

## HOW TO DO RESEARCH IN INTERNATIONAL LAW? A BASIC GUIDE FOR BEGINNERS

*Eliav Lieblich\**

### INTRODUCTION

So, you want to do research in international law? Good choice. But it can be difficult, especially in the very beginning. In this brief guide for students taking their first steps in legal research in international law, I will try to lay down the basics—just enough to nudge you towards the rabbit-hole of research. This guide is about how to think of and frame research questions, primary sources, and secondary sources in the research of international law. Or, to be precise, it is about how I think about these things. It is not about how to write in the technical sense, how to structure your paper, or about research methods (beyond some basic comments). This guide also focuses mostly on questions that are especially pertinent when researching international law. For this reason, it does not address general questions such as how and when to cite authorities, what are relevant academic resources, and so forth.

As you begin your work, you will find that legal research in international law is both similar to and different from legal research in domestic law. Research in international law and domestic law are similar in their basic requirements: 1) you need a research question, 2) you need to understand the problem you are approaching (both in terms of the legal doctrine and its underlying theory), 3) you need a method to answer your question. and 4) you need to rely on primary and secondary sources. Research in international law is different because international law, in its quest to be universal, is practiced everywhere. There is no “single” international law,

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\* Associate Professor, Tel Aviv University Buchmann Faculty of Law.

and for this reason it is an area of law that is almost always contested. Furthermore, international law is not hierarchical unlike most domestic legal systems, and many times, several legal frameworks might apply to one single question (“fragmentation”).<sup>1</sup> Additionally, international law’s sources include customary law, which is notoriously difficult to pinpoint.<sup>2</sup> This makes describing “the law” as an object of research much trickier. This guide attempts to give you the initial tools to navigate this terrain, but rest assured that it is also difficult for experienced researchers.

The guide is structured as follows. Section 2 is about research questions. It first offers a simplified typology of research question, including a few words on theory and method, and then suggests some thoughts about thinking of and framing your question. Section 3 is about secondary and primary sources in the research of international law. It includes some advice about the way to approach international legal scholarship in a world of hegemony and information overflow. The guide then becomes a bit more technical, offering tips about finding primary sources relevant for the research of international law.

A caveat is in order. This guide does not seek to offer the most theoretically robust or comprehensive introduction to international legal research. Rather, it should be viewed as practical advice to help you take your first steps into the field. The guide, of course, reflects my own understanding. Other researchers might approach these issues differently.

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<sup>1</sup> See, e.g., Martti Koskenniemi & Päivi Leino, *Fragmentation of International Law? Postmodern Anxieties*, 15 LEIDEN J. INT’L L. 553 (2002).

<sup>2</sup> Compare Monica Hakimi, *Making Sense of Customary International Law*, 118 Mich. L. Rev. 1487 (2020) with Kevin Jon Heller, *Customary International Law Symposium: The Stubborn Tenacity of Secondary Rules*, OPINIO JURIS (Jul. 7, 2020).

## I. RESEARCH QUESTIONS

### *A. Types of Research Questions: Descriptive, Normative, and Critical*

Finding a research question will be one of the most important and challenging parts of your research. Every research has a question at its foundation. The research question is simply the question that your research seeks to answer. In all fields of legal scholarship, there are basically three families of research questions: 1) descriptive research questions, 2) normative research questions, and 3) critical research questions. Very broadly speaking, descriptive questions seek to tell us something about the legal world *as it is*. Normative questions ask what *ought* to be the state of things in relation to law. Critical questions seek to *expose* the relations between law and power, and, as I explain later, are somewhat in the middle between descriptive and normative questions. In truth, there is a lot of interaction between all three types of questions. But for our sake, we keep it simple, and as a starting point for research, it is better to think about research questions in these terms. Thinking clearly about your research question will help you frame your work, structure your paper, and look for relevant sources.

*Descriptive research questions* are questions about the state of things as they are. Much of traditional international legal scholarship is descriptive in the sense that it seeks to describe “the law” as it is, whether in abstract (e.g., “what is the content of the Monetary Gold principle in international adjudication?”) or in relation to a specific situation. For instance, in their excellent writing on Yemen, Tom Ruys and Luca Ferro look at the Saudi-led intervention in the Yemeni Civil War and ask whether that intervention is lawful.<sup>3</sup> From a theoretical standpoint, this type of research can be broadly

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<sup>3</sup> Tom Ruys & Luca Ferro, *Weathering the Storm: Legality and Legal Implications of the Saudi-Led Military Intervention in Yemen*, 65 INT’L & COMP. L.Q. 61 (2016).

described as *positivist*, in the sense that it looks only into legally relevant sources (the *lex lata*), as autonomous bodies of knowledge. We can call such questions *descriptive doctrinal research questions* since they seek to analyze and describe the doctrine from an internal point of view. Of course, some doubt whether it is at all possible to describe authoritatively what the law “is,” beyond very basic statements, without making any normative judgments about what “the law” *should* be. It could even be said that the mere decision to discuss law as an autonomous sphere is a value-laden choice. These and related critiques have been levelled against doctrinal scholarship for over a century by legal realist and critical approaches, both domestically and internationally.<sup>4</sup> This resulted in the gradual marginalization of such research questions, at least in the United States. Yet, from a global perspective, doctrinal research into international law remains a central strand of research.

Doctrinal questions are not the only type of descriptive research questions. Descriptive questions can also follow the tradition of law and society approaches. This type of research looks at the law from the outside and is mostly interested in law’s interaction with society, rather than in legal doctrine *per se*. Historically, the emergence of this way of thinking relates to the insight, first articulated by legal realists, that law does not exist in an autonomous sphere and gains meaning only with its actual interaction with society. Research questions of this type might ask whether and when law is effective, how people think about the law, or how judges make decisions. For instance, in her recent book, Anthea Roberts asks whether international law is truly “international” by looking at how it is studied in different parts of the world.<sup>5</sup> This type of scholarship can also seek to explain law from a historical point of view. For example, Eyal

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<sup>4</sup> Felix S. Cohen, *Transcendental Nonsense and the Functional Approach*, 35 COLUM. L. REV. 809 (1935).

<sup>5</sup> ANTHEA ROBERTS, IS INTERNATIONAL LAW INTERNATIONAL? (2017).

Benvenisti and Doreen Lustig inquire into the interests that shaped the origins of modern international humanitarian law (“IHL”) and argue that the law was shaped more by the interests of ruling elites than by humanitarian impulses.<sup>6</sup> For the purposes of this guide, these are *socio-legal research questions*.

*Normative research questions*, in general, ask what the law *ought* to be, whether in general or in a specific instance. For example, in “The Dispensable Lives of Soldiers,” Gabriella Blum asks what ought to be the rules for the targeting of combatants in armed conflict.<sup>7</sup> As she suggests, these rules should consider the specific threat they pose and not only their legal status as combatants. The difficulty in normative questions—and from my own experience, this is one of the major challenges for students in their first research papers—is that to answer them, we need *external parameters for assessing law*. In other words, we need a theory on what is considered “good,” in light of which we can present an argument about what the law should be. Otherwise, we run into a classic problem: we cannot draw from facts alone (what law “is”) what *ought* to be (what law should be).<sup>8</sup> It is here where theory plays a key role. Normative legal theories are there to help us articulate our benchmarks for assessing what law should be. Returning to Blum’s article as an example, she uses insights from ethics to consolidate her point. She argues from an ethical, *extra-legal* vantage point, that since soldiers’ lives have moral worth, law should be understood in a manner that best reflects this moral idea.

Now, there is a myriad of normative approaches to international law, which I will not address here. A good place to start on theories of international law, including normative ones, is Andrea Bianchi’s excellent and accessible book on

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<sup>6</sup> Eyal Benvenisti & Doreen Lustig, *Monopolizing War: Codifying the Laws of War to Reassert Governmental Authority, 1856–1874*, 31 EUR. J. INT’L L. 127 (2020).

<sup>7</sup> Gabriella Blum, *The Dispensable Lives of Soldiers*, 2 J. LEG. ANALYSIS 115 (2010).

<sup>8</sup> For an explanation, see SCOTT J. SHAPIRO, LEGALITY 47–49 (2011).

international legal theories.<sup>9</sup> Just to give you a sense of things, older natural law theories would simply identify law with morality and would inquire into morality—either as handed down by God or as exposed by reason—in order to ascertain law.<sup>10</sup> In newer scholarship, it is much more common to use ethics as a way to criticize positive law or to read moral standards into the interpretation of law itself—in accordance with the moral theory to which we subscribe.<sup>11</sup> This, for instance, is Ronald Dworkin’s approach, when he urges to interpret law “in its best light.”<sup>12</sup> In international law, for instance, a notable example for such thinking is Thomas Franck’s theory of legitimacy and international law.<sup>13</sup> Franck—although careful not to frame his theory in explicitly moral terms—argues that legal rules should have certain characteristics, such as clarity and coherence, in order to enjoy a “compliance pull” that induces state compliance. If, for example, we were to adopt Franck’s theory, we would assess law in light of his standards of legitimacy.

Normative theories can also be utilitarian. The best known example for such way of thinking, of course, is law and economics.<sup>14</sup> Another family of instrumental normative theories can be roughly described as policy approaches to international law. In the simplest sense, policy approaches ask what the law should be, in terms of its ability to bring about good policy consequences. The New Haven School of International Law, for instance, analyzed international law

<sup>9</sup> ANDREA BIANCHI, *INTERNATIONAL LAW THEORIES: AN INQUIRY INTO DIFFERENT WAYS OF THINKING* (2016).

<sup>10</sup> See EMMERICH DE VATTTEL, *THE LAW OF NATIONS*, bk. I, ch. IV, §§38–39 (Béla Kapossy & Richard Whatmore eds., 2008) (1758).

<sup>11</sup> See, e.g., ADIL AHMAD HAQUE, *LAW AND MORALITY AT WAR* (2017).

<sup>12</sup> RONALD DWORKIN, *LAW’S EMPIRE* (1986).

<sup>13</sup> Thomas M. Franck, *Legitimacy in the International System*, 82 AM. J. INT’L L. 705 (1988)

<sup>14</sup> Jeffrey L. Dunoff & Joel P. Trachtman, *Economic Analysis of International Law*, 24 YALE J. INT’L L. 1 (1999).

from the point of a global standard of human dignity.<sup>15</sup> It is safe to say that almost all current scholarship on international law, especially in the United States, utilizes policy approaches, even if not explicitly.<sup>16</sup> To sum this point, when framing normative research questions, we should be aware that at some point, we will need to commit to a yardstick through which to assess our normative conclusions.

*Critical research questions* inquire into the power relations that shape law or into the relations between law and politics in the broad sense of the term. In this sense, they aim to be descriptive: they seek to describe law as a product of power relations and expose the manner in which law conceals and neutralizes political choices.<sup>17</sup> Like normative scholarship, critical research questions also rely on theories (“critical theories”). For example, Martti Koskenniemi seeks to describe how the structure of the international legal argument collapses into politics, using insights from Critical Legal Studies (“CLS”).<sup>18</sup> Aeyal Gross inquires whether the application of international human rights law might harm rather than benefit Protected Persons in occupied territories, on the basis of theoretical tools from CLS and Legal Realism.<sup>19</sup> Anthony Anghie asks how colonialism shaped the origins of international law, on the basis of postcolonial theory (and specifically in international law, Third World Approaches to International Law).<sup>20</sup> Ntina Tzouvala

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15 W. Michael Reisman, *The View from the New Haven School of International Law*, 86 AM. SOC'Y INT'L L. PROC. 118 (1992).

16 See Harlan Grant Cohen, *Are We (Americans) All International Legal Realists Now?*, in CONCEPTS ON INTERNATIONAL LAW IN EUROPE AND THE UNITED STATES (Chiara Giorgetti & Guglielmo Verdirame, eds., forthcoming), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3025616](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3025616).

17 Martti Koskenniemi, *What Is Critical Research in International Law? Celebrating Structuralism*, 29 LEIDEN J. INT'L L. 727 (2016).

18 Martti Koskenniemi, *The Politics of International Law*, 1 EUR. J. INT'L L. 4 (1999).

19 Aeyal M. Gross, *Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation?*, 18 EUR. J. INT'L L. 1 (2007).

20 Antony Anghie, *Francisco de Vitoria and the Colonial Origins of*

considers whether and how the 19th century standards of civilization in international law continue to live on in the international system through its capitalist underpinnings, by applying Marxian analysis.<sup>21</sup> From a feminist approach, Fionnuala Ní Aoláin explores what are the gendered aspects of the law of occupation.<sup>22</sup> It should be emphasized that critical research questions are also normative in the deeper sense: by seeking to expose power relations, they imply that something is wrong with law. Some critical research proceeds, after exposing power dynamics, to offer solutions—and some simply conclude that the project of law is a lost cause.

It is crucial to understand that both normative and critical research questions usually have descriptive sub-questions. For instance, Blum's normative claim is that the current rule on targeting combatants is no longer tenable and should be changed. But to do so, she first has to give a proper account of the current understanding of law. And that is, of course, a descriptive question. The same applies to critical questions. Good critical scholarship should give a valid account of its object of critique. For example, in Tzouvala's piece, a significant part offers a description of the standards of civilization, before the main critique is applied.

### *B. A Note about Theory and Methods*

The term *theory* has been used quite liberally in the previous section. Now, there are several ways to understand this term. Here, theory is used in the sense of the general intellectual framework through which we think about law or a certain legal question. It is our view on the world, if you will—the

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*International Law*, 5 SOC. & LEG. STUD. 321 (1996); see also Sundhya Pahuja, *The Postcoloniality of International Law*, 46 HARV. J. INT'L L. 459 (2005).

<sup>21</sup> Ntina Tzouvala, *Civilization*, in CONCEPTS FOR INTERNATIONAL LAW: CONTRIBUTIONS TO DISCIPLINARY THOUGHT 83 (Jean d'Aspremont & Sahib Singh eds., 2019).

<sup>22</sup> Fionnuala Ní Aoláin, *The Gender of Occupation*, 45 YALE J. INT'L L. 335 (2020).



prism through which we analyze or assess a question. The term theory must be distinguished from *method*. Methods, in legal research, encompass at least two meanings. The first, more common in descriptive socio-legal research, refers to the way in which we seek to find and arrange the information required to answer our question. For instance, if my question is “do judges in international courts cite scholarship from the Global South,” my method would be the manner in which I gather and arrange the data about judges’ citation practices. Do I search all relevant decisions for citations and create a large dataset (empirical quantitative methods)? Do I conduct interviews with prominent judges and extrapolate from their positions (qualitative methods)? Descriptive doctrinal research, too, has its version of methods in this sense. When we analyze treaties, legislation, state practice, or case law, we apply a method of collecting, analyzing, and categorizing this information.

The second manner in which the term method is used, is more pertinent in normative and critical legal research. For example, in an *American Journal of International Law* symposium on methods in international legal research, “methods” were defined as “the application of a conceptual apparatus or framework—a theory of international law—to the concrete problems faced by the international community”.<sup>23</sup> Meaning, methods are defined here as the way in which we *apply theory to specific instances*—or in other words, as applied theory. It is in this sense that you will hear terms like “feminist methods” or “critical methods” used.

In truth, much of legal research—with the exception of certain strands of law and society research—is quite loose in its awareness to methods and in its use of them. This is perhaps because most of us are socialized, in our earliest days as law students, into the general method of doctrinal approaches to law—legal interpretation, case analysis,

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<sup>23</sup> Steven R. Ratner & Anne-Marie Slaughter, *Appraising the Methods of International Law: A Prospectus for Readers*, 93 AM. J. INT’L L. 291, 292 (1999).

analogy, and allusions to consideration of “legal policy” in order to solve dilemmas. The extent to which you will be required to be strict about methods in legal research, would probably differ between instructors and their own backgrounds.

### *C. Framing and Finding Your Research Question*

What is expected from a research question, at least in the initial stage of your work? Of course, this differs between instructors and advisors. Here, I offer some insights that I think are generally applicable, with specific reference to international law.

First, a lot depends on the stage of your studies. In most seminars at the J.D. or LL.B. level, instructors do not necessarily require that your question be entirely novel, in the sense that no one has asked it before. Of course, most instructors value originality and would be happy if you come up with a reasonably original question (provided that you can answer it, but more about that in a bit). On the Master’s or Ph.D. levels, this might be very different. Framing a question that would be “an original contribution to the field” is one of the crucial parts of writing a dissertation at that level. But since this is a beginners’ guide, do not worry about that.

Second, a research question must be tailored to the scope of your work, or in other words, it must be a question that you can reasonably answer within the space you have been given. Most seminar papers are around 10,000 words, inclusive of footnotes. This length suits a question like “should the duty to take precautionary measures under IHL require risking soldiers’ lives?” but probably not “the legal history of proxy wars during the Cold War.” The unfortunate nature of seminars is that you will usually have very limited time to think of a research question, and since you are new in the field, you would probably have trouble figuring out whether your question fits the scope of your paper. Most instructors (I hope) would be happy to let you know if your question is too

wide.

Third, a research question should be one that you are capable of answering with the skills you have, or with skills—the methodological proficiency—that you have the time to reasonably acquire during your research (whether independently or with the assistance of your instructor). By the time students write seminar papers, most have a reasonable grasp of how to do legal reasoning from an internal-legal point of view and accordingly have the basic skills to answer *descriptive doctrinal questions*. Concerning most *normative* and *critical* research questions, the basic skills required—at least at the level required in seminar papers in most law schools—can be acquired during your research: to me, learning new theories and the ways to apply them is precisely what seminars should be about! The trick is to find the question and the normative or critical approach that you would like to explore. However, things get much trickier if you select a *descriptive socio-legal question*. These require, sometimes, research methods that most law students do not possess at this stage. If you are thinking about such questions, consult with your instructor to see whether she can or is willing to instruct you about the method you need.

But wait! We said nothing about how to actually find your research question. Here, I might disappoint you: there is no way around some of the difficulties we encounter when looking for a question. Finding a research question is hard, in particular when you are just starting out and have a limited grasp on the field. In truth, there is no one way—if there is even *a* way—to find a research question. A research question begins from an idea, and we cannot really control how our ideas emerge. Even the most experienced researchers will probably tell you that they get their ideas serendipitously when taking a shower, walking the dog, or folding the laundry. “Eureka” moments rarely pop-up when we summon them. So rather than attempting to give (a futile) account on a sure-shot way to find your research questions, I suggest ways that might be conducive to spark the creative thought

process needed to get a good idea.

First, ask yourself what interests you, in the most intuitive way, in terms of specific fields of international law. If you are enrolled in a thematic course, such as International Trade Law, or International Criminal Law, then this narrows your selection of course. But even within fields, there are numerous sub and sub-sub fields and questions. In international criminal law, for example, there is a world of difference between questions of jurisdiction and theories of punishment. Start by opening a general textbook in the field. Scan the contents. See the types of issues and dilemmas that arise. See what direction triggers your interest. Most textbooks will highlight controversial issues. Ask yourself whether any of these issues both interest you and can be phrased as a research question that conforms to the requirements discussed above.

Second, follow blogs in the field. There are many high quality blogs on international law, which offer good analysis on current events and legal dilemmas. These blogs can help you to map burning and interesting questions. Leading blogs such as EJIL: Talk!, Just Security, Legal Form, Opinio Juris, and Lawfare are good places to start. For those of you really willing to take the plunge, there is a very vibrant community of international law scholars on Twitter (although it might lead you to question the general sanity of the field). International legal institutions and organizations also maintain active Twitter profiles, and so do states.

Third, it is ok to begin with a somewhat general or imprecise research question, and narrow it down and refine as you go. For instance, let's assume that you begin with "should the duty to take precautionary measures under IHL require risking soldiers' lives." As you read, you will find that there are several different precautions under IHL. Depending on the scope of your research, you might want to refine your question to something like "should the duty to give advance warning to civilians require exposing soldiers to potential harm?" In other words, it is perfectly fine to make

adjustments to your question as you go.

Fourth, be proactive in your communications with your instructor. There are different types of instruction on the seminar level, but most instructors would be happy to participate with you in a ping-pong of ideas on your research question—as long as you have done some thinking and come with ideas to discuss, even if these are half-baked.

## II. SECONDARY AND PRIMARY SOURCES IN INTERNATIONAL LEGAL RESEARCH

### *A. General*

Once we have the research question, we need information to answer it. This information is found in *research sources*. In academic research, it is common to differentiate between *primary* and *secondary* sources. In simple terms, primary sources comprise raw information or first-hand accounts of something. By way of example, these include diary entries, interviews, questionnaires, archival data, and meeting records. In basic legal research, primary sources can include black letter law, rulings, and so forth. Another way to look at primary sources is that they give you direct, unmediated access to the objective of your research. Secondary sources, conversely, are writings *about* primary sources: they interpret primary sources for you. These include primarily academic books, book chapters, and journal articles. Of course, there are dialectics between primary and secondary sources. Sometimes, secondary sources can become primary sources, depending on our perspective. If, for example, I want to write about the international legal philosophy of Hans Kelsen, then Kelsen's writings become my primary sources. Other people's writings *about* Kelsen would be my secondary sources. Similarly, a judicial decision can be a primary source when we study what the law "is," but it can also be secondary source when it describes other things, such as facts, opinions, or ideas.

In international law, there is another idiosyncrasy. If we want to know what the law “is,” secondary sources might be considered primary, to an extent, because according to international law itself, “the teachings of the most highly qualified publicists” are subsidiary means to determine the positive law.<sup>24</sup>

*B. The Intricacies of Secondary Sources of International Law: Managing Hegemony and Information Overload*

Is there something special that we need to know about secondary sources in *international* legal research? On its face, secondary sources on international law are not much different from such sources in any other field. For this reason, I will not get into questions that are relevant to all fields of research, such as how to account for newspaper stories, the value of Wikipedia for research (very limited), etc. Rather, I will point out some things that are especially important to consider when approaching secondary sources in international law.

First, since international law presumes to apply everywhere, there might be relevant literature on your question in any language you can imagine. At the seminar paper level, most instructors will expect you to rely on literature in languages reasonably accessible to you. In more advanced levels of research, things might be different. As a rule of thumb, if you cannot access writings in at least English or French, your research will unfortunately be limited. Of course, we can criticize this situation in terms of the hegemony it reflects;<sup>25</sup> however, this is the reality as it stands. A possible exception is if your question focuses on the application of law in a specific jurisdiction. But here, too, you

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<sup>24</sup> Statute of the International Court of Justice, Art. 38(1)(d), June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 933.

<sup>25</sup> See Justina Uriburu, *Between Elitist Conversations and Local Clusters: How Should we Address English-centrism in International Law?*, OPINIO JURIS (Nov. 2, 2020), <https://opiniojuris.org/2020/11/02/between-elitist-conversations-and-local-clusters-how-should-we-address-english-centrism-in-international-law/>.

will be limited since without access to literature in other languages, your comparative ability will be diminished.

Second—and this is an understatement—there are differing perceptions of international law, both in general and on specific questions, across different legal cultures. Risking pandering to stereotypes, U.S. scholarship tends to be more inclined towards *policy* approaches to law, while continental European scholarship might be more positivist.<sup>26</sup> Scholarship from the Global South might view law from postcolonial perspectives. It is crucial to be aware of these differences, in the sense that no single perspective can give you the entire picture. This is not to say that you cannot focus on one specific legal culture—depending on your research question—just be aware that you might be getting a particular point of view.

Third, even within a specific legal culture, there are interpretive “camps” on most questions of international law. Very roughly speaking, writers affiliated with state institutions might interpret law in a manner more permissive of state action, while others might be more suspicious of states and approach law from a more restrictive perspective. For instance, in the field of IHL, David Luban identifies “two cultures” of interpretation—military and “humanitarian” lawyers—that differ almost on every legal question.<sup>27</sup> You will find comparable divisions on international trade, investment arbitration, and international environmental law—and in any other field for that matter. Here, too, it is very important to be aware of the “camp” of the author you are reading. You will not get a complete view if all of your secondary sources belong to this or that camp.

Fourth, be aware and critical of hierarchies.

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<sup>26</sup> See Cohen, *supra* note 15. See also William C. Banks & Evan J. Criddle, Customary Constraints on the Use of Force: Article 51 with an American Accent, 29 LEIDEN J. INT'L L. 67 (2016).

<sup>27</sup> David Luban, *Military Necessity and the Cultures of Military Law*, 26 LEIDEN J. INT'L L. 315 (2013); see also Eyal Benvenisti, *The Legal Battle to Define the Law on Transnational Asymmetric Warfare*, 20 DUKE J. COMP. & INT'L L. 339, 348 (2010).

Traditionally, secondary sources of international law were organized around major treatises (which are textbooks that deal systematically with an issue), such as Oppenheim's international law.<sup>28</sup> This tendency derives from the special status that major scholarship enjoys in the formation of international law, as mentioned above. Of course, major "classic" textbooks are still invaluable tools to get into the field and at least to understand its mainstream at a given moment. However, many canonical treatises—to be blunt—have been written by white western men from major empires, with certain perspectives about the world. Often, these writers went in and out of diplomatic service and might be generally uncritical of their states' legal policies. Many newer versions of these textbooks internalize these critiques and are much better in terms of incorporating diverse authors and views. Nonetheless, in order to get the fuller picture on your question, diversify your sources.

Fifth, and notwithstanding the need to take into account the problem of hierarchies, it is still important to get a good grasp of the "important" writings on your research question, in order to understand the predominant views on the issue. In an age of information overload, this is particularly difficult to do. There are, however, several (imperfect) ways to mitigate this problem. One way to do so is by using Google Scholar and Google Books as entry portals into your subject. These search engines allow you both to search for titles and specific phrases *within* titles. They are free, simple and fast, and Google Books even allows you to preview most books. Google Scholar and Books also present a *citation count* for each source. Citation counts refer to the number of times a work has been cited by other authors, which gives you a rough measure of the centrality of the work. However, Google's search engines should be taken with a grain of salt. Google is a data-for-profit company, and its effects on academic

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28 1 LASSA OPPENHEIM, INTERNATIONAL LAW: A TREATISE (1912).



research have been criticized.<sup>29</sup> The basic problem is that nobody knows how Google arranges its results and what interests it serves by doing so. In other words, Google creates a new hierarchy of sources, and we do not know exactly how to account for it.

Another way to get a sense of the important writings relating to your question is to look at general, introductory works on your subject. These textbooks usually provide a good overview of the major discussions and dilemmas relating to the fields they cover, and when doing so, they present the central views on these questions. See which writings they discuss and cite. A good place to start, in order to gain access to initial secondary (and sometimes primary) sources on a specific question, is the Max Planck Encyclopedias of International Law or the Oxford Bibliographies of International Law.

Still, always be mindful that the “central views” on a question are not necessarily the *best* views. For instance, many times, citation practices simply reproduce geographic, institutional, racial, or gendered hierarchy. They are not meaningless, but be critical about them. After you get the “central views” on the question go to more “neutral” search engines such as your library’s general database or commercial databases such as Hein and Westlaw that arrange scholarship in a more transparent manner. One radical suggestion is to visit your library physically (!) and go to the relevant shelf. Libraries are nice, and you will often find titles that you missed in your electronic search.

### *C. Primary Research Sources of International Law: What are They and Where to Find Them*

What are the primary sources for research in international law? The answer, of course, flows from the type of your

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<sup>29</sup> Jake Goldenfein, Sebastian Benthall, Daniel Griffin & Eran Toch, *Private Companies and Scholarly Infrastructure — Google Scholar and Academic Autonomy* (Oct. 28, 2019), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3476911](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3476911).

research question. The sources for doctrinal research questions would generally follow material that would be relevant for the study of the *legal sources* of international law, namely those found in Article 38(1) of the Statute of the International Court of Justice (“ICJ”): 1) treaties, 2) state practice and *opinio juris* (as elements of customary law), 3) general principles of law, and 4) as subsidiary means, judicial decisions and scholarly work.

However, even when conducting doctrinal research, not everyone subscribes to an exclusively formalist understanding of legal sources. For instance, there are many forms of formal and informal regulation in various global governance frameworks. Non-binding resolutions of international organizations, for example, and instruments of “soft law” can also be viewed as part of the doctrine, broadly speaking.<sup>30</sup> Additionally, legal realists might argue that whatever is perceived by international actors as authoritative and controlling in specific instances can be analyzed as a legally relevant source.<sup>31</sup> The important takeaway is that the primary sources for doctrinal research follow the author’s approach to the sources relevant for international law, and this changes between legal formalists and realists. This complicates your work, but even as a beginner, you would need to decide which way to go in terms of identifying relevant primary sources. If you are confused about this, consulting with your instructor is probably wise here.

As discussed earlier on, normative and critical research questions tend to have descriptive doctrinal sub-questions. For the doctrinal parts in normative and critical research, the above primary sources are relevant also. The normative and critical parts of such research, conversely, would usually rely on the application to the descriptive findings of theory found in secondary sources (and recall the definition of method as

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<sup>30</sup> See, e.g., Kenneth W. Abbott & Duncan Snidal, *Hard and Soft Law in International Governance*, 54 INT’L ORG. 421 (2000).

<sup>31</sup> For this type of thinking, see Hakimi, *supra* note 2.

applied theory, suggested in the AJIL symposium).<sup>32</sup>

For socio-legal research questions, primary sources can extend much wider, depending on the specific research method selected. Since the challenges of identifying sources for socio-legal research are not unique in the context of international legal research and require treatment beyond this limited guide, I do not address them here.

After clearing that up (hopefully), we now move to a more technical part: where can we find primary sources for doctrinal research in international law (or doctrinal *parts* within otherwise non-doctrinal research)? Of course, there are virtually endless options. Here, I seek only to give an overview of some of the best ways to look for such sources, or at least, those that I prefer. Note, that I do not get into the nitty-gritty of each search engine or database, such as how to run searches and where to click. They are usually quite easy to get a handle on, and if not, most law school libraries have very capable personnel to assist in the more technical aspects of things. In the same vein, I do not get into the specifics of document indexing systems of various institutions (see, for instance, [here](#)).

### 1. *Curated Collections of Important Primary Sources*

Before delving into specific primary sources and where we can find them, it is good to know that some publications select especially important sources and publish them with commentary. These publications do not include *all* primary sources, but if you want to search for especially pertinent sources on your subject, they can be helpful. For example, [International Legal Materials](#) (“ILM”) is a publication of the American Society of International Law that periodically selects important primary sources, with expert commentary. Although ILM is a very old publication, it is fortunately online, and you can search its database.

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<sup>32</sup> See Ratner, *supra* note 23.

## 2. *Treaties and Treaty Bodies*

Moving on to treaties. In general, you can access the text of almost every treaty directly from any internet search engine. For comprehensive research, however, the United Nations Treaty Collection (“UN Treaty Collection”) has a sophisticated search page, allowing you to find treaties by title, signatories, dates, and many other categories. When you click on a treaty, you can also find the list of state parties, including reservations, declarations, etc. Take note of that the UN Treaty Collection includes *only treaties registered with the United Nations*. The most important treaties are indeed registered. Those that are not might be found in secondary sources, in governmental websites, and so forth. Last, Oxford Historical Treaties is a great source for older treaties.

Treaties can also be found in the homepages of relevant international organizations. For instance, the World Trade Organization website includes all of the organization’s founding agreements and other relevant treaties. Regional organizations, also, mostly follow this practice. The International Committee of the Red Cross (“ICRC”) website has an index of all historical and in-force IHL treaties. These are only examples.

For the purpose of your research, you might want to look at the *travaux préparatoires*—which include the official negotiation records of the treaty, its drafting history, and other preparatory documents. These are important both to interpret and understand the history and rationales of the treaty. There is no single way in which these records are published. Many times, they can be found in official volumes, whether online or in hardcopy. For example, the *travaux* of the European Conventions of Human Rights can be found online here. You can find more information about finding *travaux* at the UN Library on this page.

Many treaties establish organs that oversee their execution or interpret their provisions (“treaty bodies”).

These organs, in turn, create their own documents, decisions, and comments. This is a particularly important feature of international human rights law treaties. Luckily, the UN keeps a searchable treaty body database in which you can search for virtually any type of document produced by these bodies. For example, you can find various reports submitted to these bodies by states; you can also find decisions (“jurisprudence”) of treaty bodies, as some of them are empowered to decide on individual and interstate claims. For more information about research in human rights law, Georgetown Law produced this great guide (on both secondary and primary sources).

### 3. *Judicial Decisions*

Judicial decisions constitute important primary sources in international legal research like in any legal research. However, as opposed to domestic jurisdictions, the terrain of international legal tribunals is heavily fragmented.<sup>33</sup> As you probably know by now, there is no “supreme court of the international community” to which all other courts are subject. Most tribunals are limited in their jurisdiction to a certain subject matter or to a certain group of states or individuals. To make things even more complicated, domestic courts also frequently rule on international legal questions or refer to international law in their decisions. A crucial point when conducting your research is to figure out whether there is an international tribunal that might have jurisdiction over issues relating to your question and whether these issues were addressed in a substantial way by domestic courts.

Fortunately, there are search engines that allow us to search for specific things across many international tribunals and dispute settlement mechanisms. The Oxford Reports on International Law, for instance, allows you to search across virtually all international tribunals and arbitration mechanisms (as well as treaty bodies). It includes not only

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<sup>33</sup> See Koskenniemi, *supra* note 1.

ICJ rulings, but also rulings and decisions of subject-area specific dispute settlement mechanisms such as the International Tribunal on the Law of the Sea (“ITLOS”) and others. Furthermore, the search engine allows you also to look for *domestic* rulings that apply international law in many jurisdictions. Be mindful, however, that the database on domestic rulings is not comprehensive, and many times does not include the newest rulings since it takes time for the regional reporters to report them. The Cambridge Law Reports is another very reputable and established source for international case law and domestic rulings relating to international law.

It should be noted that in addition to these databases, most tribunals have their own websites. Just by way of example, the ICJ, the European Court of Human Rights, the International Criminal Court (“ICC”), and the WTO Dispute Settlement mechanism all have very helpful sites with their own advanced search engines. Similarly, the International Center for Settlement of Investment Disputes (“ICSID”) allows you to search for decisions in investment-state arbitrations. Many other tribunals and dispute settlement arrangements have similar systems. The added value of the tribunals’ own sites is that they usually include not only decisions, but also oral and written proceedings and other documents of interest for in-depth research. Moreover, it might be that they are updated faster with new decisions.

Note, however, that many questions are never resolved by any tribunal. International law is more of an ongoing process than a system of adjudication,<sup>34</sup> and the fact that a dispute or dilemma has not been formally addressed by courts does not mean that it is not important or that there are no highly relevant primary sources on the issue. Ironically, often the opposite is true: some important questions do not come up for

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<sup>34</sup> Harold Hongju Koh, *Is there a “New” New Haven School of International Law?*, 32 YALE J. INT’L L. 559 (2007).

adjudication *precisely* because actors do not want to risk losing in adjudication.

#### 4. *United Nations Documents*

Documents produced by the different organs of the UN—as well as by states when interacting in and with the UN—are of special importance for international legal research. Resolutions by the UN Security Council (“UNSC”) can be binding; resolutions by the UN General Assembly might reflect the international consensus, can be declarative of customary international law, or crystallize into binding law as time passes. Reports by the UN Secretary General and by Special Rapporteurs are also important in this sense, not to mention the work of the UN International Law Commission (“ILC”). Letters by states and their statements in various UN fora are also crucial as sources for state practice and *opinio juris*. Fortunately, The UN’s Official Document System allows you to run searches into the majority of publicly available UN documents. Additionally, the UN Library provides another, more guided, entry point to the universe of UN documents.

Sometimes, if you know the specific type of document you need, it can be helpful to head to the website of the relevant UN organ. For example, the UNSC’s site has all of the UNSC’s resolutions, presidential statements, reports and meeting records by year (as well as documents relating to sub-organs such as Sanctions Committees). You can find, for instance, a specific meeting and its full verbatim records (what states said). The same holds for the UN General Assembly, Human Rights Council and other organs of interest. These websites are generally self-explanatory, although they might be clunky sometimes, and the UN tends to move pages around for mysterious reasons. Explore a bit, and you will usually find what you need.

Last, sometimes you would want to get a general picture about how a specific incident, event, or issue was dealt with across the UN in a specific time. The best place to get this

information is the Yearbook of the United Nations. Just look in the specific yearbook for the year in which your event of interest took place, and you will find summaries of the discussion of the issue across the UN. A huge bonus is that the yearbooks include an index of documents for each issue or event that you can then retrieve—using the document’s symbol—from the UN’s Official Document System. Note, however, that unfortunately the Yearbook is only published several years after the relevant year. As of 2020, the 2015 Yearbook hasn’t been released yet.

### 5. *Practice and Statements*

State practice and statements are important in order to ascertain customary international law, but also to understand general international approaches towards your question. At least for the latter purpose, the same holds with regard to practice and statements by international organizations and NGOs. Now, since state practice and statements can manifest in endless forms—from Twitter rants to official statements by heads of states (which are, nowadays, sometimes one and the same)—there is no one-stop shop for this type of primary source. Much can be found in UN documents, but this is by no means a comprehensive source because a lot of relevant interactions take place outside of the UN.

Nevertheless, some publications and other databases collect important pieces of (mainly state) practice. Just by way of example, each issue of the American Journal of International Law has a section on contemporary U.S. practice on international law. The U.S. State Department compiles an annual digest on U.S. State Practice, accessible here. German practice in international law can be found here (in English). Some other digests of state practice are listed by the Institute of Advanced Legal Studies library.

Additionally, after you select a research question, it is helpful to run a search and see if there is a subject-matter digest of practice relating to your question. For example, the



Journal on the Use of Force and International Law includes, in each issue, a digest of practice on the use of force, divided by regions. The ICRC Customary Law Study website contains an updating database of practice on IHL. But again, these are only examples.

Unfortunately, a lot of relevant material is not compiled or indexed anywhere, and you will have to look for it in other places. Beyond the UN databases, you can find states' positions in their governmental websites (typically the ministry of foreign affairs). NGO reports can be found in the specific organization's website. A lot of information can be found in trustworthy media outlets (and we leave the discussion of what is "trustworthy" for another day). The New York Times' searchable archive is a formidable tool for finding different positions of various actors in relation to current and historical events. For delving deeper, access into institutional archives might be needed.

Furthermore, sometimes, to gain access to relevant practice, you will need to search domestic legislation and rulings, beyond those found in the general databases mentioned above (such as the Oxford databases). Domestic legislation and rulings are especially pertinent when looking for "general principles of law," which form a part of the sources of international law.<sup>35</sup> There is no single way to look for sources in domestic jurisdictions: each jurisdiction has its own system and databases. For instance, for English-speaking jurisdictions, Westlaw and Lexis are leading databases.

Last, nowadays, it is important not to neglect social media. For better or for worse, states and other international actors often share positions (and, ahem, insults) on Twitter.<sup>36</sup> These might also be relevant for your research.

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<sup>35</sup> See, e.g., M. Cherif Bassiouni, *A Functional Approach to "General Principles of International Law"*, 11 MICH J. INT'L L. 768 (1990).

<sup>36</sup> Francis Grimal, *Twitter and the jus ad bellum: threats of force and other implications*, 6 J. USE OF FORCE & INT'L L. 183 (2019).

### III. CONCLUSION

All in all, there is no single way to think about any of the issues discussed in this guide. Some researchers will contest many of the definitions and suggestions offered here. This just serves to emphasize that determining the “best” way to approach research has a strong individual component. At least in legal research, beyond strict methodological requirements that might apply in socio-legal research, each researcher develops her own way and understandings as she gains knowledge and experience. I hope that this guide helps you to begin to find your own.