Treaty Commentaries
and commentaries on the
ILC’s Draft Articles on the Responsibility of States for Internationally Wrongful Acts

Dorraine Zief Law Library, Univ. of San Francisco
Prepared by Research Librarian Lee Ryan — 415.422.6773 (research desk)

This guide
This guide lists treaty commentaries available at the Zief Library. It also includes commentaries on one hugely important non-treaty document: the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts.

For more research advice, visit the Zief Research Help page [https://legalresearch.usfca.edu/ZiefResearchHelp] or call the Zief Library research desk: 415.422.6773.

What is a treaty commentary? Why are they useful?

What is a treaty commentary?
A typical treaty commentary is the work of one or more leading international law scholars who are experts in that treaty’s area of law. These scholars analyze the treaty article-by-article, and their analyses typically include such features as:

• the drafting history and background of the treaty article;
• a scholarly assessment of the meaning of the terms used, the varying ways they have been and can be interpreted, and the problems that have been and might be raised;
• citations to decisions of courts, tribunals, and other bodies that have dealt with the treaty article;
• citations to books and journal articles by other scholars that might shed light on the interpretation of the treaty article.

Why are treaty commentaries useful?
When dealing with a treaty, you might need in-depth information on the background and possible meaning of the language.

You might also want some ammunition to argue for your preferred way of reading specific language. In international law, Article 32 of the Vienna Convention on the Law of Treaties allows the use of interpretive sources beyond the treaty text in certain circumstances. A commentary itself is not such an interpretive source, but it is a superb tool for helping you find such sources.

Treaty commentaries are helpful on both grounds. A commentary on your treaty can help you:

• understand the language of the treaty (regardless of whether it is ambiguous);
• learn about alternative interpretations of the language of the treaty;
• find support in the treaty’s drafting history for an interpretation you want to advance;
• find cases and decisions that cite to the treaty;
• find more in-depth scholarship about the treaty.

So a treaty commentary is research tool — a tool for finding material that will help you understand a treaty and craft arguments for specific readings of terms.
Can you cite to a treaty commentary in an advocacy document?

Treaty commentaries not among the sources of international law listed in Article 38 of the Statute of the International Court of Justice, nor are they included in Article 38 among the “subsidiary means” for determining the law. So strictly and theoretically, they are not to be cited in international advocacy. (And to the extent that one of main goals of commentaries is to lead you to sources that you can cite, it may not be important to cite a treaty commentary.)

That said, while the International Court of Justice has not cited to a treaty commentary in judgments/opinions of the Court, individual judges have cited in separate or dissenting opinions to the most scholarly of the treaty commentaries (such as the Pictet commentaries on the Geneva Conventions, or Simma’s commentary on the U.N. Charter). So in some circumstances citing to a commentary won’t be inappropriate, provided that the commentary is not given more weight than it is due.

Commentaries at the Zief Law Library

These commentaries are available at the Zief Law Library. (Some, as noted below, are also available to the USF community on Oxford Scholarly Authorities on International Law (OSAIL) (https://legalresearch.usfca.edu/osail).

This list is loosely organized by general type of treaty (i.e., general international law (the UN Charter and the like); human rights and refugees; law of the sea; war, armed conflict and international humanitarian law; international criminal law and genocide; international trade; economic relations, business, and investment; private international law; environmental law; intellectual property; cultural property and heritage).

And, as noted above, the list includes commentaries on the following highly-influential non-treaty document produced by the International Law Commission.

International Law & Diplomatic Relations


On the status of these articles, Parry & Grant say:

“The I.L.C. Draft Articles are not legally binding in and of themselves. However, they are generally regarded as being reflective of customary international law.”


The ILC’s own commentaries on the draft articles might rise to the level of, in the words of Article 38 of the ICJ Statute, works of “the most highly-qualified publicists.”


Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).


In this book Prof. Crawford adds a detailed, 60-page preface to the ILC’s commentary. The book also includes an appendix of citations to the drafting history, and an extensive bibliography of books and articles about the ILC’s Draft Articles.
**United Nations Charter**

  
  This is the definitive commentary.
  


**Statute of the International Court of Justice (ICJ Statute)**

  

**Vienna Convention on the Law of Treaties (VCLT)**

  


**Vienna Convention on Diplomatic Relations (1961) (VCDR)**

  

**United Nations Convention on Jurisdictional Immunities of States and Their Property**

  

  

**Human Rights & Refugees**

**International Covenant on Civil and Political Rights (ICCPR)**


  
  Emphasizes interpretations of the ICCPR by courts, tribunals, and human rights treaty bodies.
  
International Covenant on Economic, Social and Cultural Rights (ICESCR)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

  
  This brief commentary, published shortly after the Convention came into force, necessarily concentrates on the drafting history of the Convention.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on the Rights of the Child (CRC)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

  
  This is a work in progress. So far, the commentary covers these Articles: Art. 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 17, 20, 21, 24, 26, 27, 28, 31, 32, 33, 34, 37, 38, 40, 43, 44, 45. The commentary also covers the optional protocol on the involvement of children in armed conflicts. (Details on this set are available at: https://brill.com/view/serial/CUNC.)
  
  The Zief Library lacks the print volume for Article 28.
  
  An e-book version of the Commentary for Article 28 is available for the USF community at: http://doncore.usfca.edu/iii/encore/record/C__Rb2174867?lang=eng

Convention on the Rights of Persons with Disabilities (CRPD)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).
African Charter on Human and People’s Rights
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

European Convention on Human Rights (ECHR)
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Charter of Fundamental Rights of the European Union
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

European Framework Convention for the Protection of National Minorities
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Law of the Sea


  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Law of War & Armed Conflict / Humanitarian Law

Geneva Conventions, 1949 (see below for commentaries on individual Geneva conventions)
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949 (Geneva Convention I)


  Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field — commentaries from the International Committee of the Red Cross.

  The Commentary of 2016 and Commentary of 1952 (with the text of the Convention):
  https://www.icrc.org/ihl/full/GCi-commentary

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949 (Geneva Convention II)


  The Commentary of 2017 and Commentary of 1960 (with the text of the Convention):
  https://ihl-databases.icrc.org/ihl/full/GCii-commentary

Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949 (Geneva Convention III)


  The Commentary of 1960 is also available (with the text of the Convention) at:
  https://www.icrc.org/ihl.nsf/INTRO/375

Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Geneva Convention IV)


  The Commentary of 1958 is also available (with the text of the Convention) at:
  https://www.icrc.org/ihl.nsf/INTRO/380

Protocol Additional to the Geneva Conventions Of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Of 8 June 1977 (Additional Protocol I)


  The Commentary of 1987 is also available (with the text of the Protocol) at:
  https://www.icrc.org/ihl.nsf/INTRO/470

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Of 8 June 1977 (Additional Protocol II)


  The Commentary of 1987 is also available (with the text of the Protocol) at:
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem (Protocol III), Of 8 December 2005
(Additional Protocol III)

- Jean-François Quéguiner, “Commentary on the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Adoption of an Additional Distinctive Emblem [Protocol III],” 89 International Review of the Red Cross 175 (March 2007)
  
  This Commentary of 2007 (PDF) is available (with the text of the Protocol) at:
  

Treaty on the Prohibition of Nuclear Weapons (2017)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines...

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention on Cluster Munitions

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

United Nations Arms Trade Treaty (ATT)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

Convention for the Protection of Cultural Property in the Event of Armed Conflict

  See the “Cultural Property & Heritage” section, below.

International Criminal Law & Genocide

Rome Statute of the International Criminal Court

  
  Considered by some to be the definitive commentary.

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).


**UN Convention on the Prevention and Punishment of the Crime of Genocide (1948)** (Genocide Convention)


**International Trade**

**WTO Agreements**


**Economic Relations / Business / Investment**

**UN Convention on Contracts for the International Sale of Goods (CISG)**

**Convention on the Settlement of Investment Disputes Between States and Nationals of Other States** (ICSID Convention)


**Model Bilateral Investment Treaties**

  Reproduces the text of, and comments on model BITs from 15 representative states (Austria, Canada, China, Colombia, France, Germany, Italy, Japan, Korea, Latvia, the Netherlands, Russia, Singapore, the United Kingdom, and the United States) and NAFTA Chapter 11.
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).


  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

**Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)** (OECD convention on bribery)


**Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958** (New York Convention)


**Private International Law**

**Hague Convention on Choice of Court Agreements**


**Environmental Law**

**Paris Agreement on Climate Change**

  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).
**Rio Declaration on Environment and Development**

(The Rio Declaration is not a binding treaty, but it is a landmark document in international environmental law, and some of its provisions are believed to reflect customary international law.)

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

**Intellectual Property**

**The WIPO Copyright Treaty & WIPO Performance and Phonograms Treaty (WIPO Treaties)**


**Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

**Cultural Property & Heritage**

**Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954)**


**Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) (UNESCO World Heritage Convention)**

  
  Available online to the USF community via: Oxford Scholarly Authorities on International Law (OSAIL).

**UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects (1995)**

(UNESCO Convention 2003)