

THE VIENNA
CONVENTIONS
ON THE
LAW OF TREATIES

A COMMENTARY

Volume I

EDITED BY
OLIVIER CORTEN
PIERRE KLEIN

OXFORD

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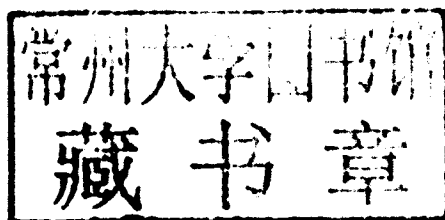
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Foreword to the French edition

I was most honoured to be invited to write the foreword to the present commentary of the 1969 Vienna Conventions on the Law of Treaties between States—and of its 1986 equivalent on the Law of Treaties between States and international organizations or between international organizations.

While reluctant at first, I finally accepted an invitation that I could not reasonably refuse, given that I am now one of the few active participants to the 1968 and 1969 sessions of the Vienna Conference on the Law of Treaties still alive (I was then the vice-chairman of the United Kingdom's delegation and a member of the Conference's Drafting Committee). I wish to take this opportunity to recall the central role played by Paul Reuter, as a member of the Drafting Committee. Paul Reuter and I also participated in the work of the International Law Commission between 1982 and 1986. This distinguished colleague, whose work is frequently referred to in this volume, continues to be sorely missed.

Another reason also led me to accept writing this foreword: I personally know, and had the opportunity, during my career as an international lawyer, to work in close cooperation with many contributors to the present book. Their merits are similar to those who undertook the commentaries of the United Nations Charter, published under the editorship of professors Cot, Pellet, and Forteau, on the one hand, and of professor (now judge) Simma, on the other.

In the concluding chapter of the second edition of my short book on the Vienna Convention on the Law of Treaties, published some 20 years ago and long sold-out, I suggested—not without some hesitation—that the International Law Commission work on the codification of the law of treaties could be compared to an 'involuntary triptich' whose central panel would have been the Vienna Convention on the Law of Treaties itself, the right-hand side panel being the 1978 Vienna Convention on State Succession in respect of treaties, and the left-hand side panel being the 1986 Vienna Convention on the Law of Treaties between States and international organizations or between international organizations. The present book covers the two panels of this involuntary triptych which are the most clearly interrelated, since the third panel (State succession in respect of treaties) deals as much with the law of State succession as it does with the law of treaties as such.

The expertise of the authors who have accepted to contribute to this detailed commentary of both Conventions is a testimony to the book's quality. Most of them are eminent international law professors. Some—such as Maurice Kamto, Alain Pellet, Giorgio Gaja, Riad Daoudi, and Christian Tomuschat—have also been members of the International Law Commission. As is well-known, the Commission devoted much time and effort over the last few years to revisit—and actually clarify—some of the most controversial issues raised by the application of the rules enshrined in the 1969 Vienna Convention to reservations to normative multilateral treaties, including international human rights treaties. This project was undertaken under Alain Pellet's authority, as Special Rapporteur on the issue of reservations. It is therefore quite natural that he agreed to analyse Articles 19, 22, and 23 of the Vienna Conventions in the present book, in light of subsequent practice and of recent case law of international courts

and tribunals. Others, such as Mohammed Bedjaoui and Bruno Simma are judges or former judges at the International Court of Justice. Others still, such as Laurence Boisson de Chazournes, Olivier Corten, Jean-Pierre Cot, Pierre d'Argent, Eric David, Giorgio Gaja, Pierre Klein, Jean Salmon, Philippe Sands, Malcom Shaw, Jean-Marc Sorel, Eric Suy, and Jean-Marc Thouvenin—in addition to several of those whose names have already been mentioned—had the privilege to appear before the ICJ in various cases, a number of which have given the Court the opportunity to pronounce on controversial issues of the law of treaties.

The preparation of this seminal work was undertaken more than five years ago under the auspices of the International Law Centre of the Université libre de Bruxelles. It displays all the characteristics of what is likely to become an essential tool for all scholars and practitioners of international law, to whom it will provide a detailed and updated analysis of the 1969 and 1986 Vienna Conventions. All of those involved in the conception of this carefully prepared commentary therefore deserve warm congratulations.

Sir Ian Sinclair
Blackstone Chambers, London

Preface

Article-by-article commentaries of treaties which form the backbone of today's international legal system have multiplied over the last few years. These reference works are much appreciated both by specialists and by a wider public of lawyers, who use them more occasionally. These commentaries provide accurate, exhaustive, and most often practical information on each of the provisions composing the treaty concerned. Contributions are often authored by specialists on the topic, which contributes to a large extent to the value and interest of this type of work. It is from that perspective that the present commentary of two key instruments of contemporary international law, the 1969 and 1986 Vienna Conventions on the Law of Treaties, was conceived. A first edition of this book was published in French in 2006 (Brussels: Bruylant). Most contributors to the first edition agreed to participate in this new version of the book, and delivered an updated and edited version of their original commentary. New authors have also joined the project to take over the contributions of original authors who were not in a position to do so.

We have aimed at presenting the commentaries in a manner that is as uniform as possible. The commentary to each provision thus includes a preliminary section dealing with the provision's object and purpose and its—possible—customary status. A second part of the commentary is devoted to the discussion of specific problems of interpretation of the provision concerned. Its effects are generally commented upon in a final section. As far as sources are concerned, contributors have mostly made use of the work of the International Law Commission and of the proceedings of the Vienna Conferences, as well as of practice subsequent to the adoption of the Conventions—including relevant case law. The aim was to go beyond a mere commentary of the *travaux préparatoires* to examine more broadly other relevant sources and to give an account of the subsequent application—if any—of each provision.

From a methodological point of view, the present work is premised upon a strictly positivist approach and not upon the philosophy or sociology of international law. Each provision of the Conventions is examined from a *lege lata* perspective, and is not subjected to value judgements. Use has therefore been made mostly of the principles of interpretation enshrined in Articles 31 and 32 of both Conventions: reference to the object and purpose of the provision, to the context, subsequent practice, and *travaux préparatoires*.

The commentary on each Article includes an analysis of both the 1969 Convention provision and its 1986 equivalent. This second part of the commentary deals only with particular issues that may have arisen from the adaptation of the relevant provision to the specific situation of international organizations. All the elements pertaining to the 1986 Convention's *travaux* which contributed to the clarification of the meaning of provisions of the 1969 Convention have, for the sake of clarity, been included in the latter's commentary.

In order to provide users with some practical information, a table on the ratification status of both Conventions (as of 1 October 2010) and a list of the ILC's Special Rapporteurs on the law of treaties (and their respective periods of activities) are provided as appendices.

The present book is the outcome of a long-lasting project. It includes the contributions of more than 80 authors, who have prepared their commentaries with dedication and

seriousness, and have complied with the editors' directives. We wish to thank them for their commitment and their patience. Our warmest thanks also go to Edith Weemaels and Joanna Spanoudis, research fellows at the Université libre de Bruxelles' International Law Centre, who assisted us most efficiently in the production of this book, to Dr Freya Baetens for her diligent editing of the Articles, to Olivia Dhein, Federica Paddeu, and again Dr Baetens for their help with translating the Articles into English, and to Chérifa Saddouk, the Centre's secretary, who took care of the countless administrative challenges which arose in the course of this project. We are equally grateful to Hassiba Hadj Sahraoui, Christophe Antoine, and Nicolas Burniat for their assistance in the collection of the Vienna Conventions' *travaux préparatoires*. From an institutional perspective, the present project could not have been brought to completion without the support of our Research Centre, ULB's Law Faculty, and the Wiener-Anspach Foundation, whose financial support for the translation of some of the commentaries was crucial. Finally, we wish to express our gratitude to Oxford University Press, for accepting and supporting this project, including by assisting with the translation of some of the commentaries. Our warmest thanks, in particular, to John Louth, who encouraged us to take up this new edition of the commentary, and to Merel Alstein, for her patience, her very active involvement in the project, and her central role in the completion of this book.

Brussels
30 September 2010
Pierre Klein
Olivier Corten

Abbreviations

<i>ACDI</i>	<i>Annuaire de la Commission du droit international</i>
<i>ADSP</i>	<i>Annales de droit et de science politique</i>
<i>AFDI</i>	<i>Annuaire français de droit international</i>
<i>AJIL</i>	<i>American Journal of International Law</i>
<i>Ann IDI</i>	<i>Annuaire de l'Institut de Droit International</i>
ANZUS	Australia, New Zealand, United States Security Treaty
<i>ARIEL</i>	<i>Austrian Review of International and European Law</i>
<i>ASDI</i>	<i>Annuaire suisse de droit international</i>
ASIL	American Society of International Law
<i>AVR</i>	<i>Archiv des Völkerrechts</i>
<i>BullQR</i>	<i>Bulletin des questions et réponses</i>
<i>BVerfGE</i>	<i>Bundesverfassungsgerichtsentscheidungen</i> (German Federal Constitutional Court Reports)
<i>BYBIL</i>	<i>British Yearbook of International Law</i>
CETS	Council of Europe Treaty Series
CFI	Court of First Instance
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CJEC	Court of Justice of the European Communities
<i>CMLR</i>	<i>Common Market Law Reports</i>
<i>CMLRev</i>	<i>Common Market Law Review</i>
COMECON	Council for Mutual Economic Assistance
CRA	Comptes rendus analytiques
CSCE	Conference on Security and Cooperation in Europe
CTBT	Comprehensive Nuclear-Test Ban Treaty
CTBTO	Comprehensive Nuclear-Test Ban Treaty Organization
<i>CTR</i>	<i>Claims Tribunal Reports</i>
CTS	Consolidated Treaty Series
DR	Decisions and Reports (European Commission of Human Rights)
DSB	Dispute Settlement Body
EC	European Community
ECJ	European Court of Justice
Ecosoc	Social and Economic Council (UN)
ECOWAS	Economic Community of West African States
ECR	European Court Reports
ECtHR	European Court of Human Rights
EFTA	European Free Trade Association
<i>EHRR</i>	<i>European Human Rights Reports</i>
<i>EJIL</i>	<i>European Journal of International Law</i>
<i>EPL</i>	<i>European Public Law</i>
ETS	European Treaty Series
FAO	Food and Agriculture Organization
FRY	Federal Republic of Yugoslavia

GA	General Assembly
GATT	General Agreement on Tariffs and Trade
GFA	General Framework Agreement
<i>GYBIL</i>	<i>German Yearbook of International Law</i>
I/ACtHR	Inter-American Court of Human Rights
IAEA	International Atomic Energy Agency
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
<i>ICLQ</i>	<i>International and Comparative Law Quarterly</i>
ICRC	International Committee of the Red Cross
ICSID	International Centre for Settlement of Investment Disputes
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDA	International Development Association
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
<i>IHRR</i>	<i>International Human Rights Reports</i>
IIL	Institute of International Law (Institut de droit international)
<i>IJIL</i>	<i>International Journal of Innovation and Learning</i>
ILC	International Law Commission
<i>ILM</i>	<i>International Legal Materials</i>
ILO	International Labour Organization
<i>ILR</i>	<i>International Law Reports</i>
IMCO	International Maritime Consultative Organization
IMF	International Monetary Fund
IMO	International Maritime Organization
Interpol	International Criminal Police Organization
<i>IRRC</i>	<i>International Review of the Red Cross</i>
ITU	International Telecommunication Union
IUHEI	Institut Universitaire de Hautes Etudes Internationales
<i>IYBIL</i>	<i>Italian Yearbook of International Law</i>
<i>JCP</i>	<i>Jurisclasseur périodique</i>
<i>JDI</i>	<i>Journal du droit international</i>
<i>JICJ</i>	<i>Journal of the International Commission of Jurists</i>
<i>JORF</i>	<i>Journal Officiel de la République Française</i>
<i>JOSdN</i>	<i>Journal Officiel Société des Nations (Official Journal of the League of Nations)</i>
<i>JT</i>	<i>Journal des Tribunaux</i>
KB	King's Bench Reports (England and Wales)
<i>LJIL</i>	<i>Leiden Journal of International Law</i>
LNTS	League of Nations Treaty Series (Recueil des traites de la Société des Nations)
LoN	League of Nations
<i>LP ICT</i>	<i>Law and Practice of International Courts and Tribunals</i>
MFN	most favoured nation

<i>MLR</i>	<i>Modern Law Review</i>
MTDSG	Multilateral Treaties Deposited with the Secretary-General
<i>NILR</i>	<i>Netherlands International Law Review</i>
<i>NQHR</i>	<i>Netherlands Quarterly of Human Rights</i>
<i>NYIL</i>	<i>Netherlands Yearbook of International Law</i>
OAS	Organization of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of the Islamic Conference
OJ	Official Journal (EU)
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Co-operation in Europe
<i>ÖZöRV</i>	<i>Österreichische Zeitschrift für öffentliches Recht und Völkerrecht</i>
<i>Pas</i>	<i>Pasicrisis</i>
PCIJ	Permanent Court of International Justice
<i>RAI</i>	<i>Recueil des arbitrages internationaux</i>
<i>RBDI</i>	<i>Revue belge de droit international</i>
<i>RCADI</i>	<i>Recueil des cours de l'Académie du droit international</i>
<i>RCDIP</i>	<i>Revue critique de droit international privé</i>
<i>RDH</i>	<i>Revue des droits de l'Homme</i>
<i>RDI</i>	<i>Rivista di diritto internazionale</i>
<i>RDIDC</i>	<i>Revue de droit international et du droit comparé</i>
<i>RDILC</i>	<i>Revue de droit international et de législation comparée</i>
<i>RDP</i>	<i>Revue du droit public et de la science politique en France et à l'étranger</i>
<i>RDUE</i>	<i>Revue de droit de l'Union européenne</i>
<i>REDI</i>	<i>Revista Española de Derecho Internacional</i>
<i>RGDIP</i>	<i>Revue general de droit international public</i>
<i>RHDI</i>	<i>Revue hellénique de droit international</i>
<i>RIAA</i>	<i>Reports of International Arbitral Awards (Recueil des sentences arbitrales)</i>
<i>RMC</i>	<i>Revue du Marché Commun et de l'Union Européenne</i>
<i>RMUE</i>	<i>Revue du Marché Unique Européen</i>
<i>RSDI</i>	<i>Revue suisse de droit international</i>
<i>RTDE</i>	<i>Revue trimestrielle de droit européen</i>
<i>RTDH</i>	<i>Revue trimestrielle des droit de l'homme</i>
<i>RUDH</i>	<i>Revue universelle des droits de l'homme</i>
SCR	Supreme Court Reports (Canada)
SFDI	Société Française pour le droit international
SFRY	Socialist Federal Republic of Yugoslavia
SOFA	Status of Forces Agreement
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UKHL	UK House of Lords reports
UKTS	UK Treaty Series
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development

UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNIDO	United Nations Industrial Development Organization
<i>UNJY</i>	<i>United Nations Juridical Yearbook</i>
UNOOSA	United Nations Office for Outer Space Affairs
UNTS	United Nations Treaty Series (Recueil des traités des Nations Unies)
UPU	Universal Postal Union
USC	United States Code
<i>VaJIL</i>	<i>Virginia Journal of International Law</i>
VCLT	Vienna Convention on the Law of Treaties
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization
<i>YBECHR</i>	<i>Yearbook of the European Commission of Human Rights</i>
<i>YIL</i>	<i>Yearbook of the Institute of International Law</i>
<i>YILC</i>	<i>Yearbook of the International Law Commission</i>
<i>ZaöRV</i>	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>

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