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Research Guides

TREATIES

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I. INTRODUCTION

Treaties are agreements between two or more nations. When you are researching treaties, there are several initial questions you should ask in order to determine where to begin your research. Is the United States a party to the treaty? Is it a bilateral treaty (between only two countries), or are there more signatories, making it a multilateral treaty? Is the treaty still in force? Has it been amended? Or are you trying to determine whether a treaty even exists, rather than trying to find one you already know about?

To help you understand the treaty process, it's a good idea to look at a treatise on the basics of treaty law, such as Aust's *Modern Treaty Law and Practice* (2d ed.) (KZ1301. A997 2007), at the beginning of your research.

II. RESEARCH GUIDES

ASIL Guide to Electronic Resources for International Law: Treaties (<http://www.asil.org/resource/treaty1.htm>) gives guidance on treaty research with an emphasis on electronic resources.

Mark Engsborg, *An Introduction to Sources for Treaty Research* (http://www.nyulawglobal.org/globalex/Treaty_Research.htm) describes the tools necessary for researching both bilateral and multilateral treaties.

Jonathan Pratter, *Treaty Research Basics*, 89 L. Libr. J. 407 (1997) and *A la Recherche des Travaux Préparatoires: An Approach to Researching the Drafting History of International Agreement*

(http://www.nyulawglobal.org/globalex/Travaux_Preparatoires1.htm).

Jeanne Rehberg, "Finding Treaties and Other International Agreements" in *Accidental Tourist on the New Frontier: An Introductory Guide to Global Legal Research* (Jeanne Rehberg & Radu D. Popa, eds.) (Ref. K85.A27 1998).

United Nations Treaty Reference Guide (<http://untreaty.un.org/English/guide.asp>) provides a definition of important terms.

For hands-on practice researching treaties, take a look at the Duke University School of Law and University of California, Berkeley, School of Law *International Legal Research Tutorial* (<http://www.law.duke.edu/ilrt/index-2.html>).

III. LOCATING THE TEXT OF A TREATY

A. Treaties to Which the U.S. is a Party

In the United States, the Constitution requires that all treaties be signed by the President and then approved by the Senate. Robert E. Dalton, "National Treaty Law and Practice: United States" in *National Treaty Law and Practice* (K3342 .N365 2005 & <http://www.asil.org/files/dalton.pdf>) provides a detailed explanation of the ratification and implementation process for U.S. treaties, and is an excellent introduction to U.S. treaty law. Wiktor's *Treaties Submitted to the United States Senate: Legislative History, 1989-2004* (Ref. Desk KF4989 .W55 2006) lists legislative history documents and implementing legislation for all treaties submitted to the U.S. Senate from the 101st-108th Congress. Other useful works include: *The Making of International Agreements: Congress Confronts the Executive* (KF5055 .J63 1984), *Treaties and Other International Agreements: The Role of the United States Senate: A Study* (KF4989 .A25 2004 & <http://purl.access.gpo.gov/GPO/LPS11657>), and the classic *Treaties: Their Making and Enforcement* (2d ed.) by Samuel Crandall (KF5055 .C73 1916).

Prior to 1950, treaties to which the U.S. was a party were published in *Statutes at Large*. In 1950, a new series, *United States Treaties and other International Agreements* (UST) (Doc. S 9.12:[vol.]) began. The slip law version of this set is known as *TIAS (Treaties and other International Acts Series)* (Doc. S 9.10:[no.]). This began in 1945 as a continuation of two earlier slip law series, *Treaty Series* (Perkins Doc. S9.5/2) and *Executive Agreement Series* (Docs S9.8). *UST* (vols. 1-35) and *TIAS* (11060 to 12734) are also available on HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>).

For a complete compilation of U.S. treaties from 1776-1949, the best source is C. Bevans, *Treaties and Other International Agreements of the United States of America, 1776-1949*, published by the government from 1968-75. (Doc. S 9.12/2) It is a thirteen volume set, with cumulative indexes. Other important historical series are *Treaties, Conventions, International Acts, Protocols, and Agreements Between the United States of America and Other Powers* compiled by William M. Malloy, which covers the years 1776-1938 (Doc. S 9.5/4), and *Treaties and Other International Acts of the United States of America* compiled by Hunter Miller (covering 1776-1863) (Doc. S 9.5/1). All three series are also available in HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>).

Treaties from 1776, including older terminated, superseded, or abolished treaties, as well as

Senate Treaty Documents are available on LexisNexis from the 104th Congress forward (INTLAW; USTRTY). Treaties since 1778 and Senate Treaty Documents from the 103rd Congress forward are on Westlaw (USTREATIES). *American Treaties and Alliances* (Ref. KZ236 2000) provides an overview of about 750 treaties and agreement beginning with the Mayflower Compact (1620).

B. Recent U.S. Treaties

The best place to find the text of recent treaties to which the U.S. is a party are the Treaty Documents issued by the United States Senate. Since the Senate must consent to the President's ratification of a treaty, all treaties are presented to the Senate in full. The Treaty Document will generally also contain a message from the President and the Secretary of State about the treaty. Treaty documents are indexed in *Congressional Index*, and are part of the CIS microfiche set (Microforms Room, Level 1, and in LexisNexis (GENFED;CISLH)). Treaty Documents are also on Westlaw (USTREATIES, from the 103rd Congress forward) and LexisNexis (INTLAW;USTRTY, from the 104th Congress forward). The GPO web site contains very recent Senate Treaty Documents (<http://www.gpoaccess.gov/serialset/cdocuments/index.html>) and Senate Executive Reports (<http://www.gpoaccess.gov/serialset/creports/index.html>). *Thomas* (<http://thomas.loc.gov/home/treaties/treaties.htm>) provides the text of treaties from the 104th Congress forward.

Sometimes the full text of a treaty is printed in the *Congressional Record* when it is considered by the Senate. You may also find recent treaties in *International Legal Materials* (Level 4). The microfiche set *Hein's United States Treaties and Other International Agreements: Current Microfiche Service*, which began in 1991, contains the text of current unreleased international agreements and treaties (Microforms Room, Level 1 and HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>)). The treaties have "KAV" numbers (after the set's editor, Igor Kavass). Recent treaties are indexed in Igor I. Kavass, *Current Treaty Index* (Ref. Doc. S 9.12u:[year]). Treaties and international agreements released by the U.S. Department of State, but not yet printed in *TIAS* are also in LexisNexis (INTLAW; USTRTY).

A good source for selected recent agreements other than treaties (e.g., memoranda of understanding) is *Reporting International Agreements to Congress under Case Act* (<http://www.state.gov/s/l/treaty/caseact>) on the State Department website. This is a temporary database until agreements are published in *TIAS*, and the agreements are unedited.

C. Treaties of International Organizations

The *United Nations Treaty Series* (KZ172.T73 and <http://library.duke.edu/metasearch/db/id/DUK00767>) began publication in 1946. Its predecessor, the *League of Nations Treaty Series* (KZ170.5.T73 and <http://library.duke.edu/metasearch/db/id/DUK00767>), was published from 1920-1946. All treaties entered into by a member of the United Nations are supposed to be registered with the U.N. Secretariat as soon as possible, but because there are no sanctions for failure to do this (except that an unregistered treaty may not be invoked before any organ of the U.N.), many treaties are never registered, and therefore are not published in the series.

There may also be a long delay between the signing of treaties and their publication. One reason is that a party to the treaty must initiate registration. Another is that all treaties must be translated into both English and French before publication. Thus, all treaties in the series are in their original language and in English and French. *Texts of Recently Deposited Multilateral Treaties*

(<http://library.duke.edu/metasearch/db/id/DUK00767>) links to texts of multilateral treaties deposited with the Secretary-General that have not yet been published in the U.N.T.S. (some of these treaties haven't yet been translated, and are available only in their original language).

Treaties of the European Community can be found in a variety of sources, including the *Encyclopedia of European Union Law* (KJE 926 .E52) and in the *European Union Law Reporter* (KJE925.5 .E97). Treaties are also available in LexisNexis (EUROPE;TREATY (from November 1979-), INTLAW;ECTY, and INTLAW;ILMTY) and Westlaw (in the EU- TREATIES and ILM databases). Selected treaties can also be found on the EU website (<http://eur-lex.europa.eu/en/treaties/index.htm> & http://europa.eu/abc/treaties/index_en.htm).

The websites of international organizations, such as the Council of Europe (<http://conventions.coe.int>) and Organization of American States (http://www.oas.org/DIL/treaties_and_agreements.htm) are often a good sources for texts of their treaties.

D. Other Treaties to Which the U.S. is Not a Party

Good sources for older treaties include the *Consolidated Treaty Series* (KZ120.P35) edited by Clive Parry, which covers the years 1648 to 1919, and *The Major International Treaties of the Twentieth Century* (Ref. KZ173 .G744 2001) which includes historical background and analysis. Denys P. Myers's *Manual of Collections of Treaties and of Collections Relating to Treaties* (KZ118.M94 1922) is a bibliography of sources for treaties concluded before World War I. *List of Treaty Collections* (KZ118.L57 1956), compiled by the United Nations, is a bibliography of treaties for about 70 countries from the 18th century to the 1950s.

International Legal Materials (ILM) (1961-) (Level 4) contains the text of many important treaties soon after they appear. These treaties are usually too recent to have appeared in more official collections, or they have been copied and translated from foreign gazettes not generally available to most users. *ILM* is published by the American Society of International Law; the society's journal, the *American Journal of International Law* (Level 4) also contains selected recent treaties. Both journals are on LexisNexis (INTLAW;ILM and INTLAW;AJIL), Westlaw (ILM and AMJIL) and HeinOnline (<http://library.duke.edu/metasearch/db/id/DUK00693>)

Many treaties to which the U.S. is not a party are published only in the gazettes of the signing countries. Most commonwealth countries have a treaty series similar to UST. In Great Britain the *Treaty Series* (KZ635.3.T74) is issued as part of the Command Papers. The Australian Treaties Library (<http://www.austlii.edu.au/au/other/dfat/>) contains the full text of treaties along with status information provided by the Department of Foreign Affairs and Trade. *Researching Non-U.S. Treaties* (http://www.llrx.com/features/non_ustreaty.htm#Bilateral) provides links to collections of treaties by country. Another idea is to check the yearbook or review of international law of the countries involved, e.g., the *British Yearbook of International Law* (Level 4). *Sources of State Practice in International Law* (Ref. KZ64.S68) includes information about treaty sources for selected countries.

IV. TREATY INDEXES

A. When the U.S. Is a Party

There are several indexes that can be checked to determine whether the U.S. has a treaty on a certain subject with another country, and whether that treaty is in force. Once a treaty is signed, it does not automatically come into force. Approval for ratification must first be given by the Senate. Treaties which are signed but not ratified are called unperfected treaties (approximately one-third of the treaties signed by the U.S. are never ratified). Unperfected treaties may still be important though, because countries may choose to follow their provisions even without ratification.

Christian L. Wiktor, *Unperfected Treaties of the United States of America* (Ref. KZ236 1976) provides the text for unratified treaties signed by the U.S.; the set contains nine volumes, covering treaties from 1776-1976. Unratified treaties from January 1981 are available on LexisNexis (INTLAW;USTRTY).

Treaties in Force is issued annually by the U.S. Department of State. (Ref. Doc. S 9.14:[year] and <http://www.state.gov/s/l/treaty/treaties/>). It is a two-part index to all treaties and other international agreements in force as of January 1 of that year: Part 1 lists bilateral treaties, and Part 2 lists multilateral treaties. The bilateral treaties are listed by country, and within each country's listing, by subject. Multilateral agreements are organized by subject. Each entry includes the title of the agreement, the date it was signed and entered into force, and citations to treaty series where it appears. *Treaties in Force* is also available on LexisNexis (INTLAW; USTIF) and Westlaw (USTIF) which provide hypertext links to the full text of some treaties. The LexisNexis, Westlaw and Internet versions are sometimes less current than the print version. The *Treaties and Agreements Library* in HeinOnline also contains *Treaties in Force* (1955-) (<http://library.duke.edu/metasearch/db/id/DUK00693>).

There are also three commercially published guides to U.S. treaties prepared by Igor Kavass. A *Guide to the United States Treaties in Force* (Ref. Doc. S 9.12u:Guide) contains lists of bilateral and multilateral treaties and agreements arranged numerically, by subject, and by country, along with a chronological index and a directory of multilateral treaties by country and international organization. The multi-volume set *United States Treaty Index: 1776-... Consolidation* (Ref. Doc. S 9.12k: Index) indexes all treaties to which the United States has been a party chronologically, by country and by subject. The Master Index, listing treaties by number, contains the most information on each treaty, including all relevant dates and citations to various treaty series. It is kept up-to date by the *Current Treaty Index* (Ref. Doc. S 9.12u:[year]) which indexes U.S. slip treaties and agreements and treaties that have not yet appeared in TIAS. The *Treaties and Agreements Library* in HeinOnline contains *Guide to Treaties in Force* and *Current Treaty Index* (<http://library.duke.edu/metasearch/db/id/DUK00693>).

B. When the U.S. Is Not a Party

If the U.S. is not a party to the treaty, materials published by the U.S. government will not be of help. When you're looking for citations and text for a treaty to which the U.S. is not a party you will generally have to look either in a world wide treaty source, or in a source of one of the signing countries. World wide sources are published both by international organizations and by commercial publishers; some of the most useful are listed below:

Bowman & Harris, *Multilateral Treaties: Index and Current Status* (Reserve) lists treaties chronologically, gives citations to all sets where they can be found, lists the parties to each treaty, and contains notes on the contents of the treaty. There are subject and keyword indexes. Although the supplement is current only through January 1, 1994, this is still a very useful resource for finding citations and other information about treaties.

The *Flare Index to Treaties* (<http://193.62.18.232/dbtw-wpd/textbase/treatysearch.htm>) from the Institute of Advanced Legal Studies of the University of London covers more than 1,500 multilateral treaties concluded from 1856 to the present. The entry for each treaty includes citations to the text in printed publications and links the text on the Internet.

Wiktor's *Multilateral Treaty Calendar = Répertoire des traités multilatéraux, 1648-1995* (Reserve) is another very useful index. This chronological list of multilateral treaties includes citations and status information, but does not provide names of parties or signatories; there is a detailed subject index. The *Index to Multilateral Treaties* (Superseded Ref. KZ118 .H35 1965), which covers the 16th century to the 1960s, is another source for citations to older treaties.

The comprehensive, multi-volume *World Treaty Index*, 2d ed. (KZ173 .R63 1983) covers treaties from about 1900 through 1980. This set has indexes by party, date and keyword, and will give you citations for the treaty, as well as listing all the parties. The *World Treaty Index* also provides access to *UNTS* and *LNTS* with indexes by citation, serial number, title, parties, date of signature, and subject.

Treaties and Alliances of the World (8th ed.) (Ref. KZ1301 .T73 2007) provides an overview of important international, regional and bilateral treaties, and reprints some texts. The *Encyclopedia of Historical Treaties and Alliances* (Ref.1160.P48 2006) covers treaties from ancient times to the 1930s.

Indexes to the *United Nations Treaty Series* (KZ172 .T73) were initially published for every hundred volumes; more recently they have covered only fifty volumes each, and they are far from being current. There is a chronological index by the date the treaty was signed, a chronological index for multilateral treaties, and a subject and country index. The web version of *United Nations Treaty Series* (<http://library.duke.edu/metasearch/db/id/DUK00767>) can be searched by subject, name of country, etc. *Multilateral Treaties Deposited with the Secretary-General* (KZ171 .M86 and <http://library.duke.edu/metasearch/db/id/DUK00767>), published since 1967, reports on the status of and parties to multilateral treaties under the auspices of the U.N. The web version is updated daily. The commercial publication *United Nations Cumulative Treaty Index* (Ref. KZ171 .U546 1999) provides access to U.N. treaties by treaty number, date, country and subject.

If you are having trouble finding a treaty, try searching on LexisNexis or Westlaw in the law review files using the name of the treaty as a search query. Law review articles are heavily footnoted, and will generally give a citation for every document mentioned.

VII. DETERMINING THE CURRENT STATUS OF A TREATY

The Treaty Actions page on the web site of the Office of the Legal Adviser of the U.S. Department of State is a record of actions taken by states in regard to international agreements, and provides information about treaties to which the U.S. is a party, but it is not always current (<http://www.state.gov/s/l/treaty/c3428.htm>). The Office of the Legal Adviser also maintains a list of

multilateral treaties for which the U.S. is depositary (which includes links to status lists for these treaties as the Office of Treaty Affairs makes them available) (<http://www.state.gov/s/l/treaty/depositary/>).

Thomas (<http://thomas.loc.gov/home/treaties/treaties.htm>) provides information on the status of treaties beginning with the 94th Congress. You can also check the status of a treaty document in *Congressional Index*.

For United Nations treaties, the latest developments can be found in *Multilateral Treaties Deposited with the Secretary-General* (<http://library.duke.edu/metasearch/db/id/DUK00767>) which is updated weekly.

If all else fails, try calling Treaty Affairs at the Department of State (202-647-1345) or the Treaty Section of the Office of Legal Affairs at the U.N. (212-963-5047).

The websites of international organizations, such as the Council of Europe (<http://conventions.coe.int/>) and Organization of American States (http://www.oas.org/DIL/treaties_and_agreements.htm) are often a good sources for status information about their treaties.

VIII. CITATION FORM FOR TREATIES

Bluebook Rule 21.4 covers citation form for treaties. When the U.S. is a party to a multilateral treaty, Rule 21.4.5 (a)(ii) requires citations to both a U.S. treaty source and a source published by an intergovernmental organization.

Two excellent online resources that will help you find citations to treaties are the ASIL's EISIL database (<http://www.eisil.org>) and the University of Minnesota Law Library's *Frequently-Cited Treaties and Other International Instruments* (<http://www.law.umn.edu/library/pathfinders/most-cited.html>).

Among the print sources where you can find parallel citations for multilateral treaties are Bowman & Harris, *Multilateral Treaties: Index and Current Status* (Reserve) and Wiktor's *Multilateral Treaty Calendar* (Reserve).

IX. INTERNET SOURCES

The GPO web site contains recent Senate Treaty Documents (<http://www.gpoaccess.gov/serialset/cdocuments/index.html>) and Senate Executive Reports (<http://www.gpoaccess.gov/serialset/creports/index.html>).

Hein Online: Treaties and Agreements Library (<http://library.duke.edu/metasearch/db/id/DUK00693>) includes treaty documents such as *UST* (vols. 1-35) and *TIAS* (11060 to 12734), Bevan's *Treaties and Other International Agreements of the United States of America, 1776-1949*, and *Treaties in Force* (1955-).

Marci B. Hoffman & Robert C Berring, *International Legal Research in a Nutshell* (2008) (Reserve and <http://www.law.berkeley.edu/library/intlnutshell/>) includes a list of web treaty collections.

The Multilaterals Project (<http://fletcher.tufts.edu/multilaterals.html>), maintained by the Fletcher School of Law and Diplomacy at Tufts University, this site includes the texts of almost 200 multilateral agreements.

Thomas (<http://thomas.loc.gov/home/treaties/treaties.htm>) provides the text of treaties (104th Congress forward) and information on the status of treaties (94th Congress forward).

United Nations Treaty Collection (<http://library.duke.edu/metasearch/db/id/DUK00767>) includes *Multilateral Treaties Deposited with the Secretary-General* and the *United Nations Treaty Series*. *United Nations Audiovisual Library of International Law* (<http://www.un.org/law/avl>) includes historical and preparatory documents for selected UN treaties.

rev. Katherine Topulos
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