



Assemblée générale

Distr. limitée
24 juin 2021
Français
Original : anglais

Commission du droit international

Soixante-douzième session

Genève, 26 avril-4 juin et 5 juillet-6 août 2021

Projet de rapport de la Commission du droit international sur les travaux de sa soixante-douzième session

Rapporteur : M. Juan José Ruda Santolaria

Chapitre V

Application à titre provisoire des traités

Additif

Table des matières

Annexe II.

Page



Annexe II

Bibliographie sélective

A. Ouvrages

Aust, Anthony. *Modern Treaty Law and Practice*, 2nd ed. Cambridge: Cambridge University Press, 2007.

Azaria, Danae. *Treaties on Transit of Energy via Pipelines and Countermeasures*. Oxford: Oxford University Press, 2015.

Bjorge, Eirik. *The Evolutionary Interpretation of Treaties*. Oxford: Oxford University Press, 2014.

Flaesch-Mougin, Catherine, and Isabelle Bosse-Platière. L'application provisoire des accords de l'Union européenne. In *The European Union in the World: Essays in Honour of Marc Maresceau*, Govaere, Inge, et al., eds. Leiden: Martinus Nijhoff Publishers, 2014.

Geslin, Albane. *La mise en application provisoire des traités*. Paris: Editions A. Pedone, 2005.

Gomaa, Mohammed M. *Suspension or Termination of Treaties on Grounds of Breach*. The Hague: Kluwer Law International, 1996.

Grignon, Julia. *L'applicabilité temporelle du droit international humanitaire*, Geneva, Schulthess, 2014.

Gutiérrez Baylón, Juan de Dios. *Derecho de los Tratados*. Mexico City: Editorial Porrúa, 2010.

Klabbers, Jan, and René Lefeber, eds. *Essays on the Law of Treaties: A Collection of Essays in Honour of Bert Vierdag*, The Hague: Kluwer Law International, 1998.

Osminin, B. I. *The Adoption and Implementation by States of International Treaty Obligations*. Wolters Kluwer, 2006.

Quast Mertsch, Anneliese. *Provisionally Applied Treaties: Their Binding Force and Legal Nature*. Queen Mary Studies in International Law, vol. 9. Leiden: Martinus Nijhoff, 2012.

Reuter, Paul. *Introduction to the Law of Treaties*. London and New York: Kegan Paul International, 1995.

Sarooshi, Dan. *International Organizations and Their Exercise of Sovereign Powers*. Oxford, Oxford University Press, 2005.

Simonet, Loïc. *Le traité sur le commerce des armes : du premier instrument juridique consacré à la réglementation des transferts internationaux d'armes conventionnelle*. Paris: Editions A. Pedone, 2015.

Villager, Mark E. *Commentary on the 1969 Vienna Convention on the Law of Treaties*. Leiden: Martinus Nijhoff, 2009.

B. Articles et chapitres d'ouvrages

Andrés Sáenz de Santa María, María Paz. "La aplicación provisional de los tratados internacionales en el derecho español", *Revista española de derecho internacional*, vol. 34, No. 1 (1982).

_____. La Unión Europea y el derecho de los tratados: una relación compleja. *Revista española de derecho internacional*, vol. 68/2 (July-December 2016).

Arsanjani, Mahnoush H., and W. Michael Reisman. Provisional application of treaties in international law: the Energy Charter Treaty awards. In Enzo Cannizzaro, ed. *The Law of Treaties Beyond the Vienna Convention*. Oxford: Oxford University Press, 2011.

- Ascensio, Hervé. Article 70. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. II. Oxford: Oxford University Press, 2011.
- Aust, Anthony. Article 24. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. I. Oxford: Oxford University Press, 2011.
- Azaria, Danae. Exception of non-performance. In *Max Planck Encyclopedia of Public International Law*, 2015.
- _____. Provisional application of treaties. In Duncan B. Hollis, ed. *The Oxford Guide to Treaties*, 2nd ed. Oxford: Oxford University Press, 2020.
- Bartels, Lorand. Withdrawing provisional application of treaties: has the EU made a mistake? *Cambridge Journal of International and Comparative Law*, vol. 1, No. 1 (2012).
- Belz, Matthew. Provisional application of the Energy Charter Treaty: *Kardassopoulos v. Georgia* and improving provisional application in multilateral treaties. *Emory International Law Review*, vol. 22, No. 2 (fall 2008).
- Bothe, Michael. Article 46. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. II. Oxford: Oxford University Press, 2011.
- Cadilhac, Marie-Cécile. Association UE-Ukraine : débuts mouvementés d'application provisoire pour un accord ambitieux. *Revue trimestrielle de droit européen*, (2015).
- Casey-Maslen, Stuart. Article 23: provisional application. In Stuart Casey-Maslen *et al.*, eds. *The Arms Trade Treaty: A Commentary*. Oxford: Oxford University Press, 2016.
- Castillo de la Torre, Fernando. El Tribunal de Justicia y las relaciones exteriores tras el Tratado de Lisboa. *Revista de Derecho Comunitario Europeo*, No. 60 (May-August 2018).
- Chamon, Merijn. Provisional application of treaties: the EU's contribution to the development of international law. *European Journal of International Law*, vol. 31, No. 3 (August 2020).
- Charney, Jonathan. U.S. provisional application of the 1994 Deep Seabed Agreement, *American Journal of International Law*, vol. 88, No. 4 (October 1994).
- Crnic-Grotic, V. Object and purpose of treaties in the Vienna Convention on the Law of Treaties. *Asian Yearbook of International Law*, vol. 7 (1997).
- Dalton, Robert E. Provisional application of treaties. In Duncan B. Hollis, ed. *The Oxford Guide to Treaties*. Oxford: Oxford University Press, 2012.
- Da Silva, Clare, and Brian Wood. Article 7: export and export assessment. In Clare da Silva and Brian Wood, eds. *Weapons and International Law: The Arms Trade Treaty*. Brussels: Larcier, 2015.
- Do Nascimento e Silva, Geraldo Eulalio. Le facteur temps et les traités. *Collected Courses of The Hague Academy of International Law*, vol. 154 (1977).
- Fahner, Johannes. The empire strikes back: Yukos-Russia, 1-1. EJIL:talk! Blog of the *European Journal of International Law*, 26 May 2016. Available at www.ejiltalk.org/the-empire-strikes-back-yukos-russia-1-1/.
- Fitzmaurice, Malgosia and Anneliese Quast. Review: La Mise en Application Provisoire des Traités. *The International and Comparative Law Quarterly*, vol. 56, No. 2 (April 2007).
- Fukui, Yasuhito. CTBT: Legal questions arising from its non-entry into force revisited. *Journal of Conflict and Security Law*, vol. 22, No. 2 (July 2017).
- Gamarra, Yolanda. Current questions of State succession relating to multilateral treaties. In Pierre Michel Eisemann and Martti Koskenniemi, eds. *State Succession: Codification Tested against the Facts*. The Hague: Hague Academy of International Law, Martinus Nijhoff, 2000.
- García, Javier. La aplicación provisional de los tratados. In Spain, Ministry of Foreign Affairs, ed. *La celebración de tratados internacionales por España: problemas actuales*. Madrid: 1990.

Hafner, Gerhard, The “provisional application” of the Energy Charter Treaty. In Christina Binder *et al.* *International Investment Law for the 21st Century: Essays in Honour of Christoph Schreuer*. Oxford: Oxford University Press, 2009.

_____, “Provisional application of treaties”. *Austrian Review of International and European Law Online*, vol. 24, No. 1 (June 2021).

Jacobsson, Marie G. Syria and the issue of chemical weapons – a snapshot of a legal time-frame: the United Nations Security Council resolution 2118 (2013) and the OPCW Executive Council Decision. In Jonas Ebbesson *et al.*, eds. *International Law and Changing Perceptions of Security. Liber Amicorum Said Mahmoudi*. Leiden: Brill Nijhoff, 2014.

Jennings, Robert Y. Treaties. In Mohammed Bedjaoui, ed. *International Law: Achievements and Prospects*. Paris and Dordrecht, UNESCO and Martinus Nijhoff, 1991.

Klaus, Ulrich. The *Yukos* case under the Energy Charter Treaty and the provisional application of international treaties. Policy Papers on Transnational Economic Law, No. 11. Halle: Transnational Economic Law Research Center, 2005.

Kohona, Palitha T. B. Reservations: discussion of recent developments in the practice of the Secretary-General of the United Nations as depositary of multilateral treaties. *Georgia Journal of International and Comparative Law*, vol. 33, No. 2 (January 2005).

Koskenniemi, Martti. Paragraph 3: Law of Treaties. In Pierre Michel Eisemann and Martti Koskenniemi, eds. *State Succession: Codification Tested against the Facts*. The Hague: Hague Academy of International Law, Martinus Nijhoff, 2000.

Krieger, Heike. Article 25. Provisional application. In Oliver Dörr and Kirsten Schmalenbach, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, 2nd ed. Berlin: Springer, 2018.

Lefeber, René. The provisional application of treaties. In Jan Klabbers and René Lefeber, eds. *Essays on the Law of Treaties: A Collection of Essays in Honour of Bert Vierdag*. The Hague: Martinus Nijhoff, 1998.

_____. Treaties, provisional application”. In Rüdiger Wolfrum, ed. *The Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, 2008.

Li, Fenghua. The *Yukos* cases and the provisional application of the Energy Charter Treaty. *Cambridge International Law Journal*, vol. 6, No. 1 (2017).

Mathy, Denise. Article 25. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. I. Oxford: Oxford University Press, 2011.

Michie, Andrew. The provisional application of arms control treaties. *Journal of Conflict and Security Law*, vol. 10, No. 3 (winter 2005).

_____. The provisional application of treaties in South African law and practice. *South African Yearbook of International Law*, vol. 30, No. 1 (2005).

_____. The role of provisionally applied treaties in international organisations. *The Comparative and International Law Journal of Southern Africa*, vol. 39, No. 1 (March 2006).

_____. Provisional application of non-proliferation treaties. In Daniel H. Joyner and Marco Roscini, eds. *Non-Proliferation Law as a Special Regime: A Contribution to Fragmentation Theory in International Law*. Cambridge: Cambridge University Press, 2012.

Niebruegge, Alex M. Provisional application of the Energy Charter Treaty: the *Yukos* arbitration and the future place of provisional application in international law. *Chicago Journal of International Law*, vol. 8, No. 1 (2007).

Ouguergouz, Fatsah, Santiago Villalpando and Jason Morgan-Foster. Article 77: Convention of 1969. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. II. Oxford: Oxford University Press, 2011.

Provost, René. Article 73: Convention of 1969. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. II. Oxford: Oxford University Press, 2011.

Quast Mertsch, Anneliese. “The reform measures of ECHR Protocol No. 14 and the provisional application of treaties”. In Malgosia Fitzmaurice and Panos Merkouris, eds. *The Interpretation and Application of the European Convention of Human Rights: Legal and Practical Implications*, Queen Mary Studies in International Law, vol. 12. Leiden: Martinus Nijhoff, 2012.

Rogoff, Martin A. and Barbara E. Gauditz. The provisional application of international agreements. *Maine Law Review*, vol. 39, No. 1 (1987).

Rosenne, Shabtai. More on the depositary of international treaties. *American Journal of International Law*, vol. 64, No. 5 (October 1970).

_____. The depositary of international treaties. *American Journal of International Law*, vol. 61, No. 4 (October 1967).

Sagar, David. Provisional application in an international organization. *Journal of Space Law*, vol. 27, No. 2 (1999).

Schaus, Annemie. Article 27. Convention of 1969. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. I. Oxford: Oxford University Press, 2011.

Schenker, Claude. L’application provisoire des traités: droit et pratique suisses. *Schweizerische Zeitschrift für internationales und europäisches Recht: Revue suisse de droit international et européen*, 2015, vol. 25, No. 2, 217-238.

Simma, Bruno, and Christian J. Tams. Article 60. In Olivier Corten and Pierre Klein, eds. *The Vienna Conventions on the Law of Treaties: A Commentary*, vol. II. Oxford: Oxford University Press, 2011.

Talmon Stefan, and Anneliese Quast Mertsch. Germany’s position and practice on provisional application of treaties. GPIL - German Practice in International Law, 25 February 2021.

Treves, Tullio. L’entrée en vigueur de la Convention des Nations Unies sur le droit de la mer et les conditions de son universalisme. *Annuaire français de droit international*, vol. 39 (1993).

Vignes, Daniel. Une notion ambiguë : l’application à titre provisoire des traités. *Annuaire français de droit international*, vol. 18 (1972).

Yihdego, Zeray. Article 23: provisional application. In Clare da Silva and Brian Wood, eds. *Weapons and International Law: The Arms Trade Treaty*. Brussels: Larcier, 2015.

C. Jurisprudence

Netherlands, The Hague District Court, Cases Nos. C/09/477160/HA ZA 15-1; C/09/477162/HA ZA 15-2; C/09/481619/HA ZA 15-112, Judgment, 20 April 2016. Available at <http://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBDHA:2016:4230>.

International Centre for Settlement of Investment Disputes, *Ioannis Kardassopoulos v. Georgia*, ICSID Case No. ARB/05/18, decision on jurisdiction, 6 July 2007.

Permanent Court of Arbitration, *Yukos Universal Limited (Isle of Man) v. the Russian Federation*, case No. AA 227, Interim Award on Jurisdiction and Admissibility, 30 November 2009.

D. Résolutions et décisions des organisations internationales

Comprehensive Nuclear Test-Ban Treaty, Meeting of States Signatories, Resolution establishing the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization. CTBT/MSS/RES/1, adopted on 19 November 1996.

European Union, Council decision (EU) 2017/38 of 28 October 2016 on the provisional application of the Comprehensive Economic and Trade Agreement (CETA) between Canada, of the one part, and the European Union and its member States, of the other part, *Official Journal of the European Union*, L 11, 14 January 2017, p. 1080.

General Agreement on Tariffs and Trade. Canada — Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies, Report of the Panel, DS17/R, adopted on 18 February 1992.

_____. Report of the Panel, Norway — Restrictions on imports of apples and pears, L/6474, adopted on 22 June 1989.

_____. Report of the Panel, Thailand — Restrictions on importation of and internal taxes on cigarettes, DS10/R, adopted on 7 November 1990.

_____. Report of the Panel, United States — Measures affecting alcoholic and malt beverages, DS23/R, adopted on 19 June 1992.

United Nations, Framework Convention on Climate Change, Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol. Legal considerations relating to a possible gap between the first and subsequent commitment periods. 20 July 2010. [FCCC/KP/AWG/2010/10](http://fccc/kp/awg/2010/10).

_____. Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol. *Report of the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol on its eighth session, held in Doha from 26 November to 8 December 2012*. 28 February 2013. [FCCC/KP/CMP/2012/13/Add.1](http://fccc/kp/cmp/2012/13/Add.1).

_____. Conference of the Parties. Decision 1/CP.21 on adoption of the Paris Agreement, para. 5, in *Report of the Conference of the Parties on its twenty-first session, held in Paris from 30 November to 13 December 2015 Addendum Part two: Action taken by the Conference of the Parties at its twenty-first session*. FCCC/CP/2015/10/Add.1.

United Nations, General Assembly resolution [50/245 of 10 September 1996](#).

United Nations, General Assembly resolution [67/234 B of 2 April 2013](#).

United Nations, General Assembly resolution 97(1) of 14 December 1946, modified by General Assembly resolutions 364 (IV) of 1 December 1949, 482 (V) of 12 December 1955 and [33/141](#) of 19 December 1978.

E. Autres documents

1. Organisations internationales

Council of Europe, ed. *Treaty Making — Expression of Consent by States to be Bound by a Treaty*. The Hague: Kluwer Law International, 2001.

_____. Committee of Ministers. Minutes of the sitting held at the Sofia Hotel Balkan, Sofia, Bulgaria, 12 December 2016. CM/PV(2016)126-final, appendix 3, decision on tackling violent extremism and radicalisation leading to terrorism para. 3. Available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806c9744.

_____. Treaty Office. Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe. 12 February 2016. CAHDI (2016) 8.

European Commission. Provisional application of new agreement between the European Union and Afghanistan signals new phase in cooperation. Press release, 30 November 2017. Available at http://europa.eu/rapid/press-release_IP-17-5008_en.htm.

Organization for the Prohibition of Chemical Weapons. Syria's accession to the Chemical Weapons Convention enters into force. 14 October 2013. Available at www.opcw.org/news/article/syrias-accession-to-the-chemical-weapons-convention-enters-into-force/.

United Nations, General Assembly, Report of the Secretary-General on examples of precedents of provisional application, pending their entry into force, of multilateral treaties, especially treaties which have established international organizations and/or regimes. 12 June 1973. [A/AC.138/88](#).

_____, General Assembly. Report of the Secretary-General on strengthening and coordinating United Nations rule of law activities. 27 July 2015. [A/70/206](#), para. 11.

_____. *Final Clauses of Multilateral Treaties: Handbook* (United Nations publication, Sales No. E.04.V.3).

_____, Office of Legal Affairs. *Treaty Handbook*, (United Nations publication, Sales No. E.12.V.1).

_____. *Repertory of Practice of United Nations Organs, Supplement No. 3*, vol. IV, arts. 92–111 of the Charter (United Nations publication, Sales No.: E.73.V.2).

_____. *Repertory of Practice of United Nations Organs*, vol. V, Articles 92–111 of the Charter (United Nations publication, Sales No: 1955.V.2 (vol. V)).

_____. *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, ST/LEG/7/Rev.1 (United Nations publication, Sales No. E.94.V.15), paras. 237–241.

_____. *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, ST/LEG/7/Rev.1. (United Nations publication, Sales No. E/94/V.5).

2. États

Estonia, Foreign Relations Act, adopted on 15 June 2006, *Riigi Teataja*, I 2006, 32, 248, entered into force on 1 January 2007. Available at www.riigiteataja.ee/en/eli/517012014001/consolide.

France, Circular of 30 May 1997 on the preparation and conclusion of international agreements, *Journal officiel de la République française*, No. 0125, 31 May 1997, 8415. The text of the circular is available at www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000200416.

Nigeria, Ministry of Foreign Affairs. The Treaty, Protocols, Conventions and Supplementary Acts of the Economic Community of West African States [1975–2010]. Abuja, 2011.

Peru. Reservation to the Vienna Convention on the Law of Treaties. C.N.1021.2000.TREATIES-2 (Depositary Notification). Available on the website of the United Nations Treaty Collection, at <https://treaties.un.org/doc/Publication/CN/2000/CN.1021.2000-Eng.pdf>.

Spain. *Boletín Oficial del Estado*, No. 288 (28 November 2014), sect. I, p. 96841.

Switzerland, Federal Justice and Police Department. Réglementer clairement l'application à titre provisoire de traités internationaux. 19 February 2004. Available at www.ejpd.admin.ch/content/ejpd/fr/home/dokumentation/mi/2004/2004-02-19.html.

Turkey, Constitution of the Republic of Turkey. Available at https://global.tbmm.gov.tr/docs/constitution_en.pdf.

United States of America, Library of Congress Report on the Law of the Sea Treaty: alternative approaches to provisional application, 93rd congress, 2nd session, House Committee on Foreign Affairs (4 March 1974). *International Legal Materials*, vol. 13, No. 2 (1974), at p. 456.

3. Commission du droit international

Provisional application of treaties: memorandum by the Secretariat. 24 March 2017. A/CN.4/707.

Third report on identification of customary international law, by Sir Michael Wood, Special Rapporteur. 27 March 2015. [A/CN.4/682](#).

Third report on subsequent agreements and subsequent practice in relation to the interpretation of treaties, by Mr. Georg Nolte, Special Rapporteur, 7 April 2015. A/CN.4/683.

Provisional application of treaties: memorandum by the Secretariat. 25 November 2014. A/CN.4/676.

Yearbook ... 2013, vol. II (Part One), document A/CN.4/658, Provisional application of treaties: memorandum by the Secretariat.

Yearbook ... 2011, vol. II (Part Three), Guide to Practice on Reservations to Treaties.

Yearbook ... 2001, vol. II (Part Two) and corrigendum.

Yearbook ... 1974, vol. II (Part One), document A/CN.4/278.

Yearbook ... 1966, doc. A/6309/Rev.1, part II.

Yearbook ... 1966, vol. II, doc. A/6309/Rev.1, part II, annex.

Yearbook ... 1966, vol. II.

Yearbook ... 1965, vol. I, 790th meeting.

Yearbook ... 1965, vol. II, document A/6009.

Yearbook ... 1962, vol. I, 668th meeting.

Yearbook ... 1962, vol. II, document A/5209.

Yearbook ... 1962, vol. II, document A/CN.4/144.

Yearbook ... 1959, vol. I, 487th meeting.

Yearbook ... 1959, vol. II, Brierly, J. L., First report on the law of treaties, document A/CN.4/23.

4. Traités

Vienna Convention on Succession of States in respect of Treaties (Vienna, 23 August 1978), United Nations, *Treaty Series*, vol. 1946, No. 33356, p. 3; in force since 6 December 1966.

Vienna Convention on the Law of Treaties (Vienna, 23 May 1969), United Nations, *Treaty Series*, vol. 1155, No. 18232, p. 331.

Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations (Vienna, 21 March 1986). A/CONF.129/15.

5. Autres

Bartels, Lorand. Comments on provisional application, All Souls College, 2 December 2014.

International Law Association. *Report of the Seventy-first Conference, Berlin, 2004*. Arms Control and Disarmament Law. Final Report of the Committee.

Michie, Andrew. "The provisional application of treaties with special reference to arms control, disarmament and non-proliferation instruments", Master of Laws dissertation, University of South Africa, 2004.
