

## **Comments and Observations on the ILC's Topic of "Provisional Application of Treaties"**

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Republic of Korea

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1. The Republic of Korea welcomes the adoption of the draft guidelines on the provisional application of treaties on first reading by the International Law Commission (ILC) at its seventieth session. The Korean Government's assessment is that the draft guidelines are generally comprehensive and well-organized. Our Government expresses its deepest gratitude to the Special Rapporteur, Mr. Juan Manuel Gómez-Robledo, and the ILC members for completing the first reading of the draft guidelines in a relatively short period of time.
2. Regarding paragraph 3 of draft guideline 9, the Republic of Korea notes that the ILC only refers to hypothetical situations regarding this issue in the commentary in the report. As pointed out in the 2018 ILC Report, there is a "lack of relevant practice" by States and international organizations on the termination of the provisional application of a treaty. Therefore, more research on State practices is needed to make this draft guideline more fully reflect the current state of international law on the topic.
3. In Korea's case, for example, the free trade agreement with the European Union has been applied provisionally. Since there is no separate domestic law on the provisional application of treaties, we have followed the same procedure as that needed for the formal conclusion and entry into force of treaties, which, under the Korean Constitution, require promulgation and, in some cases, the consent of the National Assembly for ratification. The Republic of Korea recalls that it previously presented this information to the ILC in 2015.
4. This demonstrates that domestic laws on the procedures for the provisional application of treaties vary by State. To make the guidelines more practical,

States may want to be informed of more examples or cases and given some guidance on domestic procedures for the provisional application of treaties.

5. Additionally, the present set of draft guidelines on this topic contains provisions of different normative value, some of which appear to reflect customary international law, while others have a somewhat recommendatory nature. In this sense, we question whether those which have a recommendatory nature have the appropriate substance or structure to form an actual guideline.
6. The Republic of Korea believes that the elaboration of this topic will contribute to the development of the law of treaties. We will continue to take a keen interest in the discussions on this topic and their final outcome. /End/