



# General Assembly

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## Seventy-sixth session

Agenda item 82

### Report of the International Law Commission on the work of its seventy-second session

## Resolution adopted by the General Assembly on 9 December 2021

[*on the report of the Sixth Committee (A/76/473, para. 12)*]

### 76/113. Provisional application of treaties

*The General Assembly,*

*Having considered chapter V of the report of the International Law Commission on the work of its seventy-second session,<sup>1</sup> which contains the Guide to Provisional Application of Treaties,*

*Taking note of the recommendation of the International Law Commission contained in paragraph 49 of its report,*

*Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,*

*Noting that the subject of the provisional application of treaties is of major importance in international relations,*

*Underlining the essentially voluntary and optional nature of the provisional application of treaties,*

1. *Welcomes the conclusion of the work of the International Law Commission on the provisional application of treaties, and its adoption of the draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties, and the commentaries thereto;*

2. *Expresses its appreciation to the International Law Commission for its continuing contribution to the codification and progressive development of international law;*

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<sup>1</sup> *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*



3. *Takes note* of the views and comments expressed in the debates of the Sixth Committee on the subject, including those made at the seventy-sixth session of the General Assembly,<sup>2</sup> after the International Law Commission had completed its consideration of this topic in accordance with its statute;

4. *Also takes note* of the Guide to Provisional Application of Treaties, including the guidelines, the text of which is annexed to the present resolution, brings the Guide to the attention of States and international organizations for their consideration, and encourages its widest possible dissemination;

5. *Requests* 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.

*49th plenary meeting  
9 December 2021*

## **Annex**

### **Text of the guidelines on provisional application of treaties**

#### **Guideline 1**

##### **Scope**

The present guidelines concern the provisional application of treaties by States or by international organizations.

#### **Guideline 2**

##### **Purpose**

The purpose of the present guidelines is to provide guidance regarding the law and practice on the provisional application of treaties, on the basis of article 25 of the Vienna Convention on the Law of Treaties and other relevant rules of international law.

#### **Guideline 3**

##### **General rule**

A treaty or a part of a treaty is applied provisionally pending its entry into force between the States or international organizations concerned, if the treaty itself so provides, or if in some other manner it has been so agreed.

#### **Guideline 4**

##### **Form of agreement**

In addition to the case where the treaty so provides, the provisional application of a treaty or a part of a treaty may be agreed between the States or international organizations concerned through:

- (a) a separate treaty; or
- (b) any other means or arrangements, including:

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<sup>2</sup> See A/C.6/76/SR.16, A/C.6/76/SR.17, A/C.6/76/SR.18 and A/C.6/76/SR.19. The statements made in the Sixth Committee are available in full (in the original languages) on the website of the Sixth Committee, at [www.un.org/en/ga/sixth/](http://www.un.org/en/ga/sixth/).

- (i) a resolution, decision or other act adopted by an international organization or at an intergovernmental conference, in accordance with the rules of such organization or conference, reflecting the agreement of the States or international organizations concerned;
- (ii) a declaration by a State or by an international organization that is accepted by the other States or international organizations concerned.

#### **Guideline 5 Commencement**

The provisional application of a treaty or a part of a treaty takes effect on such date, and in accordance with such conditions and procedures, as the treaty provides or as is otherwise agreed.

#### **Guideline 6 Legal effect**

The provisional application of a treaty or a part of a treaty produces a legally binding obligation to apply the treaty or a part thereof between the States or international organizations concerned, except to the extent that the treaty otherwise provides or it is otherwise agreed. Such treaty or part of a treaty that is being applied provisionally must be performed in good faith.

#### **Guideline 7 Reservations**

The present guidelines are without prejudice to any question concerning reservations relating to the provisional application of a treaty or a part of a treaty.

#### **Guideline 8 Responsibility for breach**

The breach of an obligation arising under a treaty or a part of a treaty that is applied provisionally entails international responsibility in accordance with the applicable rules of international law.

#### **Guideline 9 Termination**

1. The provisional application of a treaty or a part of a treaty terminates with the entry into force of that treaty in the relations between the States or international organizations concerned.
2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or international organization notifies the other States or international organizations concerned of its intention not to become a party to the treaty.
3. Unless the treaty otherwise provides or it is otherwise agreed, a State or an international organization may invoke other grounds for terminating provisional application, in which case it shall notify the other States or international organizations concerned.
4. Unless the treaty otherwise provides or it is otherwise agreed, the termination of the provisional application of a treaty or a part of a treaty does not affect any right, obligation or legal situation created through the execution of such provisional application prior to its termination.

**Guideline 10****Internal law of States, rules of international organizations and observance of provisionally applied treaties**

1. A State that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the provisions of its internal law as justification for its failure to perform an obligation arising under such provisional application.
2. An international organization that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the rules of the organization as justification for its failure to perform an obligation arising under such provisional application.

**Guideline 11****Provisions of internal law of States and rules of international organizations regarding competence to agree on the provisional application of treaties**

1. A State may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of a provision of its internal law regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. An international organization may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of the rules of the organization regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

**Guideline 12****Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations**

The present guidelines are without prejudice to the right of States or international organizations to agree in the treaty itself or otherwise to the provisional application of the treaty or a part of the treaty with limitations deriving from the internal law of States or from the rules of international organizations.

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