibliographies. Updated when needed. Companion set entitled *Constitutions of Dependencies and Special Sovereignties* (1975–), covers some 120 territories.

Eastern and Central European Journal on Environmental Law. Boxtel, The Netherlands: Global Law Association, 1995– . Semiannual. A new journal providing full-text environmental laws, highlights, and commentaries.

European Current Law. London: Sweet & Maxwell, 1992– . This service includes the *Monthly Digest*, *Year Book*, and *Case*

Citator. The digest covers major national (in alphabetical order, by country) and international (EU) legislation and amendments, with full indication of official sources. The *Year Book* is the annual cumulation of the *Monthly Digest*. An annual cumulative index gives access to particular environmental enactments under topics like environment, fisheries, forestry, inland waterways, plants, pollution, and water.

Food and Agricultural Legislation. Rome: Food and Agriculture Organization of the United Nations, 1952– . Quarterly, 1952–1969. Semiannual, 1970–1987. Annual, 1988– . This series, prepared by the Development Law Service and published in English, French, and Spanish, contains a selection of food and agricultural laws and regulations of national importance. Official publications forwarded by member nations pursuant to article XI of the Constitution of FAO constitute the principal source material of this series. Legislative texts are reproduced in full or in extract or summary form, or listed by title with or without comment. There is a classification index and a chronological index by country.

Foreign Broadcast Information Service (FBIS) Daily Report. Washington, DC: G.P.O., 1946– . Various irregular series, covering all the geographic regions of the world, provide translations of current news, commentaries, some laws and regulations, with references to the source documents. Indexes in paper format and also on the CD-ROM *Index to Foreign Broadcast Information Service (FBIS)* that was produced by NewsBank/Readex to cover *FBIS* from 1977 to 1996.

Retrospective collections of *FBIS* can be found in many libraries, including many U.S. government documents depository libraries, but all *FBIS* distribution in paper and microfiche had ceased by late 1996. At this writing, a limited version of *FBIS* material was being distributed to U.S. depository libraries on CD-ROM. The electronic *Global NewsBank* service commenced in 1996 by NewsBank, Inc., and *World News Connection*, an online service available by subscription from NTIS (<<http://wnc.fedworld.gov/ntis/subscription.html>>), which also began in 1996, were each designed to continue the function of *FBIS* to some extent. Subscribers to LEXIS/NEXIS can also track legal

developments in some countries and areas of the world through the NEWS files.

International Digest of Health Legislation. Geneva: World Health Organization, 1948– . Quarterly. Official publications and other documents forwarded by member states constitute the principal source of material for the *Digest*. Texts of legislation are reproduced or translated in full or in extract form, summarized, or mentioned by their title. A subject index is issued sometime after the last number in each volume. Five-year cumulative indexes are also available. As far as feasible, the editor is prepared to furnish photostat copies of original texts. Requests should specify the title of the legislation with the reference as given in the *Digest*. A consistent subject classification assists the user. Environmental legal materials are listed under sections XVI (Poisons and Other Hazardous Substances), XVIII (Environmental Protection), and XIX (Radiation Protection). In each volume, a chronological index lists national legislation by country. The same is done in the International Texts section for major treaties and conventions. The *Digest* also has a book review section and a current bibliography section.

International Encyclopaedia of Laws. Environmental Law. Ed. Marc Boes. Deventer; Boston, MA: Kluwer Law & Taxation Publishers, 1991– . Looseleaf. Three volumes. The editor's aims are: (1) to provide students engaged in comparative environmental law research with the necessary information and insight; (2) to assist the international business community, not only with regard to investment decisions, but also to contribute to the preservation and improvement of the environment in the host country; (3) to offer international organizations comprehensive information on the environmental law of many countries, to enable them not only to understand the specific situation of each country, but also to use this information in pursuing their own global policies. The *Encyclopaedia* provides a comprehensive set of materials and consists of two parts: an international monograph on organizations such as the European Union, and a series of in-depth national monographs by distinguished scholars who list the sources of environmental law for each country. So far the service has covered the People's Republic of China, Czech and Slovak Republics, Denmark, Finland, Hungary, Indonesia, Israel,

Nigeria, Poland, South Africa, United Kingdom (England and Wales), and Uruguay.

International Environment Reporter. Washington, DC: Bureau of National Affairs, 1978– . Looseleaf. Volume 3: Reference File covering Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Singapore, Spain, South Africa, South Korea, Sweden, Switzerland, Taiwan, United Kingdom, and the United States. For each country an outline of the environmental legal system and a list of laws and regulations in the field of the environment are provided. Updated monthly.

International Environmental Law and Regulation. J. Andrew Schlickman, Thomas M. McMahon, Nicoline van Riel. Salem, NH: Butterworth Legal Publishers, 1991– . This looseleaf service addresses three separate but very related areas of major importance to businesses with international operations: the national laws and regulatory programs for the protection of the environment throughout the world (so far fifteen countries are covered); the developing body of transnational law concerning environmental protection; and the various organizations involved in the development of this body of law (European Union, United Nations, and other international organizations). The service is practitioner-oriented. For each country a complete list of the core environmental legislation and enforcement authorities is provided, with a short treatise on the environmental law of the particular jurisdiction. Updated twice a year.

Review of Central and East European Law. Dordrecht: Kluwer Law International, 1992– . This bimonthly continues the *Review of Socialist Law* (1975–1991). Although the editor (the Documentation Office for East European Law of Leiden University) claims to cover all areas of the theory and practice of the legal systems in central Europe, including the republics of the former USSR, so far the *Review* has published mostly business and trade related laws (some of them with brief environmental provisions).

Reynolds, Thomas H. & Arturo A. Flores. *Foreign Law: Current Sources of Codes and Basic Legislation in Jurisdictions of the World*. AALL Pubs. Series, no. 33. Littleton, CO: Fred B. Rothman & Co., 1989– . Looseleaf or CD-ROM. This quite

unique service is intended to facilitate access to current primary sources and, to a lesser degree, secondary sources of foreign law, in both English and the vernacular. The set is now in six books. Volumes I and I-A: The Western Hemisphere; Volumes II and II-A: Western and Eastern Europe and the EC; and Volumes III and III-A: Africa, Asia, Australasia. The service also provides a list of basic materials covering more than one jurisdiction. Within each jurisdiction, environmental legislation and secondary literature are cited under headings such as maritime law, air law, environmental protection, fishing and marine resources, minerals and mining, and natural resources (nuclear energy, petroleum). The appendices of each volume cover international treaties and conventions, and include a comprehensive list of vendors of foreign legal publications. This service is a must for any law library working with foreign and international law.

Russia and the Republics Legal Materials. Ed. John N. Hazard & Vratislav Pechota. The Parker School of Foreign and Comparative Law, Columbia University. Ardsley-on-Hudson, NY: Juris Publishing, Inc., 1990-. Looseleaf. Full-text English translation of laws from Armenia, Azerbaidjan, Belarus, Georgia, Kazakhstan, Kirgizstan, Moldova, Tadzhiikistan, Turkmenistan, Ukraine, Uzbekistan, and the Russian Federation. There are not very many environmental laws yet, but environmental provisions often appear in the constitution and in laws on topics such as agriculture, trade, mining, and water regulation. For each law a short description and historical explanation are provided. The translations are of high quality. Updated irregularly.

Chapter
Twelve

**International Human Rights:
A Guide to the Legal Literature
of the United Nations and Selected
International Organizations¹**

by *RADU D. POPA*

I. Introduction

Research in international human rights can be both very difficult and very frustrating. The international protection of human rights is a multidisciplinary subject. Human rights treaties, conventions, and other instruments are issued by many different organizations and, so far, no comprehensive compilation or consolidation of these documents has been produced. To make research even harder, the records of preparatory proceedings, commentaries, interpretative texts, and decisions are issued by a variety of institutions. International organizations do not always publish their materials in a timely fashion, and sometimes their publications are not available at

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all. Similarly, materials produced by non-governmental organizations that work in the field of human rights are irregular, not easy to obtain, and not commonly available in library collections.

Given these circumstances, the researcher has to try to gather as many disparate sources as possible. Familiarity with the "standard" sources is essential at the outset of any research in international human rights. This guide begins with the United Nations, which is central to most projects on human rights. Materials related to UN human rights activities are presented in two categories: First are listed materials on the major UN human rights instruments; next are brief descriptions of the primary UN bodies active in human rights and their principal publications. Finally, this guide lists the major publications of several other organizations that contribute to the field of human rights: the International Labour Organization (ILO); the World Health Organization (WHO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Council of Europe and the European Union; and the Organization of American States (OAS).

II. United Nations Human Rights Instruments

A. The Charter and the Universal Declaration

Crucial for UN activities in the field of human rights are the Charter of the United Nations (adopted and entered into force in 1945) and the Universal Declaration of Human Rights (adopted in 1948, GA Res. 217 (III), UN Doc. A/810, at 71 (1948)). They are reprinted in numerous international law and human rights compendia and document supplements to texts on the subject. The most important commentaries and legislative document compilations for the Charter and the Declaration are:

- Cot, Jean-Pierre & Alain Pellet, ed. *La Charte des Nations Unies: Commentaire, Article par Article*. 2d ed., rev. et augm. Paris: Economica, 1991. Article-by-article commentary in French.
- Eide, Asbjorn et al. ed. *The Universal Declaration of Human Rights: A Commentary*. Oxford: Oxford Univ. Press, 1992. Article-by-article study of the Declaration by human rights scholars from

five Nordic countries. History, normative development, measures to ensure compliance.

Goodrich, Leland M., Edvard Hambro & Anne Patricia Simons. *Charter of the United Nations: Commentary and Documents*. 3d rev. ed. New York, NY: Columbia Univ. Press, 1969. Background and history of the Charter. Article-by-article commentary, including the practice of the first three sessions of the General Assembly. Full text of several major documents. Subject index and bibliography of articles.

Simma, Bruno, ed. *The Charter of the United Nations: A Commentary*. Oxford: Clarendon Press, 1994. English translation of *Charta der Vereinten Nationen. Kommentar*. München: Beck's, 1991.

United Nations. Economic and Social Council. *Collation of the Comments of Governments on the Draft International Declaration on Human Rights, Draft International Covenant on Human Rights and the Question of Implementation*. UN Doc. E/CN.4/85 (1948).

Verdoodt, Albert. *Naissance et signification de la déclaration universelle des droits de l'homme*. Louvain: Nauwelaerts, 1964. Not a commentary, but a very useful summary account of the meetings, negotiations, and delegate's positions during the elaboration of the Declaration.

B. Compilations of UN Human Rights Instruments

During the last fifteen years, a number of compilations of documents and primary source materials in human rights have been published, so that many items on a topic can now be found in one place. Therefore, it is always advisable to see if a compilation already exists for a given topic before looking for individual documents in the UN document system. Examples are:

International Human Rights Instruments of the United Nations, 1948-1982. Pleasantville, NY: Unifo Publishers, 1983. Provides the final texts of instruments developed in the UN during this period.

United Nations. Centre for Human Rights. *Human Rights: A Compilation of Human Rights Instruments*. New York, NY: United

Nations, 1994 (ST/HR/Rev.5). Full texts of conventions, declarations, recommendations, resolutions, and other instruments adopted by the UN, the UN High Commissioner for Refugees (UNHCR), ILO, and UNESCO. Includes the date of entry into force of conventions and a chronological list of instruments in the order of adoption. New editions of this compilation are issued from time to time. This edition covers instruments up to March 31, 1993. Volume I (in two parts) covers universal instruments. Volume II covers regional instruments.

For a better understanding of the subject, see:

Alston, Philip, ed. *The United Nations and Human Rights: A Critical Appraisal*. New York, NY: Oxford Univ. Press, 1992.

Meron, Theodor. *Human Rights Law-Making in the United Nations: A Critique of Instruments and Process*. London: Clarendon Press, 1986.

C. Status of UN Human Rights Instruments

Human Rights Law Journal. Kehl am Rhein; Arlington, VA: N.P. Engel, 1980– . First issue of each year provides a list of the current ratification status of UN and other international human rights instruments.

International Human Rights Reports. Nottingham: Human Rights Law Centre, University of Nottingham, 1994– . Three issues per year. Excellent source for the text of documents related to any recent topic in international human rights, from UN and regional actions to international treaties and cases. Very similar in structure to *International Legal Materials* (Washington, DC: American Society of International Law, 1962–).

Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December [year]. New York, NY: United Nations, 1982– . Date of entry into force, list of parties, signatures, accessions or acceptances, and the texts of declarations or reservations made by the parties. United Nations and League of Nations treaties are covered.

Statement of Treaties and International Agreements Registered or Filed and Recorded with the Secretariat during the Month of [month/year]. New York, NY: United Nations Legal Dept. of the

Secretariat, 1950– . Covers 1946/47– . Current number of ratifications, accessions, and subsequent agreements. Cumulative alphabetic index by subject terms and parties. Status of treaties is shown only as of one to two years prior to the publication.

United Nations. Centre for Human Rights. *Human Rights: Status of International Instruments*. New York, NY: United Nations, 1987 (ST/HR/5). Ratification status and declarations, reservations, objections, and derogations by states parties to twenty-two international human rights instruments. Annual updates to the chart of ratifications.

D. Basic Treaties on Human Rights

Following the adoption of the Universal Declaration, the UN developed two binding international agreements based on the principles in the Declaration. After almost twenty years of negotiation, the General Assembly approved the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two agreements along with the Charter and the Universal Declaration are often collectively referred to as the International Bill of Human Rights.

1. *International Covenant on Civil and Political Rights (ICCPR)*

999 UNTS 171 (GA Res. 2200 A(XXI), 21 GAOR, Supplement No. 16, UN Doc. A/6316, at 52). Adopted in 1966. Entered into force in 1976.

The most important works of commentary and legislative history on the ICCPR are:

Bossuyt, Marc J. *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights*. Dordrecht; Boston, MA: M. Nijhoff, 1987. Provides access to the preparatory work of the Covenant and its Optional Protocol. Annex II: Bibliography on the Covenant and Protocol. Annex III: Chronological list of principal documentation. Annex IV: Table of roll call votes in the Commission on Human Rights. Annex V: Table of roll call votes in the Third Committee of the United Nations General Assembly.

Henkin, Louis, ed. *The International Bill of Rights: The Covenant on Civil and Political Rights*. New York, NY: Columbia Univ.

Press, 1981. Essays on the background of the Covenant as well as on domestic implementation of the Covenant, and on the rights of self-determination, life, physical integrity and liberty, due process of law, freedom of movement, freedom of conscience and expression, and other issues.

Nowak, Manfred. *CCPR Commentary: Commentary on the U.N. Covenant on Civil and Political Rights*. Arlington, VA: N.P. Engel, 1993. Analysis of the Covenant and its two protocols. Covers practice and case law of the Human Rights Committee. Organized by article and paragraph numbers of the international instruments. Index of keywords and relevant texts.

For the status of the ICCPR, consult the following:

Report of the Human Rights Committee, issued annually as Supplement No. 40 to the *Official Records of the General Assembly (GAOR)*. Contains the list of current ratifications. See description of Human Rights Committee documents *infra* p. 283.

Reservations, Declarations, Notifications and Objections Relating to the International Covenant on Civil and Political Rights and the Optional Protocol Thereto. Geneva: United Nations, [year] (CCPR/C/Rev.2).

2. International Covenant on Economic, Social and Cultural Rights (ICESCR)

939 UNTS 3 (Annex to GA Res. 2200A (XXI), 21 GAOR, Supplement No. 16, UN Doc. A/6316, at 490). Adopted in 1966. Entered into force in 1976. A history of the drafting of the ICESCR and a guide to its interpretation prepared by Professor Louis Sohn is nearing publication.

3. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Burgers, J. Herman & Hans Danelius, eds. *The United Nations Convention Against Torture: A Handbook on the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*. Dordrecht; Boston: M. Nijhoff, 1988. Article-by-article commentary on the convention and discussion of *travaux préparatoires*.

4. Convention on the Rights of the Child

5. International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

See also the discussion below of the Committee on the Elimination of Racial Discrimination, *infra* p. 284.

United Nations. Centre for Human Rights. *Second Decade to Combat Racism and Racial Discrimination: Global Compilation of National Legislation Against Racial Discrimination*. New York, NY: United Nations, 1991 (HR/PUB/90/8). Unique compilation of constitutional and legal provisions governing equality and nondiscrimination. Based upon responses of governments to questionnaires sent by the Secretary-General (not a committee document).

6. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The annual report of the Committee on the Elimination of Discrimination Against Women appears as a GAOR Supplement. Annexes always include a list of states parties to the CEDAW.

Women's Watch. Minneapolis, MN: International Women's Rights Action Watch, 1987-. Quarterly, covering seminars, meetings, decisions, and other developments related to CEDAW.

Work of CEDAW: Reports of the Committee on the Elimination of Discrimination Against Women (CEDAW). Vol. 1, 1982-1985. New York, NY: United Nations, 1989. Contains reports of the committee for its first five sessions and summary records for all the sessions except the first. There is also an ongoing series covering sessions after 1985.

III. UN Organs with Responsibilities in the Field of Human Rights and Their Principal Documents

The United Nations, through its bodies, publishes more than 50,000 documents annually. Chapter Seven, "United Nations: Lawmaking Activities and Documentation," by Jeanne Rehberg, *supra* p. 151, contains a basic guide to the UN documentation system and UN document symbols. The following is a list of the primary UN bodies

that are active in the field of human rights and the UN document symbol for each:

UN Body	UN Document Symbol
General Assembly	A/-
Committee on the Elimination of Racial Discrimination	CERD/-
Human Rights Committee	CCPR/-
Economic and Social Council	E/-
Commission on Human Rights	E/CN.4/-
Security Council	S/-
Secretariat	ST/-

International Court of Justice documents are not distributed with UN document symbols.

The principal publications for research into the human rights activities of these UN bodies are described here, with the exception of the Security Council, which documents its human rights activities in its regular documents and publications (described in Chapter Seven, "United Nations: Lawmaking Activities and Documentation," by Jeanne Rehberg, *supra* p. 151).

A. General Assembly and Its Subsidiary Organs

1. General Assembly (GA)

Article 13(1)(b) of the UN Charter gives the GA authority to initiate studies and make recommendations for "the realization of human rights and fundamental freedoms." Pursuant to article 15, the GA receives and considers reports from other UN organs, including those concerned with human rights. Reports come mainly from the ECOSOC and from specialized bodies reporting to the GA and are generally referred to the Third Committee (the Social, Humanitarian and Cultural Committee). When the situation in which they occur is urgent, human rights issues are sometimes submitted to other main

committees or to the plenary meetings. Most of the documents of the Third Committee bear the symbol A/C.3/- . The annual report on the committee's activities appears as a part of the *GAOR Annexes*. The annual reports of the ECOSOC appear as Supplement No. 3 to the *GAOR*. The Secretary-General's annual report on the work of the UN is submitted to the GA and always appears as Supplement No. 1 to the *GAOR*. The GA considers the reports in plenary meetings. Draft resolutions submitted by the committees to the GA are then considered, adopted, amended, substituted, or rejected. All material is to be found in the *Official Records*. The GA is also empowered to establish temporary, ad hoc, or special committees. A number of them deal with human rights matters, for example, the Human Rights Committee, the UN Relief and Works Agency for Palestinian Refugees in the Near East (UNWRA), and the Committee on the Elimination of Racial Discrimination.

2. Human Rights Committee

The Human Rights Committee was established by article 28 of the Covenant on Civil and Political Rights. The committee consists of eighteen nationals from states that are parties to the Covenant, each serving for four-year terms. The committee considers reports submitted to the Secretary-General by states parties to the Covenant on the national measures they have adopted and their accomplishments in giving effect to the provisions of the Covenant (art. 40(4)). The committee also hears complaints by one state party against another (art. 41) and makes available its good offices to the states parties. To facilitate a solution, the committee must protect the confidentiality of the parties in dispute; therefore complaints are discussed in closed meetings. If the dispute is not solved to the satisfaction of the parties, the committee may appoint an ad hoc Conciliation Commission of five people, which has twelve months to submit a report.

The Optional Protocol to the Covenant stipulates that the Human Rights Committee may receive and consider communications from individuals claiming to be victims of violations of the rights set forth in the Covenant. Petitions may be submitted to the committee only after the exhaustion of local remedies. Under article 4 of the Optional Protocol, the respondent state is informed of the petition by the committee and has six months to respond to the allegations and report on remedial steps. Subsequently, the committee holds a

closed meeting and forwards its response to the state party concerned and to the individual petitioner.

A summary of the committee's activities under the Protocol is included in the committee's annual report to the General Assembly, which appears as Supplement No. 40 to the GAOR. Since the Human Rights Committee is a subsidiary organ of the General Assembly, its documents appear in the A and A/C.3 series. The summary record of its proceedings appears as A/C.3/SR.-. The committee also has its own series symbol, CCPR. CCPR/C contains reports submitted by states parties under article 40 of the Covenant.

The most important publications of the Human Rights Committee are:

- Human Rights Committee. *Selected Decisions under the Optional Protocol*. New York, NY: United Nations, 1985 (CCPR/C/OP/1). Indexed by article of the Optional Protocol, by article of the Covenant, by subject, and by author and victim. There is a second volume, 1990 (CCPR/C/OP/2), covering up to 1988.
- Human Rights Committee. *Yearbook of the Human Rights Committee [year]*. Two volumes. Volume I always covers summary records of the meetings. Volume II contains the periodic reports to the committee of the states parties and the committee's annual report to the GA.

3. Committee on the Elimination of Racial Discrimination and the International Convention on the Elimination of All Forms of Racial Discrimination

The committee was established by the GA in 1965, pursuant to article 8 of the Convention on the Elimination of All Forms of Racial Discrimination. Its official records appear with its own series symbol, CERD/-. Since it is a subordinate organ of the GA and reports to it, some of its documents are issued in the A/- and A/C.3 series. The records contain reviews of state reports (in CERD/C) and rulings interpreting the Convention. The committee also prepares annual reports for the Secretary-General and makes general recommendations to the GA based on the information received from the states parties to the Convention.

4. *Special Committee on Apartheid*

This committee was established by the GA in 1962 as the Special Committee on the Politics of Apartheid of the Government of the Republic of South Africa. The main function was to review all aspects of the policies of apartheid in South Africa and related international repercussions and to report from time to time to the General Assembly, the Security Council or both. Committee documentation appears under the symbol A/AC.115. The committee's annual report to the General Assembly appears as a supplement to the GAOR. The Special Committee does not usually conduct investigations of individual complaints. There is a Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights that investigates complaints of gross violations of human rights such as apartheid.

5. *Council for Namibia (A/AC.131)*

6. *Committee on International Terrorism (A/AC.160)*

B. Economic and Social Council and Its Subsidiary Organs

1. *Economic and Social Council (ECOSOC)*

The UN Charter established the ECOSOC as a principal UN organ. Under article 63.1, the ECOSOC coordinates activities with specialized intergovernmental organizations such as ILO, UNESCO, and WHO. The reports of these arrangements appear in UN documents marked E/-. The ECOSOC also works with non-governmental organizations. Human rights issues are generally referred to the Social Committee of ECOSOC. Social Committee reports are submitted to the ECOSOC in plenary meetings, where draft resolutions are presented for final approval. The ECOSOC makes resolutions on matters raised within the body and on others referred by the GA, subsidiary bodies of the ECOSOC, the Secretary-General, specialized agencies, and international conferences. The ECOSOC also establishes ad hoc committees to consider human rights matters and to report back at a subsequent session. Ad hoc committees go out of existence when they have completed the purpose for which they were established.

The ECOSOC also establishes regional commissions on statistics, population, human rights, social developments, the status of

women, and narcotic drugs. These commissions in turn have created sub-commissions of their own. The ECOSOC submits to the GA an annual report on its activities (Supplement No. 3 to the *GAOR*), which includes a section on human rights and the texts of the most important documents. The ECOSOC also issues its own official records of meetings, supplements, and lists of delegations (*Official Records of the Economic and Social Council (ESCOR)*). Supplement No. 1 to the *ESCOR* contains sessional agendas and full texts and checklists of resolutions and decisions.

2. Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and the Working Groups on South Africa, Israel and Chile

The Commission on Human Rights was established by the ECOSOC in 1946 as one of its functional committees under article 68 of the UN Charter. It provides the advice and assistance that enables the ECOSOC to carry out its responsibilities in the field of human rights. The commission reports to the ECOSOC on each session's activities. The annual reports are divided into chapters. Chapter I generally covers the organization of the session. Other chapters cover each of the agenda items considered. There is also a chapter on the adoption of the commission's report and one containing the text of draft resolutions that the commission is recommending to the ECOSOC. The annexes always contain a complete list of documents issued for the session. The commission's documentation bears the designation E/CN.4/-; the summary records, E/CN.4/SR.-. Since 1978, documents released by ECOSOC have the symbol E/[year]/... . Documents produced by the Commission on Human Rights have been numbered by year since 1982.²

The commission's subordinate bodies consist of permanent sub-commissions established with the authorization of the ECOSOC. The Sub-Commission on Freedom of Information and of the Press went out of existence in 1952. The only sub-commission now in

2. Prior to that date the numbering system varied. For a detailed discussion of the work of the commission and a consolidated list of documents, see *The United Nations and Human Rights: A Critical Appraisal*, ed. Philip Alston (New York, NY: Oxford University Press, 1992), at 88–89 for discussion of bibliography, and the chapter "The U.N. Commission on Human Rights," at 126–210.

operation is the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The sub-commission is empowered to undertake studies and to make recommendations to the commission concerning the prevention of discrimination relating to human rights (including all forms of detention and cruel, inhuman and degrading treatment). Its documentation is generally to be found under the series symbol E/CN.4/Sub.2/-. Since 1970 the sub-commission has had a working group to consider all communications and government reports that appear to reveal consistent patterns of human rights violations. The aim is to work out a solution through inquiry, report, and recommendation. The proceedings therefore remain confidential until the commission decides to forward the matter to the ECOSOC. (The procedure first came into operation in 1972 when the situations in Greece, Iran, and Portugal were considered.)

There are also ad hoc working groups that have been established, including the Ad Hoc Working Group of Experts on South Africa, the Working Group of Experts to Investigate Israeli Practices Affecting Human Rights of the Populations of the Occupied Territories, and the Ad Hoc Working Group of Experts on Chile. Most of the reports of UN ad hoc commissions and working groups appear in mimeographed documents only and are not compiled in official records or sales publications. Whatever is available usually appears in the E/CN.4/- series.

The easiest way to find documents from the commission and sub-commission is to consult the relevant annex to the annual report of the session. These annexes contain comprehensive lists, by document symbol, of all the documents issued for the session.

3. *Commission on the Status of the Women*

The commission was established in 1946, originally as a sub-commission of the Commission on Human Rights. It submits reports and makes recommendations to the ECOSOC on the promotion of women's rights in the political, economic, social, civil, and education fields. Since 1950, its reports have been issued as supplements to the *ESCOR*. Its document symbol is E/CN.6/-.

4. *Commission for Social Development (E/CN.5)*

C. The Secretariat

The Secretariat mainly serves the other organs of the United Nations and administers their policies and programs. It submits an annual report to the GA (Supplement No. 1 to the GAOR), with a separate section on human rights. Within the Secretariat is the Division of Human Rights, which carries out the programs of the UN human rights organs. The documentation of the Division bears the symbol ST/HR/-. Annually, the Secretariat issues a *Periodic Report on Human Rights: Analytic Summary of Reports and other Material on Civil and Political Rights for [...] (D/CN.4/-)*. An excellent reference work on the role of the Secretariat is Theodor Meron, *The United Nations Secretariat: the Rules and the Practice* (Lexington, MA: Heath, 1977).

D. The International Court of Justice

Pursuant to article 92 of the UN Charter, the ICJ is the principal judicial organ of the United Nations. The Statute of the Court is an integral part of the Charter. Many treaties and other international agreements provide for the submission of disputes to the Court (article IX of the Convention on Genocide; article 38 of the Convention on the Status of Refugees; article 9 of the Convention on the Political Rights of Women; article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination). The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do not specifically provide for adjudication by the Court. Few cases before the ICJ have dealt directly with human rights issues, although the Court has considered them (for example, in the South West Africa Case of 1950). Human rights have more often been the subject of ICJ advisory opinions. The publications of the ICJ are not part of the UN documentation system. They do not have UN document symbols, but they bear the initials ICJ. They include *Reports of Judgments, Advisory Opinions and Orders; Pleadings, Oral Arguments and Documents; Acts and Documents*, which has the rules of the Court; and the *Yearbook*. These and other ICJ materials are described in Chapter Seven, "United Nations: Lawmaking Activities and Documentation," by Jeanne Rehberg, *supra* p. 151.

IV. Finding Tools for UN Documents

UNDOC: Current Index. New York, NY: United Nations Dag Hammarskjöld Library, 1979–96. See Chapter Seven, “United Nations: Lawmaking Activities and Documentation,” by Jeanne Rehberg, *supra* p. 151 for description.

Centre for Human Rights, Geneva. *United Nations Action in the Field of Human Rights*. New York, NY: United Nations, 1974– . Ready-reference tool for access to detailed summaries of human rights developments within the United Nations. Especially useful for documents and publications. Full description of each UN human rights body. Latest edition is 1994.

Commission on Human Rights. Sub-Commission on the Prevention of Discrimination and Protection of Minorities. *List of Studies and Reports Prepared Pursuant to Sub-Commission Decision 1989/103 (E/CN.4/Sub.2/[year]/2)*. Annual list of human rights related studies and reports prepared for the UN bodies by special rapporteurs or experts of the sub-commission. Provides title, author, year when the final version was considered, and the document symbol. Includes UN sales number if applicable.

Human Rights Documentation. Geneva: International Service for Human Rights, 1989– . Irregular and always late (especially in microform). Provides lists of resolutions of the UN Commission on Human Rights and the sub-commission, lists of documents of these and other human rights bodies, compilations of voting results of the commission, and other current information. Documents are listed by UN symbol.

Human Rights Monitor. Geneva: International Service for Human Rights, 1988– . Six times per year. Essential for current awareness of human rights developments within the United Nations. Describes recent meetings of UN bodies relevant to human rights. Summarizes meetings of the UN specialized agencies such as ILO and CSCE. Provides information on the activities of non-governmental organizations, ratifications of human rights instruments, and human rights related awards.

Index to United Nations Documents and Publications with Full-Text Resolutions (CD-ROM). New Canaan, CT: NewsBank/Readex, 1990– . See description in Chapter Seven, “United Nations:

Lawmaking Activities and Documentation," by Jeanne Rehberg, *supra* p. 151.

United Nations Chronicle. New York, NY: United Nations Department of Public Information, 1964–. Quarterly. Useful information on current developments, but generally does not provide document symbols.

United Nations Juridical Yearbook. New York, NY: United Nations, 1962–. Includes legislative texts, treaty provisions, discussions of legal activities, and an extensive bibliography on UN and inter-governmental organizations.

Yearbook of the United Nations. The Hague: Martinus Nijhoff, 1947–. Excellent subject index. Often the best source for beginning any UN research. Good summaries on all matters, with references to UN documents. Unfortunately, publication often is three to four years late.

V. International Labour Organization (ILO)

A. Compilation of Instruments

International Labour Office. *International Labour Conventions and Recommendations, 1919–1995*. Three volumes. Geneva: International Labour Office, 1996. Texts adopted in the subsequent sessions are available in the *Official Bulletin* (series A and B) published by ILO.

B. Documents

Constitution of the International Labour Organization and Standing Orders of the International Labour Conference. Geneva: ILO, 1989.

Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO. 3d ed. Geneva: ILO, 1985. Decisions are arranged by subject categories. Chronological list of cases.

Labour Law Documents. Geneva: International Labour Office, 1990–95. Continuation of the Legislative Series (1914–1989).

Collection of important ILO international instruments and national legislation. Unfortunately, this series is no longer published. The ILO now offers *ILOLEX CD-ROM* (Geneva: ILO, 1995–), a trilingual (English, French, Spanish) database of more than 64,000 international labor standards documents, including the ILO Constitution, all ILO Conventions and Recommendations and ratification lists, and reports of major committees. To date, there is no current ILO source for national laws that is available to the public.

Official Bulletin. Geneva: International Labour Office, 1919– .
Special Report of the Director-General on the Application of the Declaration Concerning the Policy of Apartheid of the Republic of South Africa. Geneva: ILO, 1965–1994.

VI. World Health Organization (WHO)

Basic Documents. Geneva: WHO, 1956– . Irregular. Constitution, rules of procedures, agreements, rights and obligations of the members.

Handbook of Resolutions and Decisions of the World Health Assembly and the Executive Board. Geneva: WHO, 1973– .

International Digest of Health Legislation. Geneva: WHO, 1948– . Described in Chapter Eleven, "International Environmental Law," by Radu D. Popa, *supra* p. 255.

VII. United Nations Educational, Scientific and Cultural Organization (UNESCO)

Blaustein, Albert P., Rogers S. Clark & Jay A. Sigler, eds. *Human Rights Sourcebook*. New York, NY: Paragon House, 1987. UNESCO human rights documents and texts of UNESCO procedures.

Decisions Adopted by the Executive Board at Its 104th Session, 104 EX/Decision 3.3. Paris: UNESCO, 1978. Sets forth UNESCO procedures in human rights cases.

Report of the Director-General on the Activities of the Organization in [year]. Paris: UNESCO, 1947– .

UNESCO's *Standard-Setting Instruments*. Paris: UNESCO, 1981–. Looseleaf.

VIII. Council of Europe and the European Communities

Berger, V. *The Case Law of the European Court of Human Rights: A Practical Guide*. Sarasota, FL: UNIFO, 1989–. Volume 1 summarizes facts and law of 117 cases (1960–1987) and includes brief bibliographies and notes on domestic changes influenced by the cases. Appendices include a bibliography, text of the European Convention on Human Rights, and ratification information.

Collection of Recommendations, Resolutions and Declarations of the Committee of Ministers Concerning Human Rights 1949–1987. Strasbourg: Council of Europe, 1989.

Digest of Strasbourg Case-Law Relating to the European Convention on Human Rights. Koln: C. Heymanns Verlag, 1984–. Six volumes and ongoing supplements. Excellent service listing cases under the relevant article of the Convention.

European Commission of Human Rights. *Decisions and Reports. Décisions et rapports*. Strasbourg: European Commission, 1975–. Continues the *Collection of Decisions*, with indices. About four years behind.

European Human Rights Reports. London: European Law Center, Sweet & Maxwell, 1979–. Unofficial but very useful. Monthly. Decisions of the European Court of Human Rights, resolutions of the Committee of Ministers, summaries and extracts of human rights matters with headnotes and cross-references to European Commission cases. Also included are important decisions of the Inter-American Court of Human Rights. Cited as EHHR.

Publications of the European Court of Human Rights. Publications de la Cour européenne des droits de l'homme. Strasbourg: Council of Europe. Series A (1974–) contains the official texts of judgments and decisions of the court. Each decision is numbered and separately published, but with no index. In Series B (1975–) are oral arguments, pleadings, and documents. Cited as ECHR.

- Reports of Cases Before the Court. Recueil de la jurisprudence de la cour.* Luxembourg: Court of Justice of the European Communities, 1959– . Cited as ECR or *Recueil*. Usually late.
- Yearbook of the European Convention on Human Rights.* The Hague: Martinus Nijhoff, 1955/1957– . Part I has the texts of new Protocols to the European Convention, instruments, ratifications, reservations, procedures of the Court, and description of related activities of the European Council. Part Two has selected commission decisions in full text and selected resolutions of the Committee of Ministers. Part Three covers measures by European governments that implement the Convention, and has a bibliography and index. Extremely useful for finding summaries of decisions or treaty developments.

IX. Organization of the American States (OAS)

- Annual Report of the Inter-American Commission on Human Rights to the General Assembly.* Washington, DC: OAS, 1960– . Activities of the commission, updates on human rights situations in several countries, and new instruments in the Inter-American human rights system.
- Annual Report of the Inter-American Court of Human Rights to the General Assembly.* Washington, DC: OAS, 1976– .
- Human Rights: The Inter-American System.* Thomas Buergenthal & Robert E. Norris eds. Dobbs-Ferry, NY: Oceana, 1982– . Four-volume looseleaf containing texts of human rights instruments, cases and resolutions.
- Inter-American Commission of Human Rights. *Ten Years of Activities, 1971–1981.* Washington, DC: OAS, 1982. Easy access to the jurisprudence of the commission.
- Inter-American Court of Human Rights. San Jose, CA: Court Secretariat. *Series A: Judgments and Opinions. Fallos y opiniones* (1982–). *Series B: Pleadings, Oral Arguments, Documents. Memorias, argumentos orales y documentos* (1983–). *Series C: Contentious Cases. Resoluciones y sentencias* (1987–). *Series D: Oral Arguments and Documents* (1994–). A and B usually are very late.

Inter-American Yearbook on Human Rights. Anuario Interamericano de derechos humanos. Dordrecht: Nijhoff, 1968- . Because other sources are very late, the *Yearbook* sometimes is the best source for background information on the Inter-American human rights system and practices in selected OAS countries. Includes full text and current status of instruments, and procedural rules and relevant resolutions.

X. Other Sources for Human Rights Instruments and Jurisprudence

International Law Reports. London: Butterworths, 1919/22- . Excellent source for jurisprudence on international law generally. Fine list of cases and cumulative indexes.

International Legal Materials. Washington, DC: American Soc'y International Law, 1962- . Bimonthly containing significant decisions and instruments on many issues, including human rights, with annual and cumulative indexes.

XI. Sources for Further Reading

Hall, Katherine C. *International Human Rights Law: A Resource Guide.* Queenstown, MD: The Aspen Institute Justice and Society Program, 1993.

Tobin, Jack & Jennifer Green. *Guide to Human Rights Research.* Boston, MA: Harvard Law School, Human Rights Program, 1994.

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