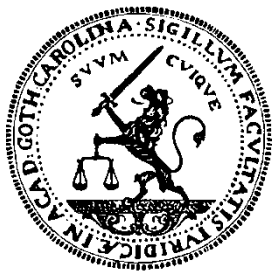

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Applying Committee Commentary in Treaty Interpretation:

The Legal Significance of the Interpretations of the Committee on the Rights of the Child during an Interpretation Process

JURM02 Master Thesis

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Contents

Summary

Inevitably, interpreting treaties potentially involve contentious results when the opinions of parties differ. The Convention on the Rights of the Child is no exception. What to include during the process of interpreting the Convention could therefore be controversial. Thus, the legal significance of the interpretative output of the Committee on the Rights of the Child, as understood through principles of public international law, does not have an incontestable answer. Thus, there is reason to be cautious regarding the legal significance of the Committee interpretations.

The significance can be assessed both as a source of law and as a means of interpretation. For either of these concepts to encompass the Committee interpretations, quite an extensive understanding of the concepts is required. The provision on subsidiary means of interpretation in the Vienna Convention, on the other hand, is more ambiguous due to the non-exhaustive list permitting several different interpretations regarding what is permissible to include. If custom is deemed to permit Committee interpretations hereunder, or if the provision is viewed less restrictively, the interpretations could be allowed as a subsidiary means of interpretation. The Committee interpretations could also have an auxiliary function and indicate the states parties' position on subsequent agreements via practice, through the reaction of the parties. Departing from the strictly legal significance, the Committee interpretations can also have secondary influence on the interpretation of the Convention. Such influence derives from inter alia the ability to influence law makers, convince judges or states, or otherwise normatively shift the perception of the Convention. The ability to do so originate from the strength of the argument presented in the Committee interpretations.

This thesis concludes that the arguments that attach legal significance to the Committee interpretations as a means of interpretation require an extensive interpretation of the Vienna Convention. Whether the Committee interpretations can be applied as a subsidiary means of interpretation remains unclear. If the interpretations are instead assessed through their secondary influence, their significance appears dependent on the strength of the argument presented in the interpretations.

Sammanfattning

Traktatstolkning vid oklar partsvilja kan mycket väl innebära att parterna har radikalt olika positioner. Det kan därför vara kontroversiellt att bestämma vad som ska inkluderas i tolkningsprocessen. Barnrättskonventionen är inget undantag. Den rättsliga betydelsen av Barnrättskommitténs tolkningar, bedömd utifrån folkrättens regler, har på grund av det inget oomtvistligt svar. Således finns det anledning att iaktta viss försiktighet när betydelsen av tolkningarna ska fastställas, oavsett om tolkningarna bedöms som potentiell rättskälla eller möjligt tolkningsmedel.

Folkrättsreglerna gällande både rättskälleläran och tolkningsmedel måste tolkas relativt extensivt för att kommitténs tolkningar ska anses falla härunder. Bestämmelsen gällande subsidiära tolkningsmedel i Wienkonventionen är däremot mer oklar till sin natur, och skulle kunna tillåta att kommitténs tolkningar används. Det som krävs är att den icke uttömande listan i artikeln anses innefatta dessa, antingen genom att bestämmelsen anses ha få begränsningar gällande det material som omfattas, eller, om de subsidiära tolkningsmedlen begränsas av sedvanerätt, att sedvanerätten skulle rymma kommitténs tolkningar. Tolkningarna skulle också kunna förstås som ett verktyg för att klargöra parternas positioner gällande eventuella efterföljande överenskommelser. Detta genom att visa på efterföljande praxis hos parterna, då stater kan visa sin partsvilja genom att reagera eller välja att följa de förtydliganden av Barnrättskonventionen som kommittén satt på pränt. Det går också att förstå kommitténs betydelse genom att anlägga ett perspektiv som granskar eventuellt sekundärt inflytande, istället för att enbart se direkt inflytande baserat på lag. Ett sådant inflytande skulle härstamma från hur väl kommitténs argument är underbyggda; starka argument skulle bland annat kunna påverka lagstiftare eller övertyga domstolar, vilket i andra hand skulle kunna påverka hur Barnrättskonventionen tolkas.

Sammantaget krävs det en relativt extensiv tolkning av internationell rätt för att kommitténs tolkningar ska anses vara tolkningsmedel under en majoritet av de argument som undersökts. Undersökningen av subsidiära tolkningsmedel visar att det är oklart om kommitténs tolkningar kan användas som sådana. När det gäller kommitténs indirekta påverkan flyttas fokus från de formella kraven som dikterar hur tolkningarna kan användas. Istället blir argumentet i själva tolkningen avgörande för deras betydelse.

Preface

This thesis concludes my studies at the Swedish Master of Laws Programme and the Master's Programme in International Human Rights Law.

I would like to thank my supervisor, Ulf Linderfalk, for the guidance, insightful comments and encouragement during my thesis writing.

I am also grateful to Alex, for proofreading and offering much appreciated comments, in addition to being a lovely friend.

Furthermore, I would like to express my appreciation for my fellow students in the RWI Library, partly for discussions on topic, but primarily for the discussions I would be hard-pressed to define as related to any topic at all. While it might not have made my thesis writing more efficient, it definitely made it more entertaining.

Finally, I would like to thank my family and friends for their love and support.

Abbreviations

CRC	Convention on the Rights of the Child, adopted at 20th Nov 1989
ECtHR	European Court of Human Rights
HRC	Human Rights Committee
ICJ	International Court of Justice
ILA	International Law Association
ILC	International Law Commission
NGO	Non-Governmental Organisation
UN	United Nations
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
VCLT	Convention on the Law of Treaties, adopted at Vienna, 22nd May 1969
WTO	World Trade Organization

Terminology[1]

Authority	Definite power to influence.
Authoritative, authoritativeness	Authoritative on a sliding scale, the exact nature may be ambiguous.
Committee interpretations	Term used as a hypernym, including all interpretative output from the Committee on the rights of the Child. Inter alia General Comments and Concluding observations are included hereunder.
Means of interpretation	The material available to use for an interpreter when assessing the intent of the parties in an unclear text. Used both in the general sense, and to describe the means specified in VCLT article 31.
Source of law	From where the law derives its power. In the context of international law, it is commonly understood as the content in article 38 in the ICJ statute.
Supplementary means of interpretation	Regulated under VCLT article 32. The material available to use for an interpreter when the means of interpretation under article 31 does not suffice for inferring the meaning of the parties.
Travaux préparatoire	Preparatory works.

[1] The terminology is explained in accordance with the usage in this thesis. Some terms are broader, but have been limited herein.

1 Introduction

1.1 Background

The Convention on the Rights of the Child[2] (hereinafter the Convention or the CRC) is one of the core human rights treaties under the United Nations. The multilateral treaties on human rights within the UN system have frequently been subjected to debates regarding the scope of the obligations the states parties have undertaken, the CRC being no exception. The large number of signatory states can increase the practical difficulty of inferring the communal intent or reach a consensus on the exact meaning of a provision, should unclarities occur. This holds especially true seeing as the CRC, like the other human rights treaties, contain some provisions that intentionally have been left vague.[3]

The parties to the CRC include almost all of the states recognised by the UN, which makes the possible impact of the Convention very wide. States, organisations and others with vested interests consequently may have a lot to gain from the manner in which the provision is interpreted. Differing understandings on how clauses and concepts are to be interpreted have thus been offered not only by states parties, but also by other interested stakeholders, such as non-governmental organisations (NGO:s) , scholars and other parts of civil society.

Among those supplying interpretations are the treaty body, the Committee on the Rights of the Child (hereinafter the Committee or the CRC Committee), who through means such as General Comments and Concluding Observations give its view on the content of the treaty. Though political aims de facto may direct the degree of state adherence to the interpretations given by the treaty bodies, the position of the comments of the Committee is affected by the authoritative significance attributed to it through international law. Such law include article 38 of the ICJ statute[4] and the Vienna Convention on the Law of Treaties[5] (hereinafter VCLT or the Vienna Convention).

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[2] *Convention on the Rights of the Child*, 20 November 1989, entered into force 2 September 1990, United Nations, Treaty Series, Vol. 1577, p. 3.
[3] Çali, B. 'Specialized Rules of Treaty Interpretation: Human Rights' Ed. Hollis, D. *The Oxford Guide to Treaties* (Oxford University Press, Oxford, 2014) 525-550 p. 541.
[4] *Statute of the International Court of Justice*, United Nations, 24 October 1945, article 38.
[5] *Vienna Convention on the Law of Treaties*, 23 May 1969, entered into force 27 January 1980, United Nations, Treaty Series, Vol. 1155, p. 331, article 31-33.

Since treaty bodies derive their authority from treaties, a central part in understanding the scope of their mandate is through the treaties regulating them. The predominate understanding is that the Committee is not capable of issuing binding comments or Concluding Observations. This view is commonly held by the parties to the Convention as well.[6] Furthermore, the International Court of Justice (ICJ) has in the case of Diallo held the general comments of another UN treaty body, the Human Rights Committee, as not expressly binding.[7] A judicial evaluation of the CRC Committee's General Comments would likely yield the same results, as the mandates of both of the treaty bodies are similar. However, that is not to say that the output from the Committee does not affect the understanding of the Convention. The Committee output is generally referred to as authoritative, but with the specificities of the term left unexplained. Thus, a closer look on what role the Committee output has in relation to treaty interpretation is warranted.

1.2 Purpose and Research Question

The primary purpose of this thesis is to examine the legal significance of the Committee on the Rights of the Child as an interpretative authority of the Convention on the Rights of the Child. The authority of the interpretations by the Committee will be described and evaluated against the framework of international law on treaty interpretation.

Various aspects are comprised within the assessment of the significance of Committee interpretations for interpreting the Convention. Therefore, the interpretations will be evaluated as both a possible source of law and a potential means of interpretation. This divide is essential due to the different properties of the concepts. Sources of law are mainly used during discussions of legality, while means of interpretation are instead applied directly during the interpretation process in order to understand the intent of the parties.[8] The Committee's potential secondary influence on how the Convention is understood will also be mentioned.

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[6] See for example the Nordic statement on the International Law Commission, Agenda item 83, by Ambassador Rönquist, 4 Nov 2015 where it was stated that "General Comments and views expressed in individual cases by treaty bodies consisting of independent experts should be of great importance for States' implementation and interpretation of international conventions […] However, such comments and views should be regarded as means of interpretation. They should not be regarded as legally binding or as having the purpose of amending a treaty."

[7] Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo) ICJ Reports (2010) p. 663f. para. 66.

[8] For further discussion on the difference between the role of sources of law and means of interpretation for treaty body interpretations, see Keller, H., Grover, L. 'General Comments

The analysis will mainly concern the role of the Committee interpretations as a means of interpretation. In understanding the weight the work of the Committee has as a means of interpretation for the Convention, the international rules regarding treaty interpretation have to be examined. Customary law, as codified in the Vienna Convention on the law of treaties will primarily be used for the analysis.

Since the treaty bodies to the main human rights conventions are comprised of various experts not necessarily of legal background, the legal nature and quality of the reasoning have been put into question. Thus, in order to assess the authoritativeness of the Committee a brief discussion on the potential impact of the quality of legal reasoning on the authoritative qualities of the comments of the Committee is included.

Research question:

> What is the legal significance of the interpretative output of the Committee on the Rights of the Child, as understood through principles of public international law?

1.3 Methodology and Material

The analysis will be conducted through a de lege lata perspective, with a traditional legal method using international law, as formed by inter alia custom, treaties and judgements, when examining the authority of the Committee. This means that the Committee output primarily will be compared with the Vienna Convention and article 38 in the ICJ statute. These sources are herein taken to be consistent with the content of the customary law, though brief discussions on wider understandings of the customary law will be included. As the Vienna Convention can be understood in a multitude of ways, a comparative approach will be used and conceptualisations that are more restrictive will be contrasted with more progressive perceptions of the content of the law. The discussion will mainly be on the scope of the law applied to the committee interpretations, but a critical view will be included in the final chapter in juxtaposition to the more technical view applied on the law in previous chapters.

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of the Human Rights Committee and their Legitimacy' Ed. Heller, H. Ulfstein, G. *UN Human Rights Treaty Bodies Law and Legitimacy*, Studies on Human Rights Conventions 1(Cambridge University Press, Cambridge, 2012) 116-198, p 162.

Additionally, as the question of interpretative authority has been raised in the context of other human rights treaty bodies, the thesis will include comparative elements with the aim of making the conclusion consistent regarding the general views on interpretations made by human rights treaty bodies. However, as the treaty bodies derive from different treaties, they potentially have differently stated scopes of authority. Consequently, a conclusion drawn regarding one treaty body cannot be applied directly to another, but is to be viewed mutatis mutandis.

The material used will predominantly consist of primary and secondary legal sources. In discussing the scope of the mandate and authority of the Committee, the Convention on the rights of the Child and the supplemental Optional Protocols are the main sources. Customary law on treaty interpretation, as codified in the Vienna Convention on the Law of Treaties, will be an important analytical tool in assessing the authoritative merits of the interpretations from the CRC Committee. The analysis will be furthered through the use of other legal sources and academic literature and articles.

The material has mainly been collected through from the Raoul Wallenberg institute of Human Rights Library and the Faculty of Law Library at Lund University, and from online databases, such as Hein Online. The United Nations Treaty Database and Human Rights website for the Office of the High Commissioner has been utilised for accessing UN related documents.

1.4 Organisation and Delimitations

Treaty interpretation and defining the scope of authority for a treaty body are complex procedures, wherefore this essay will make no claims of being an all-encompassing study of the topic. Rather, the aim is to bring differing opinions of possible interpretations regarding the authority of the Committee to the reader's attention, from which a possible conclusion on the significance of the interpretations will be drawn. Although concepts such as gap-filling could be of interest in connection with a general discussion on significance for the Convention through sources of law, it will not be expanded upon as the focus is to understand the interpretative authority of the Committee.

For the purpose of understanding the VCLT, a brief general description of the rules of interpretation will be included in chapter 2. Throughout the thesis, the Vienna Convention will mainly be understood through a conventional perspective. This is followed by a description of the CRC Committee and of the ways the Committee can interpret the Convention in

the third chapter. These descriptions will also be held general, and relate to the methods of the Committee and general traits of the different types of interpretation due to the time limitations. Due to the time available, it is not possible to conduct an analysis on content of and reactions to the Committee interpretations in detail. Though the content could be decisive on how to view a specific interpretation, the aim of this thesis is to provide a discussion on the overall possibilities of how the Committee Comments and other material relate to the international legal framework.

The discussion in chapter 4 on binding qualities and authoritativeness of the interpretations is outside of the scope of the research question. However, it is included in order to facilitate an easier understanding of the chapters following. To make a distinction between having authority and having authoritative qualities illustrates the fact that authoritative qualities are not necessarily connected with the significance as a source of law or as a means of interpretation.

Whether the Committee interpretations can be viewed as a source of law will be assessed in chapter 5. Though there are contrasting views on what constitutes a source of law, the traditional notion of the ICJ 38 as a reflection of customary law will be postulated. The concept of soft law as a source of law will be included, but not elaborated upon. Instead, the essence of the soft law concept is captured within the gamut of the previously discussed authoritativeness, meaning non-binding but of some importance.

Chapter 6 includes an analysis of whether or not, and in what form, the interpretations can be used as a means of interpretation. Only the provisions relevant will be included in the analysis. These gateways, that potentially allow the inclusion of Committee interpretations in the interpretation process, are subsequent agreements, subsequent practice, relevant rules of international law in article 31 and the provision on subsequent practice in article 32.

Lastly, the possible significance of the Committee interpretations used non-formally will be assessed. As this is not the focus of the thesis, the discussion will be kept brief and is intended to offer a different perspective to the discussion. Leaving the rules on sources of law and the framework of the VCLT, potential secondary influence on law will be considered. Here it is obvious that the authoritative character of the interpretations not necessarily is connected to whether or not the interpretations can be used under the Vienna Convention.

2 International Law on Treaty Interpretation

2.1 The 1969 Vienna Convention

The International Law Commission (ILC) was tasked with codifying international customary law, thereamong the area of treaty law. After producing a draft, the ILC left their findings to the UN General Assembly who convened and put forth their views on the material. [9] The result was the Vienna Convention on the Law of Treaties.

Three articles, article 31-33, contain the VLCT provisions on treaty interpretation [See supplement A]. The articles hold provisions that will be outlined below. These provisions contain the main rules that are to be applied during treaty interpretation. Both the general rule and the rule on supplementary means are laid down, as well as regulations for treaties authenticated in several languages. However, the rules are of a general nature and the exact scope is thus open for interpretation. A multitude of commonly used maxims and principles were discussed during the drafting process, but were described as "discretionary rather than obligatory"[10] and thus omitted from the convention text.[11] Several of these principles might still be subsumed under the general or supplementary rule, as discussed below. Since the Vienna Convention largely leaves the details of how the analysis is to be performed open, there could potentially be room to apply rules and maxims as tools during the interpretation.[12]

2.1.1 General Rule

Should a treaty contain ambiguous provisions or otherwise be unclear, article 31 VCLT is the first rule to consult in order to construe the meaning. The general rule stipulates that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose".[13] It further

[9] UNGA Resolution 2166 (XXI) International conference of plenipotentiaries on the law of treaties, 8 December 1966, UN Doc. A/RES/2166(XXI) .
[10] Draft Articles on the Law of Treaties with commentaries 1966 , *Yearbook of the International Law Commission*, YILC, 1966, vol. II. p. 218.
[11] ibid.
[12] Gardiner, R. 'The Vienna Rules on Treaty Interpretation' Ed. Hollis, D. *The Oxford Guide to Treaties* (Oxford University Press, Oxford, 2014) 475-506, p. 504.
[13] *Vienna Convention on the Law of Treaties*, supra note 5, Article 31(1).

specifies that *subsequent agreements*, *subsequent practices* and *relevant rules of international law* are to be taken into account during the interpretation. The intention was for the article to be read as a whole, making all paragraphs integral during the process of understanding the treaty.[14] Furthermore, the holistic look on the article was also intended to create a non-rigid interpretation. This puts focus on the content rather than a specific procedure.[15]

The first paragraph of the article alludes to the starting point of treaty interpretation; the text. Rather than having a complete focus on intent of the parties, disregarding the text, or looking only at the exact wording of the text, the general rule is formulated as to indicate that the intent is expressed through the treaty. This was the most common way of conducting treaty interpretation during the drafting of the Vienna Convention.[16] Consequently, the text is vital for understanding the treaty. The text is to be assessed from a broad, holistic perspective. The whole instrument containing the agreement, whichever shape it is in, is to be included in that assessment. This puts the agreement in focus instead of any physical document.[17]

The text is to be interpreted to its *ordinary meaning*.[18] There has been ample case law on the question of what ordinary meaning entails. The phrase connects the wording with the context due to the inherent implication of ordinary as being within the common usage under certain circumstances.[19]

When interpreting human rights treaties, it needs to be noted that the wording often is intentionally unclear. An interpretation close to the text might thus be difficult. In addition, a very restrictive interpretation might be contrary to both object and purpose and context.[20] At the same time there is the issue of state sovereignty and the intent of the parties, preventing the interpretations from being too extensive. These considerations might prove important when assessing whether clarity has been reached, and how to balance the interpretation.

[14] YILC 1966, Vol. II, supra note 10, p 220.
[15] Gardiner, 2014 supra note 12, p. 481.
[16] YILC 1966, Vol. II, supra note 10, p 218.
[17] Linderfalk, U. *On the interpretation of Treaties,* The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties, Law and Philosophy Library, 1572-4395 ; 83 (Springer, Dordrecht, 2007) p. 103f.
[18] Gardiner, R. *Treaty Interpretation,* The Oxford international Law Library (Oxford University Press, Oxford, 2008) p 162.
[19] ibid., p164.
[20] Çali, B, 2014, supra note 3, p. 531, 541.

The term *good faith* is a key part of the article, indicating the underlying principle of pacta sunt servanda.[21] Good faith is more extensive than the prima facie meaning, and is to be considered throughout the process of interpretation. It is however difficult to define. The term includes the requirement of being reasonable, and the principle of effective interpretation. It also relates to the parties adhering to the *object and purpose* of the treaty instead of obfuscating and wilfully claiming literal, non-intended understandings. This further shows the importance of the intent of the parties.[22]

To interpret *in light of the object and purpose* is another term indicating the importance of the intent and the principle of effectiveness. However, while the object and purpose influence how a text is understood, the wording of the text cannot be set aside by an argument that it is incompatible with the object and purpose.[23] Due to this, some restrictiveness should be applied when using the intent to search for a meaning. In comments during the drafting process the ILC took note of the ICJ emphasis on treaty interpretation not equalling treaty revision.[24] Accordingly, it is important to differentiate between treaty interpretation and treaty revision.

The second paragraph of article 31 describes and delimits what the term context encompasses. In order for material to be viewed as context, there needs to be a relation to the treaty, and the parties need to either have partaken in creating the material or accepted it. A significant aspect is time, as it is specified that the material needs to be made in connexion with the conclusion of the treaty.

The third paragraph in article 31 provides a list that is to be taken into account together with the context: subsequent agreement between the parties regarding the interpretation, subsequent practice and lastly, relevant rules of international law.

Subsequent agreements concern the application of a treaty, but is not necessarily a formal rule on how to apply the treaty. Less formal content, like instructions on application of a provision could also be covered. Furthermore, it is not necessary that the intent was to give an interpretation of the article; other material could fall under the article as well if it is shown to result in an agreement.[25]

[21] YILC 1966, Vol. II, supra note 10, p 119.
[22] Gardiner, R., 2008, supra note 18, p 148f, 151.
[23] ibid., p 189f.
[24] YILC 1966, Vol. II, supra note 10, p 220 f.
[25] Linderfalk, U., 2007, supra note 17, p 165.

Subsequent practice in application of the treaty is considered to form an agreement between the parties regarding the interpretation. This practice indicates the intent of the parties regarding the provision. Although it was debated during the drafting process whether subsequent practice should be included in the general rule or be categorised alongside travaux préparatoire under the supplementary rule, it was decided that it was better placed alongside subsequent interpretative agreements.[26] Waldock,[27] the special rapporteur of the ILC, points out that harmonious and coherent subsequent practice is decisive due to it pointing towards the parties perceiving the practice as binding.[28]

There is no clear definition of what constitutes subsequent practice, as it varies with the circumstances of each treaty and situation. Practice is often confirmed through documents, however, it is not the document or act in and of itself that is the evidence, but the notion of a rule perceived as binding.[29] Practice can be comprised of both acts and absence of acts, as agreements can be indicated through the parties choosing not to act. Parties refraining from performing an act can use the non-action to show an agreement to delimit a provision. Altogether, the actual practice need not necessarily be repeated or performed in a certain way, as the agreement between parties is the central question.[30] Others are of the opinion that one act is not enough, instead asserting the necessity of repeated action in order for practice to be formed.[31] The WTO Appellate Body has used the terms *concordant, common and consistent* as conditions when determining what can constitute subsequent practice.[32]

Practice is an inclusive term, as not only state practice is included, but all practice relating to the provision. This include practice originating from actors like international organisations. The provision is narrowed by the rest of the subparagraph, as the agreement between the states parties is essential for the practice to be considered subsequent practice in sense of the article.

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[26] Gardiner, R., 2008, supra note 18, p 226.

[27] Sir Humphrey Waldock, ILC special rapporteur on the law of treaties. Other positions include, inter alia, president of the ICJ.

[28] Third Report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur, *Yearbook of the International Law Commission*, YILC, 1964 , vol. II, A/CN.4/167 and Add.1-3,p 59f.

[29] Gardiner, R., 2008, supra note 18, p 226f.

[30] Linderfalk, U., 2007, supra note 17, p 166.

[31] Dörr, O. 'Section 3, Interpretation of Treaties' Ed. Dörr, O, Schmalenbach, K. *Vienna Convention on thte Law of Treaties; A Commentary,* (Springer-Verlag, Berlin Heidelberg, 2012) 521-587. p. 556.

[32] *Japan _ Alcoholic Beverages II* AB-1996-2 - Report of the Appellate Body, WT/DS8/AB/R ; WT/DS10/AB/R ; WT/DS11/AB/R, 04 October 1996, p. 12f.

The key aspect is the states parties' reaction to the practice. All parties of the treaty have to be part of the agreement, at least to the extent that they reasonably can be understood to agree with the practice.[33] However, not all parties have to partake in the practice, as the function of the practice is to show the agreement between the parties. Similarly, state conduct does not necessarily equal practice; the behaviour is rather indicating the existence of a practice.[34]

The paragraph on *relevant rules of international law* allows other elements of international law to be considered during the interpretation process. The term relevant limits what can be used, indicating that only law with direct connection to the matter at hand is applicable. Furthermore, the rules need to be applicable between the parties. Apart from a few dissenting opinions, this is generally understood as the current law regulating the relation between the parties.[35]

A fourth paragraph in article 31 clarifies that if it is shown intended a term to have a special meaning, that meaning shall be used. It covers technical or specific meanings, or other meanings not aligning with the ordinary meaning as generally understood.[36]

2.1.2 Supplementary Means

Article 32 regulates the use of supplementary means of interpretation, specifying two instances when they may be used. Firstly, after inferring a meaning through the use of the general rule in article 31, the supplementary means can be applied to *confirm* that conclusion. Secondly, supplementary means can be used as a way to *determine* the meaning when the general rule has not yielded a satisfactory result, meaning that the subject of interpretation is either *ambiguous or obscure* still or is interpreted to a *manifestly absurd* or *unreasonable* result.

Supplementary means used in order to determine the meaning of the treaty have to be applied restrictively. Preparatory works, for example, are not necessarily expressing the meaning the parties agreed upon when concluding the treaty. Thus establishing the intent through these means needs to be done more cautiously, compared with using the supplementary means as an indication on whether or not the already suggested meaning

[33] Linderfalk, U., 2007, supra note 17, p166f.
[34] Gardiner, R., 2008, supra note 18, p 230.
[35] Linderfalk, U., 2007, supra note 17, p 177f, 189.
[36] YILC 1966, Vol.II , supra note 10, p 222.

was correct.[37] In addition, it is uncommon for interpreters to use article 32 in order to determine the meaning, especially on the basis of having reached manifestly absurd results. The general rule is usually sufficient.[38] In fact, the differentiation between *to confirm* and *to determine* the meaning could arguably be a construction of mainly theoretical value, as it is often not emphasised in practical application.[39]

What can constitute supplementary means of interpretation is not clearly stated in the article, as the list therein is non-exhaustive. Travaux préparatoires and the circumstances of the treaty conclusion are given as the only examples. This does indicate what most frequently is used as supplementary means. However, it does not exclude the use of other material.[40] Linderfalk[41] finds that the construction of the article relates to customary law. The customary law, in its current form, contain what is permissible to use as a supplementary means.[42]

The reason for the travaux préparatoires being placed as supplementary means was described by the ILC special rapporteur, Waldock:

> They are simply evidence to be weighed against any other relevant evidence of the intentions of the parties, and their cogency depends on the extent to which they furnish proof of the common understanding of the parties as to the meaning attached to the terms of the treaty.[43]

Waldock further elaborated on the non-authentic qualities of travaux préparatoires as a means of interpretation, commenting on the difficulties of defining preparatory works. He noted that a definition might be too narrow, thus leading to evidence being omitted.[44] What is clear is that there has to be a connection to the treaty creation, and that the preparatory works are to be created before the adoption of the treaty.[45]

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[37] Gardiner, R., 2008, supra note 18, p 307.
[38] Le Bouthillier, Y. 'Article 32, Supplementary Means of Interpretation', Ed. Corten, O., Klein, P. *The Vienna Convention on the Law of Treaties, A Commentary, Volume I* (Oxford University Press, Oxford, 2011) 841-863., p 851.
[39] Gardiner, R., 2008, supra note 18, p 302.
[40] ibid., p 302.
[41] Ulf Linderfalk, Associate Professor of International Law, Faculty of Law, Lund University
[42] Linderfalk, U., 2007, supra note 17, p 238f.
[43] YILC, 1964 , vol. II,supra note 28, p 58.
[44] ibid.
[45] Le Bouthillier, Y, 2011, supra note 38, p 854.

The categorisation of travaux préparatoires as supplementary was, during the drafting process, feared to diminish the value of such documents by some, for example McDougal in the US delegation. However, the use of supplementary means has not been drastically reduced since the adoption of the VCLT nor has their importance during the interpretative process been diminished.[46] Furthermore, the frequent consultations of travaux préparatoires that tend to be made by treaty interpreters were not intended to be reduced by the article. Instead, referencing travaux préparatoires were by the ILC special rapporteur held as permissible even when the general rule created a clear meaning.[47] Gardiner[48] points out that consulting material with the purpose of confirming an interpretation might in fact lead to the opposite. Thus, material not aligning with the reached conclusion can be included during the interpretation process.[49]

Circumstances of the conclusion of the treaty, the second specified supplementary means of interpretation, is a term quite vague and difficult to define. Linderfalk argues that the construction holds a causal aspect; the circumstance has to at least in part motivate the conclusion of the treaty, and a temporal aspect; the term conclusion alludes to the finalising of the treaty. As circumstances of the conclusion can intersect with both context and travaux préparatoires, the term could be further narrowed by a negative definition that excludes the potential overlap.[50] However, interpreters seldom make such a distinction. More often, the specific kind of supplementary means used is not made clear in the interpretation.[51]

As mentioned above, article 32 is open for other supplementary means of interpretation than the ones specified. Since such means are not expressly regulated in the article, the opinions on the exact scope of permissible material range from quite inclusive to very restrictive.

Regarding substantive interpretational means relating to the treaty at hand, Linderfalk suggests three categories he finds to be customary. As such, they could be included in interpreting processes based on article 32. The first example given is ratification works. Such material cannot be included in the term preparatory work, as it was not produced before the conclusion of the treaty. However, it can still provide information on how a party viewed the treaty that might benefit the interpretation. The second category is treaties in pari materia, meaning treaties that intersect fully or partly with the treaty

[46] Gardiner, R., 2014 supra note 12, p. 502.
[47] YILC, 1964 , vol. II, supra note 28, p 58.
[48] Richard Gardiner, Visiting Professor, Faculty of Laws, University College London
[49] Gardiner, R., 2008, supra note 18, p 308.
[50] Linderfalk, U., 2007, supra note 17, p 346ff (-49)
[51] Gardiner, R., 2008, supra note 18, p 343f.

being interpreted. Additionally, Linderfalk finds that custom potentially permit the usage of context under article 32. Even though the term context is included in the general rule, not all aspects of the context are. Thus, the context can, under article 32, offer clarity to a meaning where the result of the general rule was not satisfactory.[52]

Others have a less narrow approach to what is permissible to include under article 32. Dörr[53] references the multitude of means that have been used to interpret treaties, and suggests that article 32 primarily is to be viewed as a tool for finding clarity. The onus is on the interpreter to assess whether or not the material is useful for finding clarity. If it is, article 32 permits the material to be used according to this view.[54]

In some cases, material such as commentaries or explanatory reports can fall under the category of supplementary means, indicating the intention of the parties. The material this applies to is often material already produced during the conclusion of the treaty, but there are several examples of commentaries produced later also endorsed as important for the interpretation of the provisions in treaties. One such example of this is the *UNHCR handbook on procedures and criteria for determining refugee status*, with its practical approach to the convention. Furthermore, treaties might themselves allow for later interpretations thorough specified procedures, such as a designated committee. This facilitates when later developments in the field occur.[55]

Some general legal principles also fall under the expression supplementary means. It is however debatable whether such principles fall solely under the term *supplementary means* or are better placed as a working method for interpreting the material. Although a strict classification of some maxims as supplementary means could reduce the ability to use them, as the use would be reduced to confirming or determining meaning under the circumstances discussed above, it is of less importance during the actual application and it tends to not be specified during the application.[56]

[52] Linderfalk, U., 2007, supra note 17, p 249f, 255f , p 259ff.
[53] Oliver Dörr, Professor, European Legal Studies Institute, University of Osnabruck
[54] Dörr, O., 2012, supra note 31, p. 581.
[55] Gardiner, R., 2008, supra note 18, p 347f.
[56] ibid., p 311f.

2.1.3 Treaties Authenticated in Several Languages

Article 33 specifies how to interpret treaties with several authenticated languages. The assumption is that the intention of the parties was to create an equal text, and the article puts emphasis on that the other rules of interpretation are to be used primarily. It is possible for the parties to assign a language to be prevailing in cases of conflict, which indicates the phrasing preferred by the parties, which in turn indicates the intended meaning. If that has not been done and the intended meaning is unclear still, the meaning is to be interpreted as the one that reconciles the versions best in light of the object and purpose of the treaty.[57]

The term *object and purpose* alludes to that the language where the meaning of the debated term is most in accordance with the object and purpose is the one that shall prevail.[58]

2.2 Interpretation of Human Rights Treaties

Human rights are often framed in terms of morality. This sets human rights treaties apart from other treaties, as the morality carries an inherent normative aspect.[59] Such exceptionalism will not be discussed in this thesis. However, human rights treaties in general have some shared specific traits. These traits might not affect the rules in the Vienna Convention as such, but possibly how the means of interpretations are assessed and valued during the interpretation.

Human rights treaties do differ from many other types of treaties. Steiner[60] provides a list on aspects that set human rights treaties apart: First, the reciprocal nature of most treaties can often not be found in human rights treaties, as the violations tend to transpire intra-state and primarily concern citizens. This reduces the tendency of other states to protest.[61] Furthermore, human rights violations are often part of the system, caused by deficiencies on different levels. Human rights may thus be perceived as a threat to the

[57] *Vienna Convention on the Law of Treaties*, supra note 5, article 33.
[58] Linderfalk, U., 2007, supra note 17, p 369.
[59] Perry, M. J. *Toward a Theory of Human Rights. Religion, Law, Courts.* (Cambridge Unievrsity Press, New York, 2007) p. 4ff.
[60] Henry J. Steiner, Professor, Harvard Law School.
[61] Steiner, H. J. 'International Protection of Human Rights' ed. Evans, M. D. *International Law* (Oxford Univeristy Press, New York, Third Edition, 2010)784-813 p. 799, 800f.

current structure and the shortcomings of the system remain due to an unwillingness to change. The deficiencies could also persist due to inert systems.[62] There are other aspects that complicate the realisation of rights as well, such as some rights being dependent on private actors for their realisation, where the onus is on the state to ensure the right.[63] The state also has a responsibility to promote rights, working towards a cultural change. The concept of progressive realisation of rights, where benchmarks may depend on the current situation of the country, also differ from the typical treaty.[64]

It is possible that the particular traits of human rights described above hold some relevance in the interpretation process. Despite the rules of the Vienna Convention being the same for all treaties, it could be argued that the evaluation of the material is to be different for human rights treaties. Çali[65] argues that it "flows from the relationship of the treaty's wording, context, and the object and purpose"[66] that effectiveness of the norms is a principal concern when interpreting treaties, making the interpretation more dynamic.[67] Another argued example where specific concessions regarding human rights treaties could be made relates to the non-reciprocal nature of the treaties. As individuals instead of states are beneficiaries, the interpretation of inter alia how a reservation to a treaty is understood could be affected.[68] Though a discussion on potential particularities for human rights treaties will be added in relation to the assessment of whether Committee interpretations qualify as means of interpretation or not, the main focus of the discussion will revolve around the Vienna Convention as it is generally understood.

[62] Steiner, H. J., 2010, supra note 61, p. 801f.
[63] ibid. p. 803f.
[64] ibid., p.804ff, 806ff.
[65] Başak Çali, Associate professor, International Law, Koç University Law School.
[66] Çali, B., 2014, supra note 3, p. 547.
[67] ibid., p. 546f.
[68] Gardiner, R., 2008, supra note 18, p 23.

3 The Convention and the Committee on the Rights of the Child

3.1 The Convention on the Rights of the Child

In accordance with the principles on indivisible human rights, reaffirming and specifying the rights recognised for children, the Convention on the Rights of the Child was adopted 20th November 1989, entering into force less than a year after, 2nd September 1990. It is the currently most ratified and accessed of the core human rights treaties, with 196 states parties.[69] At the same time, it is the human rights convention where states parties on average have made the most reservations. This could be seen as an indication of the controversial qualities of the rights of children.[70]

The substantive articles in the CRC cover a wide range of rights, adapted in order to accommodate the family unit and its role and for the purpose of balancing the protection of children with a consideration of their views.[71] Four articles have been elevated to general principles by the Committee; Article 2 concerning non-discrimination, Article 3(1) on the best interest of the child, article 6 on the right to life, survival and development and article 12 on the right to be heard. [72] The Convention covers a wide range of rights, and includes civil and political rights as well as social, economic and cultural rights. However, there has been some criticism towards the vague character of some rights, especially regarding provisions containing political and economic rights.[73]

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[69] Status as per the United Nations Treaty Collection Database, Chapter IV Human Rights, Convention on the Rights of the Child, 22 February 2016. https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en

[70] Mertus, J.A. *The United Nations and Human Rights; A Guide for a New Era*, Global Institutions Series; 33 (Routledge, London, Second edition, 2009) p. 89.

[71] See the preamble of the *Convention on the Rights of the Child*, supra note 2., and compare article 3 and 12 in the same instrument.

[72] UN Committee on the Rights of the Child (CRC), *General comment no. 5; General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, UN Doc. CRC/GC/2003/5, p 3f, para. 12.

[73] Fortin, J. *Children's Rights and the Developing Law*, Law in Context (Cambridge University Press, Cambridge, Third Edition, 2009), p. 44f.

Three Optional Protocols adhering to the CRC have been adopted; the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography,[74] the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict,[75] and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.[76] The first two mainly contain substantive provisions focused on the rights of children in specific, especially vulnerable, situations. They have been quite well received after being adopted in 2000; respectively 171 and 162 states are currently parties.[77]

The Optional Protocol on a communications procedure is a later addition adopted 19th December 2011. Although the Protocol entered into force in 2014, only 26 states are as of yet parties.[78] The protocol gives, as the name suggests, the Committee a mandate to assess individual communications regarding alleged violations of the CRC or its Optional Protocols.[79] If necessary to the case at hand, the Committee has the possibility to request interim measures from the state concerned.[80] The protocol also contains an inter-state communications procedure.[81] Furthermore, the protocol gives the Committee the authority to carry out an inquiry procedure if indications of

[74] *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, 25 May 2000, Entered into force 18 January 2002, United Nations *Treaty Series*, vol. 2171, p. 227.
[75] *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, 25 May 2000, Entered into force 12 February 2002, United Nations, *Treaty Series*, Vol. 2173, p. 222.
[76] *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* 19 Dec 2011, Entered into force 14 July 2011.
[77] Status as per the United Nations Treaty Collection Database, Chapter IV Human Rights, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 22 February 2016.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en
Status as per the United Nations Treaty Collection Database, Chapter IV Human Rights, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 22 February 2016.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-c&chapter=4&lang=en
[78] Status as per the United Nations Treaty Collection Database, Chapter IV Human Rights, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 22 February 2016.
https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en
[79] *Optional Protocol on a Communications Procedure*, supra note 76, article 5.
[80] ibid., article 6.
[81] ibid., article 12.

grave or systematic violations of the rights of children come to their knowledge.[82]

3.2 The Committee on the Rights of the Child

The Committee on the Rights of the Child was established in order to monitor the parties' progress in following the Convention. The mandate emanates from CRC article 43, and is further specified in the following articles and the third Optional Protocol. The Committee is comprised of 18 experts, with biennial elections continuously replacing or re-electing half of the committee after their four-year term.[83] Originally, the Committee consisted of only 10 experts, but the number was increased through a later amendment. [84]

The Committee is comprised of members from various countries, who have differing educational and professional backgrounds. The Committee members are, as specified in article 43, to have recognised competence and be of a high moral standing. They are nominated and elected by the states parties but working independently, not representing any state.[85] The notion of impartiality and independence for the treaty bodies is an essential part of the system, which is why specific guidelines on the matter have been adopted. [86]

With the intent of creating a positive environment, furthering the rights of children through encouragement and advice to states, the wording used in the articles concerning the Committee was deliberately soft. The idea was to foster dialogue and give states help with the implementation, which is why a complaints procedure was not included.[87] With the third Optional Protocol this stance was somewhat modified, as the committee got a mandate to assess whether violations had occurred when examining communications. However, the wording in the protocol did not indicate that the Committee would change the objective of an encouraging environment.

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[82] *Optional Protocol on a Communications Procedure*, supra note 76, article13.
[83] *Convention on the Rights of the Child*, supra note 2, article 43.
[84] UNGA Resolution 50/155 Conference of States Parties to the Convention on the Rights of the Child, 28 February 1996, UN Doc A/RES/50/155
[85] *Convention on the Rights of the Child*, supra note 2, article 43.
[86] See the Addis Ababa guidelines; UNGA Implementation of human rights instruments; Report of the Chairs of the human rights treaty bodies on their twenty-fourth meeting, 2 August 2012 A/67/222
[87] Verheyde, M., Goedertier, G. *Article 43-45:The UN Committee on the Rights of the Child* A commentary on the United Nations Convention on the Rights of the Child, 1574-8626 (Boston: Martinus Nijdhoff, Leiden, 2006) p. 8.

The Committee was left the task of deciding the specifics of its own working methods, and has since done so through its rules of procedure.[88] Throughout the working process, the Committee has strong connections with a variety of NGO's and specialised UN bodies, allowing perspectives other than states parties' to have a prominent role. The cooperation differs slightly from that of most other treaty bodies, as the Committee for example can send requests for information on its own initiative.[89]

3.2.1 State Reports and Concluding Observations

A central part of the work of the Committee is to examine state reports on the progress made in realising the rights in the Convention. States have, through becoming parties to the Convention, accepted the obligation to regularly submit reports.[90]

The states have an obligation to submit periodic reports every five years after the initial report. The reports are to contain sufficient information for the Committee to understand the situation in the country comprehensively. Issues relating to the implementation are to be covered, including potential difficulties. States parties are further to supplement additional information to the Committee, if so requested.[91] The parties to the Optional Protocols have to include information regarding those obligations in their report.[92]

The Committee has provided guidelines for how to write the reports and what to include, both regarding initial and periodical reports. States are to provide information on the rights grouped into topics. This information is to be coupled with the measures taken by the state regarding each topic.[93] As a result, the rights under the Convention have been viewed through a holistic

[88] UN Committee on the Rights of the Child (CRC), *Rules of Procedure*, 1 April 2015, UN Doc. CRC/C/4/Rev.4.
[89] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 31.
[90] *Convention on the Rights of the Child*, supra note 2, article 44.
[91] ibid.
[92] *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography*, supra note 74, article 12.
Optional Protocol on the Involvement of Children in Armed Conflict, supra note 75, article 8.
[93] UN Committee on the Rights of the Child (CRC), *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a), of the Convention* 30 October 1991, CRC/C/5.
and UN Committee on the Rights of the Child (CRC), *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child*, 3 March 2015, CRC/C/58/Rev.3.

perspective, making it possible to promote cohesive measures for combating structural problems. The topical approach furthers the implementation and puts focus on the core principles of the convention.[94] Another benefit of the given structure is that NGOs oriented towards specific issues more easily can participate.[95] However, some difficulties regarding sorting each right under an appropriate theme have been discerned. As some rights belong in several categories simultaneously, the right is assigned a category deemed most suitable. To assign a category to a right might inadvertently cause some perspectives on individual articles to be promoted at the expense of perspectives more prominent in other categories. An example is disability being categorised as a medical issue, causing the medical side to be the focus of the reporting. Consequently, the social model has had a reduced influence on how disability issues for children are construed.[96]

The Committee studies the reports and initiates a dialogue with the state where special agencies and the public can attend before presenting its views in their Concluding Observations.[97] Both the initial Concluding Observations and the following periodical Concluding Observations include descriptions of positive aspects and of areas of concern, with the concerns being sorted under the same themes as the state reports. The Committee presents suggestions and recommendations for the state regarding how a better implementation of the Convention can be achieved.[98] Due to the mandate of the Committee, the observations have to be worded carefully in order for them not to state violations. Though the concerns could indicate an area where the adherence to the Convention ought to be looked at, the concerns should not be susceptible to be conflated with stating a violation, as the mandate to produce Concluding Observations does not include judging states on violations. Conversely, wording the Concluding Observations too vaguely and positive might reduce their impact.[99]

The reports have increasingly become more structured and comprehensive, allowing a better understanding of the Committee's views on the rights in

[94] Landsdown, G. 'The Reporting Process under the Convention on the Rights of the Child', Ed.Alston,P., Crawford, J. *The Future of UN Human Rights Treaty Monitoring* (Cambridge University Press, Cambridge, 2000) 113-128. p. 115ff.
[95] Verheyde, M., Goedertier, G., 2006, supra note 87, p 20.
[96] Landsdown, G.,2000, supra note 96, p. 114. p. 115ff.
[97] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 23, 26, 29.
[98] This structure can be observed throughout the Concluding Observations, see for example Concluding Observations on the fifth periodic report of Bangladesh; UN Committee on the Rights of the Child (CRC), *Concluding observations on the fifth periodic report of Bangladesh*, 30 October 2015, UN Doc. CRC/C/BGD/CO/5
[99] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 30.

the CRC.[100] However, the Observations concern particular cases, and are not a comment on the Convention at large. Thus, their impact as jurisprudential guidelines is of little importance.[101] The Committee is dependent on what data they receive, and data selection affects their focus and analysis.[102] The Committee mainly relies on state reports for the data, but independent knowledge is also supplied, for example by NGO's in the form of shadow reports.[103]

If the state reports and subsequent Concluding Observations are to be understood, it is necessary to examine the procedure in relation to its objective; the realisation of rights. The state reporting is a process meant to enable a better implementation of the Convention and further the rights of children through governmental introspection and self-assessment combined with participation and cooperation with NGOs and the public.[104] Thus, the focus is not necessarily on the Concluding Observations as such, but on the state improvement. Consequently, the Observations are not modelled after court decisions, but rather as guidelines for implementing the Convention.[105]

3.2.2 General Comments

The CRC Committee has in its rules of procedure clarified their ability to produce General Comments. The Comments are intended to benefit the implementation of the rights enshrined and facilitate the states in their reporting.[106] The mandate to make General Comments has been inferred through the Committee's ability to make suggestions and general recommendations given in article 45, as the CRC contain no direct mention of the term General Comments.[107]

[100] Price Cohen, C., Kilbourne, S. 'Jurisprudence of the Committee of the Rights of the Child: A Guide for Research and Analysis' *Michigan Journal of International Law,* Vol. 19, No 3, (1998), 633-728. p. 646 f.
[101] Alston, P.'The Historical Origins of the Concept of 'General Comments' in Human Rights Law' Ed. Boisson de Chazournes, L., Gowlland-Debbas, V. *The international legal system in quest of equity and universality : L'ordre juridique international, un système en quête d'équité et universalité : liber amicorum Georges Abi-Saab* (Martinus Nijhoff Publishers,Boston, Mass., 2001) 763-776. p. 769.
[102] Price Cohen, C., Kilbourne, S., 1998, supra note 100,. p. 651.
[103] Mertus, J.A., 2009, supra note 70, p 84.
[104] Landsdown, G.,2000, supra note 96, p. 114.
[105] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 30.
[106] CRC/C/4/Rev.4 *Rules of Procedure* , 2015, supra note 60, Rule 77.
[107] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 38.

To date, 18 General Comments have been published, and a 19th comment is published in a draft version.[108] The form of the Comments differ; in some cases the Committee puts focus on specific articles, in others the focus can be placed on general issues or a more overarching thematic topic. The Comments are not de facto binding, but generally considered authoritative.[109] Furthermore, as the Comments concern the treaty at large and not confined to specific states or situations, they are an important way to convey the view and interpretations of the Committee. Alston[110] has called them "one of the potentially most significant and influential tools available to the [..] United Nations human rights treaty bodies".[111]

In General Comment 5 the Committee outlines its views on the implementation of the Convention, briefly describing key points of the Convention as a whole and issues of implementation.[112] This outline has allowed the Committee to produce a more coherent body of interpretational comments, structured similarly. The Comments are more similar in structure than those of other treaty bodies.[113] Still, the Committee output is influenced by several factors, including other treaty bodies' interpretations and the current members of the Committee. The interpretations can also be affected by the activities of the Committee, such as visits or arranging discussion events.[114]

The content of the General Comments has so far been treating a variety of different subjects. There are several topics where the Committee put particular emphasis on in their state specific Concluding Observations, such as juvenile justice, violence against children and education.[115] The Committee has later elaborated on many of these subjects in their General Comments.[116]

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[108] UN Committee on the Rights of the Child (CRC), *General Comment No. 19(2016); On Public Spending and the Rights of the Child (Article 4)* Draft Version, 11 June 2015, CRC/C/GC/19

[109] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 40.

[110] Philip Alston, Professor, New York University School of Law, Other positions include Legal advisor to UNICEF, UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions 04-10, and on Extreme Poverty and Human Rights 14-.

[111] Alston, P., 2001, supra note 101, p. 763f.

[112] CRC/GC/2003/5, supra note 72.

[113] Ando, N. 'General Comments/Recommendations' *Max Planck Encyklopedia of Public International Law* Max Planck Institute for Comparative Public Law and International Law (Heidelberg and Oxford University Press, 2010)

[114] Price Cohen, C., Kilbourne, S., 1998, supra note 100, p. 649.

[115] ibid., p. 647f.

[116] Compare the CRC General Comment 1on Education, CRC/GC/2001/1, 17 April 2001; the CRC General Comment 10 on Children's Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007; and the CRC General Comment 13 Freedom from all Forms of Violence, CRC/C/GC/13, 18 April 2011.

Interpreters focused on human rights have a penchant for placing emphasis on the principle of effectiveness when they examine provisions in treaties. Inter alia text and context of the subject of interpretation are read with the presupposition that the intent of the parties was to create effective protection of the right.[117] The Committee is likely in agreement with such a view, as they have included effective enjoyment within the concept of the best interest of the child, which is a recurring principle in the Comments.[118]

3.2.3 Complaints Procedures

Since the third Optional Protocol, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, was adopted the Committee has gained a mandate to assess individual and inter-state communications.[119] The Committee also has the authority to launch an inquiry procedure when grave or systematic violations are suspected, unless the states have chosen to opt out from that article.[120] The mandate only covers parties to the Optional Protocol, which currently amounts to 26 states,[121] but that number might increase in the future.

The individual communications procedure is substantiated in Article 5, and further regulated in the subsequent articles. Both alleged violations against the CRC and the Optional Protocols can be subjected to examination from the Committee, as long as the claim is submitted by or on behalf of an individual claiming to be a victim of said violation. The Committee is to give its views on the communication and give recommendations if suitable, after having considered the communication as quickly as possible.[122] After, a follow-up procedure is to commence, where the state is obliged to give due considerations to the result of the Committee examination and submit a response. Further follow-up measures may be initiated if considered appropriate by the Committee.[123]

The provision on communications may be broadened to include inter-state communications, as stated in article 12 in the Optional Protocol. If a state party submits a declaration on the subject, the Committee can examine

[117] Çali, B., 2014, supra note 3, p. 545.
[118] See for example: UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1),* 29 May 2013, UN Doc., CRC/C/GC/14, p.3 para 4.
[119] *Optional Protocol on a Communications Procedure*, supra note 76, article 5, article 12,
[120] ibid., article 13.
[121] Status as per the United Nations Treaty Collection Database, 20 March 2016, supra note 78.
[122] *Optional Protocol on a Communications Procedure*, supra note 76, article 10.
[123] ibid., article 11.

communications submitted from other states parties regarding possible noncompliance with the rights in the Convention or Optional Protocols.

The inquiry procedure is a possibility for the Committee to initiate an examination of treaty violations on its own, though the state is invited to cooperate throughout the process. However, as specified in article 13, the violations have to be indicated by reliable information in order for the Committee to conduct the investigation. There is a threshold only allowing violations to be investigated if they are suspected to be grave or systematic. After concluding the investigation, the Committee comments and recommendations are to be communicated to the state together with the results of the procedure, to which the state is to respond. As a follow-up, the state can be asked to provide information to the Committee on the actions taken in response to the investigation, and might further be asked to supply additional information on the issue.[124]

The communication procedures of the human rights treaty bodies could be called quasi-judicial, as the working method of the treaty bodies when they are assessing complaints is akin to the procedure used by courts. The Committees assess the claims and gives their opinion on whether a violation has occurred and whether the state ought to provide any form of redress to the complainant. However, although the result of the Committee evaluation is authoritative and is to be considered by the parties, it is not binding nor does any enforcement mechanism exist.[125] Due to the CRC Committee not yet having decided on a complaint based on the merits, it is yet too early to determine to what degree the decisions would compare to those of courts.

3.2.4 Other Functions of the Committee

The Committee further has the option to carry out urgent actions. These actions have similar prerequisites as the later added inquiry procedure under the third Optional Protocol. The threshold set confines the use of this means to ongoing cases where credible information has indicated serious violations of the rights enshrined in the CRC. The aim is to deter continuing violations through means encouraging communication and dialogue.[126] The actions in question may constitute of sending a letter, suggesting a visit, or asking for

[124] *Optional Protocol on a Communications Procedure*, supra note 76, article 14.
[125] Bayefsky. A.F. *How to Complain to the UN Human Rights Treaty System* (Transnational Publishers, Ardsley, N.Y, 2002) p. 37f.
[126] UN Committee on the Rights of the Child (CRC), *Report on the second session*, 19 October 1992, CRC/C/10 para. 54-58.

information or a report from the state. However, the Committee has utilised their ability to perform urgent actions sparsely.[127]

In addition, the Committee has a mandate to collect information. Such collection can for example take place in the form of studies concerning a specific topic, and the Committee can receive help from the Secretary General or UN bodies.[128] Like the other human rights treaty bodies, the Committee has an option to cooperate with UN specialised agencies and other competent bodies, under the forms stipulated by article 45. The Committee has interpreted the specialised agencies to include non-UN entities, such as NGOs.[129] The exchange between the Committee and the specialised agencies has been well-functioning.[130] Research is also conducted through information exchange in general discussions where for example UN specialised agencies, NGOs, and experts partake. The Committee can then summarise and give general recommendations on the topic discussed, or based on other information received.[131] The visits and seminars could influence the views of the Committee and the content of their interpretations.[132]

3.3 General Remarks on the Committee Interpretations

For the purpose of avoiding unnecessary repetition, the General Comments, Concluding remarks, recommendations on the communications procedure, and other output will all be subsumed under the term Committee interpretations for large parts of the analysis in this thesis. However, as seen above there are noteworthy differences in the material. These differences could potentially affect the assessment of the legal significance. In order not to constantly have to qualify and contrast the types of interpretations when discussing the significance of the Committee interpretations in general, the material will be compared and contrasted in this section.

The General Comments are perhaps most significant in the discussions on the interpretative value of Committee output. Their nature is formal, and

[127] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 35f.
[128] ibid., p. 36f.
[129] Office of the United Nations High Commissioner for Human Rights (OHCHR) *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process*, 24 June 2009, HRI/MC/2009/4, p. 29.
[130] Mertus, J.A., 2009, supra note 70, p 90.
[131] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 37f.
[132] Price Cohen, C., Kilbourne, S., 1998, supra note 100, p. 649.

these interpretations are the most generally applicable, as they are not focused on a particular country or issue. The ICJ described the output of the Human Rights Committee as a *considerable body of interpretative case law*, and put special focus on General Comments and responses to individual communications.[133]

The resulting comments from the communications procedure, as well as the Concluding Observations, are also of a formal nature. Both types of documents discusses specific issues in specific countries, limiting the general applicability of the interpretations.[134] Still, the reasoning and the assessments constitute interpretations of the Committee, which can be used to infer a general interpretation and argued in other cases, mutatis mutandis. However, the communications procedure gives the Committee the ability to infer whether a violation of the CRC has taken place. Such an assessment could be argued to lend a quasi-judicial character to the communications documents.

Other types of documents and statements from the Committee are, as seen above, less formal in both content and procedure, which naturally renders them less formal significance. While expressing the views of the Committee, they are not on the same level of consequence as the other types of documents.

The relative importance of the different documents produced can also be assessed based on the content therein and the quality of the interpretations. This is especially important if the Committee interpretations are not deemed to be means of interpretation in their own right, but can also affect the weight awarded a specific interpretation. The importance of content will be discussed in later chapters.

Altogether, when using the term Committee interpretations, typically the General Comments could be more likely to be deemed authoritative to a higher degree compared with the other interpretations, as seen above. The Views on individual communications and Concluding Observations have a more narrow area of application, which is good to keep in mind while discussing authoritativeness in general terms. However, the influence in practice could vary. This thesis will use the General Comments as a benchmark when assessing the importance of the Committee interpretations in general. Unless otherwise stated, the other types of interpretations will be assumed to be of somewhat lower significance for the general interpretation of the Convention.

[133] Case Concerning Ahmadou Sadio Diallo, 2010, supra note 7, para.66.
[134] Alston, P., 2001, supra note 101, p. 769.

4 Authoritative character of the Committee output

The Committee on the Rights of the Child constantly delivers interpretations of the Convention through the various communication options at their disposal. The act of interpretation is intrinsic to the function of the Committee, as examining reports and issuing general recommendations and advice cannot be performed without assessing the content of the provisions in the Convention. First, a short examination on the Committee's authoritative qualities will be performed, as it will enhance the comprehension of the interpretations.

For the sake of clarity, a short comment on the concept of authority and authoritativeness is warranted. There is a need to distinguish between having authority and having some authoritative qualities. To have authority indicates the binary division of having the capacity to bind parties or not having that capacity. In contrast, the term authoritativeness indicates that a position as more or less authoritative, meaning that the material holds significance to a degree, but that it is not binding.

The following chapters will examine the use of the Committee interpretations in finding or understanding the law as expressed in the Convention. The authority or authoritativeness of the interpretations examined in this chapter is not conclusive for in what aspect the interpretations can be used, but it does affect how the interpretations are understood and how they are applied.

4.1 Binding Qualities

When looking at authority, the first question to assess is whether the Committee interpretations have binding qualities. The CRC does not directly confer any mandate to produce binding interpretations on the Committee.[135] Further, it does not seem likely that the power would have been bestowed upon the Committee subsequently through a communal opinio juris of the states parties. In fact, several states have delivered clarifying statements on the subject of the authority of UN human rights treaty bodies and their Genera Comments, specifically refuting any binding

[135] Compare *Convention on the Rights of the Child*, supra note 2, article 43.

abilities.[136] An indication that the ICJ also would deem the Committee output as non-binding comes from a judgment where an elaboration on another treaty body to one of the UN core human rights treaties, the Human Rights Committee, was included. The ICJ stated that the interpretations of the HRC, although authoritative, were not of a binding nature.[137] While the treaty bodies are not operating on the same mandate, the authority given to them is similar enough to warrant a comparison.

The third Optional Protocol, giving a mandate to receive individual communications, does not contain any provision establishing that binding qualities emanate from the Committee conclusions either. Furthermore, it is stated in the protocol that the Committee is not to deliver a judgment, but to present its views.[138] The binding judgments of the ICJ can be used as a contrast. There, the judgments undoubtedly have binding force, albeit only on the specific matter between the parties concerned, and it is clearly regulated.[139] All above considered, it is clear that the Committee has no mandate to produce binding interpretations.

4.2 Otherwise Authoritative

The non-binding quality of the interpretations does not necessarily preclude them from having any significance for an interpretation, legal or otherwise. While the Committee output is not creating clarity itself as a binding interpretation, it is clear that they have some authoritative qualities.

There are many aspects to the origin of the treaty based Committees authoritativeness. One factor that can be argued is that the Committee is comprised of experts in the field, transferring their expertise to the interpretations. Another factor is the mandate given to interpret the convention, together with the context that no other body has been given the task to interpret the convention.[140] The authoritativeness can also be argued to stem from the fact that the norms in the Convention subject to interpretation contain binding obligations for the states. Thus, the interpretations cannot be ignored or dismissed without reason.[141]

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[136] International Law Association, *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, Berlin Conference 2004, p. 5, para 16.
[137] Case Concerning Ahmadou Sadio Diallo, 2010, supra note 7, para.66.
[138] *Optional Protocol on a Communications Procedure*, supra note 76, article 10.
[139] United Nations, *Charter of the United Nations*, 24 October 1945, article 94., *Statute of the International Court of Justice*, United Nations, 24 October 1945, article 59.
[140] Keller, H., Grover, L., 2012, supra note 8, p. 130, 132f.
[141] International Law Association 2004, supra note 134, p. 5, para 15.

Another practice that contributes to the authoritativeness of the treaty bodies is judicial cross-referencing. The interpretations of human rights treaty bodies are frequently used in such referencing. Earlier there was some opposition against using the output of treaty bodies, but the practice has now become increasingly common. The ICJ and other courts have recently begun to make use of such referencing as well.[142] While referencing the HRC, the ICJ acknowledged the authoritative traits of these treaty bodies. The ICJ stated that "it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty."[143] In the same judgment, the ICJ held that taking the treaty body into account would contribute to *necessary clarity and consistency of international law*, and legal security for both individual right holders and states parties.[144]

Keller[145] and Grover[146] point out that there is no requirement for the Committee to be consistent or adhere to their own interpretations in their analysation of the HRC. They add that since the HRC alone is given the task of interpreting the ICCPR, there is a presumption on the analysis within the General Comments to be accurate [147] The same argument can be made for the Committee on the Rights of the Child and the CRC. States are not free to ignore the Committee interpretations, even though the interpretations are not binding.[148]

That the states parties are arguably obliged to at least consider the views of the committees has been expressed by treaty bodies as well. The HRC stated, in relation to an individual complaint, that;

> Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established,

[142] International Law Association, *Interim Report International Human Rights Law and the International Court of Justice (ICJ)*, Washington Conference 2014, para. 29, 31.
[143] Case Concerning Ahmadou Sadio Diallo, 2010, supra note 7, para.66.
[144] ibid.
[145] Helen Keller, Professor of Constitutional, European and Public International Law, University of Zurich. Other positions include member of the UN HRC 2008-2011, and judge of the European Court of Human Rights.
[146] Leena Grover, Swiss National Science Foundation Research Fellow.
[147] Keller, H., Grover, L., 2012, supra note 8, p 129.
[148] Verheyde, M., Goedertier, G., 2006, supra note 87, p.30.

> the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.[149]

The HRC has, with slight modifications on the wording, used this in several cases, and later confirmed their opinion in General Comment 33. The HRC further elaborated on the subject, noting that there is an obligation for states to act in good faith, and that the obligation not only is connected to the treaties, but also to the participation in the procedures. [150]

Though it is clear that the Committee does not have the authority to bind the parties, the actual nature of the authoritativeness is quite undefined. There seems to be an obligation to consider interpretations in inter alia General Comments in good faith.

[149] UN Human Rights Committee (HRC), *Sooklal v Trinidad and Tobago,Communication No. 928/2000; Views adopted by the Committee at its Seventy-third session*, 8 November 2001, CCPR/C/73/D/928/2000

[150] UN Human Rights Committee, *General Comment No. 33; Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 25 june 2009, CCPR/C/GC/33. p. 3, para 15, 16.

5 Status as Source of Law

Assessing the impact of the work of the Committee requires defining the status of the work, whether it is a source of law or not. That classification provides the foundation for how to look at the material. Being categorised as a source of international law would enable the comments to be used for shaping the law and determine the law on issues not completely covered in the Convention.[151] However, the work from the Committee not being categorised as a source of law does not necessarily mean that it does not affect the understanding of the Convention. The work of the Committee could then be viewed and assessed not as a binding interpretation, but as a means of interpretation. The difference is that sources of law are affecting and shaping the norm itself, whereas means of interpretation affect how the norm is understood.

5.1 Sources of Law

Article 38 (1) of the ICJ statute provides a list that is generally considered to enshrine the customary law on what constitute a source of law in public international law. That subparagraphs enumerates (a) international conventions, (b) international customary law and (c) general principles of law as the sources of international law. Article 38 (d) also mentions judicial decisions and doctrine, although under the classification subsidiary sources of law. [152]

The CRC itself is a treaty, and as such creating obligations for the parties and a source of law. However, the status of the output from the Committee does not enjoy equal status, notwithstanding the Committee deriving its powers from the Convention. Since the treaty does not delegate law making powers to the Committee, as seen in chapter 4, their work cannot amend the treaty and does not form a treaty in its own right.

As for custom and general principles, they too seem unlikely to encompass Committee interpretations. Again, the opinions of the parties is generally that the Comments do not constitute binding documents. As long as the parties maintain this position, they are refuting claims that binding powers have been conferred through state practice or opinion juris. The content of

[151] Keller, H., Grover, L., 2012, supra note 8, p. 161.
[152] *Statute of the International Court of Justice*, United Nations, 24 October 1945, article 38.

for example a General Comment can coincide with those sources of law or have an influence on them, but the Comments themselves do not form customary law. The states are the source of custom, making the Comments relevant as a source of law only if they indicate the state position. However, the relevance of the Comments for representing state practice or opinio juris is rather weak.

The General Comments can be contrasted with UNGA resolutions. The latter differ in that states themselves are active in creating the declarations put forth. That links the content to the states, making the resolutions more likely to indicate the opinion of states. As the treaty body creating the General Comments are comprised of independent experts, the General Comments lack the same connection.[153]

5.2 Subsidiary Means for the Determination of International Law

When it comes to subsidiary sources of law, judicial decisions and doctrine, they are to be distinguished from the other sources of law enumerated. The difference was discussed during the drafting process of the article, and the term subsidiary was included to reflect the position of subparagraph d. The intent was for the subsidiary sources of law to help determine the law where it needed clarification. [154]

Regarding the judicial decisions, one way of describing the abovementioned difference between primary and subsidiary sources, is to look at the effect on the law. Judicial decisions are law determining rather than law making, and as such not comparable to the primary sources, though such a distinction has been disputed, and the ICJ has been argued to have shaped or created legal norms. Whether or not there exist a law-creating element, the subsidiary status still is apparent, as the court operates on the basis of state consent and the decision only applies in the specific adjudicated case.[155]

Most of the Committee work falls outside of judicial decisions, as the Committee mandate is not covering verdicts. A case can be made for the quasi-judicial Committee considerations of complaints under the third

[153] Blake, C. 'Normative Instruments in International Human Rights Law: Locating the General Comment' Center for Human Rights and Global Justice Working Paper Number 17, 2008, NYU School of Law • New York, NY 10012, p. 27.
[154] Van Hoof, G.J.H *Rethinking the Sources of International Law* (Kluwer Law and Taxation Publishers, Deventer, The Netherlands, 1983) p. 169f.
[155] ibid., p. 170ff.

Optional Protocol to be considered under this category. This as the considerations have similarities to court findings, and the working method of the Committee likens that of courts. However, there are differences that could contradict counting the considerations as judicial decisions. For example could the non-binding status of the findings or the varied composition of the Committee, not only members with a strict legal background, give rise to arguments that the findings are not of the status of judicial decisions. In respect of the not necessarily legal makeup of the experts, the Committee carries some semblance to an arbitration procedure, though there are other differences that can be found between Committee considerations and the arbitration process such as how the experts are anointed. Furthermore, even if the considerations were to be included under judicial decisions, the question of what weight to attribute them still exists.

Doctrine, or *the teachings of the most highly qualified publicists of the various nations* as phrased in the ICJ statute, is included as a subsidiary source in the statute. It has been of great importance in shaping international law historically, and is still significant in developing areas of law.[156] Despite this, doctrine cannot be seen as a de facto source of international law. Though it may shape law through influencing states, it holds no qualities in itself for creating law. Other factors are weakening the role of doctrine as well, such as the mere selection process of whom to include in the count of the most highly qualified publicists. Moreover, the connexion to state consent is missing in doctrine, which arguably gives judicial decisions a comparatively greater weight. Doctrine is to be used more as a guide on finding the law.[157]

5.3 An Expanded Concept of the Sources of Law

Since the international community is not static, albeit traditions may be moving slowly, and new ways of interacting are developing, some material of today may be difficult to translate to article 38 of the ICJ statute. Though attempts can be made to include such material under one of the subparagraphs, some find this method lacking. Consequently, there is a debate on whether or not the list in article 38 is exhaustive. Examples of material suggested as sources of law include resolutions of the UNGA and resolutions of regional organisations.[158] However, too extensive a view of

[156] Hillier, T. *Sourcebook on Public International Law*, Cavendish Publishing Sourcebook Series (Cavendish Publishing Limited, London, 1998)p. 94.
[157] Van Hoof, *Rethinking the Sources*, 1983, supra note 154, p. 176ff.
[158] Hillier, T., 1998, supra note 156, p. 95-99.

what constitutes a source of law can also be problematic. Van Hoof[159] suggests that "the requirement of clarity and certainty with the law puts a limit to the elasticity of these sources".[160]

Based on the abovementioned, is doubtful if the Committee interpretations presently could be argued as an extended source of law. As mentioned in the discussion above on customary law, the UNGA resolutions have a closer connection to the states and consequently their consent, making them generally considered as more authoritative. Since the Committee interpretations are not as connected to the states parties, the likelihood of the interpretations being considered a source of law is reduced, whether or not an the sources of law are considered extended. Today, it seems unlikely that the interpretations would be counted as a source of law under this extended concept.

Another suggested expansion of what constitutes the source of international public law is to include soft law. As the name suggests, it is not binding in the sense of ordinary (hard) law. Nevertheless, soft law may create legal effects.[161] This concept fills a perceived gap between law and non-law, where authoritative material not quite reaching the status of law can be categorised. If some or all of those rules were to be included as sources of law, as an expanded approach to article 38 may suggest, some argue that there might be a risk of diluting the rules. Contrarily, a very restrictive approach to article 38 may exclude relevant material from being considered a source of law. The idea of soft law is to prevent both of these risks.[162] However, Van Hoof cautions against placing too much weight on soft law, as he sees risks of it expanding greatly. He also points towards the embedded vagueness of the concept.[163]

5.4 Concluding Remarks

When analysing the potential use of the Committee interpretations as a source of law, the material should not be viewed as a single entity. How relevant the interpretations are for the analysis varies based on the content of the interpretations and the parties' intent regarding the purpose of the specific type of Committee interpretations. The more formal and general the output, the more likely it is to be considered a source of law. Thus, a

[159] Godefridus J.H. Van Hoof, Positions include Professor in Law, Professor in Human Rights, Honorary Professor in International Law, at Utrecht University.
[160] Van Hoof, *Rethinking the Sources*, 1983, supra note 154, p. 179.
[161] Hillier, T., 1998, supra note 156, p. 99.
[162] Van Hoof, *Rethinking the Sources*, 1983, supra note 154, p.179, 187ff.
[163] Van Hoof, *Rethinking the Sources*, 1983, supra note 154, p.179, 187ff.

General Comment, intended to have bearing on the Convention interpretation at large, would be more likely to be deemed a source of law than a comment specific to a situation, delivered through a Concluding Observation on a state report.

As has been explored in the chapter above, it can be inferred that the work of the Committee is unlikely to be categorised as a primary source of international law.

For the interpretations to be deemed a subsidiary source of law, they have to be considered either judicial decisions or doctrine. In general, the Committee interpretations cannot be considered judicial decisions, but the third Optional Protocol did create room to argue that the Views from communications procedures are akin to judicial decisions. However, the Views are not equal to judicial decisions. As the only review under the protocol so far concerned admissibility,[164] it is too early to draw any conclusions on in what direction the jurisprudence is heading and how dissimilar it will be to decisions from courts. Furthermore, it is uncertain if emulating a judicial decision is enough to be classified as a judicial decision under article 38(d).

The term doctrine seems intended to be of a more academic nature with the formulation *the teachings of the most highly qualified publicists of the various nations.* However, as no definition has been given, the precise scope of the term is unclear. As the committee is composed of "experts of high moral standing and recognized competence in the field",[165] they could arguably be covered by the article.

Regarding whether or not article 38 can be construed as non-exhaustive and the Committee work can be counted as a source of law not explicitly mentioned thereunder, the answer may differ depending on what Committee material is discussed and what perspective on international law is used for the analysis. Though it certainly is possible to argue for a definition of the sources of law that extends beyond article 38 and a subsequent inclusion of the comments of the Committee, the prospect of succeeding at present seems miniscule. This argument is divided in two; firstly, the concept of sources of law has to be accepted as extended, secondly, the Committee interpretations have to be accepted under the aforementioned extended sources of law. Should an extension of article 38 be generally recognised

[164] See UN Committee on the Rights of the Child (CRC), Abdul-Hamid Aziz v. Spain, Communication No. 1/2014, Decision of the Committee at its sixty-ninth session, 8 July 2015, CRC/C/69/D/1/2014

[165] *Convention on the Rights of the Child*, supra note 2, article 43(2).

regarding other possible sources, the argument would have increased potential to succeed. Currently, this argument appear unlikely to be widely accepted.

Depending on how the concept of soft law is perceived, the concept could be included as a source of law to a degree. The prospect for the Committee interpretations to be encompassed within the soft law concept is high, due to its authoritative nature that was examined in chapter 4. However, the significance of labelling Committee interpretations as soft law is debatable in the context of interpretation.

All things considered, for the output of the Committee to be counted as a source of law, quite an extensive interpretation of article 38 is needed, which, as van Hoof noted, might cause problems as it is essential for law to be clear and certain. Thus, the prospects for extensive interpretations of the article to be accepted appear rather slim. However, to argue for a categorisation of the Committee interpretations as subsidiary means for determining international law under article 38(d), through equating the Committee interpretations with doctrine, appear to be more convincing. The subsidiary sources are, however, auxiliary in nature.

6 Means of Interpretation

For the Committee interpretations to be used as a means of interpretation, the usage needs to be permitted by the rules in the Vienna Convention. There are a few possible gateways in the VCLT that enables the Committee interpretations to be taken into account.

As the general rule is to be applied in its entirety, the specific terms cannot be completely isolated for an analysis. However, there are certain parts of the article that could have a greater impact on whether or not the Committee interpretations are included under the general rule. Therefore, these terms and paragraphs will be examined more closely in relation to the Committee output.

6.1 Applicability of the General Rule

Most of the general rule of treaty interpretation in VCLT article 31 leaves the Committee interpretations inapplicable. Many aspects of the general rule have a strong connection to the conclusion of the treaty, which excludes the Committee interpretations as they are of a later date than the treaty. In article 31 (2), regulating the use of context, this temporal requisite is expressly stated. With the principle of pacta sunt servanda as a permeating principle of the article, the connection to the treaty conclusion exists even if not explicitly included. The intent of the parties while reaching their agreement is clearly an important part of how to understand a treaty. However, the temporal limitation is not necessarily perceived as excluding to the same extent as the second paragraph, though some have a more restrictive approach. An example is the use of *ordinary meaning* where, depending on the treaty in question, it might be appropriate to use either historical language, that is, understanding the term as it was understood during the treaty conclusion, or more contemporary language.[166]

6.1.1 Subsequent Agreements

In the third paragraph, subsequent material is explicitly allowed. It is therefore relevant to look into whether Committee interpretations can be applied under this article.

[166] Linderfalk, U., 2007, supra note 17, p 73f, 79.

The first section of the paragraph, 31(3)(a), regulates subsequent agreements. There is room to find both tacit agreements and subsequent concordance between states included in the provision, as the agreement is the qualifying term.[167] According to Gardiner, "[t]he less formal the agreement, the greater the significance of subsequent practice confirming less formal agreement of understanding".[168] From this point of view, it is difficult to find paragraph (a) to be suitable for analysing the Committee interpretations. There is little evidence for any formal agreements due to the low involvement by the states, and the use of subsequent agreements as a gateway can be dismissed rather easily in favour of a closer look at subsequent agreements through practice.

6.1.2 Subsequent Practice

Article 31(3)(b) states that "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation"[169] shall be taken into account. It has been suggested that the Committee interpretations are encompassed within the scope of the article, due to them arguably establishing state practice.[170] Thus, the paragraph warrants further examination in relation to the Committee interpretations.

Firstly, the interpretations have to pass the threshold of either being practice or forming practice. As the requirements for what constitutes practice are broad, this prerequisite is relatively easy to fulfil. As long as the states have a connection to the practice, indicating that they agree with it, the practice itself is quite unrestricted. The practice can be performed by international organisations, states not party to the treaty, or other actors. UN organs in particular are commonly referenced by the ICJ.[171] The potential prerequisite of repetition for practice to be formed[172] would likely not preclude the Committee interpretations to be used. Though Committee documents in themselves are solitary acts, they interconnect and reinforce each other. Findings in General Comments are often based on state reports and the subsequent Concluding Observations, and the General Comments later

[167] Linderfalk, U., 2007, supra note 17, p 176f.
[168] Gardiner, R., 2008, supra note 18, p 222.
[169] *Vienna Convention on the Law of Treaties*, supra note 5, Article 31(3)(b).
[170] Mechlem, K. 'Treaty Bodies and the Interpretation of Human Rights', *Vanderbilt Journal of Transnational Law*, Vol. 42, (2009), 905-947, p. 920.
[171] Dörr, O., 2012, supra note 31, p. 558.
[172] Practice being repeated is perceived as required by Dörr, O., 2012, supra note 31, p. 556, but the necessity of repetition is questioned by Linderfalk, U., 2007, supra note 17, p 166.

influence other documents.[173] Accordingly, it seems likely Committee interpretations can be included under the term practice.

Additionally, the practice has to be in *application of the treaty*. Therefore, a connection has to link the practice to the treaty. However, the required link has been interpreted as being quite extensive.[174] In the case of the Committee interpretations, there is an inherent relevance between the CRC and the Committee.

The agreement itself is another requirement the Committee interpretations need to fulfil in order to be applicable under the provision in 31(3)(b). Since state intent can be unclear or difficult to deduce, it is not always self-evident whether there is an actual agreement between the parties. State opinions converging without the intent to create law can be labelled concordance instead of agreement. There is no clear answer on whether or not subsequent concordance amounts to a subsequent agreement under article 31(3)(b). However, it is reasonable to interpret that it does, considering that the ICJ, in several cases, have indicated this in their judgments.[175] The agreement, or concordance, also needs to include all parties, at least to the extent that it could reasonably be assumed that all states parties have agreed.[176] As the CRC is a multinational treaty with a great deal of parties, there might be issues inferring a practice due to the sheer number of states involved.

The interpretation process is further complicated by the difficulties in determining what constitutes an agreement or concordance. As indicated above, the agreement does not need to be explicitly stated. However, it is crucial that the parties are aware of the practice, since that is a clear prerequisite for both agreement and acceptance.[177]

When establishing whether the Committee interpretations constitutes or contain an agreement, the acts of the parties are pivotal. As it is unlikely for all parties to partake in a practice or actively state their agreement, other ways of inferring acquiescence of states are needed for the Committee interpretations to achieve the status of subsequent practice.

The use of the interpretations, both the practical use and as written references, could indicate agreement with the practice. Parties have referenced General Comments and Views on individual cases, both in

[173] Verheyde, M., Goedertier, G., 2006, supra note 87, p. 39ff.
[174] Linderfalk, U., 2007, supra note 17, p 160f.
[175] ibid., p 170f, 171ff.
[176] ibid., p 167.
[177] Dörr, O., 2012, supra note 31, p. 560.

international and domestic contexts. Though the CRC Committee is not as commonly cited as the HRC, it has been referred to. With analogous reasoning, Concluding Observations and other interpretations could also be perceived as indicating an agreement, particularly considering such material occasionally has been referred to in judicial interpretations. Though the party subject to the Observation is the most likely to react to it, other parties sometimes react or refer to it as well.[178]

The parties have several links to the Committee, as the intent was to create an open and positive environment encouraging participation. For example, the parties' representatives are partaking in activities such as seminars and discussions. They are also communicating with the Committee through the submission of state reports and comments on the Committee work. The ongoing exchange with states is providing the Committee with information, thus shaping their work and, by extension, their Comments. Though this link alone might not be substantial enough to claim that the practice emanates from the states parties themselves, it is at the very least indicative of their cognisance.

The Committee is presenting its interpretations to the General Assembly biennially, though supplementary reports can be added if needed. The General Comments and recommendations, Concluding Reports, and the Committee's Views on Individual Communications are included in the report.[179] In short, there is ample communication between the parties and the Committee, meaning that the parties all have knowledge of the content of the Committee interpretations. If the parties so wish they can make a statement or protest the content of the comments from the Committee. Such statements from parties have been made regarding other treaty bodies, for example concerning the HRC General Comment 24 on reservations, though they are admittedly rare. The absence of these comments could be used as an argument that the states have accepted the interpretations made by the Committee.[180] However, it is not possible to directly equate the abstention of a protest with an agreement. There could be several reasons for the not occurring reaction, including reasons entirely unrelated to the discussed agreement. In the case of the ECtHR, the grounds for considering a non-reaction an agreement are consistent non-action from the state, in combination with the circumstances normally inducing action.[181] The

[178] International Law Association 2004, supra note 134, p. 7 para., 26,p. 43f. para. 176. In addition, see p.7ff for a review of the use of treaty body material by national courts.
[179] As per the *Convention on the Rights of the Child*, supra note 2, article 44, specified in the rules of procedure CRC/C/4/Rev.4, 2015, supra note 60, Rule 75, 76, 77, and per the *Optional Protocol on a Communications Procedure*, supra note 76, article 16.
[180] International Law Association 2004, supra note 134, p 6f., para 23.
[181] Gardiner, R., 2008, supra note 18, p234.

absence of state reaction could be indicative of the existence of an agreement, but it is equally viable that it stems from unrelated circumstances. An assessment would have to be performed on a case by case basis.

The ILA finds that a complete assessment of how states have acted in relation to a specific Comment, or other interpretations, can result in the Comment being considered state practice.[182] A comparison can be made to how the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* has been described by the House of Lords in the United Kingdom. There, the UNHCR handbook was deemed to have become international practice in accordance with the provision in VCLT Article 31 (3)(b) due to the signatory states using the guidelines.[183]

The General Comments have been met neither with unequivocal support nor total absence of critique. Instead, some parties have voiced objections against certain Comments, denouncing what they see as attempts of treaty bodies to encroach on state sovereignty and expand the scope of the provisions in the treaties.[184] A report by the ILA report raises the question of whether or not the disagreement on an interpretation by one state party renders that interpretation unusable in the context of state practice. However, a conclusive answer could not be found.[185] In accordance with the conventional understanding of the Vienna Convention, as discussed above, the provision requires all parties to agree for the practice to be accepted. A disagreement by some parties is an indication that the practice has not reached the threshold of constituting an agreement as required by the article, unless contradictory indications of these states opinion exist, such as active usage of the practice or other factors indicating agreement.

Altogether, if Committee interpretations are viewed as an agreement, it is because of the subsequent concordance of the state. It is important to note that the Comments, and other Committee interpretations, do not constitute state practice as such in line with this particular point of view. Instead, the agreement required for article 31(3)(b) stems from the states themselves, and their view on the Comments. Thus the Committee interpretations would in this regard not be considered means of interpretation per se, but rather a way of establishing the means of interpretation, and as such evidence of the

[182] International Law Association 2004, supra note 95. p. 7 para, 27 .
[183] Secretary of State For The Home Department, Ex Parte Adan R v. Secretary of State For The Home Department Ex Parte Aitseguer, R v. [2000] UKHL 67; [2001] 2 WLR 143; [2001] 1 All ER 593.
[184] Alston, P., 2001, supra note 101, p. 764f.
[185] International Law Association 2004, supra note, 134, p. 7 para. 25

contents of a state agreement. They could then, under article 31(3)(b), be used as an indication of state practice, depending on the content of the specific Comment or View assessed in relation to state response and other state practice.

The view that the General Comments constitute subsequent practice in themselves has been considered, for example in a report from the ILA.[186] For this to be the case, the Committee interpretations would either have to be attributable to the parties or an exception to the rules.

For interpretations to be attributable to states, a strong link between the parties and the interpretations is required. Since the power to agree is vested with the states, such power would have to be delegated to the Committee. Gardiner references the Iran-US claims tribunal, and its rejection of a bank settlement case due to a bank not being considered an of the state, when linking practice to the state.[187] With a conventional view on attributability, the Committee interpretations would likely not be deemed attributable to the states parties per se.

The basis for the second type of argument is rooted in the notion that human rights are inherently different from other types of treaties. As a report from the ILA discusses the argument that the interpretations of treaty bodies enjoy a special status, and that this special status is not properly considered within the text of the VCLT. The differences relates in part to the erga omnes-quality of the human rights treaties, with third-party treaty obligations instead of reciprocal obligations between states, which weakens the incentives for other states parties to react to treaty violations. In part, the differences are related to the established treaty body, which is given a mandate to monitor the treaty independently. Therefore, the ILA report suggests that a broadening of the concept of subsequent practice could have taken place. This view would result in the VCLT including the subsequent practice of the treaty bodies unless countered by state protests, if the interpretations are "adopted in the performance of the functions conferred on them by the States parties"[188].[189] Some states have protested against such a view on the General Comments, but the majority has not provided a reaction. [190]

[186] International Law Association 2004, supra note 134, p 6f. para 22.
[187] Gardiner, R., 2008, supra note 18, p 235.
[188] International Law Association 2004, supra note 134, p 6f. para 22.
[189] ibid., para 22, 23.
[190] Keller, H., Grover, L., 2012, supra note 8, p. 131.

There are several aspects pertaining to the argument of General Comments constituting subsequent practice. Sates have given the Committee the right to interpret the convention, indicating delegation of power, though not necessarily to the extent required for the Comments to form subsequent practice. That the interpretations given by the Committee can be argued to be closer to the original meaning and less tendentious due to states having vested interests, further supports the view of the Comments constituting subsequent practice. As opposed to this, the potential interests of the Committee could be held as possibly affecting their interpretation. The lack of a clear established agreement also weakens the claim that the Comments constitutes subsequent practice, as the states have not necessarily supported the Comment when refraining from making a protest. [191]

The Comments can further be perceived as reflecting already established practice. This point of view does not allow the Comments and the established practice to differ in content. In addition, the claim of the Comment being representative of state practice becomes weaker due to the issue of parties potentially acceding the treaty after the comments. Subsequent parties would not have had the possibility to react to the Committee interpretation, and the claim of the interpretation as being reflective of the members' opinions weakens if the membership changes.[192] At the same time, the General Comments could conceivably be construed as familiar enough to assume subsequent parties understand and agree with the Committee´s interpretations should they choose to accede the treaty. This counterargument cannot be applied on other, less well-known Committee interpretations.

In cases when states have clearly agreed and implemented Committee interpretations through their actions, the use of Committee interpretations as subsequent practice is not as difficult to advocate, as practice does not necessarily need to be performed by states.[193] Here, both the actual agreement and the practice relate to the parties, and the Committee interpretations function as a specification of the agreement of the parties.

To conclude, the use the interpretations as such as subsequent practice require a more liberal outlook on what constitutes an agreement between states. The argument is that since the Committee is authorised to give interpretations and the states have knowledge of these interpretations without conveying any protest, the General Comments would constitute practice establishing the agreement between the parties. As the Committee

[191] Keller, H., Grover, L., 2012, supra note 8, p. 131f.
[192] ibid.
[193] See discussion on subsequent practice above.

does not have a mandate to confer binding interpretations, and as an omission of making a protest is not a strong indication of an agreement between the parties, this view is difficult to advocate based on the Vienna Convention, although the possibility to give article 31(3)(b) a broader interpretation, due to the special qualities of human rights treaties, was mentioned by the ILA. However, no further evidence of such a custom is available, and others have argued against special rules being applicable human rights treaties.[194]

6.1.3 Relevant Rules of International Law

The third subparagraph of article 31 (3) allows the use of "any relevant rules of international law applicable in the relations between the parties".[195] The Committee interpretations need to meet several requirements in the article to be applicable. First, it is necessary to ascertain whether the interpretations can be described as *rules of international law*. The wording itself is not entirely conclusive, as rules could be understood as only permitting the usage of de facto international law. At the same time, the term *rules* does not necessarily equal obligations for states. Consequently, the scope of the term is not entirely clear. Courts have applied both formal law and less binding documents under this rule, though it can be a discussed whether the documents used have legal principles enshrined.[196]An example on the usage of article 31(3)(c), given by the House of Lords, is the European Court of Human Rights case of *Ireland v United Kingdom*.[197] Here, the ECtHR was assessing whether a practice amounted to torture or cruel, inhuman or degrading treatment. In this particular assessment the court used inter alia the General Assembly Resolution 3452 (XXX) as a reference on the distinction between torture and cruel, inhuman or degrading treatment.[198]

The need for the rules to be of international law connects them to the sources of international law. Generally, the primary sources of law are considered to constitute the rules of international law, though some argue for a more restrictive interpretation.[199] A wider understanding of what

[194] See for example Dörr, O., 2012, supra note 31, p 546. "[H]uman rights treaties do not have an exceptional regime of treaty interpretation".
[195] *Vienna Convention on the Law of Treaties*, supra note 5, Article 31(3)(c).
[196] Gardiner, R., 2008, supra note 18, p 263, 268f.
[197] A (FC) and others (FC) *v.* Secretary of State for the Home Department (2004), A and others (FC) and others *v.* Secretary of State for the Home Department,(Conjoined Appeals) SESSION 2005–06 [2005] UKHL 71, [2004] EWCA Civ 1123. paragraph 29
[198] *Ireland v. The United Kingdom* (Application no. 5310/71), Judgment (Plenary),18 January 1978, Series A, No. 25, para. 167.
[199] Linderfalk, U., 2007, supra note 17, p. 177.

constitutes rules of international law has been advocated as well, where international law would include subsidiary sources.[200]

As for the rule of international law being *relevant,* the Committee interpretations likely fulfil that criterion, as the relevancy requisite merely requires a connection between the rule and the provision that is being interpreted. [201]

The Committee interpretations further need to fulfil the prerequisite of *being applicable between the parties*. Here, the term applicable has to be qualified, as it could refer both to the conclusion of the treaty and to the time concurrent with the interpretation. A temporal limitation excluding subsequent rules would prevent the use of the Committee interpretations as sources. The provision can be understood as making party intent integral for whether to apply a limitation on the use of subsequent legal developments. In other words, a restriction precluding the use of subsequent law under 31(3)(c) would exist if the parties so intended.[202] It is unlikely this approach would result in a very restrictive view on applicable rules in this case, as the CRC, along with other human rights treaties, tend to be viewed in relation to societal changes.[203]

As for the term *parties*, it seems to indicate that all of the parties need to be bound by the rule.[204] Since the Committee interpretations typically would be used for interpreting the CRC, and the mandate of the Committee is stipulated by the CRC there would be no difference between the two. On the other hand, if a statement emanating from a mandate given by the third Optional Protocol was to be applied this could be an issue, since the Optional Protocol does not have the same parties as the CRC. However, this appears unlikely to be a concern, as a comment regarding a specific case of an alleged violation would be considerably less likely to constitute a rule compared to one of the General Comments.

In short, whether the Committee interpretations fall under the term *rule of relevant international law* is dependent whether the term rule is limited to law or not. As discussed in chapter 5, it is unclear if the Committee interpretations have the status of a source of law, particularly if not taking the subsidiary sources or an expanded view of the concept into account.

[200] Gardiner, R., 2008, supra note 18, p 268.
[201] Linderfalk, U., 2007, supra note 17, p 178.
[202] ibid., p182.
[203] Çali, B., 2014, supra note 3, p.531.
[204] Linderfalk, U., 2007, supra note 17, p 178.

This reduces the prospects of the Committee interpretations being considered a rule of relevant international law.

In support of an inclusion is the ECtHR judgment discussed above, where UNGA resolution 3452 (XXX) was used, as UNGA resolutions relate to the concept of sources in the same way Committee interpretations does. However, no complete analogy can be drawn, since UNGA resolutions are somewhat closer to being accepted as a source of law.[205] Since the court does not clarify in what capacity it is using the resolution, it could be argued that it is used as a description of general principles on the distinction on what sets torture apart from the other violations under the article as opposed to in the capacity of a rule itself. However, it is not evident that the resolution enshrines the generally accepted distinction on what constitutes torture. The distinction has been questioned, for example by the UN Special Rapporteur on Torture who argued that what sets torture apart is not the aggravation of the conduct, but the infliction on personal liberty, such as "the purpose of the conduct and the powerlessness of the victim"[206].[207] This weakens the claim of the resolution being seen as simply describing the law instead of constituting a rule in itself.

Consequently, there is room to argue that the Committee interpretations could be used under this provision, but it would require quite an extensive interpretation of what the wording *rule of international law* contains. The interpretation would have to be extensive both regarding the aspect of whether it is necessary to use a law and the aspect of what constitutes sources of international law. It is therefore unlikely that the Committee interpretations would be deemed a rule in the meaning of article 31(3)(c), particularly since the examination in chapter 5 indicated that the Committee interpretations do not constitute a source of law.

6.2 Applicability of the Supplementary Means

The Committee interpretations could potentially be applied during an interpretation process as a supplementary means of interpretation, on the basis of VCLT article 32. Naturally, the criteria for article 32 to be applicable, that supplementary means are utilised for confirming or

[205] If the concept of sources of law is viewed as expanded. See the discussion in chapter 5.
[206] Nowak, M., McArthur, E. 'The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment' *Torture; Journal on Rehabilitation of Torture Victims and Prevention of Torture,* Vol. 16, Number 3, (2006), p. 147.
[207] ibid., p.147, 151.

determining the meaning under certain conditions, have to be fulfilled. The use of Committee interpretations specifically is contingent on how wide the term supplementary means is perceived to be. None of the examples in the enumeration provided in the article admit the use of Committee interpretations, however, the list is not exhaustive.

If the scope of the term supplementary means in article 32 is understood as allowing only what is included through customary law, the interpretations of the Committee must reach this threshold in order to be encompassed by the article.

Linderfalk suggests three substantive elements that can be used under article 32; context, ratification work and treaties in pari materia.[208] The two latter can be directly ruled out as not applicable in this case. However, context potentially allows the Committee interpretations to be applied. Since there are cases where context cannot be used under the general rule but might bring clarity to a provision, it can arguably be used under the article on supplementary means of interpretation. The definition of context would adhere to the delineation given in article 31 paragraphs 2 and 3.[209] Paragraph 2 excludes the use of the interpretations based their subsequent creation compared to the conclusion of the treaty. This leads to the Committee interpretations falling under this category only if they are deemed to be included under paragraph 3 of the general rule (see discussion above).

Gardiner argues that the only restriction on the material that fall under the article is that it must be consistent with the Vienna rules. As Gardiner also perceives the Vienna rules as customary, this seems consistent with the interpretation of custom defining the limits for the rule as suggested above.[210] However, what is considered to constitute custom according to Gardiner seem to encompass more than the view that is presented by Linderfalk above does. According to this perception of the scope of the article, it is possible to use Committee interpretations as subsidiary means of interpretation, although it is somewhat limited by the content of the specific Committee interpretation. There is other material subsequently created that has been used in the sense of interpretative guidance, such as the UNHCR handbook on refugees.[211] Gardiner writes, “Comments written by

[208] See Linderfalk, U., 2007, supra note 17, p 249f ., 255f. and 259f.
[209] ibid., p 259, 272
[210] Gardiner, R., 2008, supra note 18, p 7, 343.
[211] ibid., p 346f.

independent experts may assume a role of almost equal value to those endorsed by the parties".[212]

Dörr, on the other hand, understands article 32 as less limited by rules and rather regimented by the specific interpreter, a tool to find the intended meaning when unclear through the discretion of the interpreter. The emphasis of the article should, according to this view, be the clarification of meaning rather than what constitutes supplementary means. Dörr gives the example of subsequent practice not emanating from the parties, and suggests that it is possible that it can be used as it might help create clarity.[213] If so, the Committee interpretations could be used as a supplementary means without the need to fit the Committee interpretations under a specific definition of customary law.

In conclusion, the possibility to use the Committee interpretations as a supplementary means of interpretation depend on how restrictive a view that is applied on the Vienna Convention. Due to there being no consensus regarding the scope of article 32, it remains unclear whether the article permits the Committee interpretations to be applied.

6.3 Concluding Remarks

The findings suggest that there is room to argue that the Comments and other interpretative material can be referenced as means of interpretation through their own merit. However, to use the Committee interpretations directly under Article 31 is far from uncontroversial. Two lines of reasoning can be found in support. The Committee interpretations could be seen as state practice themselves, either through the adoption process via delegated powers or through inferred state concordance due to, for example, non-occurring protests. The other argument equals the Committee interpretations with the term rule found in 31(3)(c). Of these options state practice under article 31(3)(b) requires a less extensive interpretation of the Vienna Convention, making an argument for the inclusion of Committee interpretations hereunder more likely to be generally accepted. However, neither of these arguments appear to conform with a more conventional understanding of the Vienna Convention.

The subsidiary rule of interpretation could arguably also function as a gateway through which the Committee interpretations can be used in the treaty interpretation process. Depending on how extensive a view adopted,

[212] Gardiner, R., 2008, supra note 18, p 348.
[213] Dörr, O., 2012, supra note 31, p. 581.

both regarding the scope of Article 32 and what constitutes custom under the article, the use of Committee interpretations as a subsidiary means of interpretation may be regarded as either permissible or prohibited. The examination above did not give a compelling indication of the scope of article 32, thus it remains unclear if the Committee interpretations can be applied as supplementary means of interpretation.

A less controversial possibility is to use the Comments in conjunction with the parties' reaction to them as evidence of what constitutes state practice, instead of using them directly as state practice themselves. Such an approach would without a doubt be accepted under the rules of treaty interpretation. With this method comes the disadvantage of having to establish agreement, or at least concordance, of each state party, which will likely be both difficult and time consuming.

Interpretations from treaty bodies have been referred to, both by international and national courts, but the courts seldom specify the specific application of the material as well as the provision allowing it. This makes it difficult to draw any conclusions regarding the limits of its application.

7 Significance Outside of the Vienna Convention

The human rights treaty bodies base their interpretations on material gathered through different processes. This removes the analysis from a purely theoretical level.[214] As such, their interpretations of the treaty are connected to the realities states encounter. If states were to completely disregard the interpretations produced by treaty bodies, or otherwise fail to comply, the legitimacy of those treaty bodies could be questioned. While this is a valid concern, the output from the treaty bodies has proven effective to some extent. Treaty bodies have affected both the general discourse and the acts of states in particular cases.[215]

It has been argued that the most valuable function of the General Comments and Recommendations of the treaty bodies is their ability to affect and advance the rights in the Conventions.[216] Alston notes that the ambiguity in the wording of the treaties can be and is used by state representatives to argue against conduct being held as noncompliant to the treaty, and against the treaty having an impact on state practice in general. General Comments clarifying the convention, and to some extent Concluding Observations, could help reduce the penchant to circumvent the provisions if they are inconvenient to follow.[217]

Regardless of the prospects of the CRC Committee interpretations being accepted as a source of law or as a means of interpretation, the interpretations potentially have an effect on how the rights enshrined in the Convention are perceived. Since the assigned treaty bodies are the main interpreters of their respective Convention, their interpretations do gain some de facto importance. Furthermore, states parties tend to use these interpretations as a base for their own reporting and analyses, instead of opting for an interpretation of their own.[218] The mere existence of an interpretation forces disagreeing parties to offer a counter argument. The authoritative character of the Committee further strengthens the position of their interpretations, and a contradicting claim would need to relate to and refute the existing interpretation.[219]

[214] Keller, H., Grover, L., 2012, supra note 8, p 130.
[215] Mertus, J.A., 2009, supra note 70, p 97.
[216] ibid., p 77f.
[217] Alston, P., 2001, supra note 101, p. 767ff.
[218] Mechlem, K., 2009, supra note 170, p. 920.
[219] Alston, P., 2001, supra note 101, p. 765.

To use the Committee interpretations outside the legal framework gives them a position formally equivalent to that of doctrine. The academic nature of doctrine is not imperative, as the concept of doctrinal interpretation also covers other non-official interpretations. The actual interpretative effect of such doctrinal interpretations on the treaty is secondary. The effects include potentially influencing those with authority to interpret the Convention, such as states parties and courts. In addition, if the argument is endorsed by a state, its significance increases.[220]

Haraszti[221] argues that a doctrinal interpretation is contingent on the content and the process in which the conclusion was reached. The authority of the interpreter and quality of argumentation can also affect the importance given to the interpretation.[222] Following a similar reasoning, Mechlem[223] argues that the authority of the treaty bodies' General Comments increase if their argument is based on the regulatory framework in the Vienna Convention. The closer the interpretations are to the rules of the Vienna Convention, the more authority they gain due to their content.[224]

Due to the aforementioned vague character of the rights enshrined in the CRC, and the numerous parties with potentially differing perceptions of the content of the obligations, a lack of clarity regarding the meaning of a provision will likely occur at some point. If so, interpretation is inevitable. Interpretation according to the Vienna Convention is in most cases performed with the aim of finding the parties' intent, conceptualised as real or presumed. The interpretation process amounts to collecting and collating evidence of various kinds, to reach a satisfyingly clear result. With such a straightforward view on the Vienna Convention, it is a matter of being or not being in accordance with the intent.

However, the Vienna Convention can also be understood in less of a monochrome way. Koskenniemi[225] contrasts the approach that describes law as normative in itself and based on the sources of law with the approach that

[220] Haraszti, G. *Some Fundamental Problems of the Law of the Treaties*, (Akademia Kiadó, Budapest, 1973), p. 77.
[221] György Haraszti, positions include professor in the International Law Department, Eötvös Loránd-University, chairing the UN COPUOS, and working within the Hungarian branch of the ILA department.
[222] Haraszti, G, 1973, supra note 220, p. 77f.
[223] Kerstin Mechlem, Lecturer in Human Rights Law and International Law, Transitional Justice Institute, University of Ulster, UK..
[224] Mechlem, K., 2009, supra note 170, p. 946.
[225] Martti Koskenniemi, Professor of International Law in University of Helsinki. Other positions include director at the Erik Castrén Institute of International Law and Human Rights, and member of the ILC 2002-2006.

understands the international law from what de facto is effective, finding issues within both.[226] He further writes:

> It is impossible to make substantive decisions within the law which would imply no political choice. The late modem turn to equity in the different realms of international law is, in this sense, a healthy admission of something that is anyway there: in the end, legitimizing or criticizing state behaviour is not a matter of applying formally neutral rules but depends on what one regards as politically right, or just.[227]

If viewed in this light, interpretation could be understood as inevitably political. Even if the Vienna Convention would be followed to the letter, the weighing of argument will contain a value component. Contrary to the view that interpretation is about finding the original intent, a politicised view on interpretation would argue that an interpretation is chosen. The political intent would manifest in how the weighing of the facts is performed, meaning that the same factual circumstances might be valued differently.

Interpretations being political does not equate them being politically *motivated*. The latter have been discussed in relation to the Vienna Convention, for example in relation to the use of preparatory works. The possibility for interpreters to in practice use preparatory works to confirm or disprove a meaning in accordance with how they themselves are originally inclined has been considered.[228] A similar line of reasoning could be applied to whether or not Committee interpretations are suitable to be used as a secondary means of interpretation. This could also be applicable on how Comments are received by the parties. The significance of Comments in the eyes of the parties could potentially vary depending on political considerations; the aim could be to further the own position and the content of the Comments could affect if the Comments are argued to be significant.[229] In light of this discussion, it is important to consider whether the Committee interpretations are helpful for finding the intent of the parties or used to find support for a preconceived perception.

A potentially shifting and undefined role of the Committee interpretations, as described above, could make it difficult to combine their authoritative qualities with the Rule of Law and principles of foreseeability and legality. Koskenniemi points out, while discussing territorial disputes, that if the

[226] Koskenniemi, M 'The Politics of International Law', *European Journal of International Law*, Vol. 1, No. 1, (1990), 4-32, p. 10f.
[227] ibid., p 31.
[228] Le Bouthillier, Y, 2011, supra note 38, p. 847f.
[229] Alston, P., 2001, supra note 101, p. 764f.

consequences of a decision dictate the result, the effect is a process where the Rule of Law is supplanted by arbitrariness.[230] When examining the rule of law in an international context, the particularities of international law have to be considered. For example, the idea of separation of powers, with an independent judiciary and an independent executive power, often found in domestic powers is not applicable on the international level. On a whole, it has proven difficult to reach a consensus on what exactly comprises an international rule of law.[231] Regardless of how the rule of law is conceptualised, in the narrow sense of rule by law or a more substantive interpretation of the rule, the international perspective seem to add other aspects to the analysis. Thus, discussing a potential political usage of Committee interpretations in light of an international conceptualisation of the rule of law requires further analysis. Still, the rule of law is valuable to keep in mind, due to its character as a fundamental legal concept.

In short, the platform the Committee has and their ability to communicate their interpretations should not be disregarded. The importance of the Committee interpretations is not necessarily connected to their significance in the actual interpretation of the treaty. The role as an opinion maker, influencing the opinio juris of states and law creating processes, should not be underestimated. An interpretation can change how the law is understood, giving the interpretation de facto significance rather than formal significance.

[230] Koskenniemi, M, 1990, supra note 226, p 16.
[231] Report of the Brandeis Institute for International Judges (BIIJ), *Toward an International Rule of Law*,(The International Center for Ethics, Justice, and Public Life, Waltham Massachusetts, 2010, p 8ff.

8 Conclusion

The purpose of this thesis was to assess the legal significance of the Committee on the Rights of the Child as an interpretative authority of the Convention on the Rights of the Child. In order to properly evaluate its significance, several aspects pertaining to treaty interpretation have to be considered. Firstly, it is necessary to examine the Committee interpretations' potential status a source of law due to the potential influence on how the Convention is interpreted. The result of such an analysis has bearing on the legal implications of the Committee interpretations, and is pertinent to the later discussion on Committee interpretations as means of interpretation under article 31(3)(c). Secondly, the potential legal significance of the Committee interpretations as a means of interpretation is assessed. Here, both article 31(3)(b) and 31(3)(c) are significant: If permissible as a means of interpretation, the Committee interpretations influence how the intent of the parties is understood. Further, as influence on the law may be secondary, the Committee interpretations are briefly assessed outside of the legal framework.

If the significance of the Committee interpretations is assessed through article 38 in the ICJ statute, the interpretations are unlikely to qualify as a source of law. Though the CRC itself has the status of a Convention, the Committee has not been delegated authority to confer the status of a Convention in accordance with article 38(a) to its interpretations. In addition, the Committee interpretations are unlikely to be considered general rules or international custom as per article 38(b) and (c), unless the content of the interpretation coincide with established custom.

The best match for the Committee interpretations under article 38 in the ICJ statute, as indicated by the analysis in chapter 5, is as a subsidiary means for the determination of international law, found in paragraph (d). If the interpretations are classified as doctrine, the authority is dependent on the strength of the argument. Thus, the closer a Committee interpretation adheres to the rules in the Vienna Convention, the more weight it can be awarded as an interpretation. Even if not considered a subsidiary source of law, a strong argument could sway opinions and thus influence the interpretation of the Convention, as expanded upon below.

The Committee interpretations could be classified as being soft law, as the authoritative but non-binding traits of the human rights treaty bodies consistently have been asserted when the question of their weight has been discussed. However, to classify it as such does not provide clarity on the

influence of the material during treaty interpretation. If the purpose instead is to debate and describe the de facto role of Committee interpretations, the term soft law could be useful.

As seen in chapter six, several segments in the VCLT could arguably allow the use of Committee interpretations as a means of interpretation, either completely or under certain conditions. However, the language of the VCLT is ambiguous, and the same provisions could be used to exclude the Committee output. The key determinant is how the Vienna Convention is construed.

The subsection most pertinent in the general rule is 31(3)(b) on subsequent practice. The paragraph is open to material created after the conclusion of the treaty, meaning that Committee interpretations are not excluded on the basis of their subsequent nature. Further, as practice is not synonymous with practice emanating from the state, Committee produced interpretations could constitute practice. Though there are disparate opinions on whether the term practice includes solitary acts, the Committee interpretations likely remain unaffected by this debate: Despite the interpretations often being issued in the form of a General Comment, i.e. a solitary text, the interpretations are frequently reproduced and occur in inter alia state reports and Concluding Observations. A third prerequisite, practice being in application of the treaty, should in general be fulfilled considering the manifest connexion between the content of the Committee interpretations and the CRC.

The determining factor in whether the Committee interpretations attain the status of subsequent practice is the requirement of them establishing an agreement between the parties. The pivotal aspect here is the agreement. Due to the restricted mandate bestowed upon the Committee, and the difficulties of attributing the actions of the Committee to the states parties due to the weak connection between the two, the Committee interpretations are unlikely to be considered means of interpretation per se. However, this does not preclude the interpretations from forming practice through the approval of the parties. Whether the interpretations can be used as practice is then contingent on the agreement of the parties.

As per the conventional reading of the Vienna Convention, all states parties have to acquiesce for the practice to be applicable as a means of interpretation. Although an alternative understanding, where the dissent of few is trumped by the voice of the majority, has been suggested as possible, such an unorthodox interpretation of the Vienna Convention presupposes the human rights treaties being viewed through the lens of exceptionalism.

While the conventional reading presumably will prevail during a judicial assessment, there are potential discrepant opinions regarding what specific state conduct constitutes an agreement and the extent to which the Committee interpretations are agreed upon. The latter possible area of disagreement problematise whether the interpretations constitute practice only insofar the content has been actively agreed to by the parties, or if the absence of a protest indicate that the Comment form practice as a whole.

To establish the Comments in their entirety as subsequent practice through inferred state consent by the absence of raised objections, or to go beyond and establish them as state practice per se, could potentially have far-reaching consequences. It could simplify the process of ascertaining whether there is an agreement between the parties. That the numerous parties to the CRC could impede attempts of finding a shared agreement is not an improbable assumption. As such it could be a useful tool to remove ambiguity from vague provisions and reduce discussions on what the specific rights entail. Conversely, surmising an agreement where none can be found risk reducing the legitimacy of the decision making that claim. Furthermore, states are likely reluctant to be bound to a position they do not recognise. This could conceivably affect the propensity of states to denounce either specific Comments from the Committee or the Comments as a whole. The Committee can, as seen in chapter 7, be perceived as advancing the position of human rights through their interpretations. If this view is applied, an increased frequency of denounced comments would be counterproductive to the progressive realisation of the rights in the Convention.

Conversely, if the Committee interpretations are understood as a means of interpretation through the parties' conveyed agreement, the reactions of the parties constitute the actual means of interpretation. The Committee interpretations would then function as a tool for states to let their intent be known. The interpretations constitute a manifestation of how the Convention can be understood, providing content to compare and contrast the state reactions to.

The second possible gateway in the VCLT allowing the use of Committee interpretations as means of interpretation under the general rule is article 31(3)(c). The decisive requisite here is whether the interpretations pass the threshold of constituting a rule. As the analysis conducted in chapter 5 suggests that the Committee interpretations do not constitute a source of law, the prospect of them amounting to a rule is slim. Given that the article potentially has been used thusly by the ECtHR in *Ireland v United Kingdom*, though the rule in question was an UNGA resolution, caution is

prudent. Still, the Committee interpretations are further from being considered a source of law, and have a less substantial connexion to the states parties than the UNGA resolutions. Altogether, the arguments for considering the Committee interpretations a rule in the sense of article 31(3)(c) are, in the opinion of the author, unconvincing at best.

The third possibility for the Committee interpretations to be considered a means of interpretation is as a supplementary means of interpretation under article 32. As the enumeration in the provision is not exhaustive, and there seems to be no clear consensus regarding the scope, it is unclear whether the interpretations are permissible under the article. If the article is seen as limited by custom, further investigation regarding what constitutes custom is necessary. Even if the current custom is not found to permit Committee interpretations as supplementary means of interpretation, what constitutes custom could change in the future. A less restrictive interpretation of article 32 allows the Committee interpretations to be used hereunder if conducive for clarification or determination of the meaning.

Since the role of supplementary means is to bring clarity where none exists and to prevent manifestly absurd or unreasonable results, the usage of Committee interpretations should be discussed in light of that aim. The Committee could be argued to lack vested interests, and thus be deemed more objective when assessing the original intent. A specialised interpreter could also reduce the risk of arriving at a manifestly unreasonable result. Contrarily, it could be argued that Committee interpretations increase the risk of deviation from the intent of the parties, as the Committee interpretations do not emanate from the parties. The counterargument of the CRC being a living instrument, which could allow some deviation from the originally envisioned meaning of specific provisions, has not been established as the indisputable standard when interpreting the Convention.

However, as there is no evident uniform reading of the article 32 regarding what is permissible to include, further analysis to find the most compelling argument, possibly accompanied by a preponderant position among academics, would be required to remove the unclear status of Committee interpretations as a subsidiary means of interpretation.

The prior discussions demonstrate the limited applicability of the Committee interpretations as a source of law and partly as a means of interpretation. It further elucidates the unclear position of the interpretations regarding some of the provisions. However, its possibly limited significance *through* law does not necessarily equal limited influence *on* law. The Committee could, through their position and the strength of their argument,

affect how the Convention is understood. This could either happen in a direct manner, through the endorsement from a state or application in judicial proceedings, or through long term impingement on the discourse surrounding the Convention. As this type of influence is not strictly legal in its nature, it falls outside the main purpose of this thesis. Nevertheless, it merits a short discussion due to the potential secondary effect on the interpretation of the Convention.

As limited as the prospects for using the Committee interpretations during an interpretation process may seem, the interpretations have been used in various judicial interpretations. The exact role of the Comments from treaty bodies is seldom specified, regardless of whether the context is international or national. The ICJ description of the HRC interpretations in the case of Diallo as authoritative but without binding effect is symptomatic for how the output of treaty bodies in general are described; as having some sort of unspecified influence. The practice does indicate an at least partial acceptance of the use of Committee interpretations during the interpretation process. However, whether the interpretations are used as a means of interpretation, a supplementary means of interpretation or purely on the basis of the strength of the argument is unclear, and the underlying reasoning is not necessarily consistent.

As the discussion above has revealed, the permissibility of Committee interpretations during an interpretation of the CRC is largely dependent on how the Vienna Convention is understood. The main responsibility falls on the individual interpreter to deduce and decide. Human rights advocates' penchant for effective rights could conceivably lead to an affinity to argue for an expansion of the provision in the treaty. In combination with a view finding the Committee interpretations conducive to the progress of human rights, there could be an interest in promoting the influence of the interpretations even if they would not reflect the original intent of the treaty. In contrast, states potentially violating a provision might naturally argue for a narrow interpretation so as to not be in breach of their undertaken obligations. Accordingly, parties could have a vested interest in arguing for an interpretation differing from the original intent, making the Committee interpretations possibly inconvenient. If states perceive that their prerogative of interpretation is being removed, there might also be a reluctance to agree to human rights obligations in the future. In light of this, letting the Committee interpretations' significance remain unclear may be perceived as beneficial. If the usage of the Committee interpretations remains unclarified, they can in practice function both as guidelines only, that parties merely need to consider, and as means of interpretation.

It is of course possible to argue from a de lege ferenda perspective, that it *should be* permissible or non-permissible to use the interpretations as means of interpretation, or that the law *ought* to accurately reflect the de facto influence of Committee interpretations today. Though the possible political consequences of clarifying the role of the Committee interpretations are outside of the scope of this thesis, it is an important topic that warrants further analysis.

When the significance of Committee interpretations is assessed, a reflection is required on how we conceptualise international law. Postulations regarding from where the authority in international law derives and how the elements of law relate to each other might affect how arguments are shaped and what significance each line of reasoning is awarded. The not uncommon notion of human rights having an elated position based on moral properties, or peremptory due to a common state understanding that has transcended to jus cogens, conflict with the positivistic notion of state sovereignty as the origin of legitimacy. Such disparate notions of the nature of international law ipso facto affect the analysis, and the outcome might consequently differ. As there is a spectrum of opinions regarding the exact relation between justice and law, a clarification of what an argument postulates might be beneficial. Consequently, the more formulistic approach taken herein does not represent the only way of analysing the topic.

In light of the contentious political interests that surround human rights, it is tempting to conceptualise the choice as whether the interpreter should err on the side of caution and be restrictive, or work towards a more expansive interpretation of the Vienna Convention. However, though interpretation is political, fundamental policy choices could be better left to law making procedures, if some semblance of separation of powers is aspired to. When it comes to interpretation, the choice ought to be built on an analysis as objective as can be, at least if viewed through a positivistic perspective.

Ultimately, the Vienna Convention is to be adhered to during treaty interpretation, including interpretation of human rights conventions. The nature of the rules allow for differing interpretations in terms of scope. Though the output from the Committee on the Rights of the Child de facto may very well have effects both on influencing legislation through opinio juris and state practice as well as effects on how the provisions in the CRC are interpreted, there is reason to adopt caution regarding the legal significance of the material. The analysis above has not precluded the use of Committee interpretations as means of interpretations, however, it suggests more convincing arguments are needed for the interpretations to be considered means of interpretation per se. The interpretations applied in the

auxiliary role of specifying the state reactions could, depending on the specific case, possibly be used during the interpretation process. Whether or not the interpretations are permissible in the role of supplementary means of interpretation remains unclear. Until clarity on the legal significance under the Vienna Convention has been reached, further examination is required.

Supplement A

Vienna Convention on the Law of Treaties
23 May 1969

Article 31, GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) Any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty;
(b) Any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
3. There shall be taken into account, together with the context:
(a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) Any relevant rules of international law applicable in the relations between the parties.
4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32, SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31 :
(a) Leaves the meaning ambiguous or obscure; or
(b) Leads to a result which is manifestly absurd or unreasonable.

Article 33, INTERPRETATION OF TREATIES AUTHENTICATED IN TWO OR MORE LANGUAGES

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.
2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.
3. The terms of the treaty are presumed to have the same meaning in each authentic text.
4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

Bibliography

LEGISLATION

International instruments

Charter of the United Nations, United Nations, 24 October 1945.

Convention on the Rights of the Child, 20 November 1989, entered into force 2 September 1990, United Nations, Treaty Series, Vol. 1577, p. 3.

Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure 19 Dec 2011, Entered into force 14 July 2011.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, 25 May 2000, entered into force 12 February 2002, United Nations, *Treaty Series*, Vol. 2173, p. 222.

Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 16 March 2001, Entered into force 18 January 2002, United Nations *Treaty Series*, vol. 2171, p. 227.

Statute of the International Court of Justice, United Nations, 24 October 1945.

Vienna Convention on the Law of Treaties, 23 May 1969, entered into force 27 January 1980. United Nations, Treaty Series, Vol. 1155, p. 331.

UNITED NATIONS OFFICIAL DOCUMENTS

United Nations General Assembly

Resolutions

UNGA Resolution 2166 (XXI) *International conference of plenipotentiaries on the law of treaties*, 8 December 1966, UN Doc. A/RES/2166(XXI).

UNGA Resolution 50/155 C*onference of States Parties to the Convention on the Rights of the Child*, 28 February 1996, UN Doc A/RES/50/155.

Reports

UNGA *Implementation of human rights instruments; Report of the Chairs of the human rights treaty bodies on their twenty-fourth meeting*, 2 August 2012 A/67/222.

Office of the United Nations High Commissioner for Human Rights

Reports

Office of the United Nations High Commissioner for Human Rights (OHCHR) *Report on the Working Methods of the Human Rights Treaty Bodies Relating to the State Party Reporting Process,* 24 June 2009, HRI/MC/2009/4.

The Committee on the Rights of the Child

Reports and Policy Documents

UN Committee on the Rights of the Child (CRC), *Report on the second session,* 19 October 1992, CRC/C/10.

UN Committee on the Rights of the Child (CRC), *Rules of Procedure*, 1 April 2015 UN Doc. CRC/C/4/Rev.4.

UN Committee on the Rights of the Child (CRC), *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph 1 (a), of the Convention* 30 October 1991, CRC/C/5.

UN Committee on the Rights of the Child (CRC), *Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44, paragraph 1 (b), of the Convention on the Rights of the Child,* 3 March 2015, CRC/C/58/Rev.3.

General Comments

UN Committee on the Rights of the Child (CRC), *General Comment No. 1; Article 29(1): The Aims of Education*, 17 April 2001, UN Doc., CRC/GC/2001/1.

UN Committee on the Rights of the Child (CRC), *General Comment No. 5; General measures of implementation of the Convention on the Rights of the Child*, 27 November 2003, UN Doc., CRC/GC/2003/5.

UN Committee on the Rights of the Child (CRC), *General Comment No. 10; Children's Rights in Juvenile* Justice, 25 April 2007, UN Doc., CRC/C/GC/10.

UN Committee on the Rights of the Child (CRC), *General Comment No. 13; The Rights of the Child to Freedom from All Forms of Violence*, 18 April 2011, UN Doc., CRC/C/GC/13.

UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, UN Doc., CRC/C/GC/14

UN Committee on the Rights of the Child (CRC), *General Comment No. 19 (2016); On Public Spending and the Rights of the Child (Article 4)* Draft Version, 11 June 2015, CRC/C/GC/19

Concluding Observations

UN Committee on the Rights of the Child (CRC), *Concluding observations on the fifth periodic report of Bangladesh*, 30 October 2015, UN Doc. CRC/C/BGD/CO/5

Views on Individual Communications

UN Committee on the Rights of the Child (CRC), A*bdul-Hamid Aziz v. Spain*, Communication No. 1/2014, Decision of the Committee at its sixty-ninth session, 8 July 2015, CRC/C/69/D/1/2014.

The Human Rights Committee

General Comments

UN Human Rights Committee, *General Comment No. 33; Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 25 june 2009, CCPR/C/GC/33.

Views on Individual Communications

UN Human Rights Committee, *Sooklal v Trinidad and Tobago, Communication No. 928/2000; Views adopted by the Committee at its Seventy-third session*, 8 November 2001, CCPR/C/73/D/928/2000.

INTERNATIONAL LAW COMMISSION

Yearbooks of the International Law Commission

Draft Articles on the Law of Treaties with commentaries 1966, *Yearbook of the International Law Commission*, YILC 1966, Vol.II.

Third Report on the law of treaties, by Sir Humphrey Waldock, Special Rapporteur, *Yearbook of the International Law Commission*, YILC, 1964 , vol. II, A/CN.4/167 and Add.1-3.

INTERNATIONAL LAW ASSOCIATION OFFICIAL DOCUMENTS

Reports

International Law Association, *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies*, Berlin Conference 2004.

International Law Association, *Interim Report International Human Rights Law and the International Court of Justice (ICJ)*, Washington Conference 2014.

LITERATURE

Books

Alston, P. ’The Historical Origins of the Concept of ‘General Comments’ in Human Rights Law’ Ed. Boisson de Chazournes, L., Gowlland-Debbas, V. *The international legal system in quest of equity and universality : L'ordre juridique international, un système en quête d'équité et universalité : liber amicorum Georges Abi-Saab* (Martinus Nijhoff Publishers,Boston, Mass., 2001) 763-776 .

Bayefsky. A.F. *How to Complain to the UN Human Rights Treaty System* (Transnational Publishers, Ardsley, N.Y, 2002).

Çali, B. ‘Specialized Rules of Treaty Interpretation:Human Rights’ Ed. Hollis, D. *The Oxford Guide to Treaties* (Oxford University Press, Oxford, 2014) 525-550.

Dörr, O. ‘Section 3, Interpretation of Treaties’ Ed. Dörr, O, Schmalenbach, K. *Vienna Convention on thte Law of Treaties; A Commentary*, (Springer-Verlag, Berlin Heidelberg, 2012) 521-587.

Fortin, J. *Children's Rights and the Developing Law*, Law in Context (Cambridge University Press, Cambridge, Third Edition, 2009).

Gardiner, R. *Treaty Interpretation*, The Oxford international Law Library (Oxford University Press, Oxford, 2008).

Gardiner, R. 'The Vienna Rules on Treaty Interpretation' Ed. Hollis, D. *The Oxford Guide to Treaties* (Oxford University Press, Oxford, 2014) 475-506.

Hillier, T. *Sourcebook on Public International Law,* Cavendish Publishing Sourcebook Series (Cavendish Publishing Limited, London, 1998).

Haraszti, G. *Some Fundamental Problems of the Law of the Treaties*, (Akademia Kiadó, Budapest, 1973).

Keller, H., Grover, L. 'General Comments of the Human Rights Committee and their Legitimacy' Ed. Heller, H. Ulfstein, G. *UN Human Rights Treaty Bodies Law and Legitimacy*, Studies on Human Rights Comnventions 1(Cambridge University Press, Cambridge, 2012) 116-198.

Landsdown, G. 'The Reporting Process under the Convention on the Rights of the Child', Ed.Alston,P., Crawford, J. *The Future of UN Human Rights Treaty Monitoring*(Cambridge University Press, Cambridge, 2000) 113-128.

Le Bouthillier, Y. 'Article 32, Supplementary Means of Interpretation', Ed. Corten, O., Klein, P. *The Vienna Convention on the Law of Treaties, A Commentary, Volume I* (Oxford University Press, Oxford, 2011) 841-863.

Linderfalk, U. *On the interpretation of Treaties; The Modern International Law as Expressed in the 1969 Vienna Convention on the Law of Treaties,* Law and Philosophy Library, 1572-4395 ; 83 (Springer, Dordrecht, 2007).

Mertus, J.A. *The United Nations and Human Rights; A Guide for a New Era,* Global Institutions Series; 33 (Routledge, London, Second edition, 2009).

Perry, M. J. *Toward a Theory of Human Rights. Religion, Law, Courts.* (Cambridge Unievrsity Press, New York, 2007).

Steiner, H. J. 'International Protection of Human Rights' ed. Evans, M. D. *International Law* (Oxford University Press, New York, Third Edition, 2010) 784-813.

Verheyde, M., Goedertier, G. *Article 43-45:The UN Committee on the Rights of the Child* A commentary on the United Nations Convention on the Rights of the Child, 1574-8626 (Boston: Martinus Nijdhoff, Leiden, 2006).

Van Hoof, G.J.H *Rethinking the Sources of International Law* (Kluwer Law and Taxation Publishers, Deventer, The Netherlands, 1983).

Articles

Price Cohen, C., Kilbourne, S. 'Jurisprudence of the Committee of the Rights of the Child: A Guide for Research and Analysis' *Michigan Journal of International Law,* Vol. 19, No 3, (1998), 633-728.

Koskenniemi, M 'The Politics of International Law', *European Journal of International Law*, Vol. 1, No. 1, (1990), 4-32.

Mechlem, K. 'Treaty Bodies and the Interpretation of Human Rights', *Vanderbilt Journal of Transnational Law*, Vol. 42, (2009), 905-947.

Nowak, M., McArthur, E. 'The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment' *Torture; Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Vol. 16, Number 3, (2006), 147-151.

ACADEMIC REPORTS AND UNPUBLISHED WORKING PAPERS

Blake, C. 'Normative Instruments in International Human Rights Law: Locating the General Comment' *Center for Human Rights and Global Justice Working Paper* Number 17, (2008), NYU School of Law • New York, NY 10012.
Found at http://chrgj.org/wp-content/uploads/2012/07/blake.pdf
Last accessed 26th May 2016.

Report of the Brandeis Institute for International Judges (BIIJ), *Toward an International Rule of Law*,(The International Center for Ethics, Justice, and Public Life, Waltham Massachusetts, 2010).

OTHER SOURCES

Statements from States

Nordic statement on the International Law Commission, Agenda item 83, by Ambassador Rönquist, 4 Nov 2015.
Found at http://www.swedenabroad.com/en-GB/Embassies/UN-New-York/Current-affairs/Statements/Nordic-statement-by-Ambassador-Ronquist-on-International-Law-Commission-Agenda-item-83-sys/
Last accessed 26th May 2016.

Encyclopaedias

Ando, N. 'General Comments/Recommendations' *Max Planck Encyclopedia of Public International Law* Max Planck Institute for Comparative Public Law and International Law (Heidelberg and Oxford University Press, 2010).

Table of Cases

THE INTERNATIONAL COURT OF JUSTICE

Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), 30 Nov 2010, ICJ Reports (2010), p 639.

THE EUROPEAN COURT OF HUMAN RIGHTS

Ireland v. The United Kingdom (Application no. 5310/71), Judgment (Plenary), 18 January 1978, Series A, No. 25.

THE WORLD TRADE ORGANISATION APPELLATE BODY

Japan _ Alcoholic Beverages II AB-1996-2 - Report of the Appellate Body, WT/DS8/AB/R ; WT/DS10/AB/R ; WT/DS11/AB/R, 04 October 1996.

THE UNITED KINGDOM, HOUSE OF LORDS

A (FC) and others (FC) *v.* Secretary of State for the Home Department (2004), A and others (FC) and others *v.* Secretary of State for the Home Department,(Conjoined Appeals) SESSION 2005–06 [2005] UKHL 71, [2004] EWCA Civ 1123.

Secretary of State For The Home Department, Ex Parte Adan R v. Secretary of State For The Home Department Ex Parte Aitseguer, R v. [2000] UKHL 67; [2001] 2 WLR 143; [2001] 1 All ER 593.