QUB libguide : Public International Law Research

Foreword

This guide focuses on resources for public international law research. Section 1 begins with a brief introduction to public international law. Section 2 then introduces the sources of international law as set out in Article 38(1) of the Statute of the International Court of Justice, highlighting a few fundamental points regarding each source. Section 3 finally outlines the means of finding each of these sources using the various library resources of Queen’s University Belfast. In particular this guide will not address the question of whether or not Article 38(1) constitutes an exhaustive list of sources, nor will it analyse each source in depth. This is purely an introductory guide to public international law research.

1. Introduction

1.1. Applicable law to public international law disputes.

Public international law consists of rules and principles of general application which govern the relationships between nations. An important distinction is to be drawn between domestic and international disputes, in that domestic disputes will generally arise as to the precise application or interpretation of established legal rules, whereas international disputes will generally turn on whether or not the legal rule relied upon by one state exists as a legal rule at all.¹

1.2. ‘Law makers’ in international law

There is no singular ‘law making body’ for international law. Instead, international legal rules can be created by any organ of state representing sovereign authority or indeed by international (aka intergovernmental) organisations such as the UN or the EU.

1.3. Dictionaries and Encyclopaedias

A useful dictionary is Ernest Lindbergh’s ‘International law dictionary’, found on McClay Floor 2, KC72 LIND.

2. Sources

International legal rules are identified through a variety of ‘formal’ sources. These formal sources are set out in Article 38 of the Statute of the International Court of Justice:

**Article 38**

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
   a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
   b. international custom, as evidence of a general practice accepted as law;
   c. the general principles of law recognized by civilized nations;
   d. subject to the provisions of Article 59, 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.

2. This provision shall not prejudice the power of the Court to decide a case ex aequo et bono, if the parties agree thereto.’

This section will address each of these formal sources in turn, identifying the most important points to remember for each source.

2.1. International Conventions/Treaties

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2 M. Evans, *supra note 1*, pg 96
Conventions are often referred to by different names, including treaties, agreements, covenants, protocols and exchanges of notes. Conventions can be bilateral (between two states), multilateral (between multiple states), regional and global. Operating in a manner quite similar to private law contracts between two companies on a domestic level, conventions are often cited as the first formal source of international law, because a party to a convention has agreed to be bound by the provisions set out therein, thus constituting a strong basis for legal obligation. The law of conventions is set out in the 1969 Vienna Convention on the Law of Treaties, Article 2(1)(a) of which defines a treaty as;

‘an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation’

The most basic principle underlying the law of treaties is codified in Article 26 of the Vienna Convention;

“Pacta sunt servanda’ - Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”

From this principle stems the obligation to interpret international conventions set according to Article 32(1);

‘A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.’

An important resource in the interpretation of treaties is the travaux préparatoires, or preparatory work of a treaty³, which can sometimes explain not only the justification behind certain treaty provisions, but also the reasoning behind the omission of a proposed legal rule.

States may become parties to an international convention by signing or ratification at the time of its creation or by accession at some later date where the treaty expressly provides for this⁴. The manner in which states express consent to be bound by an international convention is thus subject to rigorous procedures both at an international and domestic level. Article 11 of the Vienna convention outlines the various ways states may express consent to be bound by a Convention. In this context it is important to note the legal effect of the word ‘signature’. The legal effect of signing a treaty depends on whether or not that treaty is subject to ratification, acceptance or approval. If so, then signing constitutes an intermediate step⁵, with consent to be bound by a treaty only being finally expressed upon completion of the final step, for example, ratification. However, even at this intermediate step a state is obliged to refrain from acts which would defeat the object and purpose of a treaty (see Article 18 of the Vienna Convention).

Articles 46-50 and 51-53 of the Vienna Convention provide for circumstances where a state’s participation with a treaty is invalid, covering circumstances of coercion, fraud, error, lack of competence to conclude treaties and conflict of with a jus cogens norm (see 2.2. below)

N.B. Treaties obviously only bind those states which are party to them. However, some treaty provisions codify an existing rule of customary international law, or indeed some treaty provisions

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⁵ M. Evans, supra note 1, pg 96
may over time crystallise into rules of customary international law. For example, the rule against refoulement is set out in Art 33 of the Convention Relating to the Status of Refugees, thus binding state parties to that convention. However, as well as the treaty provision, the prohibition of refoulement exists as a rule of customary international law, binding all states. Therefore, states not necessarily bound by the treaty provision are still bound by the rule.

2.2. Customary International Law

Customary international law, or international custom, is evidence of a general practice accepted as law through a constant and virtually uniform usage among States over a period of time. Customs comprise two elements; consistent state practice and opinio juris (a sense of legal obligation). All states are bound by customary international law.

Evidence of state practice can come in a variety of forms, such as diplomatic acts, institutions, governmental acts, official policy statements, treaty participation, domestic law and domestic case law, etc. Of particular importance is the practice of states whose ‘interests are specifically affected’. An important point to note:

‘The court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule… the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules and that instances of state conduct inconsistent with the given rule should generally have been considered as breaches of that rule, not as indications of the recognition of a new rule.’

Evidence of opinio juris sive necessitates (often abbreviated to opinio juris) is difficult to prove, as states rarely provide a reason for why they have acted in a particular manner. In fact, state practice and opinio juris are closely intertwined in that practice itself can be ‘evidence’ of the opinio juris element.

Before moving on it is necessary to mention jus cogens norms, which are rules so fundamental that no state can derogate from them, under any circumstances. Examples of such rules are the prohibition of torture and the prohibition of slavery.

2.3. General Principles

General principles recognised by civilised Nations are those which can be derived from a comparison of the various systems of municipal law and the extraction of such principles as appear to be shared by all, or a majority of them. Perhaps a stronger definition is to be found in Art 21(1)(C) of the Rome Statute of the International Criminal Court;

‘general principles of law derived by the court from the national laws of legal systems of the world.’

6 North Sea Continental Shelf, Judgment, ICJ Reports 1969, para 71
7 North Sea Continental Shelf, Judgment, supra note 6, para 74
8 Case concerning military and paramilitary activities inside and against Nicaragua, ICJ Reports, 1986, para 186
9 North Sea Continental Shelf, Judgment, supra note 6, 1969, para 77
Effectively they fill the gaps left by treaty and customary international law.

Oft-cited examples are the principle of good faith towards international obligations (a similar but separate rule to be distinguished from *pacta sunt servanda* in the context of treaty law - see above) and estoppel (which derives its roots from the common law equitable doctrines).

2.4. Judicial decisions and the teachings of the most highly qualified publicists of the various nations

These final sources are often referred to as ‘subsidiary’ or ‘material’ sources. The reasoning for this is self-evident, as any rule of international law cited in a judicial decision, treatise, or journal article will be stated as a rule deriving from a treaty, a rule of customary international law or a general principle.

Article 38(1)(d) refers to decisions of both international tribunals and domestic courts, provided they are ruling on issues of international law. As regards case-law of the ICJ, Article 59 of the Statute of the International Court of Justice states that decisions of the ICJ are binding only between the parties to the dispute; however considerable weight may be attributed to them. Domestic cases must concern issues of international law.

All classes of secondary material: treatises, journal articles, governmental reports, etc fall within the scope of Article 38(1)(d), however it is important to note that law student articles or notes or doctoral theses do not fall within this scope.

3. Research Resources

This section will provide research resources for each of the formal sources outlined in section 2.

3.1. International Conventions/Treaties

Generally a standard Google search will bring up most treaty texts; however a useful resource is;

http://treaties.un.org

This database tracks dates of all state parties’ signature and ratification of various treaties and conventions, as well as reservations/declarations of the parties.

3.2. Customary International Law

The International Committee of the Red Cross

As regards international humanitarian law, the International Committee of the Red Cross publishes extensive material in the field of customary international humanitarian law, and has a section for contemporary challenges. A simple search of the ICRC database such as ‘torture state practice’ may be a good starting point for research and the engine allows for refinement of search results.
The International Law Commission

Article 13(1) of the Charter of the United Nations states that the General Assembly shall take steps towards the progressive development and codification of international law. With this in mind, in 1947, the General Assembly adopted resolution 174 (II) (E, F, S, R, C), establishing the International Law Commission (ILC) and approving its Statute, Article 1(1) of which states the ILC’s mandate:

“Commission shall have for its object the promotion of the progressive development of international law and its codification.”

Thus the yearly sessions of the ILC can be a valuable resource for researchers seeking to verify the existence of a rule of customary international law. Follow the link below to the ILC website which provides a summary of the ILC’s work since its creation, with reference to each session.

http://www.un.org/law/ilc/

Resolutions of International Organisations

The resolutions of international organizations (especially given the size of such organizations as the General Assembly of the United Nations) may also be used as evidence of both state practice and opinio juris. Numerous factors must be taken into account with resolutions, for example how many states endorsed the resolution and the reasoning and history behind it. Resolutions of UN bodies can be found at the link below;


Independent Resources

Decisions of domestic courts, domestic policies and administrative decisions, treaty participation and integration of treaty provisions into domestic law can all be used as evidence of state practice.

Various countries non-official yearbooks of international law, such as the British yearbook of international law, or even multinational yearbooks such as the Asian yearbook of international law tend to document state practice. Another time-consuming but worthwhile research method as regards finding state practice and opinio juris is to consult the website of each particularly affected state’s department of foreign affairs.

“Constitution Finder”

This extended list of the constitutions and domestic laws of a large number of states can be useful when looking for state practice.

http://confinder.richmond.edu/
3.3. General principles

It seems that general principles are (because of their nature) to be found through examination and comparison of domestic laws of states. However, journal articles exist on the subject and there are judicial decisions which have turned on the establishment of such principles.

Professor Bin Cheng’s treatise, General Principles of Law as Applied by International Courts and Tribunals (Cambridge, 2006) is a comprehensive authority on arbitral and judicial decisions that have relied upon general principles. This treatise is found on McClay Floor 2 KC1210 CHEN

3.4.1. Judicial decisions

Judicial decisions may emanate from both international and national tribunals, providing they are ruling on issues of international law.

QUB has online access to the Oxford Reports on International Law, which is continuously updated and brings together decisions on public international law from international law courts, domestic courts, and ad hoc tribunals. This database can be accessed at the link below;

Oxford Reports on International Law

As regards the case-law of specific international tribunals, the Queen’s Library website has a list of links to the websites of international human rights tribunals at;

http://libguides.qub.ac.uk/content.php?pid=350033&sid=2863968

The following is an extended list of international tribunal websites not included in the above link and intended to complement the existing list:

The International Court of Justice

This is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and has as its mandate to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies. Article 59 of the Statute of the International Court of Justice notes that a decision of the ICJ binds only those States who are party to the proceedings; however, great weight is afforded to ICJ jurisprudence, which is considered to be the strongest statement of international law on the disputed situation.

http://www.icj-cij.org/

QUB also has the following digests of ICJ jurisprudence;

The Permanent Court of International Justice

This is the predecessor of the International Court of Justice.


The Human Rights Committee

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. ¹²


Inter-American Court of Human Rights

Operating under the Organization of the American States, the Inter-American Court of Human Rights’ objective is the application and interpretation of the American Convention on Human Rights and other treaties concerning this same matter.

http://www.corteidh.or.cr/casos.cfm?&CFID=1784555&CFTOKEN=11058089

¹² http://www2.ohchr.org/english/bodies/hrc/ (HRC website)
European Courts

There are two distinct systems of European regional courts. The first is that of the European Union, which deals with commercial, social and European constitutional issues. The second system is that of the Council of Europe, which deals principally with human rights cases.

The European Union

Having moved away from the original system where the Commission had a decision making role, there now exists a two-step procedure between the Court of the First Instance and the European Court of Justice. Decisions of the European Union Courts can be found here;


The European Commission

The previous preliminary hearing at the commission requirement has been discarded in favour of a single court system. The various methods of finding decisions of the European Court of Human Rights have been comprehensively set out in;

http://libguides.qub.ac.uk/content.php?pid=350033&sid=2863968

QUB also has the following digests of European Human Rights Case law;

McClay Floor 2 KC1245 BERG

McClay Floor 2 KC1245 BERG

KC1245 BERG

A systematic guide to the case law of the European Court of Human Rights, 1960-1994 / [compiled by] Peter Kempees
2 Vols
McClay Floor 2 KC1245 KEMP

The International Criminal Tribunal for Rwanda ("ICTR")

Founded by the Security Council acting under Chapter VII of the United Nations Charter, the International Criminal Tribunal for Rwanda was established for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and her neighbouring states between 1 January 1994 and 31 December 1994.


International Criminal Tribunal for the Former Yugoslavia ("ICTY")

Founded by Resolution 827 of the United Nations Security Council, the ICTY is a United Nations court of law dealing with war crimes that took place during the conflicts in the Balkans in the 1990’s.

www.un.org/icty

Iran-US Claims Tribunal

The Iran-United States Claims Tribunal came into existence through the "Algiers Declarations" between the Islamic Republic of Iran and the United States of America. These agreements were aimed at resolving the crisis in relations between the Islamic Republic of Iran and the United States of America arising out of the November 1979 hostage crisis at the United States Embassy in Tehran, and the subsequent freezing of Iranian assets by the United States of America. N.B. new users are required to register.

www.iusct.org/

International military tribunal for the Trial of German Major War Criminals

This Tribunal for the trial of War Criminals was set up by the Governments of the UK, USA, France and Russia to punish persons who had committed crimes against peace, war crimes and crimes against humanity as defined in the Charter in no particular geographical location.

www.yale.edu/lawweb/avalon/imt/proc/judcont.htm

An additional list of Human Rights Bodies can be found on the Office of the High Commissioner for Human Rights website at;

http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx
The International Tribunal for the Law of the Sea (ITLOS)

The International Tribunal for the Law of the Sea is an independent judicial body established by the United Nations Convention on the Law of the Sea to adjudicate disputes arising out of the interpretation and application of the Convention.

http://www.itlos.org/index.php?id=2&L=0

The International Centre for Settlement of Investment Disputes

ICSID was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID or the Washington Convention). The Convention sets forth ICSID's mandate, organization and core functions. The primary purpose of ICSID is to provide facilities for conciliation and arbitration of international investment disputes.

https://icsid.worldbank.org/ICSID/Index.jsp

North American Free Trade Agreement Arbitration Awards

http://naftaclaims.com/

World Trade Organisation

Established by the Uruguay Round negotiations and earlier negotiations under the General Agreement on Tariffs and Trade (GATT), the WTO currently comprises 159 member states. The WTO Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the panels’ findings or the results of an appeal. Although many disputes are settled out of court, the dispute cases of the WTO can be found here;

http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm#results

Investment Treaty Arbitration

This research website is extremely helpful for those researching investment treaty law and arbitration, providing access to treaties, publicly available investment treaty awards, ICSID cases and other resources in this area.

http://italaw.com/

Permanent Court of Arbitration (PCA)

The PCA was established by the 1899 Convention for the Pacific Settlement of International Disputes. The PCA is competent in several fields of international dispute resolution, including territorial, treaty, and human rights disputes between states, as well as commercial and investment disputes, including
disputes arising under bilateral and multilateral investment treaties. Alongside its obligations towards the United Nations Commission on International Trade Law (UNCITRAL), the PCA is listed as an ad hoc arbitrator pursuant to Article 287(1) of UNCLOS (UN Convention on the Law of the Sea). The website provides not only access to decisions of the PCA, but also various scholarly articles in a variety of international legal fields.

www.pca-cpa.org

**Domestic Courts**

Some countries have special private reporters which select and publish that country’s international law cases.

**3.4.2. The teachings of the most highly qualified publicists of the various nations**

This include treatises, systematic presentations of international law by scholarly bodies such as the International Law Association, reports of the International Law Commission, journal articles, monographs, governmental reports, etc.

**Treatises**

For a general overview on a topic area a good starting point is to consult the various treatises found on the second floor of the McClay library, referred to above in ‘Key Treatises’. Here you will find an overview of the legal issues surrounding a topic area, and generally consulting footnotes will lead you to a more specialised treatise or article.

**Scholarly Articles**

The value of scholarly articles in international research cannot be overstated. Scholarly articles can provide a basis for an assertion or contention as to the existence of a customary rule or principle as the author will have researched the subject extensively. Again, by following footnotes, you should be able to find concurring or conflicting academic opinions, and the arguments for and against either assertion.

**HeinOnline**

QUB has subscribed to the Foreign and International Law Resources Database, which provides access to a vast scope of international yearbooks and periodicals, U.S. law digests, international judicial decisions, domestic laws and other useful resources. Furthermore QUB has subscribed to the HeinOnline Kluwer Law International Journal Library, which is arranged by topic area, for example, international arbitration.
Lexis Nexis

The Lexis Nexis online library provides access to a more limited number of journals that HeinOnline, but Lexis Nexis library also includes such publications as the Journal of International Banking & Financial Law.

Both of these databases can be accessed via the link below:

http://libguides.qub.ac.uk/content.php?pid=350033&sid=3058363

QCat Database

Another valuable resource for students of public international law is the QCat Database, which searches through a range of international databases such as HeinOnline and Lexis Nexis, to find articles matching search criteria. Searching the QCat Database for key terms such as ‘non-refoulement’ or even the name of a relevant author is a practical and efficient research method. Currently there is no neat way of getting a listing of journals, but if you search ‘international law’ in the QCat catalogue, and then use the ‘Format’ search limit to limit results to e-journal, you’ll see a list of 244 titles (journals and yearbooks) we have access to with ‘international law’ in the title or added notes.

Lauterpacht Centre for International Law

The Lauterpacht centre has for its principle objective to promote the development of international law through research and publication. The Centre’s website contains a comprehensive list of links to international tribunals, a specialised section on international arbitration research, as well a state practice section, with access to states foreign affairs departments and links to United Nations databases such as those of the Security Council and General Assembly.

http://www.lcil.cam.ac.uk/research_links/

The American Society of International Laws’ “Electronic Information System for International Law”

This research portal provides links to numerous international research resources, as well as links to other sites similar to that of the Lauterpacht centre.

http://www.eisil.org

4.0. Citing international law

The link below directs students to the OSCOLA citation guide for international law sources.
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