

6. Brazil

Statement made in the Sixth Committee, Seventy-first session (2016), 26th meeting, 28 October 2016.⁷

Finally, in relation to the topic “provisional application of treaties”, Brazil considers it crucial that the Commission continues giving adequate consideration to the fact that some States are not in a legal position to apply provisionally any sort of treaty, in light of constitutional regulations related to the separation of powers. This is the case of Brazil that has therefore made a reservation to Article 25 of the 1969 *Vienna Convention in the Law of Treaties*.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021.⁸

The Brazilian constitutional system, as a general rule, requires parliamentary approval of treaties that create binding obligations to Brazil. For this reason, when the National Congress approved the *Vienna Convention on the Law of Treaties*, it objected to article 25, related to provisional application. Therefore, Brazil ratified the Vienna Convention with reservation to this article.

As Brazil disassociates itself from the practice of provisional application of treaties, the guide adopted by the ILC, including its guideline 10, related to the internal law of states, is not applicable to Brazil.

This objection does not affect the obligation not to defeat the object and purpose of a treaty before its entry into force, as prescribed in article 18 of the *Vienna Convention on the Law of Treaties*. It is also without prejudice to Article 24 (4) of the Vienna Convention, according to which certain provisions regarding matters arising necessarily before the entry into force of a treaty apply from the time of the adoption of the text, as stated in the commentary to draft guideline 5. Articles 18 and 24 of the Vienna Convention were not subject to any kind of reservation by Brazil, and they are not directly included in the guide recently adopted.

Although the Brazilian practice does not include provisional application of international agreements, we do not object to other states following this practice, and provisionally applying bilateral or multilateral treaties *vis-à-vis* Brazil. Brazil may only apply the treaty after the parliamentary approval and subsequent ratification, but we do not object to European Union members applying it before its entry into force, based on their own constitutional systems.

⁷ Full text available at: https://www.un.org/en/ga/sixth/71/pdfs/statements/ilc/brazil_23.pdf.

⁸ Edited by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg_brazil_1.pdf.