



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

International Human Rights Law Research Guide

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International Law generally

- Public International Law:
 - Concerns relationships between nations
 - There is no formal constitutional structure, no central organization, and no centralized law making authority
 - it is essentially a voluntary institutional framework and “depends on consensual dispute resolution mechanisms and political or economic pressure for enforcement (Currie)

Sources of International Law

Article 38 of the Statute of the International Court of Justice defines the sources of international law.

- These sources are commonly accepted as being generally applicable to International law as a whole not just to the deliberations of the International Court of Justice.
- Although *Article 38* does not explicitly define the relationship or hierarchy of the sources it is generally accepted that the order listed reflects the relative importance of each source with treaties being generally favoured because their provisions are the clearest and because they have been explicitly agreed to by the parties.

So the sources of International Law that the court will apply in order are:

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;

- Which means treaties (both multi- and bi-lateral):
- Treaties are created by express agreement through a formalized procedure. Each treaty has explicit clauses and clear meaning.
- Treaties are only binding on parties who have consented to be bound by them.

b. international custom, as evidence of a general practice accepted as law;

- “as evidenced by a general practice accepted as law.” is “based on patterns of state conduct” and “on what countries do and believe rather than what they expressly agree to do” (Currie).
- International custom has two components:
 - An objective or material component: that which can be shown by proven repeated state practice, i.e. something that is done regularly and consistently by a number of states.
 - A subjective or psychological component: the *opinio juris sive necessitatis* (*opinio juris*) requirement which means that states have a sense of legal responsibility or conviction that the rule is obligatory even if it is not codified.
 - International custom can also be comprised of official statements at international conferences, formal instructions to diplomatic agents, national court decisions, legislative measures or other actions taken by governments to deal with matters of international concern. (Buerghenthal & Murphy)

c. the general principles of law recognized by civilized nations;

- The section refers to principles that are common to the major legal systems of the world (often used in absence of treaty or accepted customary international law)
- To find this you need to look for analogous domestic legislation.
- This source is of lesser importance than treaties and customary international law. (Currie)

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.

- **Judicial Decisions by international tribunals** are used as a guide for interpretation but unlike the common law system there is **no** *Stare Decisis* in the decisions of International Tribunals.

- Courts or judges do not make law, only states have the power to do that by consent.
- International tribunals may also consider the judgments of domestic courts and international arbitral tribunals.
- Case law has more weight than scholarly writing.
- Scholarly writing is an aid to understanding or determining the law's content. These works are used as evidence for determining whether a given norm can be deemed to have been accepted as a rule of international law.
 - According to Currie, scholarly writing is not considered to be a formal law-creating source but a “material or evidentiary” law-finding source.
 - Publicists are generally well respected scholars but can also include entities like the International Law Commission.
 - Scholarly writing is considered a lesser source of law by international tribunals but it is very useful in helping researchers to understand the law.

Other sources not enumerated in s.38

- **Unilateral Declarations** which may create legal obligations on the part of a state.
- **“soft law:”** – which is not law but information with potential legal relevance which can be called upon to support an argument that some new norm is emerging or has emerged. Some examples of soft law are: industry standards, the work of the international law commissions, communiqués, codes of conduct etc., UN resolutions (which are not binding but can be evidence of an emerging norm),
- However, if a treaty says resolutions of an organization are binding then they are a source of law; the International Civil Aviation Organization for example.

Research Strategy / Methodology

Think about the question and start by getting an understanding of the subject and its context including which international bodies have jurisdiction over creating and adjudicating international laws.

There are a number of research guides available on the internet which will help you get started in your research. (See below).

Always start by looking at secondary sources.

- Read treatises or case books for expert commentary on your topic and then follow the footnotes to additional secondary material or to primary sources
 - To find texts, use the library catalog. Search for:
 - Human Rights or Civil Rights (International Law) - (as a subject) or
 - International human rights or other appropriate keywords and/or
 - browse the shelves for call numbers K 3230 to K 3250
- Search for journal articles, starting with journal indexes then searching the full text journal databases for concepts or fact situations
- Search for encyclopedia entries on the subject (see the list of Encyclopedias below) which will provide a brief overview of the subject and give you the vocabulary to expand your search into other secondary resources.
- Use dictionaries to define unfamiliar terms and also **be aware that familiar terms may have different meanings in other jurisdictions**
- Newspapers will provide the most recent background and information on current or emerging issues
 - Search using [Factiva](#) or [Canadian Newsstand](#)
- Find websites and blogs from authoritative sources using Google will help with this

Finally – check the primary sources

Use citations from the secondary sources to locate

- Treaties
 - Find the website for the body that generated the treaty
 - Make sure you find out
 - When was the treaty concluded
 - Which countries are parties to the treaty?
 - Whether it has been ratified?
 - Whether there are their reservations, declarations or derogations?

- And is it in force?
- Jurisprudence – Case law, Decisions and reports
 - Look at domestic and international case law

Tools for Finding Human Rights Resources

Tutorials – International Law Generally

- Public International Law Libguide
<http://guides.library.utoronto.ca/internationallaw>
- 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>

U.S. Based tutorial includes information on locating treaties, international agreements, customary international law and the documentation of international organizations. Includes review questions and a list of essential sources.

Resource Guides

- American Society of International Law. *Electronic Research Guide: International Human Rights*
<http://www.asil.org/humrts1.cfm>
- ESIL – *Electronic Information System for International Law: International Human Rights*
<http://www.eisil.org/index.php?sid=990326800&t=index>

Provides annotated links to primary materials, web sites and research guides. Includes citations, entry into force and signature dates and amendments.

- Georgetown University Law Centre Law Library. Human Rights Law Research Guide
<http://www.ll.georgetown.edu/intl/guides/HumanRightsLaw.cfm>

Highlights and annotates the top resources for international law

Secondary sources

General Treatises

-  Freeman, Mark, & van Ert, Gibran. *International Human Rights Law*. (Essentials of Canadian Law Series). Toronto: Irwin Law, 2004
K 3240 .F74 2004 On Reserve
Also available electronically through the U of T Library Catalogue
<http://simplelink.library.utoronto.ca/url.cfm/90331>

Canadian – clear and concise background information
- Buergenthal, Thomas, Shelton, Diana & Stewart, David. *International Human Rights in a Nutshell*. (4th ed.) St Paul, Minn: Thomson West, 2007
K 3240.4 .B82 2007 – On Reserve

American – good background information

Encyclopedias and Dictionaries

- Bouchet-Saulnier, Françoise. *Practical Guide to Humanitarian Law* (2nd English Language Edition). Lanham, Md. : Rowman & Littlefield Pub., c2007
Call Number: KZ6471 .B6813 2007 Reference – On the main floor in Row 1
- Condé, H. Victor. *A Handbook of International Human Rights Terminology*. Lincoln: University of Nebraska Press, 2004.
Call Number: K3239.6 .C659 2004 Reference – On the main floor in Row 1
- Forsyth, David P. *Encyclopedia of Human Rights*. Oxford: Oxford University Press, 2009.
Available electronically through the U of T Library Catalogue
<http://www.oxfordreference.com.myaccess.library.utoronto.ca/view/10.1093/acref/9780195334029.001.0001/acref-9780195334029>
- Robertson, David, *A Dictionary of Human Rights* (2nd ed.) . London, Europa, 2004.
Call Number: K3239.3 .R67 2004 Reference – On the main floor in Row 1
2004 edition available electronically through the U of T Library Catalogue
<http://simplelink.library.utoronto.ca/url.cfm/114127>

Casebooks

Casebooks generally reproduce or excerpt key judicial decisions along with notes and commentary.

Look for casebooks in the catalogue, by searching for “Human Rights - Cases” as a subject.

- De Schutter Olivier. *International Human Rights Law: Cases, Materials, Commentary*. Cambridge ; New York : Cambridge University Press, 2010.
Call Number: K3240 .S38 2010
-  Freeman, Mark, & van Ert, Gibran. *International Human Rights Law: Cases and Materials*. Toronto: Irwin Law, 2005
Call Number: K 3240 .F742 2005 Course Reserve
- Hanski, Raija. *Leading Cases of the Human Rights Committee*. Turku/Åbo : Institute for Human Rights, Åbo Akademi University, 2003.
Call Number: K3239.53 .L43 2003 Course Reserve
- *Oxford Reports on International Human Rights Law*
Available electronically through the U of T Library Catalogue (This can be excruciatingly slow!!!!)

Includes the full text of cases from:

- African Commission on Human and Peoples Rights
- European Court of Human Rights
- Inter-American Court of Human Rights
- UN Committee against Torture
- UN Committee on the Elimination of Discrimination against Women
- UN Committee on the Elimination of Racial Discrimination
- UN Human Rights Committee

Periodical Literature

For contemporary up to date information – always start with an index then go to the full text.

International Law Indexes

- **Foreign & International Law Resources Database (from Hein Online)**
<http://heinonline.org/HOL/LuceneSearch?collection=intyb&searchtype=advanced>

- searchable database of full-text current and historical international law journals, yearbooks, digests, conferences and decisions.

General Periodical Indexes

- Links available from the Library's Journals Research Guide
<http://guides.library.utoronto.ca/content.php?pid=316259&sid=2653741>

Other Periodical Literature

The Legal Scholarship Network in Social Sciences Research Network (SSRN)

<http://www.ssrn.com/>

- SSRN is a unique source; its objective is to provide worldwide distribution of research to authors and their readers and to facilitate communication among them.
- It's a good way for scholars to get their papers and their names out there
- The papers are not peer-reviewed and often they are a part of a working paper series at an academic institution.
- They are largely not yet published in academic journals and reviews when they are first posted, but many of them eventually do get published.
- The site is very up to date.

International Human Rights Documents

United Nations Human Rights System

International Bill of Human Rights

- Consists of
 - Human Rights Provisions of the U.N. Charter.
 - Universal Declaration of Human Rights
<http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>
 - International Covenant on Economic, Social and Cultural Rights
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
 - International Covenant on Civil and Political Rights
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
 - First Optional Protocol
Allows individual complaints of violations
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>
 - Second Optional Protocol
Aimed at abolishing the Death Penalty
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

U.N. Charter

- **The U.N. Charter:** Article 55 (c), to promote, “respect for and observance of universal human rights for all” and Article 56: “All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

Human Rights Bodies

Charter-based bodies:

- derive their establishment from provisions contained in the Charter of the United Nations,
- hold broad human rights mandates,
- address an unlimited audience, and

- take action based on majority voting. (from the United Nations Documentation Research Guide)
- [Human Rights Council](#)
 - “The HRC comprises 47 States who are responsible for strengthening the promotion and protection of human rights around the globe. The Council was created ...with the main purpose of addressing situations of human rights violations and make recommendations on them”. (HRC Website)
- Or the [Commission on Human Rights](#) (replaced by the Human Rights Council)
- [Universal Periodic Review](#)
 - “Involves a review of the human rights records of all 192 UN Member States once every four years.” (UPR Website)
- [Human Rights Council Advisory Committee](#)
 - This committee is “composed of 18 experts, [and] has been established to function as a think-tank for the Council and work at its direction. ...The function of the Advisory Committee is to provide expertise in the manner and form requested by the Council, focusing mainly on studies and research-based advice”. (HRAC Website)
- [Special Procedures of the Human Rights Council](#)
 - The special procedures include special rapporteurs, special representatives, independent experts, and working groups, that investigate, discuss, and report on specific human rights issues under a [country mandate](#) or [thematic mandate](#)

U.N. Treaties and their Treaty-Based Bodies

There are eight human rights treaty bodies comprised of independent experts elected by the states parties. These bodies are responsible for tracking ratifications and reservations, receiving and reviewing reports by states parties, investigating violations, by hearing state to state or individual to state complaints. [Treaty-based bodies](#):

- “derive their existence from provisions contained in a specific legal instrument,
- hold more narrow mandates (i.e., the set of issues codified in the legal instrument),

- address a limited audience (i.e., only those countries that have ratified the legal instrument), and
- base their decision-making on consensus.” (from the United Nations Documentation Research Guide)
- **Human Rights Committee (HCR)**
<http://www2.ohchr.org/english/bodies/hrc/index.htm>
 - *International Covenant on Civil and Political Rights*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>
- **Committee on Economic, Social and Cultural Rights (CESCR)**
<http://www2.ohchr.org/english/bodies/cescr/index.htm>
 - *International Covenant on Economic, Social and Cultural Rights*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- **Committee on the Elimination of Racial Discrimination (CERD)**
<http://www2.ohchr.org/english/bodies/cerd/index.htm>
 - *International Convention on the Elimination of All Forms of Racial Discrimination*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
- **Committee on the Elimination of Discrimination against Women (CEDAW)**
<http://www2.ohchr.org/english/bodies/cedaw/index.htm>
 - *Convention on the Elimination of All Forms of Discrimination against Women*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>
- **Committee against Torture (CAT)**
<http://www2.ohchr.org/english/bodies/cat/index.htm>
 - *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>
- **Committee on the Rights of the Child (CRC)**
<http://www2.ohchr.org/english/bodies/crc/index.htm>

- *Convention on the Rights of the Child*
[Convention on the Rights of the Child](#)
- **Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. (CMW)**
<http://www2.ohchr.org/english/bodies/cmw/index.htm>
 - *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>
- **Committee on the Rights of Persons with Disabilities**
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>
 - *Convention on the Rights of Persons with Disabilities*
<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

Documents for these committees can be found via the **Treaty Body Database**

<http://www.unhcr.ch/tbs/doc.nsf>

Locating UN Documents

Research Guides

- United Nations Dag Hammarskjöld Library: *United Nations Documentation Research Guide*
<http://www.un.org/Depts/dhl/resguide/>

Sources Generally

Google

If you know the title, document number or have a broad general idea, Google can help you locate a specific document.

Universal Human Rights Index

<http://uhri.ohchr.org/en>

- An excellent resource, the Universal Human Rights index provides an easy to search, extensive, annotated index of documents from the Treaty Bodies, Human Rights Council, Special Rapporteurs, with links to full-text documents.

Sources from the United Nations

AccessUN

An **Index** to U.N. documents and publications from 1946-present. It will give you the document number, title, subjects, etc. In some cases the full text of the document will be included in the record

Official Document System of the United Nations (slow)

<http://documents.un.org/>

- Includes full text documents issued since 1992
- The full text of resolutions and decisions adopted by the General Assembly, the Security Council, the Economic and Social Council, and the Trusteeship Council since 1946.
- Includes treaty body materials
- It is best used when you have a U.N. document number (e.g. A/C.3/64/L.18) and want the full-text of the document. So if you have searched Access UN and have a document number you can go here to retrieve the document.

UNBISNET: United Nations Bibliographic Information System

<http://unbisnet.un.org/>

- Catalogue of United Nations (UN) documents and publications indexed by the UN Dag Hammarskjöld Library and the Library of the UN Office at Geneva.
- Good if you know what you are looking for – not good for fishing – has links to full text.

United Nations Treaty Collection

<http://treaties.un.org.myaccess.library.utoronto.ca/>

- Includes, the United Nations Treaty Series; Texts of Recently Deposited Multilateral Treaties; Status and Titles of the Multilateral Treaties Deposited with the Secretary-General

UN-I-QUE

lib-unique.un.org/

- UN-I-QUE is the Dag Hammarskjold Library's catalogue of periodical or serial documents. All the document numbers are listed in reverse chronological order.

Regional Systems

African Human Rights System

African Charter on Human and Peoples Rights (Banjul Charter)

<http://www.achpr.org/instruments/achpr/>

African Commission on Human and Peoples Rights

<http://www.achpr.org/>

European System

Council of Europe

- The European Convention on Human Rights (*Convention for the Protection of Human Rights and Fundamental Freedoms*)
<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>

Council Institutions:

Committee of Ministers

- http://www.coe.int/T/CM/Home_en.asp
The Council's decision making body

Commissioner for Human Rights

- http://www.coe.int/t/commissioner/default_EN.asp
- This site includes links to Country Reports, Issue Papers, Recommendations and Opinions

European Court of Human Rights

<http://www.echr.coe.int/echr/>

Documents:

Council of Europe's Treaties

<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>

- A complete list of the Council of Europe's treaties with links to full text

Case Law

HUDOC Database

<http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/HUDOC+database/>

- HUDOC is a searchable database of case-law of the European Court of Human Rights, the European Commission of Human Rights and the Committee of Ministers.

Inter-American Human Rights System (OAS)

- The Inter-American system operates with both a Commission and a Court.

The Commission, in Washington, DC, is empowered to hear individual complaints and also to report on general human rights situations in member states. It may also conduct on-site observations in particular countries, with that government's consent.

- The Court, which began its operations only in 1979, is empowered to issue decisions of both an advisory nature as well as in contentious cases. The Court, whose jurisdiction must be agreed to by participating states, has heard and decided only a few contentious cases
- American Declaration on the Rights and Duties of Man
<http://www.oas.org/consejo/general%20assembly/decs%20-%20res%20ag/ga-res98/eres1591.htm>
- American Convention on Human Rights
<http://www.oas.org/juridico/English/treaties/b-32.html>

Inter-American Commission on Human Rights

- Official Site for the Commission
<http://www.corteidh.or.cr/index.cfm>
- Inter-American Commission on Human Rights Case Reports., Country Reports and Special Reports
<http://www1.umn.edu/humanrts/cases/commissn.htm>

Inter-American Court of Human Rights

- Official Site for the Court
<http://www.corteidh.or.cr/index.cfm?CFID=211001&CFTOKEN=76483128>
- Decisions and Judgments
<http://www.corteidh.or.cr/casos.cfm>
- Advisory Opinions
<http://www.corteidh.or.cr/opiniones.cfm>
- Contentious Cases
<http://www1.umn.edu/humanrts/iachr/contntus.htm>

Primary Sources

Westlaw and QL/Lexis/Nexis do not have good databases of treaties or international decisions

Treaties

Guides to Treaty Research

Treaty Research – Libguide

<http://guides.library.utoronto.ca/content.php?pid=163673&sid=1381592>

ASIL Guide to Electronic Resources for International Law

<http://www.asil.org/treaty1.cfm>

Locating Treaties

Every treaty and every international agreement entered into by any Member of the United Nations [is] registered with published by the Secretariat.

United Nations Treaty Collection

<http://treaties.un.org.myaccess.library.utoronto.ca/>

- includes United Nations Treaty Series (1945 present), League of Nations Treaty Series (1920-1946), recently deposited treaties, treaty status including ratifications, signatories and reservations.

Consolidated Treaty Series

- Call Number: JX 120 .P35 LAW #1-160, 166-231 in the Bora Laskin Law Librayr
Includes Treaties from 1648 to 1920

Canada Treaty Information

<http://www.treaty-accord.gc.ca/>

- Includes information on all treaties to which Canada is a party but not all are in full-text.
Includes information about Canada's new policy of tabling treaties before parliament

Treaty Interpretation

Vienna Convention on the Law of Treaties

http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

Case Law

Generally, decisions are only binding on the *parties to the Dispute* and have no precedential value. There is not actually a lot of case law as most bodies only make a few decisions a year. Each body has a website which includes judgments.

- International Court of Justice
<http://www.ici-cij.org/homepage/index.php?lang=en>
- International Criminal Court
 - Situations and Cases
http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx

Be sure to check the reports of national courts as the ICC can only exercise its jurisdiction when national courts are unwilling or unable to investigate or prosecute crimes such as genocide, crimes against humanity, war crimes, and the crime of aggression.

- *Butterworths Human Rights Cases*
Available electronically through the U of T Library Catalogue
<http://www.lexisnexis.com.myaccess.library.utoronto.ca/hottopics/Inacademic/?verb=sr&csi=374240>

Domestic Implementation

Using International Law in Domestic Courts

<http://www.oxfordlawreports.com/>

- Only available on Campus
- International Law in Domestic Courts is a case reporting service that brings you the most important public international law issues being decided today in domestic courts of over sixty countries with detailed analysis of the core legal issues, case summaries and historical and legal context. Includes translations of key passages of non-English judgments. All are fully searchable.
- van Ert, Gibran. *Using international law in Canadian courts*. The Hague ; New York : Kluwer Law International, 2008
KE8364 .E78 2008 Course Reserves

Sources of Foreign law

Foreign Law Guide: Current Sources of Codes and Basic Legislation in Jurisdictions of the World

<http://www.foreignlawguide.com/>

- Only available at the faculty only.
- Provides relevant information on sources of foreign law, including complete bibliographic citations to legislation
- Links may not be up to date
- Once connected, select Subscriber Login (IP Authentication)

Constitutions of the Countries of the World

<http://www.oceanalaw.com/>

Only available at the faculty only

Contains the full text for the constitutions of 192 countries with “Introductory and Comparative Notes” that examine recent amendments and highlights of pertinent historical, political and economic information.

To access, select "Connect via IP address" and then select "Constitutions of Countries of the World"

WorldLII

<http://www.worldlii.org/>

- Huge database of statutes and case law from countries throughout the world but it does not include historical material and or provide any commentary or context.

Finding International Organizations

United Nations System Pathfinder

<http://www.un.org/Depts/dhl/pathfind/frame/start.htm>

- Identifies major publications of United Nations Organizations with links to full text on the web. Current to 2005

Human Rights Websites

University of Minnesota Human Rights Library

<http://www1.umn.edu/humanrts/>

- The University of Minnesota Human Rights Library houses one of the largest collections of more than eighty-five thousand core human rights documents, including several hundred [human rights treaties](#) and other primary international human rights instruments. The site also provides access to more than four thousands links and a unique search device for multiple human rights sites.

Women's Human Rights Resources

<http://www.law-lib.utoronto.ca/diana/whrr/index.cfm>

- This database lists hundreds of resources -- articles, documents and links -- related to international women's rights law and Canadian women's rights law. Annotations describe the content of each resource. Users can search by keyword and author as well as browse by women's rights topic. Full-text documents are provided where available.