

## **Draft guidelines on provisional application of treaties**

### **Comments by the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden)**

**11 December 2019**

The Nordic countries are very pleased about the progress made at the 70<sup>th</sup> session with the adoption on first reading by the Commission of the “Guide to Provisional Application of Treaties”, which includes twelve draft guidelines and commentaries thereto, as well as at the 71<sup>st</sup> session when the revised draft model clauses were annexed to the report. The Nordic countries continue to support the efforts of the Special Rapporteur and the Commission on this subject.

The Nordic countries wish to draw attention to the draft guideline 6 on legal effect of provisional application, 7 on reservations, and 9 on termination and suspension of provisional application.

The wording of guideline 6 takes into account the distinction made in the Vienna Convention on the Law of Treaties between provisional application and entry into force. The Nordic countries can agree with this solution and the fact that the wording allows for the termination and suspension of provisional application in line with Part V, Section 3, of the Convention (*mutatis mutandis*).

The Nordic countries also welcome the Commission’s work on the use of reservations in relation to provisional application. Any reservation in relation to provisional application should be made in accordance with the relevant rules of the Vienna Convention. The possibility to make a reservation to exclude or modify the legal effect produced by the provisional application of a treaty might increase the willingness to apply the treaty provisionally by states that would make a reservation to the treaty when expressing consent to be bound. A review of the practical impacts of draft guideline 7 might however be useful in the further work on the subject.

Although the practice on termination and suspension of provisional application is scarce, the Nordic countries note with interest the draft guideline 9 and, in particular, its paragraph 3 on termination and suspension not only in the case of a material breach but with a *mutatis mutandis* reference to Part V, Section 3 of the Vienna Convention. The reference will guide future practice in the area, and clarifies the relationship between Article 25 and Part V, Section 3 of the Convention. The specific reference to Part V, Section 3 also complies with the principle of legal certainty.

The Nordic countries draw attention to Article 24 (4) of the Vienna Convention and invite the Commission to reflect in the commentaries to the guideline 3 on the legal basis of provisional application. The view of the Nordic countries is that the provision providing for provisional application is a matter arising necessarily before the entry into force of the treaty and hence apply from the time of the adoption of the text of the treaty, thereby giving a legal basis for the provisional application.

The Nordic countries welcome the Special Rapporteur's proposal for draft model clauses on provisional application. We believe that such clauses would be of practical assistance when formulating final provisions of treaties.

The Nordic countries note that the draft model clauses do not include a provision that would provide for provisional application not only from the date foreseen in the treaty, but also from a later date once the state concerned notifies that its internal procedures necessary for provisional application have been complied with. The Nordic countries invite the Commission to reflect on including a clause to this effect in relation to draft model clause 1.

The Nordic countries are looking forward to the second reading of the Commission on this topic.