

## 11. Cuba

Statement made in the Sixth Committee, Seventieth session (2015), 24th meeting, 10 November 2015:<sup>28</sup>

In Cuban practice, the use of the provisional application clause is not extensive and only applies to cases in which immediate execution is agreed to in the interest of the Parties.

For Cuba, provisional application does not replace the entry into force of treaties, however, provisional application constitutes an important element that the Vienna Convention contributed to international law and that today, given the circumstances in which some treaties are signed, require an immediate application.

In Cuba, it is ensured that most of the treaties that have the clause of provisional application lead to the entry into force and definitive application of the treaty. Examples of this practice are to be found in the signing by the Government of Cuba of bilateral agreements that include provisional application clauses and that are in force or are in the process of complying with the formalities of internal legal regulations for its entry into force.

Communication transmitted to the Secretariat, 27 June 2022:<sup>29</sup>

Cuba is grateful to the International Law Commission for its work in preparing the *Guide to Provisional Application of Treaties*, including the guidelines concerning the provisional application of treaties by States and international organizations annexed to resolution 76/113, and takes note of the same, bearing in mind the importance of the subject for international law and international relations.

Cuba considers that the provisional application of treaties has its legal basis in strict observance of articles 24 and 25 of the *Vienna Convention on the Law of Treaties*, which gives priority to the principle of party autonomy, in that it is the parties that establish by agreement the scope of the obligations they are to assume, their duration and the termination thereof.

Article 26 of the Convention also applies to the legal institution of provisional application, bearing in mind that the obligations deriving from that regime should be governed by the *pacta sunt servanda* principle, since they constitute a commitment by the parties to perform the obligations in good faith.

At the same time, caution is needed in interpreting the sovereign acts of States in respect of the signature and entry into force of international agreements, it being the parties that assume certain rights and obligations.

The provisional application of a treaty does not replace its entry into force, but should be used as an optional mechanism in exceptional circumstances where there is an urgent need to apply a treaty. Provisionally applied treaties should enter into force definitively once the constitutional approval processes established under the domestic law of the signatory parties have been completed. In other words, provisional application should not serve as a substitute for efforts to seek definitive entry into force.

In the Cuban legal system, the provisional application of treaties is regulated by article 52.2 of resolution 206/215 entitled “Bilateral and Multilateral Treaty Procedures”, according to

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<sup>28</sup> Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: [https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/cuba\\_3.pdf](https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/cuba_3.pdf).

<sup>29</sup> Unofficial translation (from Spanish) by the United Nations Secretariat. The original submission is available at: [https://legal.un.org/legislativeseries/pdfs/chapters/book26/cuba\\_s.pdf](https://legal.un.org/legislativeseries/pdfs/chapters/book26/cuba_s.pdf).

which a treaty may be provisionally applied prior to its entry into force provided that the foreign party accepts the provisional application and the circumstances make it advisable.

In Cuban practice, provisional application is not overused; treaties are provisionally applied only in cases where, in the interests of the parties, it is decided that the obligations should be implemented immediately.

For Cuba, provisional application is not a substitute for the entry into force of treaties. Cuba ensures the entry into force and definitive application of all treaties with a provisional application clause, as evidenced in the signature by the Government of Cuba of bilateral agreements that have included the provisional application clause and have entered into force following completion of the domestic legal procedures. Examples are the *Agreement between the Government of the Republic of Cuba and the Government of the Republic of Cape Verde on the abolition of visas*, signed on 3 June 1982, and the *Technical and Economic Cooperation Agreement between the Government of the Republic of Cuba and the Government of the People's Republic of China*, signed on 22 July 2014.