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Identification of customary international law

Ways and means for making the evidence of customary international law more readily available

Memorandum by the Secretariat

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Introduction

A. Mandate and previous consideration of the issue

1. At its sixty-fourth session, in 2012, the International Law Commission decided to include the topic “Formation and evidence of customary international law” in its programme of work and appointed Sir Michael Wood as Special Rapporteur.¹ At its sixty-eighth session, in 2016, the Commission adopted, on first reading, a set of 16 draft conclusions on identification of customary international law, together with commentaries thereto.²

2. In his fourth report on identification of customary international law, the Special Rapporteur recalled the practical challenges of access to evidence in order to ascertain the practice of States and their *opinio juris* and the Commission’s prior engagement with this issue.³ He suggested that the Secretariat be requested to provide an account of the evidence of customary international law currently available and, if appropriate, make recommendations as to improving its availability.⁴ Following its consideration of that report at its sixty-eighth session, in 2016, the Commission requested the Secretariat to prepare a memorandum on ways and means for making the evidence of customary international law more readily available, which would survey the present state of the evidence of customary international law and make suggestions for its improvement.⁵ The present memorandum has been prepared in fulfilment of that request and was considered by the Commission during its seventieth session, at its 3396th to 3402nd meetings.⁶

3. At its seventieth session, in 2018, the Commission adopted, on second reading, the entire set of draft conclusions on identification of customary international law, together with the commentaries thereto.⁷ In accordance with article 23 of its statute, the Commission also made a recommendation thereon to the General Assembly.⁸ Consequently, at its seventy-third session, on 20 December 2018, the General Assembly adopted resolution 73/203 on identification of customary international law.

4. At its seventieth session, the Commission also requested that the present memorandum be reissued to reflect the text of the draft conclusions and commentaries adopted on second reading.⁹ In the present memorandum, reference is thus made to the draft conclusions and commentaries adopted on second reading.

5. A similar survey of the existing state of the evidence of customary international law, including suggestions for its improvement, was undertaken by the Secretariat in 1949, on the occasion of the first session of the Commission, as preparatory work within the purview of article 24 of the statute of the Commission.¹⁰ Article 24 reads as follows:

¹ *Yearbook of the International Law Commission 2012*, vol. II (Part Two), p. 85, para. 268.

² *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10)*, para. 62. At its sixty-fifth session, in 2013, the Commission changed the title of the topic to “Identification of customary international law” (*ibid.*, *Sixty-eighth Session, Supplement No. 10 (A/68/10)*), para. 65).

³ See the fourth report on identification of customary international law by Special Rapporteur Sir Michael Wood ([A/CN.4/695](#) and [A/CN.4/695/Add.1](#)), paras. 38–49.

⁴ *Ibid.*

⁵ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10)*, para. 56.

⁶ *Ibid.*, *Seventy-third Session, Supplement No. 10 (A/73/10)*, paras. 56–57.

⁷ *Ibid.*, paras. 58, 60, 65 and 66.

⁸ *Ibid.*, para. 63.

⁹ *Ibid.*, para. 61.

¹⁰ Ways and means of making the evidence of customary international law more readily available:

The Commission shall consider ways and means for making the evidence of customary international law more readily available, such as the collection and publication of documents concerning State practice and of the decisions of national and international courts on questions of international law, and shall make a report to the General Assembly on this matter.

6. By virtue of that provision, the Commission began consideration of ways and means for making the evidence of customary international law more readily available at its first session and invited Mr. Manley O. Hudson to prepare a working paper on the subject. He produced a working paper on the scope, evidence and availability of evidence of customary international law, which was considered at the second session of the Commission, in 1950.¹¹ At that session, the Commission completed its consideration of the topic and submitted a report to the General Assembly, containing suggestions of specific ways and means for making the evidence of customary international law more readily available.¹² In particular, the Commission recommended that the widest possible distribution be made of publications relating to international law issued by organs of the United Nations – including the *Reports* and other publications of the International Court of Justice, the *United Nations Treaty Series* and the *Reports of International Arbitral Awards* – and that the General Assembly authorize the Secretariat to prepare a number of other legal publications.¹³ The Commission also recommended “that the Registry of the International Court of Justice should publish occasional digests of the Court’s *Reports*”.¹⁴ Furthermore, it recommended “that the General Assembly call to the attention of Governments the desirability of their publishing digests of their diplomatic correspondence and other materials relating to international law” and “that the General Assembly give consideration to the desirability of an international convention concerning the general exchange of official publications relating to international law and international relations”.¹⁵

7. Since then, the General Assembly has authorized most of the suggested publications, as well as other relevant ones, including the *United Nations Juridical Yearbook*, the *United Nations Legislative Series*, the *Repertoire of the Practice of the Security Council*, the *Repertory of Practice of United Nations Organs* and the

Preparatory work within the purview of article 24 of the Statute of the International Law Commission (Memorandum submitted by the Secretary-General) (A/CN.4/6 and A/CN.4/6/Corr.1), available from http://legal.un.org/docs/?path=../ilc/documentation/english/a_cn4_6.pdf&lang=EF; see also the working paper based on Part III thereof, document A/CN.4/W.9, referred to in *Yearbook of the International Law Commission 1949*, p. 228, footnote 10.

¹¹ *Yearbook of the International Law Commission 1950*, vol. II, document A/CN.4/16 and A/CN.4/16/Add.1, pp. 24 and 33. See also the comments on Judge Hudson’s working paper on article 24 of the statute of the International Law Commission (presented by the Secretariat), *ibid.*, document A/CN.4/27, p. 33.

¹² *Ibid.*, pp. 367–374, paras. 24–94.

¹³ *Ibid.*, pp. 373–374, paras. 90–93. The Commission recommended: “(a) A Juridical Yearbook, setting forth, *inter alia*, significant legislative developments in various countries; current arbitral awards by *ad hoc* international tribunals; significant decisions of national courts relating to problems of international law and particularly those concerning multipartite international conventions. ... (b) A Legislative Series containing the texts of current national legislation on matters of international interest, and particularly legislation implementing multipartite, international instruments. ... (c) A collection of the constitutions of all States, with supplementary volumes to be issued from time to time for keeping it up to date. ... (d) A list of the publications issued by the Governments of all States containing the texts of treaties concluded by them, supplemented by a list of the principal collections of treaty texts published under private auspices. (e) A consolidated index of the *League of Nations Treaty Series*. ... (f) Occasional index volumes of the *United Nations Treaty Series*. (g) A *répertoire* of the practice of the United Nations with regard to questions of international law. (h) Additional series of the *Reports of International Arbitral Awards* ...”

¹⁴ *Ibid.*, para. 93.

¹⁵ *Ibid.*, paras. 93–94.

Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice.¹⁶ These publications have greatly contributed to the availability of evidence of customary international law over the years.

B. Scope and methodology

8. As was the case in 1949, the focus of this memorandum is the availability of evidence of customary international law. Since then, however, both the scope of customary international law and the availability of evidence thereupon have changed strikingly. The scope of customary international law – that is the extent and the content of existing rules of customary international law – is beyond the remit of the present memorandum.¹⁷ Nonetheless, it may be remarked that the significant increase in the number of States and international organizations, the intensification of international intercourse, and the development of international law in a number of fields have all contributed to the broadening of the scope of rules of customary international law since 1949. This, in turn, led to an expansion of the resources which could potentially be relevant as evidence of the two elements thereof: a general

¹⁶ See General Assembly resolution 487 (V) of 12 December 1950, which invited “the Secretary-General, in preparing his future programme of work in this field, to consider and report to the General Assembly upon the recommendations contained in paragraphs 90, 91 and 93 of part II of the report of the International Law Commission, in light of the discussion held and the suggestions made thereon in the Sixth Committee”. As to the *United Nations Juridical Yearbook*, see also General Assembly resolution 1291 (XIII) of 5 December 1958, resolution 1451 (XIV) of 7 December 1959, resolution 1814 (XVII) of 18 December 1962 and resolution 3006 (XXVII) of 18 December 1972; as to the *United Nations Legislative Series*, in addition to the general mandate in resolution 486 (V) above, each volume thereof received a separate mandate over the years: see, most recently, General Assembly resolution 68/110 of 16 December 2013 and resolution 69/117 of 10 December 2014; as to the *Repertoire of the Practice of the Security Council*, see General Assembly resolution 686 (VII) of 5 December 1952 and resolution 55/222 of 23 December 2000; as to the *Repertoire of Practice of United Nations Organs*, see General Assembly resolution 796 (VIII) of 27 November 1953 and, most recently, resolution 72/118 of 7 December 2017; as to the *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice*, see General Assembly resolution 46/50 of 9 December 1991 and, more recently, resolution 70/236 of 23 December 2015; the latter resolution also renewed the mandate concerning the *Reports of International Arbitral Awards*. In relation to the *Cumulative Index of the Treaty Series* (which has indeed been periodically published and is available online from https://treaties.un.org/pages/CumulativeIndexes.aspx?clang=_en), see the mandates relating to the *Treaty Series* itself, *inter alia* in General Assembly resolution 23 (I) of 10 February 1946, resolution 24 (I) of 12 February 1946, resolution 97 (I) of 14 December 1946, resolution 364 (IV) of 1 December 1949, resolution 482 (V) of 12 December 1950, resolution 33/141 of 19 December 1978, resolution 51/158 of 16 December 1996, resolution 52/153 of 15 December 1997, resolution 70/118 of 14 December 2015, resolution 71/148 of 13 December 2016 and resolution 72/119 of 7 December 2017. Among the publications recommended by the International Law Commission in 1950 (see footnote 13 above), those which have not been published by the Secretariat are: “[a] consolidated index of the *League of Nations Treaty Series*” (see the nine separate indexes published by the League of Nations at https://treaties.un.org/pages/Content.aspx?path=DB/LoNOnline/pageIntro_en.xml); “[a] collection of the constitutions of all States, with supplementary volumes to be issued from time to time for keeping it up to date”; and “[a] list of the publications issued by the Governments of all States containing the texts of treaties concluded by them, supplemented by a list of the principal collections of treaty texts published under private auspices”.¹⁷ It is also beyond the scope of the topic “Identification of customary international law” under consideration by the Commission: see paragraph (6) of the commentary to draft conclusion 1, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

¹⁷ It is also beyond the scope of the topic “Identification of customary international law” under consideration by the Commission: see paragraph (6) of the commentary to draft conclusion 1, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

practice and its acceptance as law (*opinio juris*).¹⁸ The same is true for subsidiary means for the determination of customary international law, due to the dramatic increase of international courts and tribunals, as well as legal literature. A vast amount of these resources is readily available, in part thanks to the publications initiated at the Commission's suggestion and mentioned above. Furthermore, owing to advancements of legal information and information technology, evidence of the conduct of States and international organizations is nowadays much more readily accessible than in 1949. Indeed, as the Special Rapporteur remarked, "[t]he sheer quantity of available material is daunting".¹⁹ However, there remain a number of forms of evidence that are unpublished, as well as some crucial practical barriers in accessing the information that is published. Analysing such gaps and hindrances is among the objectives of this memorandum.

9. A fourfold methodology was employed in assembling the data analysed in this memorandum. First, the cooperation of States was sought to identify the resources that they deemed most relevant for ascertaining their own practice and acceptance as law (*opinio juris*). All Member States of the United Nations, non-member States having received a standing invitation to participate as observers in the sessions and the work of the General Assembly, as well as the Cook Islands and Niue, were requested to submit their replies to a questionnaire concerning available bibliographic resources of evidence of customary international law relating to their country. Twenty-six States replied to the questionnaire.²⁰

10. Second, information was requested from all entities in the United Nations system and all entities and organizations which, as of 2016, had received a standing invitation to participate as observers in the sessions and the work of the General Assembly.²¹ These entities and organizations were invited to reply to a questionnaire concerning the evidence of customary international law collected or published under their auspices. Thirty-five organizations responded.²²

11. Third, a number of learned societies, academic research centres and libraries

¹⁸ Draft conclusion 2, *ibid.*, para. 65. See also the fourth report on identification of customary international law by Special Rapporteur Sir Michael Wood (A/CN.4/695 and A/CN.4/695/Add.1), para. 45.

¹⁹ *Ibid.*

²⁰ Australia, Austria, Azerbaijan, Belarus, Benin, Bosnia and Herzegovina, Canada, the Czech Republic, Denmark, Djibouti, El Salvador, Eswatini, Finland, France, Georgia, Germany, Japan, Luxembourg, Malta, Paraguay, Singapore, Slovenia, Spain, Switzerland, Togo and the United Kingdom of Great Britain and Northern Ireland.

²¹ The list of entities and organizations which, as of 2016, had received a standing invitation to participate as observers in the sessions and the work of the General Assembly is available in document A/INF/70/5.

²² Bank for International Settlements, Collective Security Treaty Organization, Common Fund for Commodities, Council of Europe, European Union, International Atomic Energy Agency, International Criminal Court, International Tribunal for the Former Yugoslavia, International Finance Corporation, International Fund for Agricultural Development, International Hydrographic Organization, International Maritime Organization, International Monetary Fund, International Organization for Migration, International Trade Centre, Secretariat of the United Nations Convention to Combat Desertification, Secretariat of the United Nations Framework Convention on Climate Change, United Nations Department for Economic and Social Affairs, United Nations Department of Management, United Nations Environment Programme, United Nations Ethics Office, United Nations Global Compact, United Nations Industrial Development Organization, United Nations Office for Outer Space Affairs, United Nations Office of Coordination of Humanitarian Affairs, United Nations Office of Legal Affairs, United Nations Relief and Works Agency for Palestine Refugees in the Near East, United Nations System Chief Executives Board for Coordination, United Nations University, Universal Postal Union, World Bank, World Food Programme, World Intellectual Property Organization, World Meteorological Organization and World Trade Organization.

specializing in international and comparative law were contacted. Assistance was also sought from the Global Network for International Law, in which international,²³ regional²⁴ and national²⁵ learned societies participate. One society responded.²⁶ In addition, assistance was received from six universities and academic research centres in international law,²⁷ as well as by three specialized libraries.²⁸ These institutions provided relevant bibliographic information in various languages concerning several States and regions.

12. Fourth, a survey of the most readily available primary sources of evidence from States and international organizations was also conducted by the Secretariat. Such research was limited to a select number of sources that could easily be accessed in digital form, as well as printed materials whose existence and content could be confirmed with resources available online. Subsequently, the data collected was complemented and corroborated by reference to multinational repositories of legal

²³ Association for International Arbitration, Association internationale du droit de la mer, Club de droit international, Group of Friends of the International Criminal Court, The Hague Academy of International Law, International Arbitration Institute, International Law Association and Institut du droit international.

²⁴ African Association of International Law, African Foundation for International Law, African Institute of International Law, ASEAN [Association of Southeast Asian Nations] Law Association, Asian Society of International Law, Asociación Americana de Derecho Internacional Privado, European Society of International Law, Hispano-Luso-American Institute of International Law, International Law Association: Caribbean Branch, International Law Association: East African Branch, Institute for International and Comparative Law in Africa, Latin American Society of International Law, Société africaine pour le droit international and Society for International Law in the Middle East.

²⁵ Academia Brasileira de Direito Internacional, Academia Colombiana de Derecho Internacional, Academia Mexicana de Derecho Internacional, American Society of International Law, Armenian Association of International Law, Asociación Argentina de Derecho Internacional, Asociación Costarricense de Derecho Internacional, Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales, Asociación Española para el Derecho Internacional de los Derechos Humanos, Association algérienne de droit international, Association tunisienne de droit constitutionnel comparé et de droit international, Australian and New Zealand Society of International Law, Bangladesh Chapter of the Asian Society of International Law, British Institute of International and Comparative Law, Canadian Council on International Law, Chinese Society of International Law, Comité français de droit international privé, Comité français de l'arbitrage, Czech Society of International Law, Founding Members of an International Law Society in the State of Palestine, German Society of International Law, Hellenic Society of International Law and International Relations, Indian Society of International Law, Indonesian Society of International Law, International and Comparative Law Center – Armenia, International Law Association: national branches, International Law Association of Thailand, Irish Society of International Law, Japan Chapter of the Asian Society of International Law, Japanese Association of World Law, Japanese Society of International Law, Koninklijke Nederlandse Vereniging voor Internationaal Recht, Korean Society of International Law, Malaysian Chapter of the Asian Society of International Law, Nigerian Society of International Law, Research Society of International Law – Pakistan, Slovak Society of International Law, Sociedad Chilena de Derecho Internacional, Sociedad Cubana de Derecho Internacional, Sociedad Peruana de Derecho Internacional, Sociedade Portuguesa de Direito Internacional, Società Italiana di Diritto Internazionale e di Diritto dell'Unione Europea, Société belge de droit international, Société française pour le droit international, Société libanaise pour le droit international, Société québécoise de droit international, Société suisse de droit international and Society of International Law Singapore.

²⁶ International Law Association: Italian Branch.

²⁷ Centre de droit international de Nanterre de l'Université Paris Nanterre (France), Centre d'études et de recherche en droit international et communautaire de l'Université de Yaoundé II (Cameroon), Centro de Direito Internacional – Belo Horizonte (Brazil), Institut suisse de droit comparé (Switzerland), Center of International Law of the National University of Singapore and University of Richmond School of Law (United States of America).

²⁸ The Dag Hammarskjöld Library at United Nations Headquarters in New York, the United Nations Library and Archives at Geneva, and the Peace Palace Library in The Hague.

bibliographic information.²⁹

13. The bibliographic information collected does not purport to be exhaustive. The objective of gathering resources concerning all States ran into the same barriers to information access which will be discussed below in chapter I, section B. Furthermore, only resources relating to central government entities have been considered,³⁰ although the central government resources included may make reference, or provide access to, resources concerning entities below the central government.³¹

14. Scholarly works have also generally been excluded from the collected resources. As per draft conclusion 14, these may be relevant as subsidiary means for the determination of rules of customary international law³² and a bibliography of the legal literature on the topic is annexed to the fourth report of the Special Rapporteur.³³ Only three categories of academic works, insofar as they collect and publish evidence of customary international law rules, are included here: digests of the practice of States or international organizations specifically relevant to international law; academic works which include materials constituting evidence of practice or acceptance as law (*opinio juris*); and materials relating to private bodies engaged in the codification and development of international law.³⁴

C. Structure of the memorandum and its annexes

15. All the bibliographic information thus assembled is listed in annexes I to VI to the present memorandum. The annexes reflect the very wide range of forms which the evidence of customary international law may take.

16. Annex I is a list of resources relevant for individual States. For each State, a distinction is drawn between general resources (such as the official gazette, or the collection of laws) and any available resources relating specifically to international law (such as a national collection of treaties). Annex I also contains a list of resources relevant for several States, such as regional collections of laws or multinational collections of materials relating specifically to international law.

²⁹ These included: the World Legal Information Institute, available from www.worldlii.org, which arises from a collaboration of numerous research centres all over the world coordinated by the Australasian Legal Information Institute, a joint facility of the University of New South Wales and the University of Technology – Sydney; the GlobaLex database, available from www.nyulawglobal.org/globalex/, published by the Hauser Global Law School Program at New York University School of Law; the Guide to Law Online database, available from www.loc.gov/law/help/guide/nations.php, published by the United States Law Library of Congress; M. Hoffman (ed.), *Foreign Law Guide*, available by subscription from <http://referenceworks.brillonline.com/browse/foreign-law-guide/>; and R. F. Gaebler and A. A. Shea (eds.), *Sources of State Practice in International Law*, 2nd rev. ed., Brill/Nijhoff, 2014.

³⁰ This exclusion does not imply that such materials are irrelevant. Indeed, paragraph 1 of draft conclusion 7 on identification of customary international law refers to “all available practice of a particular State” (draft conclusion 7, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65). The Commission further remarked that “[p]ractice of organs of a central government will usually be more significant than that of constituent units of a federal State or political subdivisions of the State” (commentary to draft conclusion 7, para. (5), *ibid.*, para. 66).

³¹ For example, online judicial repositories of decisions of the higher courts of a State often link to the online repositories of lower courts, or an integrated repository may contain both.

³² Draft conclusion 14, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

³³ Fourth report on identification of customary international law by Special Rapporteur Sir Michael Wood (A/CN.4/695 and A/CN.4/695/Add.1), annex II.

³⁴ See chapter I, section A.11 below.

17. Annex II is a list of resources gathered by, or relevant for, the organizations that were contacted.³⁵ These may provide evidence of the practice and acceptance as law (*opinio juris*) of their member States and of the various organs of these organizations, insofar as such evidence may be relevant.

18. Annex III is a list of resources not contained in the previous two annexes which relate to specific fields of international law. These include collections of practice and acceptance as law (*opinio juris*) relevant to such fields, as well as specialized databases. Such resources are published by organizations, academic institutions or other entities.

19. Annexes IV to VI contain certain other materials that may be relevant to the identification of customary international law. Annex IV includes multinational collections of treaties and depositary information, the relevance of which is explained in draft conclusion 11.³⁶ Annex V includes resources relating to international courts and tribunals, and hybrid courts; it also includes decisions of treaty-monitoring bodies. Annex VI includes materials relating to bodies established by intergovernmental organizations for the examination, codification, progressive development or harmonization of international law, such as the International Law Commission, as well as materials produced by private bodies engaged in the codification and development of international law.

20. Altogether the resources collected include materials in 91 languages, which are listed in Annex VII. Several resources are available in more than one language, as will be discussed below in chapter I, section B.

21. Within each subcategory, resources are arranged by title. For each resource, an abbreviated set of bibliographic information is provided: the author(s); the title of the resource (in the original language and in any other language provided as part of the title or on the home page of the website); the year(s) of publication; the publisher; and the address for online sources. The publishers of websites and serial publications are generally omitted, but the publishers of books are provided when available. When a resource is available both in print and online, this is explicitly indicated. When an online resource is only available by subscription, this is also explicitly indicated. The addresses of all online resources were last accessed in early October 2017.

22. The present memorandum is structured as follows. Chapter I constitutes a survey of the present state of the evidence of customary international law. Chapter I, section A describes the range of available materials relevant for the identification of customary international law and indicates where the corresponding bibliographic resources may be found in the annexes. Chapter I, section B analyses the overall availability of the evidence described in the preceding section. More specifically, it identifies the main barriers to the availability of evidence of customary international law and to accessing such information at present. Subsequently, it provides guidance for navigating the large amount of existing information, with an emphasis on subsidiary means for the determination of customary international law. Finally, chapter II offers some suggestions for improving the availability of the evidence of customary international law.

³⁵ See paragraph 10 above.

³⁶ See draft conclusion 11 and commentary thereto, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

Chapter I. Survey of the present state of the evidence of customary international law

A. Description of the collected evidence

1. Range of materials relevant for the identification of customary international law

23. According to draft conclusion 2 on identification of customary international law, “[t]o determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (*opinio juris*)”.³⁷

24. As to the element of a general practice, draft conclusion 4 indicates that “[t]he requirement of a general practice, as a constituent element of customary international law, refers primarily to the practice of States that contributes to the formation, or expression, of rules of customary international law”; in addition, “[i]n certain cases, the practice of international organizations also contributes to the formation, or expression, of rules of customary international law”, while “[c]onduct of other actors is not practice that contributes to the formation, or expression, of rules of customary international law, but may be relevant when assessing the practice” just mentioned.³⁸ Draft conclusion 5 specifies that “State practice consists of conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions”.³⁹ The Commission indicated that “[p]ractice may take a wide range of forms” and that “[f]orms of State practice include, but are not limited to: diplomatic acts and correspondence; conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference; conduct in connection with treaties; executive conduct, including operational conduct ‘on the ground’; legislative and administrative acts; and decisions of national courts”.⁴⁰

25. As to the element of acceptance as law (*opinio juris*), according to draft conclusion 9, “[t]he requirement, as a constituent element of customary international law, that the general practice be accepted as law (*opinio juris*) means that the practice in question must be undertaken with a sense of legal right or obligation”.⁴¹ According to draft conclusion 10, the “evidence of acceptance as law (*opinio juris*) may take a wide range of forms”; these “[f]orms of evidence of acceptance as law (*opinio juris*) include, but are not limited to: public statements made on behalf of States; official publications; government legal opinions; diplomatic correspondence; decisions of national courts; treaty provisions; and conduct in connection with resolutions adopted by an international organization or at an intergovernmental conference”.⁴²

26. In addition, the Commission considered, in Part Five of the draft conclusions, that “[v]arious materials other than primary evidence of alleged instances of practice

³⁷ Draft conclusion 2, *ibid.*, para. 65. Per draft conclusion 3, “[i]n assessing evidence for the purpose of ascertaining whether there is a general practice and whether that practice is accepted as law (*opinio juris*), regard must be had to the overall context, the nature of the rule, and the particular circumstances in which the evidence in question is to be found”; and “[e]ach of the two constituent elements is to be separately ascertained. This requires an assessment of evidence for each element” (*ibid.*).

³⁸ Draft conclusion 4, *ibid.*

³⁹ Draft conclusion 5, *ibid.*

⁴⁰ Draft conclusion 6, *ibid.*

⁴¹ Draft conclusion 9, *ibid.* In addition, “[a] general practice that is accepted as law (*opinio juris*) is to be distinguished from mere usage or habit” (*ibid.*).

⁴² Draft conclusion 10, *ibid.* In addition, “[f]ailure to react over time to a practice may serve as evidence of acceptance as law (*opinio juris*), provided that States were in a position to react and the circumstances called for some reaction” (*ibid.*).

accepted as law (accompanied by *opinio juris*) may be consulted in the process of determining the existence and content of rules of customary international law”; these are treaties, resolutions adopted by international organizations and at intergovernmental conferences, decisions of courts and tribunals, and teachings of the most highly qualified publicists of the various nations.⁴³

27. The diverse forms of evidence non-exhaustively referred to in draft conclusions 6 and 10 and the materials mentioned in Part Five of the draft conclusions may be found in many types of bibliographic resources listed in annexes I to VI. These resources range from the more general, such as State archives, to the more specific, such as documents collected by private bodies engaged in the codification and development of international law. These will now be considered in turn.

2. Archives and official journals

28. States generally maintain archives of documents for official record and historical research purposes. Archives may contain evidence of most of the forms of practice and acceptance as law (*opinio juris*), including evidence of certain forms of practice that may be difficult to find otherwise, such as official accounts of operational conduct “on the ground”. In particular, archives may also contain documents that had initially been classified as confidential by States; these may shed light on earlier practice. The commentary to draft conclusion 5 clarifies that “[i]n order to contribute to the formation and identification of rules of customary international law, practice must be known to other States (whether or not it is publicly available)”, and that “it is difficult to see how confidential conduct by a State could serve such a purpose unless and until it is known to other States”.⁴⁴

29. Annex I contains information relating to the archives of 93 out of 197 States.⁴⁵ Additionally, Annex I makes reference to a number of archives specializing in international relations and diplomatic activity, which are often held in the Ministries for Foreign Affairs.⁴⁶ In most cases, materials contained in archives can only be accessed in person, but some archival information has been digitized or is otherwise available online in around 40 States.

30. Most, if not all, States have official gazettes where their legislative and administrative acts are published (and, at times, also decisions of the highest national courts). The titles thereof are included in annex I.

31. International organizations maintain archives and publish official records or journals. Archives and official records of international organizations may be relevant *inter alia* as evidence of the conduct of States in connection with resolutions adopted by an international organization, as evidence of public statements made on behalf of States, as evidence of diplomatic correspondence, and as evidence of conduct in connection with resolutions adopted by an international organization. They may also record the practice of the organization itself. Where available, information on archives and official records of international organizations may be found in annex II. For example, the official records of all meetings of the United Nations General Assembly,

⁴³ Paragraph (1) of the general commentary to Part Five, *ibid.*, para. 66. See draft conclusions 11 to 14, *ibid.*, para. 65.

⁴⁴ Paragraph (5) of the commentary to draft conclusion 5, *ibid.*, para. 66.

⁴⁵ These are the Member States of the United Nations, as well as the Cook Islands, the Holy See, Niue and the State of Palestine.

⁴⁶ For example, in China, 中华人民共和国外交部档案馆, available from <http://dag.fmprc.gov.cn/chn/spdb/>; in Italy, the Archivio Storico Diplomatico, Ministero degli Affari Esteri e della Cooperazione Internazionale, printed and online, available from <https://web.esteri.it/ArchivioStoricoDiplomatico/Default.aspx>; and in Mexico, the Archivo Histórico Genaro Estrada, Secretaría de Relaciones Exteriores, available from <https://acervo.sre.gob.mx/index.php/archivo-historico-genaro-estrada>.

Security Council, and Economic and Social Council are available from a variety of bibliographic resources, both printed and online,⁴⁷ and the United Nations and League of Nations archives are open to the public.⁴⁸

3. Legislative, executive, and judicial conduct of States

32. Draft conclusion 5 indicates that “State practice consists of conduct of the State, whether in the exercise of its executive, legislative, judicial or other functions”.⁴⁹ Some forms of conduct are especially relevant at the international level,⁵⁰ but, as clarified in the commentary, “any conduct of the State, whatever the branch concerned and functions at issue”, may constitute State practice.⁵¹

33. Any type of legislative act of States may constitute practice relevant for the identification of customary international law.⁵² This includes laws, acts, statutes, regulations, legislative decrees, edicts, proclamations or acts having any other denomination, taken in the exercise of the legislative function of the State.

34. In addition to the official gazette, various printed and digital collections of laws exist in at least 195 States. Furthermore, a number of private legal information databases, normally available by subscription, contain the legislation of more than 60 States from all five regional groups⁵³ and several free online legal information databases collect the legislative acts of most States.⁵⁴ All these collections are included in annex I, either under each State or under the final section containing resources relevant for several States, as the case may be. In addition, numerous collections of national legislation from different States concerning specific fields of international law, often maintained by international organizations, are contained in annex III.⁵⁵

⁴⁷ The official records of the three organs are all available in print and online from <http://research.un.org/en/docs/or> (the digital version is complete from 1994 onwards, but only a selection of the most important documents from 1946 to 1994 has been digitized). In addition, meeting records of the General Assembly are available from www.un.org/en/ga/documents/pvssr.asp; meeting records of the Security Council are available from www.un.org/en/sc/meetings/; and meeting records of the Economic and Social Council are available from <http://research.un.org/en/docs/ecosoc/meetings>. Furthermore, documentation and speeches at various United Nations organs since the sixty-seventh session of the General Assembly (2012) are available at the PaperSmart portal, see <https://papersmart.unmeetings.org>. All United Nations documents are also included in the Official Document System, see <https://documents.un.org>.

⁴⁸ See the United Nations Archives, available from <https://archives.un.org>, and the League of Nations Archives, United Nations Office at Geneva, available from <https://libraryresources.unog.ch/leagueofnationsarchives>.

⁴⁹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

⁵⁰ They will be considered below, in chapter I, sections A.4–A.8.

⁵¹ Paragraph (1) of the commentary to draft conclusion 5, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

⁵² Draft conclusion 6, *ibid.*, para. 65.

⁵³ See, for example: База Данных Законодательство Стран СНГ (Legislation of the CIS countries), available from <http://base.spininform.ru>; Centre national de documentation juridique (Côte d’Ivoire), available from www.cndj.ci; شبكة قوانين الشرق (Eastlaws), available from www.eastlaws.com; 北大法宝法律数据库 (China), available from www.pkulaw.cn; Microjuris Argentina, available from <http://ar.microjuris.com/home.jsp>; and Westlaw International, available from <http://westlawinternational.com>.

⁵⁴ See the network of free websites affiliated with the World Legal Information Institute (footnote 29 above).

⁵⁵ See, for example, the Customary International Humanitarian Law Database of the International Committee of the Red Cross, available from <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>; the *Law of the Sea Bulletin* published by the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs, available from www.un.org/Depts/los

35. Executive conduct of States may also constitute practice relevant for the identification of customary international law,⁵⁶ as well as, under certain circumstances, evidence of acceptance as law (*opinio juris*).⁵⁷

36. Certain elements of the executive conduct of States are more difficult to access than others. Executive orders, decrees and other measures adopted by Governments that form part of the legal order of a State are usually found in the collections of legislation mentioned above or in government websites;⁵⁸ they are thus widely available (in at least 187 States). Official government websites exist in most countries, and they are listed in annex I, but they contain varying degrees of information on the activities of the respective States. Sometimes, they provide accounts of the practice of the State in particular domains – for instance, a website of the Ministry of Justice might explain how extradition procedures work, and on which legal basis they are carried out.⁵⁹ Government websites might also contain official materials published in the name of a State, such as military manuals and official maps.⁶⁰ However, evidence of State practice “on the ground”, including law enforcement and seizure of property, as well as battlefield and military activity, may be harder to come by. Newspapers and other media might provide information thereupon: while newspapers and media resources are generally not included in the annexes, some official State newspapers and newspapers also act as official gazettes.⁶¹ Furthermore, organizations at times collect information concerning the executive conduct of States in the same collections of legal information arranged by field that were mentioned above.⁶² Overall, bibliographic resources containing the executive conduct of States were found in relation to 192 States.

37. The conduct of States in relation to domestic judicial proceedings may constitute evidence both of practice and of acceptance as law (*opinio juris*).⁶³ In this regard, the claims or pleadings of States before national courts and tribunals are a form of executive conduct,⁶⁴ and the orders, judgments or other decisions of national courts

[/doalos_publications/los_bult.htm](#); the ECOLEX Database, a joint initiative of the Food and Agriculture Organization of the United Nations, the International Union for the Conservation of Nature and Natural Resources, and the United Nations Environment Programme, available from www.ecolex.org; the FAOLEX Database of the Food and Agriculture Organization of the United Nations, available from <http://faolex.fao.org/faolex/index.htm>; the NATLEX Database of national labour, social security and related human rights legislation of the International Labour Organization, available from www.ilo.org/dyn/natlex/; the *United Nations Legislative Series*, with volumes covering several discrete fields, available in printed form and from <http://legal.un.org/legislativeseries/>; and the WIPO Lex database of the World Intellectual Property Organization, available from www.wipo.int/wipolex/.

⁵⁶ See paragraph (5) of the commentary to draft conclusion 6, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

⁵⁷ See paragraph (3) of the commentary to draft conclusion 10, *ibid.*

⁵⁸ See footnotes 53 and 54 above.

⁵⁹ See, for example, Rikoksen johdosta tapahtuva luovuttaminen: Yleistä, available from <http://oikeusministerio.fi/rikoksen-johdosta-tapahtuva-luovuttaminen>, in Finland.

⁶⁰ See, for example, OneMap, Singapore Land Authority, available from www.onemap.sg, in Singapore; and the Manual of the Law of Armed Conflict, available from www.gov.uk/government/collections/jsp-383, as part of the government portal of the United Kingdom of Great Britain and Northern Ireland.

⁶¹ See, for example, in Kazakhstan, Казахстанская правда, available from www.kazpravda.kz; and in Peru, *Diario Oficial: El Peruano*, available from www.elperuano.pe.

⁶² These are included in annex III, see footnote 55 above; for instance, the United Nations High Commissioner for Refugees collects a wealth of data concerning the executive practice of States in the field of refugee law, which is available from the RefWorld database, available from www.refworld.org.

⁶³ Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

⁶⁴ Paragraph (5) of the commentary to draft conclusion 6, *ibid.*, para. 66.

constitute the judicial conduct of States. They may all be relevant for the identification of customary international law. In addition, according to draft conclusion 13, “[r]egard may be had, as appropriate, to decisions of national courts concerning the existence and content of rules of customary international law, as a subsidiary means for the determination of such rules”.⁶⁵

38. Orders, judgments and other decisions of national courts were found in bibliographic resources relating to 184 States. Resources containing specifically the claims or pleadings of States before national courts were found in relation to around 95 States. The free and subscription-based legal information databases mentioned above are the most widely available resources to access such judicial practice.⁶⁶ Court reports in printed form also exist in several countries and are listed in annex I.

39. In addition, collections of national court decisions specifically relevant to international law are extremely useful. In annex I, information may be found concerning printed and online collections which include such decisions of national courts of various countries. For example, the *International Law Reports*, the *International Legal Materials* and the *Oxford Reports on International Law in Domestic Courts* contain English translations and summaries of decisions relevant to international law rendered all over the world.⁶⁷ The Oxford database, for instance, contains key information (often including the full text) on more than 1,800 decisions from over 100 countries. However, these three resources are only available to their respective subscribers. On the other hand, international organizations often collect and make available for free a selection of national court decisions relevant to fields of international law within their remit; the respective databases are listed in annex III.⁶⁸ For example, the Compendium of Court Decisions maintained by the International Labour Organization contains national court decisions on child labour, collective bargaining, dismissal, domestic workers, employment relationships, equal remuneration, forced labour, freedom of association and many other issues related to international labour law rules and standards from around 65 countries in all regions of the world.⁶⁹ Another example is the Refworld database of the United Nations High Commissioner for Refugees, which includes the full text in the original language and an English headnote for hundreds of national court decisions on migration and refugee law (as well as related fields) from over 70 countries (and a number of regional and international courts).⁷⁰

⁶⁵ Draft conclusion 13, para. 2, *ibid.*, para. 65. See also the memorandum by the Secretariat on the role of decisions of national courts in the case law of international courts and tribunals of a universal character for the purpose of the determination of customary international law (A/CN.4/691).

⁶⁶ See footnotes 53 and 54 above. They are included in annex I.

⁶⁷ See the *International Law Reports*, Cambridge University Press, available from <http://ebooks.cambridge.org/clr/home.jsf> (known until 1949 as the *Annual Digest of Public International Law* or *The Annual Digest and Report of Public International Law Cases*); *International Legal Materials*, American Society of International Law, available from www.asil.org/resources/international-legal-materials; and the *Oxford Reports on International Law*, Oxford University Press, available from <http://opil.ouplaw.com/home/oril>.

⁶⁸ Some of the resources mentioned in footnote 55 above also contain decisions of national courts. See also, for instance, the INCADAT (International Child Abduction Database) maintained by The Hague Conference on Private International Law, available from www.incadat.com.

⁶⁹ Compendium of Court Decisions, International Labour Organization, available from <http://compendium.ilo.org>.

⁷⁰ See footnote 62 above.

4. State conduct at the international level

40. Certain elements of the executive conduct of States directly concern international law. To begin with, diplomatic acts and diplomatic correspondence, including correspondence addressed to or from international organizations, may be evidence both of practice and of acceptance as law (*opinio juris*).⁷¹ Information thereupon was found to be available in relation to around 130 States. In particular, a number of websites of Ministries for Foreign Affairs contain such correspondence, as do certain printed and online documentary collections of the practice of individual States.⁷² Multinational collections of diplomatic correspondence, especially historical ones, are included in the section of annex I containing resources relating to several States.⁷³ A number of the websites of international organizations contain diplomatic acts and correspondence, as well as correspondence addressed by and to them.⁷⁴ Furthermore, certain databases maintained by organizations also contain such acts and correspondence.⁷⁵

41. Public statements made on behalf of States may constitute evidence of State practice and acceptance as law (*opinio juris*).⁷⁶ Such statements were found to be available in relation to around 185 States. In addition to statements made in the context of the activities of international organizations (which will be considered in the next section), other official statements can generally be found on governmental websites,⁷⁷ as well as in the collections and databases referring to specific fields of international law.⁷⁸

42. The published opinions of government legal advisers and the claims and pleadings of States before subregional, regional or international courts and tribunals may constitute evidence of both the practice of States and their acceptance as law (*opinio juris*).⁷⁹ These were found to be available in relation to around 73 States. As to the opinions of government legal advisers, which are generally confidential, only a few specialized publications exist,⁸⁰ and some may be found on governmental

⁷¹ Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

⁷² These are listed in annex I. See, for example, *Außenpolitische Dokumentation, Texte und Dokumente*, Bundesministerium für Auswärtige Angelegenheiten, 1990–2000, in Austria; Documents on Canadian External Relations, 1874–1963, printed and online, available from www.international.gc.ca/history-histoire/documents-documents.aspx, in Canada; and the Secretariat of State, available from www.vatican.va/roman_curia/secretariat_state/index_it.htm, in relation to the Holy See.

⁷³ See, for example, A. N. Makarov, Aleksandr N. *et al.*, *Fontes Juris Gentium, Digest of the Diplomatic Correspondence of the European States: 1856–1878*, Series B, sect. I, vols. 1 and 2, Berlin, Carl Heymann, 1932.

⁷⁴ These are listed in annex II. See, for example, the Official Document System of the United Nations, footnote 47 above; and the IMODOCS database of the International Maritime Organization, available from <https://docs.imo.org>.

⁷⁵ These are listed in annex III. See, for example, the documents collected by the United Nations High Commissioner for Refugees at the RefWorld database, footnote 62 above.

⁷⁶ Draft conclusion 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65. See also paragraph (2) of the commentary to draft conclusion 6, *ibid.*, para. 66, and paragraph (3) of the commentary to draft conclusion 3, *ibid.*, referring to *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 99, at pp. 122–123, para. 55.

⁷⁷ These may be found in annex I.

⁷⁸ See annex III and footnote 55 above.

⁷⁹ Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65; see also paragraph (5) of the commentary to draft conclusion 6, *ibid.*, para. 66, and paragraphs (4) and (5) of the commentary to draft conclusion 10, *ibid.*

⁸⁰ See, for example, *Selected Opinions of Attorneys-General of the Commonwealth of Australia with Opinions of Solicitors-General and the Attorney-General's Department, 1901–1950*,

websites. They are included in annex I. As to pleadings of States, these are commonly found in the printed and online resources published by the relevant international court or tribunal, and may be found in annex V.⁸¹

5. Conduct in relation to international organizations

43. The conduct of States “in connection with resolutions adopted by an international organization” may constitute both a form of practice and a form of evidence of acceptance as law (*opinio juris*).⁸² First, “acts by States related to the negotiation, adoption and implementation of resolutions, decisions and other acts adopted within international organizations ... whatever their designation and whether or not they are legally binding”, may be evidence of practice.⁸³ As to acceptance as law (*opinio juris*), the “[m]ultilateral drafting and diplomatic processes may afford valuable and accessible evidence as to the legal convictions of States with respect to the content of customary international law”.⁸⁴

44. Such conduct of States is distinct from the resolutions themselves, which are discussed below.⁸⁵ Evidence of conduct in connection with resolutions adopted by an international organization is rather to be found in the summary or verbatim records of meetings of international organizations, which are usually accessible in the printed official records and on the websites of the respective organizations; they are listed in annex II.⁸⁶ Sometimes, audiovisual materials of public meetings are also available, giving an even more direct account of State conduct in this regard.⁸⁷ For instance, the PaperSmart portal of the United Nations includes most statements delivered by delegations since 2012, as well as links to the ancillary documents and audiovisual materials.⁸⁸ In addition, official statements of States may often be found on the websites of their permanent missions to the respective international organizations.⁸⁹

available from <http://legalopinions.ags.gov.au>; and J. L. Cadwalader, *Digest of the Published Opinions of the Attorneys-General, and of the Leading Decisions of the Federal Courts, with Reference to International Law, Treaties, and Kindred Subjects*, Washington D.C., United States Government Printing Office, 1877, printed and online, available from <http://nrs.harvard.edu/urn-3:HUL.FIG:002410737>.

⁸¹ See, for example, *I.C.J. Pleadings*, printed and online, available from www.icj-cij.org/en/list-of-all-cases; and *ITLOS Pleadings, Minutes and Documents*, printed and online, available from www.itlos.org/en/publications/.

⁸² Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

⁸³ Paragraph (5) of the commentary to draft conclusion 6, *ibid.*, para. 66.

⁸⁴ Paragraph (6) of the commentary to draft conclusion 10, *ibid.*

⁸⁵ See chapter I, section A.8 below.

⁸⁶ See footnote 47 above for the official records of United Nations organs. See also, for example, IRIS: Institutional Repository for Information Sharing, of the World Health Organization, available from <http://apps.who.int/iris/>; the UNESDOC Database of the United Nations Educational, Scientific and Cultural Organization, available from www.unesco.org/new/en/unesco/resources/publications/unesdoc-database/; and the Caribbean Community Secretariat website, CARICOM: Caribbean Community, available from www.caricom.org.

⁸⁷ See, for example, European Council streaming, available from <https://video.consilium.europa.eu/en/webcasts>; and UN Web TV, available from <http://webtv.un.org>.

⁸⁸ See footnote 47 above.

⁸⁹ Some of these are included in annex I, which contains the websites of the permanent missions in New York, where available: see, for example, 中华人民共和国常驻联合国代表团 (Permanent Mission of the People's Republic of China to the United Nations), available from www.china-un.org; Постоянное представительство Российской Федерации при ООН (Permanent Mission of the Russian Federation to the United Nations), available from <http://russiaun.ru>; and Misión Permanente de la República Bolivariana de Venezuela ante Naciones Unidas (Permanent Mission of the Bolivarian Republic of Venezuela), available from <http://onu.embajada.gob.ve/>. Websites of missions to other international organizations are only mentioned in annex I when they were provided by the respective State in response to the Secretariat's questionnaire: see, for example, 国際民間航空機関日本政府代表部 (Delegation of

45. As mentioned above, although “[t]he requirement of a general practice, as a constituent element of customary international law, refers primarily to the practice of States that contributes to the formation, or expression, of rules of customary international law”, “[i]n certain cases, the practice of international organizations also contributes to the formation, or expression” thereof.⁹⁰ The practice of international organizations as such, which is separate from the practice of its member States, can be accessed through the general websites and collections of documents listed in annex II. Periodical reports on the activities of such organizations may also be found in such websites and collections. More generally, the practice of international organizations may also be accessed from the archives and official reports mentioned above.⁹¹

46. The legal opinions of counsel of international organizations may be relevant to international law, depending on their subject matter. Because of the confidential nature of most legal advice, such opinions are rarely available.⁹² Some such redacted opinions are published in the *United Nations Juridical Yearbook* (among other materials).⁹³ In addition, after a certain number of years, the archives of organizations may also provide access to them.⁹⁴

6. Digests of practice relevant to international law

47. In view of the multifarious nature of the range of materials which may be relevant for the identification of customary international law, collections thereof relating to specific countries or regions, often in relation to a specific period of time, are particularly useful. Such digests or yearbooks may, for example, include all legislative acts relevant to international law adopted in a given period by a particular State or group of States, they may include a selection of diplomatic correspondence addressed to a particular State or originating therefrom over a certain period of time, or they may collect domestic judicial decisions relevant to international law rendered in a given year. The desirability of such compilation flows from the enormous variety and quantity of legislative, executive and judicial conduct which may, in the abstract, be relevant: having access to a selection of those elements that are especially relevant to international law significantly aids in the identification of potential evidence of a specific rule of customary international law. Indeed, when it last considered this issue in 1950, the International Law Commission recommended that the General Assembly should “call to the attention of Governments the desirability of their publishing digests of their diplomatic correspondence and other materials relating to international law”.⁹⁵

48. This objective has not yet been fully realized. Periodical digests of State practice relevant to international law focusing on the practice of specific States or groups of

Japan to the International Civil Aviation Organization), available from www.icao.int/icao/japan.go.jp/itprtop_ja/index.html.

⁹⁰ Draft conclusion 4, paras. 1–2, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

⁹¹ See chapter I, section A.2 above.

⁹² For example, the European Commission Legal Service cautions that as it “is an internal service of the Commission, its documents are generally internal documents”, and that “Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents” contains a specific exception as to the availability of its documents: “The institutions shall refuse access to a document where disclosure would undermine the protection of: ... court proceedings and legal advice ... unless there is an overriding public interest in disclosure” (http://ec.europa.eu/dgs/legal_service/documents_en.htm).

⁹³ *United Nations Juridical Yearbook*, Codification Division, United Nations Office of Legal Affairs, available from <http://legal.un.org/unjuridicalyearbook/>.

⁹⁴ See chapter I, section A.2 above.

⁹⁵ *Yearbook of the International Law Commission 1950*, vol. II, p. 374, para. 94. See also General Assembly resolution 487 (V) of 12 December 1950.

States exist in relation to around 30 States only,⁹⁶ in addition to more general digests covering African and Asian countries.⁹⁷ Where available, these are included in annex I, under the subsections devoted to resources relating specifically to international law. In addition, the collections of evidence relating to specific fields of international law in annex III may also appear in the form of digests of practice covering specific fields.⁹⁸ For example, the *Law of the Sea Bulletin*, which has been published by the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs since 1983, contains national legislation, declarations made by States, bilateral treaties and other types of materials specifically relevant to the law of the sea.⁹⁹

49. The *United Nations Juridical Yearbook*¹⁰⁰ and the *Max Planck Yearbook of United Nations Law*¹⁰¹ are digests devoted to the practice of the United Nations and its specialized agencies specifically relevant to international law. In addition, two publications are devoted specifically to the practice of the United Nations as it relates to the application of the Charter of the United Nations. The *Repertory of Practice of United Nations Organs*¹⁰² contains analytical studies of the decisions of the principal organs of the United Nations under each of the Articles of the Charter of the United Nations, whereas the *Repertoire of the Practice of the Security Council*¹⁰³ provides comprehensive coverage of the Security Council's interpretation of the Charter of the United Nations and of its Provisional Rules of Procedure.

⁹⁶ Australia, Austria, Belgium, Canada, China, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Iceland, India, Ireland, Italy, Japan, Latvia, Lithuania, Mexico, the Netherlands, New Zealand, Norway, the Philippines, Poland, the Republic of Moldova, Singapore, South Africa, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and the State of Palestine. See, for example, the *Nordic Journal of International Law: Acta Scandinavica juris gentium*, available from www.brill.com/nordic-journal-international-law; *Japanese Yearbook on International Law*, available from www.ilajapan.org/jyil/; the *Polish Yearbook of International Law*, available from www.inp.pan.pl/pyil/; L. Caflisch, *Compilation des chroniques de la pratique suisse en matière de droit international public: 1999–2015*, Bern, Swiss Federal Department of Foreign Affairs, 2017, available from www.dfae.admin.ch/content/dam/eda/fr/documents/das-eda/organisation-eda/compilation-RSDIE_FR.pdf; and S. D. Murphy, *United States Practice in International Law*, vol. 1 (1999–2001) and vol. 2 (2002–2004), Cambridge University Press, 2003 and 2006.

⁹⁷ See the *African Yearbook of International Law Online*, available from www.brill.com/african-yearbook-international-law-online-annuaire-africain-de-droit-international-online; and the *Asian Yearbook of International Law*, available from www.dilafoundation.org/about-the-asian-yearbook-of-international-law.html.

⁹⁸ See chapter I, section A.3 above. See also, for example, G. Hafner, M. G. Kohen and S. Breau (eds.), *State Practice regarding State Immunities*, Council of Europe and Martinus Nijhoff, 2006; P. Tavernier (ed.), *Recueil juridique des droits de l'Homme en Afrique*, vol. 1 (1996–2000) and vol. 2 (2000–2004), Brussels, Bruylant, 2002 and 2006; and Book 25: Materials on the Responsibility of States for Internationally Wrongful Acts, United Nations Legislative Series, available from <http://legal.un.org/legislativeseries/book25.html>.

⁹⁹ *Law of the Sea Bulletin*, Division for Ocean Affairs and the Law of the Sea, United Nations Office of Legal Affairs, available from www.un.org/Depts/los/doalos_publications/los_bult.htm. In relation to maritime boundaries, see also C. G. Lathrop (ed.), *International Maritime Boundaries*, American Society of International Law and Brill, 2016, available from <http://referenceworks.brillonline.com/browse/international-maritime-boundaries>.

¹⁰⁰ See footnote 93 above.

¹⁰¹ F. Lachenmann, T. J. Röder and R. Wolfrum, *Max Planck Yearbook of United Nations Law*, The Hague, Brill / Nijhoff, available from www.brill.com/publications/max-planck-yearbook-united-nations-law.

¹⁰² See footnote 16 above.

¹⁰³ See footnote 16 above.

7. Treaties, other international agreements and acts related to negotiations

50. Treaties and other international agreements, as well as acts related to their negotiation, may be relevant for the identification of customary international law in at least three respects. First, “conduct in connection with treaties” is one of the forms of practice referred to in draft conclusion 6.¹⁰⁴ Second, the “treaty-making process [and] draft treaty provisions ... may ... give rise to State practice and evidence of acceptance as law (*opinio juris*) as indicated in draft conclusions 6 and 10”.¹⁰⁵ Third, according to draft conclusion 11, “[a] rule set forth in a treaty may reflect a rule of customary international law” under certain circumstances.¹⁰⁶

51. The text of most treaties is available, often in more than one language. By virtue of Article 102, paragraph 1, of the Charter of the United Nations, “[e]very treaty and every international agreement entered into by any Member of the United Nations after [the entry into force of the Charter of the United Nations] shall as soon as possible be registered with the Secretariat and published by it”. Since 1946, most treaties so registered have been published in the *United Nations Treaty Series* in their original language(s), English and French, with the exception of certain categories of bilateral treaties and other agreements of limited scope (for example those relating to the organization of conferences, or officially published elsewhere).¹⁰⁷ The *Treaty Series* is available both online and in printed form.¹⁰⁸ However, the comprehensiveness of the *Treaty Series* relies on the promptness of States in their compliance with Article 102 of the Charter of the United Nations, and the number of existing treaties that have not been registered remains unclear.

52. Many treaties from before 1946 are equally easily accessible. The *League of Nations Treaty Series*, covering the period from 1920 to 1946, is available in both printed and online form.¹⁰⁹ In addition, a number of publications listed at the beginning of annex IV provide access to multilateral treaties and international agreements going as far back as the fifteenth century.¹¹⁰

53. In addition to these general publications, thematic collections of agreements exist, often maintained by organizations in relations to fields of international law within their remit; these are also listed in annex IV.¹¹¹ For example, a comprehensive

¹⁰⁴ Draft conclusion 6, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

¹⁰⁵ Paragraph (1) of the commentary to draft conclusion 11, *ibid.*, para. 66.

¹⁰⁶ Draft conclusion 11, para. 1, *ibid.*, para. 65.

¹⁰⁷ Article 12, Regulations to give effect to Article 102 of the Charter of the United Nations, adopted by General Assembly resolution 97 (I) of 14 December 1946, as most recently amended (see General Assembly resolutions 364 B (IV) of 1 December 1949, 482 (V) of 12 December 1950, 33/141 A of 19 December 1978, and 52/153 of 15 December 1997, and https://treaties.un.org/pages/Resource.aspx?path=Publication/Regulation/Page1_en.xml).

¹⁰⁸ *United Nations Treaty Series*, available from https://treaties.un.org/pages/Content.aspx?path=DB/UNTS/pageIntro_en.xml.

¹⁰⁹ *League of Nations Treaty Series*, 1920–1946, available from <https://treaties.un.org/pages/LONOnline.aspx>.

¹¹⁰ See, for example, C. Parry (ed.), *Consolidated Treaty Series with Index 1648–1919*, Oxford University Press, 1969, available from <http://opil.ouplaw.com/home/OHT> (online version edited by Randall Lesaffer); and G. F. de Martens et al., *Nouveau Recueil général de traités et autres actes relatifs aux rapports de droit international* [1494–1944], Goettingue, Librairie Dieterich, 1890.

¹¹¹ See, for example, the Treaties, Conventions, Protocols and Charters of the African Union, available from <https://au.int/en/treaties>; the treaty collection of the Collective Security Treaty Organization, Правовая база ОДКБ, Организация Договора о коллективной безопасности, available from www.odkb-csto.org/documents/; the *Council of Europe Treaty Series* and the *European Treaty Series*, both available from www.coe.int/en/web/conventions; and the Database of Bilateral Investment Treaties of the International Centre for Settlement of Investment Disputes, available from <https://icsid.worldbank.org/en/Pages/Resources/Bilateral-Investment-Treaties-Database.aspx>.

online collection of peace agreements was recently published under the auspices of the United Nations and the University of Cambridge, allowing the search on key issues across more than 75,000 provisions from around 1,000 peace agreements.¹¹² Furthermore, 137 States publish information on the treaties to which they are parties. In this regard, the databases and government websites listed in annex I often provide access to the text of multilateral treaties in the respective official language(s), thus considerably enhancing the availability of major multilateral treaties.¹¹³

54. The Secretary-General of the United Nations, several international organizations and a number of States are designated as depositaries of numerous multilateral treaties. Their conduct as depositaries is relevant from at least two perspectives. First, such conduct may constitute evidence of practice or acceptance as law (*opinio juris*) in and of itself, for instance with relation to the customary international law of treaties.¹¹⁴ Second, the information collected by depositaries, including signature and ratification by States, constitutes evidence of “conduct in connection with treaties”, that is one of the “forms of State practice” relevant under draft conclusion 6.¹¹⁵ Annex IV contains a list of the printed and online bibliographic resources made available by depositaries.¹¹⁶ Publications explaining the practice of individual States or organizations as depositaries are included respectively in annexes I (for States) and III (under the “Law of treaties” section).¹¹⁷ In this regard, the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, which is prepared by the Treaty Section of the United Nations Office of Legal Affairs, is especially relevant. It contains a detailed summary of practice relating to many aspects of the law of treaties, including, among others, the capacity to participate in treaties; the application of rules concerning full powers and signatures; reservations, objections, and declarations; and the entry into force of

¹¹² Language of Peace, United Nations and University of Cambridge, printed and online, available from www.languageofpeace.org. See also Peacemaker: Database of Peace Agreements, Department of Political Affairs, available from <http://peacemaker.un.org/document-search#>.

¹¹³ See, for example, معاهدات بين المللى (Afghanistan), available from <http://moj.gov.af/fa/Page/1693>; International treaties, Secretary of State for Foreign Affairs (San Marino), available from www.esteri.sm/on-line/home/affari-esteri/trattati-internazionali.html; South African Treaty Register, Office of the Chief State Law Adviser, Department of International Relations and Cooperation (South Africa), available from www.dirco.gov.za/chiefstatelawadvice/treatysection.html; and the Base Pública de Información sobre Acuerdos Internacionales suscritos por Uruguay, Ministerio de Relaciones Exteriores (Uruguay), available from www.tratados.mrree.gub.uy.

¹¹⁴ Paragraph (6) of the commentary to draft conclusion 4, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66 (“[T]he practice of ... treaty depositaries ... may contribute to the formation, or expression, of rules of customary international law”).

¹¹⁵ Draft conclusion 6, *ibid.*, para. 65.

¹¹⁶ See, for example, Multilateral Treaties Deposited with the Secretary-General, United Nations, available from https://treaties.un.org/pages/Content.aspx?path=DB/MTDSGStatus/pageIntro_en.xml; Conventions for which Romania fulfills the role of depositary, available from www.mae.ro/node/1492; Dépositaire, Confédération suisse (Switzerland), available from www.eda.admin.ch/eda/de/home/aussenpolitik/voelkerrecht/internationale-vertraege/depositar.html; Conventions, Agreements and Treaties deposited with the Food and Agriculture Organization of the United Nations, available from www.fao.org/legal/treaties/treaties-outside-fao-framework/en/; and the Status of [World Trade Organization] Legal Instruments, 2015, printed and online, available from www.wto.org/english/res_e/publications_e/legal_instru_e.htm.

¹¹⁷ See, for example, *Guide de la pratique en matière de traités internationaux*, Département fédéral des affaires étrangères, Confédération suisse (Switzerland), 2015, printed and online, available from www.dfae.admin.ch/eda/de/home/dienstleistungenundpublikationen/publikationen.html/publikationen/de/eda/voelkerrecht/Praxisleitfaden-Voelkerrechtliche-Vertraege.

treaties. The publication was last issued in 1999.¹¹⁸ In addition, the *Treaty Handbook*, also prepared by the Treaty Section, is a guide both to the Secretary-General's practice as a depositary of multilateral treaties and to the Secretariat's practice in relation to the registration and publication of treaties under Article 102 of the Charter of the United Nations; it was last updated in 2012.¹¹⁹

55. Any act relating to the negotiations of treaties (including the *travaux préparatoires*) may also constitute a form of practice or evidence of acceptance as law (*opinio juris*).¹²⁰ Such materials may be found in the proceedings of diplomatic conferences. Some proceedings may be found in annex II (under certain international organizations) and in annex III (by reference to specific fields).¹²¹ For example, the proceedings of the United Nations Conference on International Organization ("San Francisco Conference") of 1945 are available both in printed form and online as *Documents of the United Nations Conference on International Organization*.¹²² In addition, the *Diplomatic Conferences* series contains materials relating to 12 diplomatic conferences held under the auspices of the United Nations between 1958 and 1998.¹²³ Furthermore, the Historic Archives of the United Nations Audiovisual Library of International Law contain detailed information on the procedural history of more than one hundred international legal instruments, including international treaties, alongside related documents and audiovisual materials, where available.¹²⁴ Some acts related to the negotiation of treaties may also be found in the national collections of activities of Ministries for Foreign Affairs and in digests of State practice relevant to international law mentioned above.¹²⁵ More generally, the United Nations Bibliographic Information System allows for the detailed search of publications relating to the proceedings of a vast number of international conferences, including diplomatic conferences.¹²⁶

8. Resolutions of international organizations and intergovernmental conferences

56. Resolutions adopted by international organizations or at intergovernmental conferences may be relevant for the identification of customary international law in

¹¹⁸ *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, Treaty Section, United Nations Office of Legal Affairs, 1999, printed and online, available from https://treaties.un.org/pages/Resource.aspx?path=Publication/SOP/Page1_en.xml.

¹¹⁹ *Treaty Handbook*, Treaty Section, United Nations Office of Legal Affairs, 2012, available from https://treaties.un.org/Pages/Resource.aspx?path=Publication/TH/Page1_en.xml. See also the *Final Clauses of Multilateral Treaties Handbook*, Treaty Section, United Nations Office of Legal Affairs (United Nations publications, Sales No. E.04.V.3), available from https://treaties.un.org/Pages/Resource.aspx?path=Publication/FC/Page1_en.xml.

¹²⁰ Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65. See also paragraph (5) of the commentary to draft conclusion 6 and paragraph (6) of the commentary to draft conclusion 10, *ibid.*, para. 66.

¹²¹ See, for example, *Proceedings of the ... Session* (Actes et documents de la ... session), Hague Conference on Private International Law, periodically published since 1893; and *United Nations Conference on Consular Relations, Diplomatic Conferences*, Codification Division, United Nations Office of Legal Affairs, 1963, available from http://legal.un.org/diplomaticconferences/1963_cons_relations/.

¹²² *Documents of the United Nations Conference on International Organization*, held from 26 April to 26 June 1945, in San Francisco, United States (22 vols.), see <http://ask.un.org/faq/14405>.

¹²³ *Diplomatic Conferences*, Codification Division, United Nations Office of Legal Affairs, available from <http://legal.un.org/diplomaticconferences/>.

¹²⁴ Historic Archives, Audiovisual Library of International Law, Codification Division, United Nations Office of Legal Affairs, available from <http://legal.un.org/avl/historicarchives.html>.

¹²⁵ See footnotes 46 and 96 above. See also, for example, A. A. Cançado Trindade, *Repertório da Prática Brasileira do Direito Internacional Público* (6 vols. covering the period 1898–1981), Fundação Alexandre de Gusmão, available from <http://funag.gov.br/loja/index.php?route=product/search&search=Pr%C3%A1tica%20Brasileira>.

¹²⁶ See the United Nations Bibliographic Information System, available from <http://unbisnet.un.org>.

at least two respects. First, as discussed in chapter I, section A.5 above, conduct in connection with such resolutions may be a form of State practice referred to in draft conclusion 6, as well as a form of evidence of acceptance as law (*opinio juris*) referred to in draft conclusion 10.¹²⁷ Second, according to draft conclusion 12, while resolutions adopted by international organizations or at intergovernmental conferences cannot, of themselves, create a rule of customary international law, they “may provide evidence for determining the existence and content of a rule of customary international law, or contribute to its development”; furthermore, a provision in such a resolution “may reflect a rule of customary international law if it is established that the provision corresponds to a general practice that is accepted as law (*opinio juris*)”.¹²⁸ As the commentary to draft conclusion 12 explains, the term “resolutions” refers to “resolutions, decisions and other acts adopted by international organizations or at intergovernmental conferences, whatever their designation and whether or not they are legally binding”.¹²⁹

57. Resolutions of international organizations are widely available for most organizations considered, and they are generally found in the resources collected in annex II.¹³⁰ For example, all resolutions and decisions adopted by United Nations organs (and several other United Nations entities) are available in the respective official records, in the United Nations Bibliographic Information System (which includes draft resolutions), and in the Official Documents System, as well as in their respective websites and in the United Nations Digital Library.¹³¹ Most of these resources are online, but printed records may be accessed at many of the 355 United Nations depository libraries that are present in over 136 countries.¹³² Another example is the collection of resolutions, recommendations and declarations maintained by the United Nations High Commissioner for Refugees, which provides access to over 11,500 documents, including a vast number of resolutions of other international organizations relevant to the mandate of the High Commissioner.¹³³

58. Resolutions adopted by intergovernmental conferences are generally available in the proceedings of conferences mentioned above.¹³⁴

9. International courts and tribunals, hybrid courts and treaty-monitoring bodies

59. Bibliographic resources relating to international courts and tribunals may be relevant to the identification of customary international law in at least two respects. First, as mentioned above, the claims and pleadings of States before international, regional or subregional courts and tribunals may constitute evidence of both the

¹²⁷ Draft conclusions 6 and 10, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

¹²⁸ Draft conclusion 12, paras. 1–2, *ibid.*

¹²⁹ Paragraph (2) of the commentary to draft conclusion 12, *ibid.*, para. 66.

¹³⁰ See, for example, footnote 74 above; the Database of [Association of Southeast Asian Nations] and International Law Documents, Centre for International Law, National University of Singapore, available from <https://cil.nus.edu.sg/2009/cil-documents-database/>; and Selected Decisions and Selected Documents of the International Monetary Fund, available from www.imf.org/external/pubs/ft/sd/index.asp.

¹³¹ See footnote 47 above. See also the United Nations Bibliographic Information System, available from <http://unbisnet.un.org> (a search by “Type of Material”: “(B01): resolutions/decisions (UN)” and “(B02): resolutions/decisions (UN) — draft” returns around 50,000 and 48,000 records respectively); and the United Nations Digital Library, available from <https://digitallibrary.un.org/search?ln=en&cc=Resolutions+and+Decisions>. (around 53,500 records).

¹³² See the United Nations Depository Library Programme, available from <https://library.un.org/content/united-nations-depository-library-programme>.

¹³³ See Refworld: Resolutions/Recommendations/Declarations, United Nations High Commissioner for Refugees, available from www.refworld.org/type/RESOLUTION.html.

¹³⁴ See paragraph 55 above.

practice of States and their acceptance as law (*opinio juris*).¹³⁵ Second, according to draft conclusion 13, “[d]ecisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of rules of customary international law are a subsidiary means for the determination of such rules”.¹³⁶ As the commentary indicates, the term “international courts and tribunals” includes (but is not limited to) the International Court of Justice, the Permanent Court of International Justice and “specialist and regional courts, such as the International Tribunal for the Law of the Sea, the International Criminal Court and other international criminal tribunals, regional human rights courts and the World Trade Organization Dispute Settlement Body”, as well as “inter-State arbitral tribunals and other arbitral tribunals applying international law”.¹³⁷

60. The orders, judgments and other decisions of international courts and tribunals, as well as those of hybrid courts, are generally accessible through the bibliographic resources listed in annex V. As far as permanent judicial institutions are concerned, the official reports thereof, such as the *I.C.J. Reports* or the International Tribunal for the Law of the Sea *Reports of Judgments, Advisory Opinions and Orders (ITLOS Reports)* series, provide access to all decisions in the official language(s) of the respective institution.¹³⁸ In addition, in relation to the International Court of Justice, the *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice* include the translation into Arabic, Chinese, Russian and Spanish of the summaries of decisions by the Court as prepared by its Registry in English and French.¹³⁹ Furthermore, several privately edited collections exist that reproduce or systematize international jurisprudence.¹⁴⁰ For example, the *World Court Digest* maintained by the Max Planck Institute for Comparative Public Law and International Law reproduces excerpts of judgments and decisions of the International Court of Justice and its predecessor, the Permanent Court of International Justice, which are arranged by topic of international law (such as “good faith”, “formation of rules of international law”, “jurisdiction of States”, “immunity of States” and several others).¹⁴¹ This is especially useful when searching for statements of the Court in relation to the existence and content of a specific rule of customary international law.

61. Information on arbitral tribunals has not benefited from the same degree of availability, systematization and analysis that decisions of permanent judicial institutions have enjoyed, for a variety of reasons, including the *ad hoc* nature of international arbitration. Even basic information as to the existence of certain arbitral proceedings involving States is not always easily accessible. Arbitration rules allow for a number of arbitral proceedings to remain confidential,¹⁴² and awards may never be published. For example, the Arbitration Rules of the Permanent Court of Arbitration provide that, rather than being automatically published, “[a]n award may

¹³⁵ See paragraph 42 above.

¹³⁶ Draft conclusion 13, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65.

¹³⁷ Paragraph (4) of the commentary to draft conclusion 13, *ibid.*, para. 66.

¹³⁸ See International Court of Justice, *I.C.J. Reports*, available from www.icj-cij.org/en/decisions; and the International Tribunal for the Law of the Sea, *Reports of Judgments, Advisory Opinions and Orders*, available from www.itlos.org/en/publications/.

¹³⁹ *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice*, Codification Division, Office of Legal Affairs, United Nations, available from <http://legal.un.org/icjsummaries/volumes.shtml>.

¹⁴⁰ See footnote 67 above.

¹⁴¹ *World Court Digest*, Max Planck Institute for Comparative Public Law and International Law, available from www.mpil.de/en/pub/publications/archive/wcd.cfm.

¹⁴² See, for example, Rule 32 of the International Centre for Settlement of Investment Disputes Rules of Procedure for Arbitration Proceedings, available from <https://icsid.worldbank.org/Pages/icsiddocs/ICSID-Convention-Arbitration-Rules.aspx>.

be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority”.¹⁴³ The Rules of Procedure for Arbitration Proceedings of the International Centre for Settlement of Investment Disputes provide that “[t]he Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publications excerpts of the legal reasoning of the Tribunal”.¹⁴⁴ In addition, a vast number of awards and decisions by arbitral tribunals in specialized fields (such as investment arbitration) are easily accessible only by subscribers to private databases or printed collections.¹⁴⁵

62. A number of international arbitral awards are nonetheless available. A few notable historical series covering arbitration practice since the eighteenth century are still in use today.¹⁴⁶ Furthermore, in its 30 volumes published since 1949, the United Nations *Reports of International Arbitral Awards* has made available a selection of arbitral decisions rendered between States and between States and international organizations from 1798 to the present day; the collection is available both in print and online, where it is also possible to conduct full text searches of all volumes at once.¹⁴⁷ More recently, the websites of the institutions providing appointment, registry or administration services to arbitral tribunals, such as the International Centre for Settlement of Investment Disputes and the Permanent Court of Arbitration, have provided access to most awards and proceedings that the parties have agreed to make public.¹⁴⁸

63. Pronouncements of treaty-monitoring bodies established by virtue of multilateral treaties may also shed some light on the existence of customary international law. Treaty bodies normally make their pronouncements accessible through their respective websites, which are listed in annex V; in particular, certain treaty bodies share common online databases for the search of their jurisprudence,¹⁴⁹ and at least one treaty body also makes information available in print.¹⁵⁰

¹⁴³ Article 34, paragraph 5, Permanent Court of Arbitration: Arbitration Rules 2012, available from <https://pca-cpa.org/wp-content/uploads/sites/175/2015/11/PCA-Arbitration-Rules-2012.pdf>.

¹⁴⁴ Rule 48, paragraph 4 (see footnote 142 above).

¹⁴⁵ See, for example, Investment Claims, Oxford University Press, available from <http://oxia.oup.com/home/ic>; Investor-State Law Guide, available from www.investorstatelawguide.com; and Transnational Dispute Management, available from www.transnational-dispute-management.com.

¹⁴⁶ See, for example, C. de Martens, *Causes célèbres du droit des gens* (5 vols.), 2nd rev. ed., Leipzig, Brockhaus, 1858–1861; J. B. Moore, *International Adjudications: Ancient and Modern: History and Documents* (vols. 1–6), Oxford University Press, 1929–1933; A. G. de Lapradelle and N. Politis, *Recueil des arbitrages internationaux 1798–1875* (vols. I–III), Paris, Pedone, 1905–1954; and A. M. Stuyt, *Survey of International Arbitrations 1794–1990*, 3rd ed., Dordrecht, Martinus Nijhoff, 1990.

¹⁴⁷ United Nations, *Reports of International Arbitral Awards*, available from <http://legal.un.org/riaa/>.

¹⁴⁸ See, for example, International Centre for Settlement of Investment Disputes, Cases, available from <https://icsid.worldbank.org/en/Pages/cases/AdvancedSearch.aspx>; and Permanent Court of Arbitration: Cases, available from <https://pca-cpa.org/en/cases/>.

¹⁴⁹ See, for example, the database of jurisprudence emanating from the United Nations Treaty Bodies which receive and consider complaints from individuals, United Nations Office of the High Commissioner for Human Rights, available from <http://juris.ohchr.org>; and the treaty bodies database, United Nations Office of the High Commissioner for Human Rights, available from http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en.

¹⁵⁰ African Commission on Human and Peoples’ Rights: recommendations and resolutions, available from www.achpr.org.

10. Bodies established by intergovernmental organizations for the examination, codification, progressive development or harmonization of international law

64. The International Law Commission highlighted the significance of certain “materials other than primary evidence of alleged instances of practice accepted as law (accompanied by *opinio juris*) [that] may be consulted in the process of determining the existence and content of rules of customary international law”.¹⁵¹ Among those materials, as the commentaries to the draft conclusions indicate, the output of the Commission itself merits special consideration. This is in light of three factors, namely “the Commission’s unique mandate, as a subsidiary organ of the United Nations General Assembly, to promote the progressive development of international law and its codification; the thoroughness of its procedures (including the consideration of extensive surveys of State practice and *opinio juris*); and its close relationship with the General Assembly and States (including receiving oral and written comments from States as it proceeds with its work)”.¹⁵²

65. The unique mandate of the Commission as a subsidiary organ of the General Assembly derives from Article 13, paragraph 1 (a) of the Charter of the United Nations, which provides that “[t]he General Assembly shall initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification”. However, although the International Law Commission remains the sole body at the universal level with a mandate to make studies and recommendations concerning the progressive development and codification of international law in general, other bodies and institutions have been entrusted with similar functions either at the regional level or for specific fields of international law. Their output may therefore also be relevant for the identification of rules of customary international law.

66. When considering a specific topic, the Commission will frequently survey all available evidence of the two elements of the rule of customary international law to be identified, often in conjunction with relevant subsidiary means for the determination of such rule.¹⁵³ This is done through a range of different methods, individually by special rapporteurs in their reports and collectively by the Commission when considering the various topics on its agenda and adopting its annual reports.¹⁵⁴ The Commission underscored “the importance of providing and making available all evidence of State practice and other sources of international law relevant to the performance of [its] function”, emphasizing also that “[t]he reports of its Special Rapporteurs require an adequate presentation of precedents and other relevant data, including treaties, judicial decisions and doctrine, and a thorough analysis of the questions under consideration”.¹⁵⁵

¹⁵¹ Paragraph (1) of the general commentary to Part Five, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

¹⁵² Paragraph (2) of the general commentary to Part Five, *ibid.* See also the statute of the International Law Commission, available from <http://legal.un.org/docs/?path=../ilc/texts/instruments/english/statute/statute.pdf&lang=EF>.

¹⁵³ See the memorandum by the Secretariat on elements in the previous work of the International Law Commission that could be particularly relevant to the topic of formation and evidence of customary law (A/CN.4/659), observation 1, paras. 13–15.

¹⁵⁴ See *The Work of the International Law Commission*, United Nations, 9th ed., 2017, vol. I, Part II, section 5 (b).

¹⁵⁵ *Official Records of the General Assembly, Seventy-second Session, Supplement No. 10 (A/72/10)*, para. 284. Similar statements had been made over time since 1977, when the Commission noted that, according to its statute, it must “justify its proposals to the General Assembly and ultimately to States, on the evidence of existing law and the requirements of its progressive development in the light of the current needs of the international community”, adding that its “commentaries are an essential element of the codification process, facilitating, at the first stage of that process, the

67. The primary bibliographic resource to access the work of the Commission is the *Yearbook of the International Law Commission* (both in print and online), which is available since 1949.¹⁵⁶ Since 1976, the *Yearbook* contains, in volume I, the summary records of the Commission's plenary meetings during the session;¹⁵⁷ in volume II (Part One) documents considered during the session, including reports by Special Rapporteurs, studies and memorandums of the Secretariat, comments and observations by Governments, and other relevant documents; and, in volume II (Part Two) the report of the Commission to the General Assembly on its work during the session.¹⁵⁸ The report includes, in particular, summaries of the debates as well as the texts of draft provisions and commentaries adopted by the Commission during the session. Materials relevant to the work of the Commission can also be accessed through the *Analytical Guide to the Work of the International Law Commission*, whose online version constitutes the most complete and up-to-date resource in this regard.¹⁵⁹

68. The active role played by Governments at every stage of the Commission's work is at the core of the system established by the General Assembly for the progressive development and codification of international law.¹⁶⁰ Such interaction takes place through a variety of means, including the submission of materials on issues identified by the Commission and statements made at the Sixth Committee when considering the annual report of the Commission,¹⁶¹ as well as written comments and observations on provisionally adopted texts.¹⁶²

69. Since 1997, the Commission indicates in chapter III of its annual report the specific issues on which comments would be of particular interest.¹⁶³ In relation to certain topics, the Commission may also request international organizations to provide their comments and observations. For instance, international organizations have been requested to submit information in the context of the topics "Protection of persons in the context of disasters",¹⁶⁴ "Responsibility of international organizations",¹⁶⁵ "Reservations to treaties"¹⁶⁶ and "Subsequent agreements and subsequent practice in relation to interpretation of treaties".¹⁶⁷

contribution of individual States through comments and observations and, during and after the final stage, the understanding and interpretation of the rules embodied in the codification conventions. They are an important part of the *travaux préparatoires* of those conventions, being frequently referred to or quoted in the diplomatic correspondence of States as well as by the International Court of Justice" (*Yearbook of the International Law Commission* 1977, vol. II (Part Two), p. 132, para. 125. See also General Assembly resolution 32/151 of 19 December 1977, para. 10).

¹⁵⁶ See General Assembly resolution 987 (X) of 3 December 1955 and, most recently, resolution 72/116 of 7 December 2017, paras. 28–30.

¹⁵⁷ The Commission has indicated that it considers its summary records "the equivalent of *travaux préparatoires*"; see *Yearbook of the International Law Commission* 2004, vol. II (Part Two), p. 120, para. 367.

¹⁵⁸ Before their publication in the *Yearbook of the International Law Commission*, vol. II (Part Two), the annual reports of the Commission to the General Assembly are available in *Supplement No. 10 of the Official Records of the General Assembly* for each session.

¹⁵⁹ *Analytical Guide to the Work of the International Law Commission*, United Nations, available from <http://legal.un.org/ilc/guide/gfra.shtml>.

¹⁶⁰ See *Yearbook of the International Law Commission* 1980, vol. II (Part Two), para. 191, and *Yearbook of the International Law Commission* 1999, vol. II (Part Two), para. 616.

¹⁶¹ Such statements may be found in the meeting records of the General Assembly, as well as in the PaperSmart portal (see footnote 47 above).

¹⁶² See *The Work of the International Law Commission* (footnote 154 above), section 7, pp. 73–81.

¹⁶³ *Ibid.*, section 7 (a), p. 74.

¹⁶⁴ *Yearbook of the International Law Commission* 2008, vol. II (Part Two), paras. 31–32.

¹⁶⁵ *Yearbook of the International Law Commission* 2009, vol. II (Part Two), paras. 27–28.

¹⁶⁶ *Yearbook of the International Law Commission* 2010, vol. II (Part Two), para. 25.

¹⁶⁷ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10 (A/69/10)*,

70. Submissions in reply to requests for information on specific issues are of exceptional value in the present context, but tend to be limited in quantity, a situation about which the Commission has expressed concern.¹⁶⁸ These comments are available to the members of the Commission, but are not systematically published as an official document. Since 2014, they can be found online, for some topics, in their original language in the *Analytical Guide to the Work of the International Law Commission*.¹⁶⁹

71. When the Commission provisionally adopts an entire set of provisions on first reading, these are transmitted to Governments through the Secretary-General for comments and observations.¹⁷⁰ At times, the Commission has extended such request to international organizations and other entities. For instance, in the context of the topic “Protection of persons in the context of disasters”, the Commission also invited “competent international organizations, the International Committee of the Red Cross and the International Federation of Red Cross and Red Crescent Societies” to submit their comments and observations.¹⁷¹ The comments and observations received under this procedure are compiled by the Secretariat in analytical form as a document for the session of the Commission that is issued in all six official languages of the United Nations. The Commission is required to take into consideration such comments in preparing the final draft and explanatory report (articles 16 (i) and 22 of the statute of the Commission).¹⁷²

72. Although not part of the output of the International Law Commission, the *United Nations Legislative Series* deserves special mention in light of its direct connection with the work of the Commission. This publication is produced by the Secretariat of the United Nations and contains submissions by States and, occasionally, international organizations, on legislative, executive, judicial and administrative practice relating to selected topics of public international law. Volumes have been compiled at the request of the International Law Commission or the General Assembly, to serve as preparatory documentation for diplomatic conferences, or to provide resource materials to contribute to the development of a particular field. The publication currently consists of 25 volumes, published occasionally between 1951 and 2012.¹⁷³

73. Resources concerning the work of the Commission may be found in annex VI. In addition, as mentioned above, other bodies are established by intergovernmental organizations for the examination, codification, progressive development or harmonization of international law. Regional bodies, such as the African Union Commission on International Law, the Council of Europe Committee of Legal Advisers on Public International Law and the Inter-American Juridical Committee, exist alongside thematic bodies, such as the International Institute for the Unification of Private Law and the United Nations Commission on International Trade Law.

para. 26; and *ibid.*, *Seventieth Session, Supplement No. 10 (A/70/10)*, para. 26.

¹⁶⁸ *Yearbook of the International Law Commission 1996*, vol. II (Part Two), para. 180; and *Yearbook of the International Law Commission 1999*, vol. II (Part Two), para. 617.

¹⁶⁹ See footnote 159 above.

¹⁷⁰ See articles 16 to 21 of the statute of the International Law Commission (footnote 152 above). The Commission is required to invite or request Governments to submit comments on the Commission’s document containing the initial draft as well as appropriate explanations, supporting material and information supplied by Governments (article 16 (g) to (h) and article 21). See also *The Work of the International Law Commission* (footnote 154 above), section 7 (a).

¹⁷¹ *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 10 (A/69/10)*, para. 53.

¹⁷² See *The Work of the International Law Commission* (footnote 154 above), section 7 (a).

¹⁷³ *United Nations Legislative Series*, printed and online, available from <http://legal.un.org/legislativeseries/>.

Information produced by or relating to such bodies may also be found in annex VI;¹⁷⁴ certain bibliographic resources collected under their auspices and relating to discrete fields of international law may be found in annex III.¹⁷⁵

11. Private bodies engaged in the codification and development of international law

74. Draft conclusion 14 provides that the “[t]eachings of the most highly qualified publicists of the various nations may serve as a subsidiary means for the determination of rules of customary international law”. While academic works are beyond the scope of the present memorandum, draft conclusion 14 also applies to “[t]he output of international bodies engaged in the codification and development of international law”, including “the Institute of International Law (*Institut de droit international*) and the International Law Association, as well as international expert bodies in particular fields”.¹⁷⁶

75. The determinations and proceedings of these bodies may thus play a subsidiary role in the identification of customary international law. Information about them may be found in annex VI.¹⁷⁷ For example, the Harvard Research in International Law, conducted between 1929 and 1932, was especially important in the identification of customary international law at the time.¹⁷⁸ The *Yearbook* of the Institute of International Law is an important subsidiary resource for the determination of rules of customary international law in the specific fields in which studies have been conducted over the years.¹⁷⁹ This is chiefly because of the collegial methodology employed by the Institute, which, as a learned society of the most eminent “from among those of various nations who have given service to international law either in the field of theory or in that of practice”, has the purpose of promoting “the progress of international law” *inter alia* by formulating the “general principles” thereof after careful study of the available practice of States in a given topic.¹⁸⁰ Similarly, the many branches and committees of the International Law Association, whose purposes include “the study, clarification and development of international law”,¹⁸¹ have been involved in codification projects analysing the practice and acceptance as law (*opinio*

¹⁷⁴ See, for example, the *AUCIL Yearbook of the International Law Commission: Yearbook of the African Union Commission on International Law* (since 2013); the *Annual Report of the Inter-American Juridical Committee to the General Assembly*, available from www.oas.org/en/sla/iajc/annual_reports.asp.

¹⁷⁵ See, for example, *United Nations Legislative Series: Materials on Jurisdictional Immunities of States and their Property*, United Nations publication (Sales No. E/F.81.V.10), 1982, printed and online, available from <http://legal.un.org/legislativeseries/documents/untlegs0020.pdf>; The implementation of United Nations sanctions, Council of Europe Committee of Legal Advisers on Public International Law, available from www.cahdidatabases.coe.int/Search/Index/3; and *Treaty Making: Expression of Consent by States to be Bound by a Treaty*, British Institute of International and Comparative Law and Council of Europe Committee of Legal Advisers on Public International Law, Kluwer Law International, 2001.

¹⁷⁶ Paragraph (5) of the commentary to draft conclusion 14, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

¹⁷⁷ See, for example, the *Yearbook* of the Institute of International Law, available from www.idi-il.org/en/publications-par-categorie/annuaire/.

¹⁷⁸ See *The Harvard Research in International Law: Original Materials* (1929–1932), Hein, 2008; and *The Harvard Research in International Law: Contemporary Analysis and Appraisal*, Hein, 2007, both available from <http://heinonline.org/HOL/Index?collection=hril> by subscription.

¹⁷⁹ See the *Yearbook* of the Institute of International Law (footnote 177 above).

¹⁸⁰ Article 1, paragraph 2, and article 5 of the statutes of the Institute of International Law, available from www.idi-il.org/app/uploads/2017/06/Statutes-of-the-Institute-of-International-Law.pdf.

¹⁸¹ Article 3.1, constitution of the International Law Association, available from www.ila-hq.org/images/ILA/docs/constitution_english_adopted_johannesburg_2016.pdf.

juris) of States in relation to several topics; the proceedings of its meetings may thus be an important source of information.¹⁸²

B. Analysis of the state of the evidence

1. Categories of relevant materials which are not readily available

76. The present memorandum has hitherto described the wide range of materials relevant for the identification of customary international law and the availability of corresponding bibliographic resources that may be employed to access such materials, and which are listed in annexes I to VI. It appears from this survey that there is a large availability of evidence of customary international law. Information is considerably more accessible now than it was in 1949, when the Secretariat last conducted such a survey.¹⁸³ However, such availability is neither consistent across the many types of evidence of customary international law, nor is it homogeneous across regions of the world.

77. Certain categories of evidence are much harder to find than others, and some may legitimately need to remain confidential. First, while the legislative and judicial practice of States is widely available, accounts of the executive conduct of States are much more difficult to ascertain and evaluate. For instance, diplomatic correspondence may be classified as confidential, or it may only be accessible by personally consulting the physical records of a State archive or the archive of an international organization. Another example is executive conduct in the field of the law of armed conflict. While some States publish their military manuals, many others do not; more generally, executive conduct “on the ground”, such as military conduct, is not always reported, or may be reported by news services, the accuracy of which might be difficult to evaluate. In addition, detailed reports of such conduct may exist but remain confidential: the International Committee of the Red Cross regularly collects information about the practice of States while helping Governments in fulfilling their legal obligations, but not all such information is made public; indeed, confidential reports sent to the attention of Governments are an important part of the work of the International Committee of the Red Cross.¹⁸⁴

78. Decisions of arbitral tribunals are another category of source that is not uniformly available, as discussed above.¹⁸⁵ While decisions of permanent judicial institutions are generally available, a number of arbitral proceedings remain confidential and are never reported. In addition, not all the pleadings of States before international courts and tribunals, including arbitral tribunals, are publicly available.

79. In relation to international organizations, while it is generally possible to find online versions of official documents and records of meetings, many documents that are potentially relevant as evidence of customary international law are never issued as official documents or otherwise remain confidential. For example, the World Bank does not publish the verbatim or summary records of meetings in which representatives of States participate, nor does it publish the video or audio recordings of such meetings, or the diplomatic correspondence addressed to or received from

¹⁸² See, generally, the International Law Association (www.ila-hq.org) and *International Law Association Reports of Conferences*, available from www.ila-hq.org/index.php/publications/order-reports and <http://heinonline.org/HOL/Index?index=ilarc/ilarc&collection=intyib>.

¹⁸³ See paragraphs 1 to 7 above.

¹⁸⁴ See International Committee of the Red Cross, “Memorandum: the ICRC’s privilege of non-disclosure of confidential information”, *International Review of the Red Cross* (2016), vol. 97 (897/898), pp. 433–444, available from www.icrc.org/en/download/file/19024/irc_97_1-2-18.pdf. See footnote 55 above as to State practice information which the Committee publishes.

¹⁸⁵ See chapter I, section A.9 above.

States. In addition, the World Bank collects information on the conduct of States in relation to its mandate and activity, but does not publish such information. In general, as noted above, the legal opinions of counsel of international organizations are often unpublished,¹⁸⁶ and some of the diplomatic correspondence addressed to or from States may only be made available after a certain number of years in the archives of the international organization.

80. The impact of the limited availability of these categories of evidence on the identification of a particular rule of customary international law will vary depending on the alleged rule to be identified. In the application of the two-element approach in certain fields of international law or for certain specific rules, domestic laws and decisions of national courts might play a more important role than executive conduct.¹⁸⁷ This would make the difficulty in accessing executive conduct less relevant to the identification of such a rule. The opposite may also be true in other fields of international law, where executive conduct might be the most important source of practice to be taken into account. As the commentary to draft conclusion 3 clarifies,¹⁸⁸ “the type of evidence consulted (and consideration of its availability or otherwise) depends on the circumstances, and certain forms of practice and certain forms of evidence of acceptance as law (*opinio juris*) may be of particular significance, according to the context”.¹⁸⁹ For example, when assessing whether a rule of customary international law concerning exceptions to the jurisdictional immunities of States had emerged, the International Court of Justice explicitly enumerated the types of evidence that would be of particular significance in that context, such as, among others, “judgments of national courts”, “legislation”, and “claims to immunity advanced by States before foreign courts”.¹⁹⁰

2. Scarcity of resources specifically relevant to international law

81. This disparity in the availability of certain categories of evidence further reinforces the importance of bibliographic resources focusing specifically on international law, such as digests of State practice in yearbooks of international law, national treaty collections or maps elucidating maritime claims. As mentioned earlier,¹⁹¹ these resources distil relevant information from the vast array of evidence of legislative, executive and judicial conduct of States. Digests of State practice often highlight and make available precisely those categories of State conduct that would otherwise be more difficult to access, including specific instances of executive conduct.

82. In this regard, the recommendation made by the International Law Commission in 1950 that such digests and other specialized resources be widely published has not yet been heeded by most Governments.¹⁹² Resources specifically relevant to international law could be identified only in relation to around 66 States. In particular, out of all 1,989 resources concerning specific States or groups of States contained in annex I, only 194 are resources relating specifically to international law. Of these, 102 bibliographic resources relate to 23 States (out of 29) in the Western European

¹⁸⁶ See chapter I, section A.5 above.

¹⁸⁷ See the second report on identification of customary international law by Special Rapporteur Sir Michael Wood (A/CN.4/672), para. 28.

¹⁸⁸ See footnote 37 above for the text of draft conclusion 3.

¹⁸⁹ Paragraph (3) of the commentary to draft conclusion 3, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66. See also the third report on identification of customary international law by Special Rapporteur Sir Michael Wood (A/CN.4/682), para. 17.

¹⁹⁰ *Jurisdictional Immunities of the State* (see footnote 76 above), pp. 122–123, para. 55.

¹⁹¹ See chapter I, section A.6 above.

¹⁹² See *ibid.* and footnote 13 above.

and Others Group, 36 resources relate to 14 States (out of 55) in the Asia-Pacific Group, 24 resources relate to 14 States (out of 33) in the Latin American and Caribbean Group, 14 resources relate to 9 States (out of 23) in the Eastern European Group, 8 resources relate to 5 States (out of 54) in the African Group, and the remaining resources relate to several States at once, as well as to one non-Member State.¹⁹³

83. Thus, such discrepancy in the availability of resources specifically devoted to international law appears to be regional in nature: while specialized resources are present in most States in the Western European and Others Group, and in a number of States in the Latin American and Caribbean Group and in the Eastern European Group, they are much rarer in States in the African and Asia-Pacific Groups.

3. Multiplicity of languages

84. Because of this scarcity and uneven regional diversity of the resources specifically relevant to international law, identifying a rule of customary international law may require a thorough examination of the general repositories of legislative, executive, judicial and other conduct of several States. This may be a daunting task for a variety of reasons; in particular, linguistic and practical reasons may render the accessibility of evidence that is theoretically available quite arduous in practice.

85. In this regard, the first barrier in accessing the evidence of customary international law relating to 197 States is a linguistic one. The almost 2,500 bibliographic entries listed in the annexes I to VI include materials in more than 90 languages, as recorded in annex VII. The ten most represented languages among the identified resources are the six official languages of the United Nations and a few others: English (1,703 entries), French (686), Spanish (517), Arabic (286), Russian (257), Chinese (156), German (141), Portuguese (133), Italian (98) and Dutch (52). The ten least represented languages (with one entry each) are Afrikaans, Berber, Filipino, Niuean, Oromo, Palauan, Punjabi, Samoan, Sesotho and Setswana.

86. Less than half of all bibliographic resources identified are at least partly available in more than one language (more than 1,120 resources out of around 2,500).¹⁹⁴ In most cases, one of the other languages is English (more than 1,040 resources out of around 1,120). In practice, most multilingual resources are available in two (663) or three (223) languages, one of which is usually English, followed by French, Spanish, Arabic, Russian and Chinese.¹⁹⁵

87. Multilingualism is essential for the evidence of customary international law to be truly available worldwide. Out of 1,120 multilingual bibliographic resources in the annexes, only 241 are available in more than three languages. With a few exceptions, these resources are generally those arising from the activities of international organizations: for example, United Nations parliamentary documentation is nowadays

¹⁹³ Turkey is a member of both the Western European and Others Group and the Asia-Pacific Group. Kiribati is counted among the Asia-Pacific Group. The United States of America is counted among the Western European and Others Group. See United Nations Regional Groups of Member States, available from www.un.org/depts/DGACM/RegionalGroups.shtml.

¹⁹⁴ See, for example, the HUDOC database of the European Court of Human Rights, available in 33 languages; most resources relating to the European Union, which are available in 24 languages; and several government websites offering content in multiple languages, for example the Office of the Supreme Leader of the Islamic Republic of Iran, پایگاه اطلاع رسانی دفتر مقام معظم رهبری, available from <http://leader.ir>, and the Government of Sweden, Regeringskansliet, available from www.regeringen.se.

¹⁹⁵ Out of 1,120 bibliographic resources available in more than one language, 1,042 are at least partly available in English, 552 in French, 304 in Spanish, 247 in Arabic, 233 in Russian and 146 in Chinese.

routinely issued in all six official languages;¹⁹⁶ periodical legal publications such as the *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice*, the *Repertoire of the Practice of the Security Council* and the *United Nations Juridical Yearbook* are especially important in view of their availability in six languages.¹⁹⁷

88. However, even in multilingual resources, the amount of information that is actually translated in other languages is often minimal when compared to the total amount of potentially relevant evidence of customary international law available in the original language. This is also true of many multilingual websites published under the auspices of the United Nations. In this regard, the General Assembly noted “with concern” that there is a “disparity between the English and the non-English languages on the websites maintained by the Secretariat” and “urge[d] the Secretary-General to lead the efforts of all offices and departments of the Secretariat to take concrete action to address such uneven development, and in this regard call[ed] upon all stakeholders, including the Department of Public Information, content-providing offices and departments, in particular the Office of Information and Communications Technology of the Secretariat, to continue their collaboration, within their respective mandates, so as to achieve full parity among the six official languages on all United Nations websites developed and maintained by all Secretariat entities, in full conformance with the principles of multilingualism and in compliance with the relevant resolutions addressing multilingualism and accessibility for persons with disabilities, by making every effort to translate materials currently available only in English and by providing offices and departments with technological solutions that comply with the principle of parity, from within existing resources”.¹⁹⁸

4. Practical obstacles to information access

89. Another clear obstacle to information access is the digital divide between States and regions of the world. In its most recent report on *Measuring the Information Society*, the International Telecommunication Union estimated that “more than half the world’s households ... now have access to the Internet at home, compared with less than 20 per cent in 2005 and just over 30 per cent in 2010”; however, crucially, “[b]y 2017, it is estimated that 84.4 per cent of households in developed countries will have Internet access, compared with 42.9 per cent in developing countries and just 14.7 per cent in [the least developed countries]”.¹⁹⁹ In addition, “the gap between [the least developed countries] and developing countries in general appears to be widening”.²⁰⁰ The digital divide also persists in terms of regions, with Europe maintaining “the highest proportion of households with Internet access, almost 85 per

¹⁹⁶ The United Nations Official Document System website, for instance, is structured to allow the search for documents in all six official languages, plus German: see <https://documents.un.org/prod/ods.nsf/home.xsp>. However, not all parliamentary documents issued since 1946 exist in all six languages, because the timing of adoption of each of the six languages as official and working languages of the principal organs of the United Nations varied over time (see “Historical development of United Nations languages”, United Nations Dag Hammarskjöld Library, available from <http://ask.un.org/faq/14463>).

¹⁹⁷ As mentioned above, the *Summaries* provide the translation of summaries of the decisions of the Court in four languages additional to the two official languages in which the Court renders its decisions; see footnote 139 above. Both the *Repertoire* and the *United Nations Juridical Yearbook* are eventually published in all six languages, but backlogs exist in relation to some of the published languages.

¹⁹⁸ General Assembly resolution 71/328 of 11 September 2017, para. 35; see also paragraphs 45–49. See also General Assembly resolution 69/324 of 11 September 2015, paras. 29 and 38–42.

¹⁹⁹ International Telecommunication Union, *Measuring the Information Society Report 2017: Volume 1*, p. 15, available from www.itu.int/en/ITU-D/Statistics/Documents/publications/misr2017/MISR2017_Volume1.pdf.

²⁰⁰ *Ibid.*

cent”, while only 18 per cent of households in Africa had access (this was, nonetheless, a marked increase from 3.9 per cent in 2010).²⁰¹

90. Such a digital divide affects the availability and accessibility of the evidence of customary international law. Most bibliographic resources listed in the annexes are online. Of around 2,500 resources, around 1,630 exist only in digital form, while the remainder are either available both in print and online (around 540) or only available in print (around 320). Although other printed resources may certainly exist which are not listed in the annexes (such as print-only repositories of domestic laws or of decisions of national courts), the fact remains that most legal information from most States is now available online. Until access to the Internet is also generalized, such availability will not translate into universality of information access – hence the importance of the continued distribution of print publications.

91. Other obstacles exist in terms of information access. For example, although a wide variety of information is available in State archives and in archives of international organizations, accessing such archives often requires a visit in person, which makes researching the evidence of customary international law difficult in practice. More generally, when considering the actual availability of evidence of customary international law, factors to be taken into account are issues of time, material resources, and access to institutions and libraries with subscriptions to journals and to the many online services that are only available to paying customers. Furthermore, online resources do not necessarily reproduce in full the documents constituting the evidence sought, and the information contained therein may change over time. Hence, the significant development of online information should be accompanied by greater consistency and exhaustivity thereof.

92. In this regard, the existence of specialized libraries providing access to resources relevant to international law (in addition to law libraries in general) is essential to the availability of evidence of customary international law. In particular, institutions such as the United Nations Libraries (in Addis Ababa, Bangkok, Beirut, Geneva, New York, Santiago, Tokyo and Vienna, among others),²⁰² the United Nations Depository Libraries all over the world²⁰³ and the Peace Palace Library in The Hague²⁰⁴ give access to a wealth of evidence of customary international law that would otherwise be unavailable to the public, as well as to the expertise of specialized librarians. National libraries may also play an important role in collecting legal information issued by foreign Governments.

93. In 1950, the International Law Commission recommended “that the General Assembly give consideration to the desirability of an international convention concerning the general exchange of official publications relating to international law and international relations”.²⁰⁵ This suggestion was not taken up by the General Assembly, which did not make any recommendations in that regard. In 1958, at the culmination of a separate process, the General Conference of the United Nations Educational, Scientific and Cultural Organization adopted two international conventions on the publication and exchange of official documents by States, both of which entered into force in 1961.²⁰⁶ These Conventions

²⁰¹ *Ibid.*

²⁰² United Nations Libraries, see <https://library.un.org/content/un-libraries>.

²⁰³ United Nations Depository Libraries, see <https://library.un.org/content/united-nations-depository-library-programme>.

²⁰⁴ Peace Palace Library: The international law library, see www.peacepalacelibrary.nl.

²⁰⁵ *Yearbook of the International Law Commission 1950*, vol. II, p. 374, para. 94.

²⁰⁶ Convention concerning the Exchange of Official Publications and Government Documents between States, signed at Paris on 3 December 1958, United Nations, *Treaty Series*, vol. 398, No. 5715, p. 9; and Convention concerning the International Exchange of Publications, signed at Paris on 3 December 1958, *ibid.*, vol. 416, No 5995, p. 51. The two Conventions are both deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization. The electronic repository of the

facilitate the establishment of bilateral exchanges of official documents between national libraries.²⁰⁷

5. Ways and means to access and employ the existing evidence

94. Despite the difficulties discussed in the sections above as to the availability of certain categories of evidence and as to other practical obstacles to information access, the general observation made by the Special Rapporteur recalled in the Introduction above – that “[t]he sheer quantity of available material is daunting”²⁰⁸ – remains valid. When undertaking the task of identifying a given rule of customary international law, a vast amount of potentially relevant information is indeed available. In addition, such difficulty is “compounded by the absence of a common classification system to compare and contrast the practice of States and others”.²⁰⁹ Navigating through such information requires the deployment of a certain methodology, as explained in the commentaries to the draft conclusions.

95. First, one must consider which subset of potentially relevant information is actually relevant to the rule at hand, as this might significantly narrow the scope of required research. As mentioned above, it is important to identify the types of conduct that are most relevant to the specific content of the rule to be identified: it may be that decisions of national courts are especially relevant, or that national legislation is, and so on.²¹⁰ Furthermore, it is necessary to assess whether any States “are particularly involved in the relevant activity or are most likely to be concerned with the alleged rule (‘specially affected States’).”²¹¹ As the commentary to draft conclusion 8 (on the generality of practice) remarks, “[w]hile in many cases all or virtually all States will be equally affected, it would clearly be impractical to determine, for example, the existence and content of a rule of customary international law relating to navigation in maritime zones without taking into account the practice of relevant coastal States and flag States, or the existence and content of a rule on foreign investment without evaluating the practice of the capital-exporting States as well as that of the States in which investment is made. It should be made clear, however, that the term ‘specially affected States’ should not be taken to refer to the relative power of States”.²¹² It may be the case that only a handful of States had the opportunity to participate in a given practice, thus potentially (but not necessarily) restricting the scope of relevant information.²¹³

96. Second, having established which subset of potentially relevant information will be relevant for the rule at hand, specialized bibliographic resources may be available that focus on the field of international law under consideration. For example, when assessing the existence or otherwise of a rule of customary international law in the field of the law of armed conflict, it is reasonable to start one’s inquiry with the evidence of

depository lists, respectively, 51 and 47 instruments of ratification, acceptance or notification of succession (see www.unesco.org/eri/la/convention.asp?KO=13036&language=E&order=alpha#1 and www.unesco.org/eri/la/convention.asp?KO=15395&language=E&order=alpha).

²⁰⁷ See, for example, information concerning international exchange of publication by the National Diet Library in Japan, available from www.ndl.go.jp/en/aboutus/cooperation/exchange/index.html.

²⁰⁸ Fourth report on identification of customary international law by Special Rapporteur Sir Michael Wood (A/CN.4/695 and A/CN.4/695/Add.1), para. 45.

²⁰⁹ *Ibid.*

²¹⁰ See chapter I, section B.1, above.

²¹¹ Paragraph (4) of the commentary to draft conclusion 8, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 66.

²¹² *Ibid.*

²¹³ As to the relevance of “inaction” and “failure to react”, see draft conclusion 6, para. 1, and draft conclusion 10, para. 3, *ibid.*, para. 65, respectively.

State practice and acceptance as law (*opinio juris*) collected by the International Committee of the Red Cross in its online databases and printed publications.²¹⁴

97. Third, and at times most importantly from a practical perspective, the undertaking of the task of identifying the rule of customary international law under consideration may have already been carried out elsewhere. Subsidiary sources may already exist that provide easy access to a reliable assessment as to the existence of that specific rule. As discussed above, “[d]ecisions of international courts and tribunals, in particular of the International Court of Justice, concerning the existence and content of rules of customary international law are a subsidiary means for the determination of such rules”.²¹⁵ If, for example, the International Court of Justice already pronounced itself as to the existence of the rule under consideration, it may not be practical or necessary to conduct a *de novo* assessment of all the potentially relevant evidence. However, subsidiary means need to be considered in their specific context, and due consideration is to be given to the date of the assessment of the two elements of the specific rule, or inexistence thereof, and to the methodology followed.

98. In addition, as discussed above,²¹⁶ the work of bodies established by international organizations for the examination, codification, progressive development or harmonization of international law may also be relied upon as having considerable value in the determination of the existence of a rule of customary international law – especially in relation to well-established rules that have subsequently encountered a favourable reception by States. It is important to note that such expert bodies also exist at the regional level, and the information collected by them may be especially useful to close the regional gaps in information availability.

99. Therefore, whether it is necessary to proceed with a *de novo* bibliographic research for the identification of a specific rule of customary international law may ultimately depend on whether relevant and reliable subsidiary means for the determination of such a rule already exist. If they exist, such subsidiary means may well constitute in practice the first bibliographic resource considered when identifying a specific rule of customary international law.

Chapter II. Suggestions for improving the availability of the evidence of customary international law

100. After conducting a survey of the present state of the evidence of customary international law, the present memorandum is tasked with making suggestions for its improvement.²¹⁷

101. Enhancing the availability of the evidence of customary international law would result from a joint effort of States, international organizations and their secretariats, expert bodies (including the International Law Commission) and private entities such as academic research centres and learned societies. The suggestions below address four possible areas of intervention in this regard.

102. When a similar survey was conducted in 1949, an ambitious proposal was initially set forth, envisaging that the Secretariat would play a central role in the preparation of a systematic and comprehensive compilation of evidence of customary international law under the supervision of the International Law Commission and with

²¹⁴ See footnote 55 above.

²¹⁵ Draft conclusion 13, *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10 (A/73/10)*, para. 65. See chapter I, section A.9, above.

²¹⁶ See chapter I, section A.10, above.

²¹⁷ *Official Records of the General Assembly, Seventy-first Session, Supplement No. 10 (A/71/10)*, para. 56.

the support of Governments and private entities.²¹⁸ The Commission did not support that proposal, which was viewed as impractical.²¹⁹ It nevertheless adopted several of the more specific suggestions made by the Secretariat in relation to possible useful publications, many of which were later taken up by the General Assembly and implemented over time.²²⁰

103. Such specialized publications collecting evidence of practice and acceptance as law (*opinio juris*) remain today of critical importance for the identification of customary international law. For that reason, the recommendations made by the Commission in 1950 regarding the usefulness of such publications are still valid.

104. That being said, the initial proposal by the Secretariat appears much more viable today due to the advent of the Internet, as well as the general improvement in information technology and information availability. It is nowadays possible to conceive of a role for the Secretariat – if not in the collection of the primary documents themselves, at least in the centralized systematic and comprehensive dissemination of information concerning how to find documents constituting evidence of customary international law. Indeed, such a role would support the fulfilment of the International Law Commission’s function envisaged in article 24 of its statute, the text of which was mentioned above.²²¹

1. Suggestions concerning ways and means for States to make the evidence of their practice and acceptance as law (*opinio juris*) more readily available

105. As was recommended in 1950 by the International Law Commission, States should continue to bear in mind “the desirability of their publishing digests of their diplomatic correspondence and other materials relating to international law”.²²² As of 1 October 2017, such digests are accessible for around 30 States only.²²³ States could be encouraged again to publish directly such periodical digests of their practice relevant to international law, possibly in multiple languages, provided they have the necessary resources to do so. The merits of establishing a common classification system of the practice of States and others could be considered. The attention of States could also be drawn to the benefits of supporting their publication by other entities, including in international law yearbooks and other periodicals, by providing these entities with relevant documentation.

106. It is of utmost importance that States continue making their legislative, judicial and executive practice widely available in printed and online form. Free online repositories of laws, decisions of national courts and executive decisions constitute key resources for the identification of rules of customary international law. Where not yet available, the institution of such free repositories could be considered as one of the possible options for making such evidence available.

107. Regional cooperation between States to make more readily available the evidence of practice and acceptance as law (*opinio juris*) within their region could be fostered, especially in the context of existing regional institutions.

²¹⁸ See footnote 10 above.

²¹⁹ The Chair, for example, expressed the view that the preparation of such a comprehensive collection “would take many years and could never be complete” (*Yearbook of the International Law Commission 1949*, p. 228, para. 89).

²²⁰ See footnotes 13 and 16 above.

²²¹ See paragraphs 1 to 7 above.

²²² See footnote 15 and chapter I, section A.6, above. See also General Assembly resolution 487 (V) of 12 December 1950.

²²³ See chapter I, section A.6, above.

108. The fulfilment of the obligation of Member States, under Article 102 of the Charter of the United Nations, to register with the Secretariat every treaty and every international agreement they enter into, the importance of which was recently reaffirmed by General Assembly resolution 72/119 of 7 December 2017, is critical to the availability of treaties and of conduct in relation with treaties. In that resolution, the General Assembly expressed appreciation for the efforts by Member States and the Secretariat to support activities aimed at ensuring the implementation of this obligation, including capacity-building, publications or technical assistance (para. 11).

109. The continuous development of libraries specializing in international law and the guarantee of their general access by the public is of critical importance for the gathering of evidence of rules of customary international law. Such libraries may be, in some instances, the only places where relevant resources and expertise can be accessed in light of the increasing availability of materials on the Internet coupled with the lack of affordable access to information and communications technologies in many developing countries. States and other interested actors could be encouraged to make every effort to support libraries specializing in international law, including United Nations Libraries, United Nations Depository Libraries and the Peace Palace Library in The Hague.²²⁴

2. Suggestions concerning ways and means for the United Nations to maintain and develop its legal publications relevant to international law and ensure their widest dissemination

110. The preparation of United Nations publications relevant to international law should be ensured, as well as their widest dissemination, including the following periodicals:

- *I.C.J. Pleadings*;
- *I.C.J. Reports*;
- *Law of the Sea Bulletin*;
- *Diplomatic Conferences*;
- *Repertoire of the Practice of the Security Council*;
- *Repertory of Practice of United Nations Organs*;
- *Reports of International Arbitral Awards*;
- *Summaries of Judgments, Advisory Opinions and Orders of the International Court of Justice*;
- *The Work of the International Law Commission*;
- *United Nations Commission on International Trade Law Yearbook*;
- *United Nations Juridical Yearbook*;
- *Yearbook of the International Law Commission*.

111. The *United Nations Legislative Series* could be revitalized. This publication facilitates the work of the International Law Commission when considering specific topics. It constitutes a significant resource for the collection and publication of evidence of customary international law from States (and, where relevant, other

²²⁴ The importance of specialized international law libraries was already highlighted by the Commission in 1950: see *Yearbook of the International Law Commission 1950*, vol. II, p. 372, para. 82.

entities) in relation to topics in its programme of work. The last issue of the *United Nations Legislative Series* collecting evidence of State practice was published in 2005.

112. The importance of the *United Nations Treaty Series*, the publication of which is required by Article 102 of the Charter of the United Nations, could be further reaffirmed. All efforts should be made to develop and enhance the United Nations electronic treaty database, providing online access to the *Treaty Series* and, more generally, to comprehensive information on the depositary functions of the Secretary-General and the registration and publication of treaties under Article 102 of the Charter of the United Nations, while bearing in mind that many developing countries lack affordable access to information and communications technologies, as recently emphasized in General Assembly resolution 72/119.

113. The update of the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties* in light of new developments and practices, as envisaged most recently in General Assembly resolution 72/119, could be recommended.

114. A periodic review of the scope and content of United Nations publications providing evidence of customary international law could ensure that the information published therein reflects the evolution of such evidence over time.

115. The paramount importance of multilingualism for enhancing the availability of evidence of customary international law could be emphasized with reference to General Assembly resolution 71/328.

116. In addition, the critical legal significance of the *Official Records* and other documents of the United Nations as possible evidence for the identification of customary international law could be acknowledged. In this regard, it could be recommended to continue the current efforts at making available online all parliamentary documents issued from 1946 onwards.

117. Support could be expressed for the maintenance and continuous update of the websites and electronic databases of the Secretariat and other United Nations entities disseminating information relevant to international law.

3. Suggestions concerning ways and means for enhancing the availability of evidence of customary international law in the context of the progressive development and codification of international law

118. States could be encouraged to contribute to the progressive development and codification of international law by submitting more systematically their views and practice further to requests by the International Law Commission at the various stages of consideration of particular topics.²²⁵ Concrete options for providing capacity-building assistance to support the contribution of information by States could be identified.

119. The cooperation of the International Law Commission with other bodies engaged in the examination, codification, progressive development or harmonization of international law could be fostered. In particular, requests for information on specific issues identified by the International Law Commission and for comments on draft provisions and commentaries thereto provisionally adopted by the Commission could be addressed more regularly to the African Union Commission on International Law, the Asian-African Legal Consultative Organization, the Council of Europe Committee of Legal Advisers on Public International Law and the Inter-American Juridical Committee.

²²⁵ See chapter I, section A.10, above.

120. States could also be encouraged to participate in regional efforts for the progressive development and codification of international law.

121. The publication in the *Analytical Guide to the Work of the International Law Commission* of the written comments received by Governments and other entities in response to requests for information on specific issues could be encouraged.²²⁶

4. Suggestions concerning a periodically updated online database for the systematic and comprehensive dissemination of bibliographic information on the evidence of customary international law

122. The information contained in the annexes to the present memorandum could be made widely available through an online database maintained by the Secretariat. Such information could be periodically updated based on information received from States, international organizations and other entities.

123. For this purpose, States and relevant organizations could be requested to identify focal points for the periodic update of such information. The Secretariat could also establish partnerships with research centres, learned societies, academic institutions and other private entities, for the maintenance and periodic update of the information.

124. The information collected should be presented periodically to the International Law Commission for its consideration and review.

²²⁶ *Ibid.*

Annex I

Resources by State

Afghanistan

Resources relating specifically to international law

- معاهدات بین المللی, <http://moj.gov.af/fa/Page/1693>.

General resources

- Permanent Mission of Afghanistan to the United Nations in New York, <http://afghanistan-un.org>.
- شورای ملی = National Assembly, www.parliament.af.
- دفتر ریاست جمهوری اسلامی افغانستان = د افغانستان جمهوري ریاست رسمی ویبسایت Office of the President, <http://president.gov.af>.
- ریاست عمومی اداره امور ریاست جمهوری, <http://aop.gov.af>.
- ستره محکمه, <http://supremecourt.gov.af>.
- ماهنامه آگاهی حقوقی, printed and online, <http://moj.gov.af/fa/page/1697/24118/1711>.
- مجله عدالت, printed and online, <http://moj.gov.af/fa/page/1697/7967/1708>.
- مجموعه قوانین افغانستان = د افغانستان د قوانینو مجموعه, printed and online, <http://moj.gov.af/Content/files/index.htm>.
- Government Media and Information Center = مرکز اطلاعات و رسانه های حکومت = د حکومت د اطلاعاتو او رسانیو مرکز, www.gmic.gov.af.
- وزارت دفاع ملی, <http://mod.gov.af>.
- وزارت عدلیه, <http://moj.gov.af>.

Albania

General resources

- Fletorja Zyrtare, printed and online, www.qbz.gov.al.
- Gjykata e Lartë, www.gjykataelarte.gov.al.
- Gjykata Kushtetuese, www.gjk.gov.al.
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- Kuvendi, www.parlament.al.
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- Permanent Mission of Albania to the United Nations, www.albania-un.org/un/.
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Algeria

General resources

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- الجريدة الرسمية, printed and online, www.joradp.dz.
- وزارة الشؤون الخارجية, www.mae.gov.dz.

Andorra

General resources

- Afers Exteriors, www.exteriors.ad.
- *Butlletí Oficial*, printed and online, www.bopa.ad.
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- Govern d'Andorra, www.govern.ad.
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Angola

General resources

- Assembleia Nacional de Angola, www.parlamento.ao.
- *Diário da República*, printed and online, www.impresanacional.gov.ao.
- Governo de Angola, www.governo.gov.ao.
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- Ministério da Justiça e dos Direitos Humanos, www.minjusdh.gov.ao.
- Ministério das Relações Exteriores, www.mirex.gov.ao.
- Permanent Mission of the Republic of Angola to the United Nations, www.un.int/angola/.
- Southern African Legal Information Institute, www.saflii.org.
- Tribunal Constitucional da República de Angola, www.tribunalconstitucional.ao.

Antigua and Barbuda

General resources

- Antigua and Barbuda Laws, <http://laws.gov.ag>.
- Antigua and Barbuda's Government Information and Services, www.ab.gov.ag.

- Eastern Caribbean Supreme Court, Organization of Eastern Caribbean States, www.eccourts.org.
- Judicial Committee of the Privy Council, www.jcpc.uk.
- Ministry of Foreign Affairs, International Trade and Immigration, www.abforeignaffairs.com.
- National Archives, printed and online, www.antiguanationalarchives.org.
- *The Antigua and Barbuda Official Gazette*, printed and online, http://legalaffairs.gov.ag/detail_page.php?page=gazette.php.

Argentina

Resources relating specifically to international law

- *Anuario Argentino de Derecho Internacional*, 1983–, printed and online, www.aadi.org.ar/index.php?acc=4.
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- *Boletín Oficial*, printed and online, www.boletinoficial.gob.ar.
- Cámara de Diputados de la Nación, www.diputados.gov.ar.
- Centro de Información Judicial, www.cij.gov.ar.
- Corte Suprema de Justicia, www.csjn.gov.ar.
- *Digesto Jurídico Argentino*, printed and online, www.saij.gob.ar/digesto-juridico-argentino.
- LegisLaw Banco Jurídico Argentino, www.legislaw.com.ar.
- Microjuris Argentina, <http://ar.microjuris.com/home.jsp>, available by subscription.
- Ministerio de Relaciones Exteriores y Culto, www.cancilleria.gob.ar.
- Misión Permanente de la República Argentina ante las Naciones Unidas, <http://enaun.mrecic.gov.ar>.
- Poder Judicial de la Nación, www.pjn.gov.ar.
- Presidencia de la Nación, www.casarosada.gob.ar.
- Senado, www.senado.gov.ar.
- Sistema Argentino de Documentación Jurídica, Ministerio de Justicia y Derechos Humanos, www.saij.gob.ar.

Armenia

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- Արտաքին Գործերի Նախարարություն, <http://mfa.am>.
- Կառավարությունը, www.gov.am.
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- Նախագահը, www.president.am.
- Պաշտոնական տեղեկագրում Հայաստանի Հանրապետության.
- Սահմանադրական դատարանը, www.concourt.am.

Australia

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Austria

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- Nazirlər Kabineti, www.cabmin.gov.az.
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Bahamas

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Bangladesh

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- সুপ্রিম কোর্ট = Supreme Court, printed and online, www.supremecourt.gov.bd/web/.

Barbados

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- Judicial System, www.barbadoslawcourts.gov.bb.
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Belarus

Resources relating specifically to international law

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- Конституционный Суд, www.kc.gov.by.
- Министерство иностранных дел, <http://mfa.gov.by>.
- Национальный архив, www.narb.by.
- Национальный правовой интернет-портал = National Legal Internet Portal, <http://pravo.by> and <http://law.by>.
- Национальный центр правовой информации Республики Беларусь, <http://ncpi.gov.by>.
- Новости Беларуси - БелТА, www.belta.by.
- Официальный интернет-портал Президента, <http://president.gov.by>.
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- Совет Республики Национального собрания, www.sovrep.gov.by.
- Союзное государство, www.postkomsg.com.
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Belgium

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General resources

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- Archives de l'État = Rijksarchief = Staatsarchiv = State Archives, printed and online, <http://arch.arch.be>.
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Annex II

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African, Caribbean and Pacific Group of States

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Caribbean Community Secretariat

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Annex VI

Bodies engaged in the examination, codification, progressive development, or harmonization of international law

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African Union Commission on International Law

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Annex VII

Languages of the resources collected

<i>Language</i>	<i>Number of resources</i>	<i>Language</i>	<i>Number of resources</i>	<i>Language</i>	<i>Number of resources</i>
1. Abkhazian	2	34. Hungarian	30	67. Punjabi	1
2. Afrikaans	1	35. Icelandic	10	68. Romanian	44
3. Albanian	18	36. Irish	24	69. Romansh	3
4. Amharic	4	37. Italian	98	70. Russian	257
5. Arabic	286	38. Japanese	33	71. Samoan	1
6. Armenian	10	39. Kazakh	9	72. Serbian	30
7. Azeri	11	40. Khmer	7	73. Sesotho	1
8. Bahasa, Indonesian	7	41. Kinyarwanda	9	74. Setswana	1
9. Bahasa, Malaysia	3	42. Kirundi	2	75. Sinhala	9
10. Bangla (Bengali)	6	43. Kiswahili	10	76. Slovak	30
11. Belarusian	14	44. Korean	16	77. Slovene	30
12. Berber	1	45. Kyrgyz	9	78. Spanish	517
13. Bosnian	18	46. Lao	5	79. Swedish	37
14. Bulgarian	33	47. Latin	3	80. Tajik	9
15. Catalan	7	48. Latvian	32	81. Tamil	10
16. Chinese	156	49. Lithuanian	32	82. Tetum	6
17. Croatian	41	50. Macedonian	15	83. Thai	12
18. Czech	33	51. Malagasy	9	84. Tigrinya	6
19. Danish	35	52. Malay	3	85. Tongan	2
20. Dari (Persian)	12	53. Maltese	29	86. Turkish	19
21. Dhivehi	7	54. Mongolian	9	87. Turkmen	6
22. Dutch	52	55. Montenegrin	9	88. Ukrainian	18
23. Dzongkha	3	56. Myanmar	4	89. Urdu	3
24. English	1699	57. Nepali	6	90. Uzbek	17
25. Estonian	27	58. Niuean	1	91. Vietnamese	16
26. Filipino	1	59. Northern Sami	2		
27. Finnish	32	60. Norwegian	6		
28. French	684	61. Oromo	1		
29. Georgian	11	62. Palauan	1		
30. German	141	63. Pashto	12		
31. Greek	40	64. Persian (Farsi)	17		
32. Hebrew	7	65. Polish	36		
33. Hindi	6	66. Portuguese	133		