

FOREWORD

In 1950, the International Law Commission considered ways and means for making customary international law more readily available, in accordance with article 24 of its Statute. The Commission recommended, *inter alia*, that the General Assembly of the United Nations should authorize the Secretariat to prepare and issue, with as wide a distribution as possible, a *Legislative Series* containing the texts of current national legislation on matters of international interest. In this connection, it was recommended that the Secretariat should assemble and publish from time to time collections of the texts of national legislation on special topics of general interest. The *Legislative Series* is prepared by the Codification Division of the Office of Legal Affairs.

The first 25 volumes in the *Legislative Series* have addressed a broad range of special topics of general interest relating, *inter alia*, to the law of the sea, the law of treaties, nationality, diplomatic and consular law, international organizations, State succession, non-navigational uses of international watercourses, jurisdictional immunities of States and their property, the multilateral treaty-making process, the prevention and suppression of international terrorism as well as the responsibility of States for internationally wrongful acts. The legal materials contained in this series have included not only national legislation but also treaties, judicial decisions, diplomatic correspondence, statements made by States in international organizations and other relevant materials depending on the topic. The present volume of this series is devoted to the topic of the provisional application of treaties.

The Vienna Convention on the Law of Treaties was adopted in 1969 on the basis of a set of draft articles finalised by the International Law Commission in 1966. Article 25 provides for the provisional application of treaties in the following terms:

Article 25
Provisional application

1. A treaty or a part of a treaty is applied provisionally pending its entry into force if:
 - (a) the treaty itself so provides; or
 - (b) the negotiating States have in some other manner so agreed.
2. Unless the treaty otherwise provides or the negotiating States have otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State shall be terminated if that State notifies the other States between which the treaty is being applied provisionally of its intention not to become a party to the treaty.

In 2012, the International Law Commission decided to include the topic of provisional application of treaties in its programme of work, with a view to considering a number of issues related to the interpretation and application of Article 25 which had arisen in the period since its adoption. The Commission appointed Juan Manual Gomez Robledo (Mexico) as Special Rapporteur for the topic.

In 2021, the International Law Commission concluded its work on the topic and adopted the *Guide to Provisional Application of Treaties*, constituted of a set of draft guidelines and a draft annex on the provisional application of treaties, together with commentaries thereto. The Commission recommended that the General Assembly take note of and commend the Guide, and accompanying commentaries, to the attention of States

and international organizations. It also recommended that the Assembly “request the Secretary-General to prepare a volume of the *United Nations Legislative Series* compiling the practice of States and international organizations in the provisional application of treaties, as furnished by the latter over the years, together with other materials relevant to the topic.” The General Assembly, in resolution 76/113 of 19 December 2021, followed the recommendation of the Commission, and, *inter alia*, requested the Secretary-General to prepare the present volume of the *Legislative Series*.

The volume is constituted of three parts. Part One is dedicated to information about the practice of States and international organizations in connection with the provisional application of treaties. It reproduces excerpts from various sources, including written communications transmitted to the Commission during the course of its work on the topic, statements made during the annual debates on the report of the International Law Commission held in the Sixth Committee of the General Assembly as well as responses received in writing to a communication sent to all States in early 2022 soliciting information regarding their respective State practice for inclusion in the present volume. A similar communication was sent to selected international organizations, both within and beyond the United Nations system, and including regional organizations. Part One also includes information about the practice of the United Nations itself, and reproduces the relevant extracts from, *inter alia*, the *United Nations Treaty Handbook*.

Part two is dedicated to the work product of the Commission, and reproduces the *Guide to Provisional Application of Treaties*, as well as the accompanying commentaries and General Assembly resolution 76/113.

Part Three reproduces several miscellaneous documents, including three studies prepared by the United Nations Secretariat for the consideration of the International Law Commission during its work on the topic, as well as a bibliography that was included in the 2021 report of the Commission upon conclusion of its work on the topic.

The materials are presented predominantly in English, in some cases on the basis of translations prepared by the Secretariat of the United Nations. Where available the versions in the original language of submission or delivery have been posted on the website accompanying this volume (at locations indicated in the accompanying footnotes).¹

¹ Available at: <https://legal.un.org/legislativeseries/book26.shtml>.