

# United States Treaty Research

*Updated January 2009*

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## I. Introduction

The purpose of this research guide is to provide an introduction to some of the sources that can be used for finding the text and status of treaties and other international agreements to which the United States is a party. This pathfinder covers research strategies for finding such materials and describes print and electronic resources available through the Schaber Law Library and the Internet. This guide is selective – it only covers the most important resources in this area.

The United States often enters into legally binding agreements with other sovereign states. Such agreements are often generically referred to as treaties, although the agreements themselves may be known by a variety of different names: convention, covenant, charter, accord, protocol, etc.<sup>1</sup> However, the term “treaty” has a specific legal meaning under U.S. law: international agreements made by the President with the advice and consent of the Senate. The authority for such agreements is derived from Art. II, Section 2, Clause 2 of the United States Constitution. International agreements concluded without being submitted to the Senate are known as “executive agreements.” These are agreements entered into by the President based either on the President’s independent constitutional authority, authorization from congressional legislation, or authorization from previously enacted treaties. International agreements may be bilateral (two parties) or multilateral (three or more parties). Knowing if an agreement is bilateral or multilateral can be important, because some treaty resources organize materials based on this distinction.

There are several steps common to most treaty research. These are:

- checking for relevant secondary sources;
- finding the authorized text of the treaty;
- verifying its current status, including determining the parties to the agreement;
- ascertaining whether there are any reservations, understandings or declarations;
- locating any statutes and regulations that implement the agreement; and
- finding interpretative materials, such as judicial decisions and legislative history documents.

Each of these different issues will be discussed below.

## II. Secondary Sources

Usually the most efficient way to begin a research project is by consulting secondary sources, such as scholarly treatises, practice guides or law review articles. These resources will refer you to relevant

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<sup>1</sup> Generally, the name assigned to a treaty does not affect its legal status under international law. A useful discussion on the meaning of these different terms can be found at [http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml).

primary authority materials and provide an explanation of the law. Some treatises and practice guides will contain the full-text of international agreements, refer the reader to related legislation and case law, and provide commentary on how the agreement has been applied. Law review articles offering detailed analysis of particular agreements will also sometimes be available. This approach is most likely to be productive if you are researching a more prominent international agreement.

While a limited selection of treatises and practice materials covering treaties is available electronically through Westlaw or LexisNexis, many are only accessible in print. To locate these print resources, search the library's online catalog. Some of these publications will explicitly focus on specific international agreements.<sup>2</sup> Others may concentrate on a particular topic and only address international agreements as one facet of its coverage.<sup>3</sup> Law review articles can be located by searching periodical indexes, such as the *Legal Resource Index* or *Index to Legal Periodicals*, and through the full-text law review databases on LexisNexis and Westlaw.

Many treaties and executive agreements will have little or no coverage in secondary sources. The rest of this guide will review other materials that can be used to locate the text of treaties and executive agreements, determine their status, and ascertain their impact on the law.

### III. Finding the Text of a Treaty or Executive Agreement

#### A. Treaty Publications

The text of U.S. treaties and executive agreements can be found in a variety of formats, including official treaty sets, commercial publications, and electronic resources. The following is a selective list of the most useful resources for locating the text of such agreements. If you are citing to an agreement using *The Bluebook: A Uniform System of Citation*, Rule 21.4.5 indicates the order of preference regarding which specific sources to cite.

##### 1. Print and Microfiche Resources

*United States Statutes at Large* (Stat.): This official publication has treaties and executive agreements from 1776-1949. Volume 64, part 3 (1950-51) contains a cumulative list of treaties and agreements. Location: Stack-1, KF50 .U55.

*United States Treaties and Other International Agreements* (U.S.T.): This set currently covers treaties and executive agreements from 1950-1984. This official set cumulates and replaces T.I.A.S. Location: Stack-1, JX236 1950.

*Treaties and Other International Acts Series* (T.I.A.S.): This official series currently has treaties and executive agreements published in pamphlet form from 1984-1997. Location: Stack-1, JX236 1950.

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<sup>2</sup> See, e.g., Vern Krishna et al., *The Canada-U.S. Tax Treaty: Text and Commentary* (2004); Kenneth R. Simmonds and Donald J. Musch, eds., *North American Free Trade Agreements* (1992).

<sup>3</sup> See, e.g., Melville B. Nimmer & David Nimmer, *Nimmer on Copyright* (1976) (includes discussion of the Berne Convention and its implementing legislation).

*Senate Treaty Documents*: The text of proposed treaties submitted to the Senate for its advice and consent are reproduced in Senate Treaty Documents (called Senate Executive Documents prior to 1979). These documents are available electronically through *Westlaw*, *LexisNexis*, *HeinOnline*, *THOMAS*, and *Treaties and International Agreements Online*, each of which is described below in § III.A.2. They are also available in microfiche using the *Congressional Information Service* microfiche set (Location: Fiche, Cab.A-Sec.01) or *Hein's United States Treaties and Other International Agreements Current Service* (Location: Fiche, Cab.A-Sec.06).

*Hein's United States Treaties and Other International Agreements Current Service* (KAV): This microfiche set is a good source for recent treaties and agreements not yet published in T.I.A.S. It is also available electronically through *HeinOnline* (discussed in § III.A.2). The set is indexed by *A Guide to the United States Treaties in Force* and the *United States Treaty Index*, which are described in § III.B.2. Location: Fiche, Cab.A-Sec.06, JX 236 1950.

*United States Code Service*: The text of forty international agreements is included in an unnumbered volume entitled "International Agreements." The U.S.C.S. is also available electronically on *LexisNexis* (GENFED; USCODE). Location: Reference, KF62 .U55.

Bevans, Charles I. *Treaties and Other International Agreements of the United States of America, 1776-1949* (Bevans): Bevans includes multilateral treaties listed chronologically and bilateral treaties organized by country. Volume 13 is a subject index to the set. Location: Stack-1, JX236 1949.

*United Nations Treaty Series* (U.N.T.S.): Many international agreements to which the U.S. is a party are registered with the United Nations Secretariat and published in this treaty set. Coverage begins in 1946. This publication has a cumulative index which is shelved at the end of the set. Location: Stack-1, JX170.U55 T7.

*League of Nations Treaty Series* (L.N.T.S.): Treaties from 1920-1946 that were registered with the League's Secretariat. The set includes an index listing treaties by country, subject and chronologically. Location: Stack-1, JX170 .L43.

## **2. Electronic Resources**

*Treaties and International Agreements Online*: Contains U.S. agreements enacted since 1783 as well as many tax treaties to which the U.S. is not a party. This resource is accessible through the library's Databases web page (<http://www.mcgeorge.edu/x1635.xml>).

*LexisNexis*: The treaties file (INTLAW; USTRTY) contains agreements enacted since 1776. To locate, follow: Legal > Area of Law – By Topic > International Law > Find Treaties & International Agreements.

*Westlaw*: The treaties database (USTREATIES) includes agreements enacted since 1778. To locate, follow: Directory > International/Worldwide Materials > Multi-National Materials > Legislation.

*HeinOnline*: Includes a "Treaties and Agreements Library" that provides PDF versions of various official and unofficial treaty publications, including *Statutes at Large*, U.S.T., T.I.A.S.,

KAV and Bevans. This resource is accessible through the library's Databases web page (<http://www.mcgeorge.edu/x1635.xml>).

*THOMAS* (<http://thomas.loc.gov/home/treaties/treaties.html>): This is the website of the Library of Congress. It provides access to the text of Senate Treaty Documents (see § III.A.1) in PDF format from 1995 (104<sup>th</sup> Congress) to present. Executive agreements are not covered.

*United Nations Treaty Collection*: This database provides access to the full-text of the *United Nations Treaty Series* and the *League of Nations Treaty Series* in PDF format (see § III.A.1). This resource is accessible through the library's Databases web page (<http://www.mcgeorge.edu/x1635.xml>).

## **B. Research Process**

There are a variety of methods that can be used to locate the text of a treaty or executive agreement. The following discussion covers some basic approaches that can be used.

### **1. When You Have a Citation**

Finding the text of a U.S. treaty or executive agreement is relatively simple if you already have a citation to the document. However, in some instances the citation may include an unfamiliar abbreviation. If so, check Table 4 in the *Bluebook: A Uniform System of Citation* (Locations: Reserve & Reference, KF245 .U55), or an abbreviations dictionary, such as *Bieber's Dictionary of Legal Abbreviations* (Locations: Reserve & Reference, KF246 .D53 2001; also available on LexisNexis). These sources allow you to look up an abbreviation and determine the full name of the publication.

You will have several options once you have identified the publication referred to in the citation. The library locations of the most important print publications are included in § III.A.1 of this guide, and usually citations will refer to these sources. If the publication is not listed there, you can search the online catalog to determine if it is available in the library. The electronic resources listed in § III.A.2 also may be used to retrieve the full-text of agreements using citation information.

### **2. When You Do Not Have a Citation**

The first factor to consider is whether the treaty or executive agreement that you are trying to locate is currently in force. If you have reason to believe that it is, then the best place to start your research is with the following resources:

*Treaties in Force*: This annual U.S. State Department publication lists treaties and executive agreements that are currently in force. Citations are provided for most of the agreements indicating where they are published. However, it may not include citations to recent agreements that have not yet been published in T.I.A.S. (this citation information is provided in *A Guide to United States Treaties in Force*, which is discussed immediately below). This publication is available electronically on Westlaw (USTIF), LexisNexis (INTLAW; USTIF), *HeinOnline* and through the State Department's website

(<http://www.state.gov/s/l/treaty/treaties/>). Locations: Reference & Stack-1, JX231 .U55 (latest edition in reference area).

Kavass, Igor I., ed. *A Guide to the United States Treaties in Force*: This commercial version of *Treaties in Force* lists all U.S. treaties and executive agreements currently in effect, including citations to where they are published. This source covers the major U.S. treaty publications, including *Statutes at Large*, U.S.T., T.I.A.S., and KAV. It is somewhat easier to use than the official version and includes citations to recent agreements that can not be found in the official publication. This resource is also available on *HeinOnline*. Locations: Reference & Treatise, KF4989 .G84 (latest edition in reference area).

Treaties and executive agreements that are no longer in force will not appear in the current volumes of *Treaties in Force* or *A Guide to the United States Treaties in Force*. The following resources allow the user to search by subject for agreements that are no longer in force as well as those that are in effect.

Kavass, Igor I., ed. *United States Treaty Index: 1776- Consolidation*: This index covers many treaty sets, including *Statutes at Large*, U.S.T., T.I.A.S., and KAV. Portions of this set are also available through *HeinOnline*, but not the complete resource. Locations: Reference & Stack-1, JX236.5 .U58.

You can also locate U.S. treaties and executive agreements using the electronic databases covered in § III.A.2. *Westlaw*, *LexisNexis* and *Treaties and International Agreements Online* allow the user to run sophisticated keyword searches, and coverage is from the latter 1700s to near present. Keep in mind that the effectiveness of such full-text searches depends on your ability to accurately anticipate the terminology used in the documents. One useful aspect of *Treaties and International Agreements Online* is that the search interface has an index feature that allows you retrieve agreements based on subject headings.

## **IV. Verifying the Status of a Treaty or Executive Agreement**

Once you have located the text of an agreement you will need to verify its current status. This involves determining 1) whether it has entered into force, 2) the parties to the agreement, and 3) if there are later agreements that have amended it. Each of these issues is discussed below.

### **A. Has the Treaty Entered Into Force?**

There are a number of ways to determine whether a treaty or executive agreement has entered into force. Both *Treaties in Force* and *A Guide to the United States Treaties in Force* (see § III.B.2) only list agreements that are in effect and include the date of entry into force. However, these resources will need to be updated because they often will be over a year out of date when consulted. To update these publications, check the U.S. State Department's Current Treaty Actions web page (<http://www.state.gov/s/l/treaty/c3428.htm>), which lists agreements that have more recently entered into force. Since this site is several months out of date at any given time, you will need to contact the State Department's Office of Treaty Affairs at (202) 647-1345 to obtain completely up-to-date information.

It is possible to track the status of treaties that are currently being considered by the Senate as part of its advice and consent role. This may be done electronically through *THOMAS* (see § III.A.2) or in print using the *Congressional Index* (Locations: Reference & Treatise, KF49 .C6).

## **B. Who Are the Parties to the Agreement?**

The parties to a bilateral agreement are self-evident. However, multilateral agreements may have numerous countries as parties. *Treaties in Force* is one source that can be used to determine which countries are parties to a particular agreement. Each multilateral agreement in *Treaties in Force* lists all parties as of the date of publication. The Current Treaty Actions web page (see § IV.A) can then be used to update *Treaties in Force* – it lists countries that have recently signed or ratified agreements to which the U.S. is a party.

Multilateral agreements are frequently made under the auspices of international governmental organizations, such as the United Nations, Council of Europe, or Organization of American States. These organizations will often serve as the depositary for the documentation related to the agreements. The websites for these organizations will sometimes provide current information on which countries are parties to these agreements. If the United Nations is the depositary such information can be found in *Multilateral Treaties Deposited with the Secretary-General*, which is available electronically through the *United Nations Treaty Collection* (see § III.A.2) as well as in print (Location: Stack-1, JX171 .U558).

## **C. Amending or Related International Agreements**

The provisions of a treaty or executive agreement will sometimes be amended through a later international agreement. There also may be related agreements that deal with similar subject matter. There are a number of ways to find these amending or related agreements. The most reliable way is to use *Treaties in Force* or *A Guide to the United States Treaties in Force* (see § III.B.2). These sources explicitly indicate if a particular agreement amended (or is amended by) another agreement. These publications can be updated through the Current Treaty Actions web page (see § IV.A). *Treaties in Force* and *A Guide to the United States Treaties in Force* will also sometimes indicate related agreements. It should be noted that treaties are not covered by the electronic version of *Shepard's* or by *KeyCite*. *Shepard's Federal Statutes Citations*, one of the print *Shepard's* sets, used to cover agreements that appeared in *Statutes at Large*, U.S.T. or T.I.A.S. Unfortunately, coverage ceased in 2001, and this set should not be relied upon for current information.

## **V. Reservations, Understandings and Declarations**

Reservations are unilateral statements made by a party to an international agreement that seeks to exclude or modify the legal effect of provisions in that agreement as they apply to that party. An understanding is a statement made by a party in relation to an international agreement that states the party's interpretation of a particular provision in the agreement but which does not intend to alter its legal effect. Declarations are an interpretation of the agreement as a whole, but are not intended to modify its legal provisions. Reservations, understandings and declarations (RUDs) are relevant in determining the legal effect of an international agreement. The Senate frequently includes RUDs when approving treaties as part of its advice and consent function. If the President ratifies the treaty it will become effective under domestic law subject to those conditions.

The entry for an agreement listed in *Treaties in Force* (see § III.B.2) will indicate if a specific country, including the United States, has any RUDs related to that agreement. *A Guide to the United States Treaties in Force* (see § III.B.2) indicates if the United States has any RUDs pertaining to a particular agreement, but does not do so for other countries. However, neither normally include the full-text of RUDs. The text of RUDs can be located using standard federal legislative history resources. Information on how to do this is available through the Schaber Law Library's *Federal Legislative History Pathfinder*. RUDs are normally available in the Senate Executive Report related to the treaty. These are committee reports issued by the Senate Foreign Relations Committee which contain analysis and recommendations regarding the treaty. RUDs are also sometimes published in the *Congressional Record*. THOMAS (<http://thomas.loc.gov/home/treaties/treaties.html>) provides the text of RUDs for treaties from 1983 to present.

The reservations and declarations of other countries to a multilateral agreement can sometimes be found on the depositary organization's website or through *Multilateral Treaties Deposited with the Secretary-General*. See § IV.B for more information on these resources.

## **VI. Implementing Statutes and Regulations**

Many international agreements require accompanying legislation in order to become effective under United States law. This legislation must be consulted to determine the legal effect of the agreement. Such information can be found using the standard techniques for researching federal statutory law. This legislation will initially appear in *Statutes at Large* and then be codified into the *United States Code*. In some instances there may be accompanying regulations as well. These are published in the *Federal Register* and the *Code of Federal Regulations*.

## **VII. Interpretative Materials**

There are a variety of materials that can be utilized to interpret the meaning of an international agreement. The most important is case law. One method for locating judicial decisions is through *United States Code Service* (U.S.C.S.) and *United States Code Annotated* (U.S.C.A.). The U.S.C.S. has an unnumbered volume entitled "International Agreements" (also available electronically on *LexisNexis* (GENFED; USCODE)). This volume contains the full-text of two dozen major multilateral agreements to which the United States is a party. The annotations accompanying the treaties include references to both cases and secondary sources. Both U.S.C.A and U.S.C.S. can also be used to locate cases that construe the implementing legislation related to an international agreement. The West's digest system (and its electronic equivalent on Westlaw) is another useful resource for locating cases. It includes the topic "Treaties" which lists cases that have interpreted U.S. international agreements. Court decisions may also be found by searching under the topic and key numbers covering the same subject area as the subject matter of the international agreement. U.S. cases can also be located through the full-text case law databases on *Westlaw* and *LexisNexis*. Some multilateral agreements to which the United States is a party might also have been adjudicated in international tribunals, such as the United Nation's International Court of Justice. Cases can also be found by using *Shepard's Federal Statutes Citations* (Location: Reference, KF101.2 S5). This set covers international agreements printed in *Statutes at Large*, U.S.T. and T.I.A.S. However, this set is not current—it has not listed any new citing cases since 1996. This information is not available through the *LexisNexis* version of *Shepard's* or on *KeyCite*.

Legislative history documents can be useful for interpreting the meaning of an international agreement. The Senate advice and consent process for treaties generates committee reports, hearings, and floor debates, all which may give insight into the meaning of an agreement. Senate executive reports can be particularly useful in this regard (see § V). The U.S is party to many international agreements that were negotiated under the auspices of an intergovernmental organization. The documents generated during this process (often referred to as “travaux preparatoires”) can serve a similar function and are sometimes published by the sponsoring international organization or a commercial publisher.