

**Comments and Observations of the Government of the Kingdom of Bahrain on the draft
Guide to Provisional Application of Treaties, adopted on first reading by the International
Law Commission at its seventieth session**

The Government of the Kingdom of Bahrain would like to extend its deep appreciation to the valuable work of the International Law Commission and especially Special Rapporteur Mr. Juan Manuel Gómez-Robledo on his continuous efforts with respect to the draft Guide to Provisional Application of Treaties as adopted on first reading by the Commission at its seventieth session.

In this regard, the Government of the Kingdom of Bahrain would like to make the following comments and observations:

1. We have observed through the relevant documents on the topic that the provisional application of treaties ought to be voluntary in nature. In this regard, the Government of Bahrain would like to draw to the Commission's attention the approach undertaken in draft Guideline 3 which implies that non-negotiating States and international organizations may have the same role as negotiating States or international organizations and are thereby enabled to provisionally apply a treaty. As such, draft Guideline 3 reads as follows:

"A treaty or a part of a treaty may be provisionally applied, pending its entry into force between the States or international organizations *concerned*..."

The formulation referred to above as suggested by the Commission may sometimes be relevant to multilateral treaties, but one cannot preclude how such formulation may otherwise become less relevant to the existing practice with bilateral treaties which solely concern the negotiating states or international organization for a specified purpose. Thus, we recommend that the Commission considers aligning the wording of draft Guideline 3 to Article 25 of 1969 Vienna Convention on the Law of Treaties, at least insofar as bilateral treaties are in question.

2. We also note that the Commission considered whether it was necessary to have a provision on responsibility and how the inclusion of draft Guideline 8 was thereby deemed necessary by the Commission in order to address legal consequences of the provisional application of a treaty or a part of a treaty. In a similar context, the Commission also noted in paragraph 5 of its commentary on draft Guideline 6 that reference to a "a legally binding obligation" is intended to add more precision in the *depiction* of the legal effect of provisional application and that the formulation suggested *does not imply* that provisional application has the *same* legal effect as entry into force. While the Kingdom of Bahrain, nonetheless acknowledges the importance of the legal consequences that may arise in case of breach of an obligation under a treaty that is being provisionally applied, it considers it necessary that draft Guideline 8 reflects any legal consequences of breach as provided in the treaty itself or as otherwise agreed between the parties and that is before resorting to "other applicable rules of international law."