

Comments by the International Organization for Migration (IOM)

I have the pleasure to refer to the letter of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, dated 15 November 2018, seeking comments and observations to the draft guidelines on provisional application of treaties, to assist the Special Rapporteur on the topic in preparing for the consideration of the draft guidelines by the Commission on second reading.

I would like to express my gratitude for the opportunity to share our views on this important topic. Please find here some remarks from the perspective of migration.

I would like to clarify that IOM is a non-normative organization that does not engage itself in setting and enforcing binding rules upon its Member States and other states; however, it can develop non-normative instruments for States, such as declarations, guidelines, non-binding frameworks and similar instruments, and can advise and support States in the development of binding instruments. Nevertheless, IOM would like to share some comments from its own experience in concluding international instruments.

IOM is a related organization in the United Nations system; consequently, it is not covered by neither the 1946 Convention on the Privileges and Immunities of the United Nations nor the 1947 Convention on the Privileges and Immunities of the Specialized Agencies. To define the applicable level of privileges and immunities applicable to it, IOM has thus to negotiate and conclude bilateral agreements with Member States and states where it operates, aiming for standards in line with the 1947 and 1946 Conventions. As a consequence, IOM has a wide variety of agreements and, therefore, very different situations across many states, some of them including provisional application of the agreement. As an example of this, in one particular country, IOM is provisionally granted the privileges and immunities of the 1947 Convention, pending the negotiation and conclusion of a bilateral cooperation agreement establishing the modalities of cooperation between IOM and such state in its territory. Such provisional application of the 1947 Convention, notably, is granted in a note verbale sent to IOM by the Ministry of Foreign Affairs.

In concluding bilateral agreements with States, IOM strives for entry into force upon signature. When not possible, IOM aims to include a reference to provisional application of the agreement until the necessary internal procedures for entry into force are completed and the Government notifies IOM of such completion. It has become IOM's practice to include such a reference for provisional application in its cooperation agreements, for clarity regarding the scope, start and end of the provisional application. While this provisional application allows for operability until entry into force, it often results in both parties relying on such provisional application and not making any further efforts to go beyond provisional application towards actual entry into force.

Another comment, though not of a legal nature, regards the use of verbs in Guideline 1, Commentary 2, second line *in fine*. We noticed that the word "concern", used as a verb, is compared to "applies to". Since both verbs are being discussed as possible options to explain the scope of the draft guidelines, and since *draft guidelines* is the subject of the sentence in Guideline 1, we believe it may be clearer to say instead "apply to", in plural.

I hope these few notes will assist the Special Rapporteur in preparing for the consideration of the draft guidelines by the Commission on second reading.