

INTERNATIONAL LAW COMMISSION

Seventy-second session

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5 July-6 August 2021

PROVISIONAL APPLICATION OF TREATIES

Statement of the Chairperson of the Drafting Committee

Ms. Patrícia Galvão Teles

26 July 2021

Mr. Chairperson,

It is my pleasure, today, to introduce the fourth report of the Drafting Committee for the seventy-second session of the International Law Commission, and the second report on the topic “Provisional Application of Treaties”. The report, which is to be found in document A/CN.4/L.952/Rev.1, contains the complete Guide to the Provisional Application of Treaties, constituted of the texts and titles of the 12 draft guidelines on provisional application of treaties, as well as an annex containing examples of provisions on provisional application of treaties, adopted by the Drafting Committee on second reading.

If you recall, on 3 June 2021, I introduced the first report of the Drafting Committee containing the draft guidelines on provisional application of treaties, as adopted by the Drafting Committee during the first part. At the time, the Commission took note of the report of the Drafting

Committee. Today, I am pleased to inform the Commission that I will be reporting on the remaining components of the Guide on the Provisional Application of Treaties, and that I will, accordingly, be in a position to recommend that the Commission proceed to the adoption of the entire Guide.

Annex

Mr. Chairperson,

Allow me to first draw the attention of the Commission to the annex, contained in the report presently before the Commission. In my presentation in June, I explained that the Drafting Committee had not been able to conclude its consideration of the Special Rapporteur's proposal for the inclusion of an annex containing a set of draft model clauses designed to assist treaty negotiators. By the end of the first part of our session, there remained conflicting views in the Drafting Committee not only on the draft clauses proposed by the Special Rapporteur, but also out of the concern, expressed by some Members, that *any* model clause might be perceived as indicating a preference by the Commission, which could adversely affect the freedom of States and international organizations.

During the June break, informal consultations were held on the matter at which time it was decided, on the suggestion of the Special Rapporteur, to instead present an annex containing mere examples of provisions in existing agreements and other instruments, as a reference for future treaty negotiators. On that understanding, the Drafting Committee held one further meeting at which time it considered a proposal for such a revised annex, prepared by the Special Rapporteur, with the assistance of the Secretariat. It was on the basis of that proposal, and taking into account a number of suggestions for improvement submitted by several members, that the Drafting Committee was subsequently able to adopt the annex you now have before you.

The annex is constituted of an introductory paragraph and five sections. The introductory paragraph explains the purpose of the annex, namely to present examples of provisions intended to assist States and international organizations in drafting an agreement to apply provisionally a treaty or part of a treaty. Furthermore, there is no intention to cover all possible situations, nor to prescribe any specific formulation. The examples were selected from recent practice and the

Drafting Committee sought, to the extent possible, to reflect regional diversity, even if not exhaustively so.

Turning to the five sections, each is sub-divided into provisions in bilateral and multilateral treaties or agreements, for purposes of the clarity of presentation. Some sections are in turn further organized in accordance with particular aspects or components. The five main sections are:

- Commencement of provisional application
- Form of agreement on provisional application
- Opt in/opt out of provisional application
- Limitations to provisional application deriving from internal law of States or rules of international organizations
- Termination of provisional application

Mr. Chairperson, permit me to say something on terminology. Initially, the Drafting Committee was proceeding on the basis of the word “clauses”, which had been used in the Special Rapporteur’s earlier proposals for model clauses. Since, in his earlier conception the intention was to provide model formulations to be included in treaties, the use of the word “clauses” was justified. However, the examples included in the new annex were drawn not only from treaties, but also from other instruments, such as Notes and Letters. The Drafting Committee thought it preferable to use the more neutral term “provisions”, so as to avoid any possible mischaracterization of the instruments in question. This was done even at the price of the admittedly inelegant reference to “provisions on provisional application”, which also appears in the title of the annex. Nonetheless, to state the obvious, the word “provision” is being used in its different meanings. Such inelegance is less of a problem in the other languages.

Mr. Chairperson,

With the conclusion of the work on the annex, the Drafting Committee was then in a position to consider the Guide as a whole. The Committee decided to retain the overall title, as adopted on first reading, namely the “Guide to the Provisional Application of Treaties”. The Drafting Committee also agreed to recommend that the Guide be constituted of two parts, namely the draft guidelines and the annex.

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Mr. Chairperson,

This concludes my introduction of the further report of the Drafting Committee on the Provisional Application of Treaties. Before proceeding to making a recommendation for action, I would like to recall that it is customary to thank and congratulate the Special Rapporteur. Indeed, I regret that the Drafting Committee ran out of time, such that we were unable to convey our deep gratitude to him for his tremendous efforts at our final meeting.

Accordingly, permit me, also on behalf of the members of the Drafting Committee, to thank and pay tribute to the Special Rapporteur, Juan Manuel Gomez Robledo, for his outstanding contribution to the Commission's work on the topic over the years. The fact that we have completed a second reading of the text of the Guide is testimony to his mastery of the subject and dedication to the completion of the task at hand. I am also grateful to all the members of the Drafting Committee for their constructive and insightful contributions, as well as for their cooperative spirit and active participation which also ensured a successful outcome.

I would further like to extend my thanks to the Secretariat for its invaluable support and assistance. In particular, I would once again like to express my gratitude to the interpreters for their assistance and flexibility. I would also like to convey my gratitude to the conference and technical officers who have made this hybrid session possible.

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Mr. Chairperson,

This concludes my introduction of the further report of the Drafting Committee on this topic for the seventy-second session. It gives me great pleasure to be in a position to confirm that the Drafting Committee recommends that the Commission adopt, on second reading, the draft

Guide on the Provisional Application of Treaties, constituted of both the draft guidelines on the provisional application of treaties, and the accompanying annex.

Thank you, Mr. Chairperson.
