

45. Following its debate on the report, the Commission, at its 3522nd meeting, held on 14 May 2021, decided to refer draft guidelines 1 to 12, together with five draft model clauses, as contained in the Special Rapporteur's sixth report, to the Drafting Committee, taking into account the debate in the Commission.

46. At its 3530th meeting, held on 3 June 2021, the Commission considered an interim report of the Drafting Committee. At its 3549th meeting, held on 26 July 2021, the Commission considered the final report of the Drafting Committee (A/CN.4/L.952/Rev.1), and adopted the Guide to Provisional Application of Treaties, including the draft guidelines and a draft annex containing examples of provisions on provisional application (see sect. E.1 below).

47. At its 3554th to 3557th meetings, held from 29 July to 3 August 2021, the Commission adopted the commentaries to the Guide (see sect. E.2 below).

48. In accordance with its statute, the Commission submits the Guide to the General Assembly, with the recommendation set out below (see sect. C below).

### **C. Recommendation of the Commission**

49. At its 3557th meeting, held on 3 August 2021, the Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly:

(a) take note of the Guide to Provisional Application of Treaties of the International Law Commission in a resolution, and encourage its widest possible dissemination;

(b) commend the Guide, and the commentaries thereto, to the attention of States and international organizations;

(c) 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.

### **D. Tribute to the Special Rapporteur**

50. At its 3557th meeting, held on 3 August 2021, the Commission, after adopting the Guide to Provisional Application of Treaties, adopted the following resolution by acclamation:

*“The International Law Commission,*

*Having adopted the Guide to Provisional Application of Treaties,*

*Expresses to the Special Rapporteur, Mr. Juan Manuel Gómez Robledo, its deep appreciation and warm congratulations for the outstanding contribution he has made to the preparation of the Guide through his tireless efforts and devoted work, and for the results achieved in the elaboration of the Guide to Provisional Application of Treaties.”*

### **E. Text of the Guide to Provisional Application of Treaties**

#### **1. Text of the draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties**

51. The text of the Guide to Provisional Application of Treaties adopted by the Commission, on second reading, at its seventy-second session is reproduced below.

## **Guide to Provisional Application of Treaties**

### **Guideline 1**

#### **Scope**

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

### **Guideline 2**

#### **Purpose**

The purpose of the present draft 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:
  - (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 draft 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 draft 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.

**Annex****Examples of provisions on provisional application of treaties**

The following examples of provisions are intended to assist States and international organizations in drafting an agreement to apply provisionally a treaty or a part of a treaty. They do not cover all possible situations and are not intended to prescribe any specific formulation. These examples providing for the provisional application of treaties, found in