

**RESPONSE OF THE REPUBLIC OF SINGAPORE TO THE
INTERNATIONAL LAW COMMISSION’S REQUEST FOR COMMENTS
AND OBSERVATIONS ON THE DRAFT GUIDE TO PROVISIONAL
APPLICATION OF TREATIES**

Singapore is pleased to respond to the request from the International Law Commission for comments and observations on the draft Guide to Provisional Application of Treaties, as adopted on first reading (2018) in Chap. VII of A/73/10 (the “Guide”).

2. Singapore commends the Commission and the Special Rapporteur Mr. Juan Manuel Gómez-Robledo for their work on the provisional application of treaties. Singapore is of the view that the Commission’s final output will provide valuable guidance and be of practical use to States and international organisations in their treaty-making. Singapore has previously provided our views on this topic at the 66th, 67th, 68th, 69th, 70th, 71st, 72nd and 73rd sessions of the Sixth Committee from 2011 to 2018. Singapore also provided written comments at the Committee’s 69th session.

3. Singapore has comments and observations on the following draft guidelines as adopted on first reading:

- a. draft guideline 4;
- b. draft guideline 7; and
- c. draft guideline 10

Draft guideline 4 (Form of Agreement)

4. Singapore agrees with the overarching principle that “the provisional application of a treaty or party of a treaty may be agreed through: (a) a separate treaty; or (b) any other means of arrangements...” The commentaries clarify that the structure of this guideline is intended to follow the sequence of article 25 of the Vienna Convention on the Law of Treaties of 1969 (the “1969 Vienna Convention”) and the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations of 1986 (the “1986 Vienna Convention”).

5. The Commission has chosen two examples of such “means or arrangements”: namely, a resolution adopted by an international organisation or at an intergovernmental conference, or a declaration by a State or an international organisation that is accepted by the other States or international organisations concerned. Footnote 1020 of the commentaries clarifies that the examples do not refer to agreements in which the international organisation is party to the treaty as such, but to “agreements between States reached in meetings or conferences under the auspices of that international organization.”

6. We are of the view that this important clarification is not apparent on the face of draft guideline 4. The guidelines or the commentaries should clarify the types of treaties that the examples at sub-paragraph (b) are intended to address. In addition, article 25 of the Vienna Conventions of 1969 and 1986 refers to the requirement of consent on the part of the negotiating States. Accordingly, the Commission should emphasise that the consent of the negotiating parties is required in all instances.

Draft guideline 7 (Reservations)

7. We agree with views expressed in the Commission that further work is required in this regard. With respect to draft guideline 7, paragraph 1, the Commission might state expressly that the relevant rules in the 1969 Vienna Convention are those relating to the formulation of reservations. This is consistent with the commentary and will provide the correct reference point for users when the guidelines are eventually finalised. In a similar vein, the Commission should consider clarifying which rules of international law apply in the case of a reservation by an international organisation.

Draft guideline 10 (Internal law of States and international organisations, and the observance of provisionally applied treaties)

8. Singapore notes the Commission’s explanation that this guideline is intended to follow closely the formulation contained in article 27 of both the 1969 and 1986 Vienna Conventions. We also note that draft guideline 11 (Provisions of internal law of States and rules of international organisations regarding competence to agree on the provisional application of treaties) closely follows the formulation of parallel article 46 of the 1969 and 1986 Vienna Conventions. However, unlike draft guideline 10, parallel article 27(3) of the 1969 and 1986 Vienna Conventions states that “This rule is without prejudice to article 46.”

9. Given the relationship between articles 27 and 46 in the Vienna Conventions, Singapore’s view is that draft guideline 10 should similarly clarify its relationship with draft guideline 11. In particular, draft guideline 10 should state that it is “without prejudice” to draft guideline 11.

.