

## 16. Germany

Statement made in the Sixth Committee, Sixty-seventh session (2012), 21st meeting, 5 November 2012:<sup>33</sup>

States may decide to limit the extent of provisional application of a treaty. This has been done in many treaties concluded with Germany's participation. In that case, the extent of provisional application is determined either in the treaty itself or in the instrument containing the agreement on provisional application.

In many States—including Germany—internal law determines to what extent provisional application of a treaty may be agreed to or to what extent a treaty may be provisionally applied. If the implementation of a treaty requires change or adoption of internal national legislation in a negotiating State, the provisional application of this treaty will be impossible for the State, at least until the respective law has been changed or adopted by the legislative bodies. The same might be true if the financial funding demanded by the treaty requires parliamentary approval.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 24th meeting, 4 November 2013:<sup>34</sup>

In many States—including Germany—constitutional and internal law determine to what extent provisional application of a treaty can be agreed to, or to what extent a treaty may be provisionally applied. States have found several ways to agree on provisional application of a treaty taking into account such constitutional requirements.

Statement made in the Sixth Committee, Seventy-sixth session (2021), 17th meeting, 26 October 2021:<sup>35</sup>

In a dualist legal system like in Germany, where treaties must be transposed or incorporated into national law to become effective, it is a typical requirement of constitutional law that the competent organ may only agree to provisional application of a treaty if national law is already in conformity with the treaty or is brought into conformity with it first.

This plays an important role especially against the background of the legal effects of provisional application at the level of international law. The principles of *pacta sunt servanda* and State responsibility apply also for provisional application of treaties.

Due to the principle enshrined in the Article 25 of the German Basic Law, that general rules of international law shall be an integral part of federal law, Germany supports the possibility to apply treaties provisionally because the course of actions facilitated by the provisional application of a treaty usually helps to build confidence between the contracting parties, creates an incentive to ratify the treaty and enables the parties to take preparatory measures and thereby serves the further development of international relations.

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<sup>33</sup> Full text available at: [https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/germany\\_3.pdf](https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/germany_3.pdf).

<sup>34</sup> Summarised in UN Doc. A/C.6/68/SR.24, para. 64.

<sup>35</sup> Full text available at: [https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg\\_germany\\_1.pdf](https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/17mtg_germany_1.pdf).