B. Information concerning the practice of the United Nations, its Funds and Programmes, the Specialized Agencies and related organizations, as well as of other international organizations, including regional international organizations, and other entities

1. United Nations

Communication from the Treaty Section, Office of Legal Affairs, 14 July 2022:

> The practice of the Secretariat of the United Nations in the provisional application of treaties draws from the registration of treaties under Article 102 of the *Charter of the United Nations*.
>
> Regarding the registration practice of the Secretariat, its origins can be traced back to the discussions of the Sixth Committee during the first session of the General Assembly.[164] Subsequent practice in relation to the provisional application of treaties can be found in the report of the Secretary-General entitled "Review of the regulations to give effect to Article 102 of the Charter of the United Nations"[165] and as later included in the Article I(2) of the *General Assembly Regulations to give effect to Article 102 of the Charter of the United Nations* annexed to General Assembly resolution 76/120 of 9 December 2021.
>
> The provisions of a treaty will set up the modalities by which it enters into force and whether it is applied provisionally. For multilateral treaties deposited with the Secretary-General, on behalf of which the Treaty Section performs depositary functions, when they provide for provisional application, the Treaty Section processes and circulates any notification of provisional application.
>
> *The Treaty Handbook* and the *Final Clauses of Multilateral Treaties Handbook* publications constitute additional resources on the matter.

The Treaty Handbook (Extracts)[166]

> *3.4 Provisional application*
>
> (See the *Summary of Practice*, para. 240.)
>
> Some treaties provide for provisional application, either before or after their entry into force. For example, article 7 (1) of the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 1994*, provides
>
> > If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force.
>
> The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 1995*, also provides for provisional application, ceasing upon its entry into force. Article 56 of the *International Cocoa Agreement, 2010*, also provides for provisional application with effect from the entry into force of the Agreement or, if it is already in force, at a specified date.

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[164] See: *Repertory of Practice of United Nations Organs*, Vol. V (1945–1954), paras. 32–34.

[165] See: Doc. A/75/136, para.12.

[166] Revised Edition, 2012, United Nations Sales No. E.12.V.1, pp. 11, 69. Available at: https://treaties.un.org/doc/source/publications/THB/English.pdf.

A State provisionally applies a treaty that has entered into force when it unilaterally undertakes, in accordance with its provisions, to give effect to the treaty obligations provisionally, even though its domestic procedural requirements for international ratification, approval, acceptance or accession have not yet been completed. The intention of the State would generally be to ratify, approve, accept or accede to the treaty once its domestic procedural requirements have been met. The State may unilaterally terminate such provisional application at any time unless the treaty provides otherwise (see article 25 of the *Vienna Convention [of the Law of Treaties*,] 1969). In contrast, a State that has consented to be bound by a treaty through ratification, approval, acceptance, accession or definitive signature is governed by the rules on withdrawal or denunciation specified in the treaty as discussed in section 4.5 (see articles 54 and 56 of the Vienna Convention 1969).

[…]

Glossary

[…]

provisional application of a treaty that has entered into force

Provisional application of a treaty that has entered into force may occur when a State unilaterally undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis. The State would generally intend to ratify, accept, approve or accede to the treaty once its domestic procedural requirements for international ratification have been satisfied. The State may terminate this provisional application at any time. In contrast, a State that has consented to be bound by a treaty through ratification, acceptance, approval, accession or definitive signature generally can only withdraw its consent in accordance with the provisions of the treaty or, in the absence of such provisions, other rules of treaty law.

See article 24 of the Vienna Convention 1969.

provisional application of a treaty that has not entered into force

Provisional application of a treaty that has not entered into force may occur when a State notifies the signatory States to a treaty that has not yet entered into force that it will give effect to the legal obligations specified in that treaty on a provisional and unilateral basis. Since this is a unilateral act by the State, subject to its domestic legal framework, it may terminate this provisional application at any time.

A State may continue to apply a treaty provisionally, even after the treaty has entered into force, until the State has ratified, approved, accepted or acceded to the treaty. A State's provisional application terminates if that State notifies the other States among which the treaty is being applied provisionally of its intention not to become a party to the treaty.

See article 25 of the Vienna Convention 1969.

Final Clauses of Multilateral Treaties Handbook (Extracts)[167]

G. Provisional application of a treaty

1. Provisional application of a treaty before its entry into force

Provisional application of a treaty may occur when a State unilaterally decides to give legal effect to the obligations under a treaty on a provisional and voluntary basis. This provisional application may end at any time.

[167] UN Sales No. E.04.V.3 (2003), at pp. 42–44. Available at: https://treaties.un.org/doc/source/publications/FC/English.pdf.

A treaty or part of it is applied provisionally pending its entry into force if either the treaty itself so provides or the negotiating States, in some other manner, have so agreed. Article 25 (1) of the Vienna Convention, 1969, states:

> *Provisional application*
>
> A treaty or a part of a treaty is applied provisionally pending its entry into force if:
>
> (*a*) the treaty itself so provides; or
>
> (*b*) the negotiating States have in some other manner so agreed.

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997, article 18 states:

> *Provisional application*
>
> Any State may at the time of its ratification, acceptance, approval or accession, declare that it will apply provisionally paragraph 1 of Article 1 of this Convention pending its entry into force.

Also, article 7 of the *Agreement relating to the implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, provides:

> *Provisional application*
>
> 1. If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force by:
>
> (*a*) States which have consented to its adoption in the General Assembly of the United Nations, except any such State which before 16 November 1994 notifies the depositary in writing either that it will not so apply this Agreement or that it will consent to such application only upon subsequent signature or notification in writing;
>
> (*b*) States and entities which sign this Agreement, except any such State or entity which notifies the depositary in writing at the time of signature that it will not so apply this Agreement;
>
> (*c*) States and entities which consent to its provisional application by so notifying the depositary in writing;
>
> (*d*) States which accede to this Agreement.
>
> 2. All such States and entities shall apply this Agreement provisionally in accordance with their national or internal laws and regulations, with effect from 16 November 1994 or the date of signature, notification of consent or accession, if later.[168]

Article 308 (4) of the *United Nations Convention on the Law of the Sea*, 1982, stipulates:

> 4. The rules, regulations and procedures drafted by the Preparatory Commission shall apply provisionally pending their formal adoption by the Authority in accordance with Part XI.

[168] The *Agreement relating to the Implementation of Part XI of the 1982 United Nations Convention on the Law of the Sea, 1994*, applied provisionally with effect from 16 November 1994, the date on which the *United Nations Convention on the Law of the Sea, 1982*, entered into force.

Unless the treaty provides otherwise a State may unilaterally terminate such provisional application at any time upon notification to the depositary.[169]

2. Provisional application of a treaty after its entry into force

Provisional application is possible even after the entry into force of a treaty. This option is open to a State that may wish to give effect to the treaty without incurring the legal commitments under it. It may also wish to cease applying the treaty without complying with the termination provisions. The *International Cocoa Agreement*, 1993, article 55 (1) provides:

> Notification of Provisional Application
>
> 1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government for which the Council has established conditions for accession, but which has not yet been able to deposit its instrument, may at any time notify the depositary that, in accordance with its constitutional procedures and/or its domestic laws and regulations, it will apply this Agreement provisionally either when it enters into force in accordance with article 56 or, if it is already in force, at a specified date. Each Government giving such notification shall at that time state whether it will be an exporting Member or an importing Member.[170]

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:[171]

> 105. The International Court of Justice has held that the United Nations is the *supreme* type of international organization and could not carry out the intentions of its founders if it was devoid of international personality.[172] Indeed, the United Nations has a unique character that is projected in a very special relationship in respect of the law of treaties. In view of its legal capacity, the United Nations may sign treaties.
>
> 106. The Secretariat of the United Nations, for its part, performs the functions of registration and publication of treaties, under Article 102, paragraph 1, of the Charter of the United Nations, and carries out the functions of the Secretary-General as depositary of treaties, in the latter case when the treaty so provides.
>
> 107. With the valuable assistance of the Treaty Section of the Office of Legal Affairs, a description of how the Secretariat works with respect to the provisional application of treaties, in the framework of its registration functions and the depositary functions of the Secretary-General, is presented below.

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[169] See paragraph 2 of article 25 of the *Vienna Convention, 1969*. Article 25 (2) of the *Vienna Convention, 1969*, deals with the difference between termination of the provisional application and termination of or withdrawal from a treaty by consent of the parties as provided in article 54 of the *Vienna Convention, 1969*, Pursuant to article 54, a State may terminate the provisional application at any time but a State that has expressed its consent to be bound by a treaty through definitive signature, ratification, acceptance, approval or accession, generally can only withdraw or terminate it in accordance with the treaty provisions or in accordance with general rules of treaty law.

[170] See also the *International Agreement on Olive Oil and Table Olives*, 1986 (article 54), and the *International Sugar Agreement*, 1992 (article 39).

[171] Doc. A/CN.4/699 (2016).

[172] *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion, *I.C.J. Reports 1949*, p. 179. See also *I.C.J. Summaries 1948–1991*, p. 10.

1. Registration functions

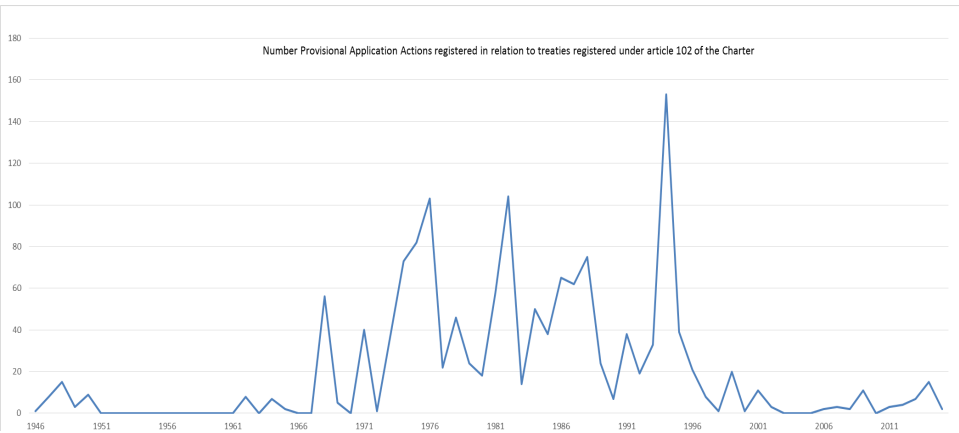
108. Article 102, paragraph 1, of the Charter of the United Nations stipulates the following:

> Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

Currently, 53,453 original treaties are registered with the United Nations, amounting to more than 70,000 if one includes subsequent original treaties and agreements. Taking into account all treaties and related actions, the total comes to over 250,000 registrations.[173]

109. On average, about 2,400 treaties and related actions are registered each year with the United Nations.[174] A detailed review of the information gathered from the registration of actions reveals that in some years the number of registrations is particularly high, owing to the fact that certain treaties elicit a greater number of acceptances of provisional application. For example, mainly due to commodity agreements, there were 56 actions on provisional application in 1968; in 1973, there were 103 such actions; in 1982, 104 were registered; in 1988, 75 were registered; and in 1994, 153 were registered. In the last-mentioned year (1994), 113 of the actions on provisional application registered refer exclusively to the Agreement for the Implementation of Part XI of the *United Nations Convention on the Law of the Sea of 10 December 1982*.[175] The following graph, provided by the Treaty Section of the Secretariat, shows some points in time when registered provisional application actions were at a peak.

Number of provisional application actions registered in relation to treaties registered under Article 102 of the Charter of the United Nations



110. It is interesting to note that a large part of the registered actions took place subsequently to the entry into force of the 1969 Vienna Convention. This graph also gives an idea of the vast practice that has existed through the years with respect to recourse to provisional application, going beyond the simple inclusion of a provisional application

[173] Registrations may be consulted at https://treaties.un.org.

[174] Strengthening and coordinating United Nations rule of law activities. Report of the Secretary-General (A/70/206, 27 July 2015, para. 11).

[175] *Agreement for the Implementation of Part XI of the United Nations Convention on the Law of the Sea* of 10 December 1982 (New York, 28 July 1994), United Nations, *Treaty Series*, vol. 1836, No. 31364, p. 3.

clause in a treaty, but referring to an action taken, *i.e.*, by registration of the recourse to such provisional application directly by the international community. From 1946 to 2015, a total of 1,349 provisional application actions were registered.

111. All these figures serve to place in context the very wide universe of treaty registration under Article 102 of the Charter of the United Nations.

112. On the other hand, in accordance with article 1, paragraph 2, of the regulations on registration adopted by the United Nations General Assembly in 1946, "[r]egistration shall not take place until the treaty or international agreement has come into force between two or more of the parties thereto."[176] On the basis of this provision, the standard practice of the Secretariat is to decline to proceed with the registration of treaties until the date of their entry into force. This might suggest *prima facie* that treaties which are applied provisionally but which have not entered into force would not be subject to registration. However, the *Repertory of Practice of United Nations Organs* (1955) describes the practice in the following manner:

> 32. Article 1 (2) of the regulations lays down the rule that registration cannot take place prior to the entry into force of an agreement between two or more parties. However, in adopting this rule at the first part of the first session of the General Assembly, Sub-Committee 1 generally agreed that the term "entry into force" was intended to be interpreted in its broadest sense. *It was the view of the Sub-Committee that, in practice, treaties which, by agreement, were being applied provisionally by two or more parties were, for the purpose of article 1 (2) of the regulations, in force.*
>
> 33. This point was stressed both in the report of Sub-Committee 1 to the Sixth Committee and in the report of the latter to the General Assembly at the second part of its first session. The following statement was made in both reports: "*It was recognized that, for the purpose of article 1 of the regulations, a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto*".
>
> 34. *In a number of cases to which this interpretation applies, the registration of an agreement was effected prior to its definitive entry into force.* Apart from these instances, the Secretariat has, on several occasions, declined to proceed with the registration of an agreement submitted prior to its actual entry into force. On one occasion, the registering party, after having effected the registration of an agreement, informed the Secretary-General that the date of its entry into force had been postponed for one year. As a result, the registration took effect almost a year before its entry into force. However, the registration was not cancelled and the agreement was published in the chronological order of registration with an accompanying explanatory note.[177]

113. Subsequently, in the updated version of the *Repertory of Practice of the United Nations, Supplement No. 3*, this criterion was reiterated, and a more in-depth analysis of this interpretation was made, as follows:

> (*h*) Article 1 (2) of the regulations lays down the rule that registration cannot take place prior to the entry into force of the treaty or international agreement. However, under an early interpretation given to the term "entry into force" by the Sixth Committee for the purpose of that rule, "a treaty comes into force when, by agreement, it is applied provisionally by two or more of the parties thereto". In a number of cases

[176] General Assembly resolution 97(1) of 14 December 1946, modified by General Assembly resolutions 364 (IV) of 1 December 1949, 482 (V) of 12 December 1955 and 33/141 of 19 December 1978.

[177] *Repertory of Practice of United Nations Organs*, vol. V, *Articles 92–111* of the Charter (United Nations publication, Sales No: 1955.V.2 (vol. V)), Article 102, paras. 32–34 (emphasis added).

to which that interpretation applies, the registration of a treaty or agreement was effected prior to its definitive entry into force.

(*i*) Notifications by the parties or specialized agencies of the definitive entry into force of treaties registered before that time clearly fall within the meaning of subsequent actions requiring registration as certified statements under article 2 of the regulations and have been registered by the Secretariat as such. As regards treaties and agreements for which the Secretary-General acts as depositary or to which the United Nations is a party, and which have been registered on provisional entry into force, the Secretariat *ex officio* registers their *definitive entry into force* on the date on which the conditions for bringing them *definitively into force* have been fulfilled.

(*j*) A treaty or agreement, even though it contains provisions for provisional application, is often registered only after the definitive entry into force. In such instances, if the registering party or specialized agency specifies the dates of the provisional entry and the definitive entry into force, both dates are recorded in the register. When no reference is made to the provisional entry into force, only the definitive date is recorded and no information about the former is requested by the Secretariat. On the other hand, if only the provisional date of entry into force is given and it appears that the treaty has already entered into force definitively, the Secretariat solicits the required data from the registering party or specialized agency.[178]

114. It should be noted that these criteria have not been modified and are still valid. As a result, the criterion agreed by the Sixth Committee of the General Assembly for the purposes of registering treaties under Article 102 of the Charter of the United Nations has equated, *de facto*, provisional application with entry into force when the treaty is applied provisionally, by agreement, by two or more contracting parties. Even today, the Secretariat continues to apply this criterion in the exercise of its registration and publication functions. This would appear contrary to the terminological and substantive distinction referred to by the Special Rapporteur since his first report, in which he pointed out that, although prior to the 1969 *United Nations Conference on the Law of Treaties*, there might have been some confusion between the concepts of entry into force and provisional application, the Vienna Conference had clarified the distinction between the two legal regimes.[179]

115. It is important to point out, however, that both the regulations on registration and the *Repertory of Practice of the United Nations* existed prior to the adoption and entry into force of the 1969 Vienna Convention.

116. In accordance with that practice, in the context of its registration function under Article 102 of the Charter of the United Nations, the Secretariat has registered a grand total of 1,733 treaties subject to provisional application, and therefore subject to their *presumed* entry into force. This total includes bilateral treaties, closed multilateral treaties and open multilateral treaties.

117. According to the legal literature, only 3 per cent of all treaties registered with the United Nations since 1945 have been subject to provisional application.[180]

118. The diversity of State practice in regard to provisional application is also reflected in the way in which the Secretariat has traditionally proceeded to register successive

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[178] *Repertory of Practice of United Nations Organs, Supplement No. 3, vol. IV, Articles 92–111 of the Charter* (United Nations publication, Sales No.: E.73.V.2), Article 102 (emphasis added).

[179] *Yearbook of the International Law Commission, 2013*, vol. II (Part One), document A/CN.4/664, paras. 7–24.

[180] Albane Geslin, *La mise en application provisoire des traités*, Paris, Pedone, 2005, p. 347.

actions in respect of multilateral treaties. Throughout the decades of registration under Article 102 of the Charter of the United Nations, these actions have been classified in a great variety of categories, which show the diversity of provisional application clauses and options that have been submitted to the Secretariat.

119. Thus, the website of the United Nations *Treaty Series offers* 12 different search criteria with respect to actions related to provisional application, as follows: provisional acceptance, provisional acceptance/accession, provisional application; provisional application by virtue of a notification; provisional application by virtue of accession to the Agreement; provisional application by virtue of adoption of the Agreement; provisional application by virtue of signature, adoption of the Agreement or accession thereto; provisional application in respect of the Mandated Territory of Palestine; provisional application of the Agreement as amended and extended; provisional application to all its territories; provisional application under Article 23; and provisional entry into force.[181] The existence of specific references such as "Mandated Territory of Palestine", "all its territories" or "under Article 23", reflects how fields are created to cover specific treaties, thus reaffirming the difficulty of relying on a single search criterion.

120. Moreover, it is essential to note that the Secretariat registers treaties under Article 102 of the Charter of the United Nations at the express request of States. This implies that, beyond any legal views held by the Secretariat itself, what takes precedence in cases of treaties applied provisionally but not yet in force is the assessment made by States with respect to the validity of the treaty in question, as expressed through the request for registration Therefore, the States themselves decide, as we have seen, that a treaty applied provisionally has entered into force, on the basis of the criteria adopted by the Sixth Committee in the *Regulations on Registration and Publication of Treaties.*

121. The Secretariat is limited to adding different dates to its registry on the basis of information provided by the State, but without adopting a criterion that draws a meaningful distinction between provisional application and entry into force.

2. Depositary functions

122. Articles 76 and 77 of the 1969 Vienna Convention regulates the functions of depositaries. These functions include keeping custody of the treaty, receiving and keeping custody of notifications relating to it, examining whether such communications are in due and proper form, and informing the parties of acts, communications and notifications relating to the treaty.

123. The depositary functions are especially important in dealing with practical aspects such as the date of entry into force and termination of treaties, either in general or with respect to one particular State, or with respect to the date on which the treaty produces legal effects in relation to the other parties to the treaty.[182]

124. On the other hand it has been suggested that the depositary lacks the competence to determine in a definitive manner the legal effects of the notifications it receives, in the sense that its function cannot substantively affect the rights or obligations of the parties to a treaty.[183]

125. Accordingly, the International Court of Justice has found, for example, that depositary functions should be limited to receiving and notifying States of reservations or objec-

[181] See: https://treaties.un.org/pages/searchActions.aspx.

[182] Shabtai Rosenne, "The Depositary of International Treaties", *American Journal of International Law*, vol. 61, No. 4 (October 1967), p. 925.

[183] *Ibid.*, p. 928.

tions thereto.[184] This position emphasizes that the attributions of the depositary are essentially juridical and formal, limiting to the greatest extent possible any political role that might be attributed to it.[185]

126. However, the proliferation of multilateral treaties and the growing complexity of such treaties, compounded by the changes in the international community itself, including the rise of new subjects of international law, have had a direct impact on the functions of depositaries, especially with respect to the scope of their functions.[186]

127. Without a doubt, the Secretary-General of the United Nations is the depositary *par excellence*. The transfer of this function in the transition from the League of Nations to the United Nations was determined by the General Assembly in 1946.[187] Currently, the Secretary-General is the depositary for more than 560 multilateral treaties.

128. In that regard, the Secretary-General, in his capacity as depositary, is also limited to performing the functions entrusted to him by the parties to a treaty, focusing on the provisions of the treaty itself.

129. As for provisional application, this means in practical terms that the Secretary-General will proceed in accordance with the terms of the multilateral treaties deposited with the Secretariat, without having competence to amend these terms on the basis of his own interpretation of what would be legally correct in accordance with the law of treaties. This is a truly complex task, since, as we have seen, States use a very wide variety of formulas to agree to provisional application of treaties, and these change without maintaining a set pattern.

130. In some cases, as in the case of the *Protocol on the Privileges and Immunities of the International Seabed Authority*, the depositary is limited to receiving and circulating notifications of provisional application under article 19 of the treaty, which provides as follows: "A State which intends to ratify, approve, accept or accede to this Protocol may at any time notify the depositary that it will apply this Protocol provisionally for a period not exceeding two years".[188] What is interesting in this case is that the provisional application period is limited to a maximum of two years. In depositary practice, a provision of this type, for example, simply implies that the Secretary-General would indicate, in the depositary notification, that the State in question has accepted to apply the treaty provisionally for a period of two years (or less), in accordance with the provisions of the treaty, and therefore, when this time period expires, the treaty is no longer applied provisionally.

131. Another example that could be studied is the *recent International Agreement on Olive Oil and Table Olives*, 2015. This treaty contains an article concerning provisional application followed by the provision on its entry into force. The two texts, if read together, are very interesting:

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[184] *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, *I.C.J. Reports 1951*, p. 27. See also *I.C.J. Summaries 1948–1991*, p. 25.

[185] Rosenne, "The Depositary of International Treaties", p. 931.

[186] Fatsah Ouguergouz, Santiago Villalpando and Jason Morgan-Foster, "Article 77", in Olivier Corten and Pierre Klein (eds.), *The Vienna Convention on the Law of Treaties. A Commentary*, vol. II, Oxford, Oxford University Press, 2011, pp. 1715–1753.

[187] Transfer of certain functions, activities and assets of the Leagues of Nations, General Assembly resolution 24(I) of 12 February 1946.

[188] Protocol on the Privileges and Immunities of the International Seabed Authority (Kingston, 27 March 1998), United Nations, *Treaty Series*, vol. 2214, No. 39357, p. 133.

Article 30.
Notification of provisional application

1. A signatory Government which intends to ratify, accept or approve this Agreement, or any Government for which the Council of Members has established conditions for accession but which has not yet been able to deposit its instrument may, at any time, notify the depositary that it will apply this Agreement provisionally when it enters into force in accordance with article 31, or, if it is already in force, at a specified date.

2. A Government which has submitted a notification of provisional application under paragraph 1 of this article will apply this Agreement when it enters into force, or, if it is already in force, at a specified date *and shall, from that time, be a Contracting Party*. It shall remain a Contracting Party until the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article 31.
Entry into force

1. This Agreement shall *enter into force definitively* on 1 January 2017, provided that at least five of the Contracting Parties among those mentioned in annex A to this Agreement and accounting for at least 80 per cent of the participation shares out of the total 1,000 participation shares have signed this Agreement definitively or have ratified, accepted or approved it, or acceded thereto.

2. If, on 1 January 2017, this Agreement has not entered into force in accordance with paragraph 1 of this article, it shall *enter into force provisionally* if by that date Contracting Parties satisfying the percentage requirements of paragraph 1 of this article have signed this Agreement definitively or have ratified, accepted or approved it, or have notified the depositary that they will apply this Agreement provisionally.

3. If, on 31 December 2016, the requirements for entry into force under paragraph 1 or paragraph 2 of this article have not been met, the depositary shall invite those Contracting Parties which have signed this Agreement definitively or have ratified, accepted or approved it, or have notified that they will apply this Agreement provisionally, to decide whether to bring this Agreement into force definitively or provisionally among themselves, in whole or in part, on such date as they may determine.

4. For any Contracting Party which deposits an instrument of ratification, acceptance, approval or accession after the entry into force of this Agreement, this Agreement shall enter into force on the date of such deposit.[189]

132. These provisions, which seem to add more confusion to a situation that is already anarchic, are particularly interesting because the State which formulated a notification of provisional application was considered a *contracting party*; the terms "provisional application", "enter into force provisionally" and "enter into force definitively" coexist in the same article, as if they were equivalent expressions; the contracting parties, via the notification of provisional application, count for the purposes of the entry into force; and, if the treaty does not enter into force within the established time periods, a mandate is given to the depositary to invite the contracting parties to decide whether the treaty will enter into force either provisionally or definitively.

[189] International Agreement on Olive Oil and Table Olives, 2015 (Geneva, 9 October 2015), *Multilateral Treaties Deposited with the Secretary-General*, chap. XIX, TREATIES-XIX.49 (emphasis added).

133. The legal doctrine has held that one of the essential elements characterizing the functions of the depositary is that it does not have the power to set criteria for the various actions that States may take in relation to a treaty.[190] The function of the depositary is governed essentially by a requirement of impartiality that considerably limits the scope of its functions.[191] But as has been pointed out, the very complex evolution of the depositary's work currently calls into question such affirmations.

134. Another current example is the *Paris Agreement* on climate change adopted on 12 December 2015. The decision of the Conference of the Parties to the Framework Convention on Climate Change, by which this Agreement was adopted, provides as follows: "Recognizes that Parties to the Convention may provisionally apply all of the provisions of the Agreement pending its entry into force, and *requests* Parties to provide notification of any such provisional application to the Depositary."[192] This is another example of provisional application that was not envisaged in the treaty but was rather agreed by a decision of the Conference of the Parties.

135. It is also noteworthy that some treaties on the United Nations Treaty Collection website, such as the *Arms Trade Treaty*, the *Convention on Cluster Munitions*, or the large number of treaties on commodities that contain provisions on provisional application,[193] a column on the page reflecting their status identifies any declarations of provisional application. This column is generated once the provisional application action is registered by a State, and the system updates automatically upon the deposit of successive provisional application actions.

3. United Nations publications on treaties

136. The Treaty Section of the Office of Legal Affairs has prepared a *Treaty Handbook*, whose latest revised edition was published in 2013.194 The prologue describes the function of the *Handbook* as follows:

> This *Handbook*, prepared by the Treaty Section of the United Nations Office of Legal Affairs, is a practical guide to the depositary practice of the Secretary-General and the registration practice of the Secretariat. It is intended as a contribution to the United Nations efforts to assist States in becoming party to the international treaty framework. […] It is presented in a user-friendly format with diagrams and step-by-step instructions, and touches upon many aspects of treaty law and practice. This *Handbook* is designed for use by States, international organizations and other entities.[195]

137. The glossary of the *Handbook* reflects Secretariat practice with regard to registration and publication of treaties under Article 102 of the Charter of the United Nations, together with the depositary practice of the Secretary-General, both of which have been described in previous sections. Thus, the *Handbook* defines provisional application, distinguishing between the case of a treaty that has entered into force and that of a treaty that has not entered into force. These definitions are cited below:

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[190] Shabtai Rosenne, "More on the depositary of international treaties", *American Journal of International Law*, vol. 64, p. 851.

[191] *Ibid.*, p. 840–841.

[192] FCCC/CP/2015/L.9, para. 5.

[193] See https://treaties.un.org/pages/Treaties.aspx?id=19&subid=A&lang=en.

[194] *Treaty Handbook* (United Nations publication, Sales No.: E.02.V2).

[195] *Ibid.*, p. iv.

Provisional application of a treaty that has entered into force

Provisional application of a treaty that has entered into force may occur when a State *unilaterally undertakes to give legal effect to the obligations under a treaty on a provisional and voluntary basis*. The State would generally intend to ratify, accept, approve or accede to the treaty once its domestic procedural requirements for international ratification have been satisfied. The State may terminate this provisional application at any time. In contrast, a State that has consented to be bound by a treaty through ratification, acceptance, approval, accession or definitive signature generally can only withdraw its consent in accordance with the provisions of the treaty or, in the absence of such provisions, other rules of treaty law […].

Provisional application of a treaty that has not entered into force

Provisional application of a treaty that has not entered into force may occur when a State *notifies the signatory States to a treaty that has not yet entered into force that it will give effect to the legal obligations specified in that treaty on a provisional and unilateral basis. Since this is a unilateral act by the State, subject to its domestic legal framework, it may terminate this provisional application at any time*. A State may continue to apply a treaty provisionally, even after the treaty has entered into force, until the State has ratified, approved, accepted or acceded to the treaty. A State's provisional application terminates if that State notifies the other States among which the treaty is being applied provisionally of its intention not to become a party to the treaty.[196]

138. Since the Special Rapporteur already addressed the latter case, relating to unilateral notifications, in Chapter II, section A (Source of obligations),[197] of his second report, he does not consider it appropriate to deal further with it here. He merely points out that, although some favour has been expressed in both the Commission and the General Assembly for a strict interpretation of article 25 of the 1969 Vienna Convention, giving preference to agreements between the negotiating States and apparently not open to—but not excluding—the possibility that third States might decide to apply the treaty unilaterally and provisionally, the Secretariat *Handbook* describes a practice which is perhaps more extensive than might have been thought.

139. Nor can it be ignored that the *Handbook* also draws attention to the production of legal effects arising out of the provisional application of treaties, noting that States will *give effect* to the obligations derived from the treaty in question.

140. The Special Rapporteur is in no way suggesting that the *Handbook* constitutes an authoritative interpretation of the 1969 Vienna Convention. The *Handbook* itself contains a note waiving responsibility and explaining that "[t]his *Handbook* is provided for information only and does not constitute formal legal or other professional advice". Nonetheless, the *Handbook* is offered as a "guide to practice",[198] and it is logical to conclude that, as the decision was made to include these "definitions" as described above, it is because they reflect State practice with regard to registration and deposit, as discussed in the previous sections.

141. Although this topic was mentioned in the Special Rapporteur's first report,[199] it is appropriate to reiterate the way in which the *Handbook* refers to the provisional application of treaties, as follows:

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[196] *Ibid.*, p. 65 (emphasis added).

[197] *Yearbook of the International Law Commission, 2014*, vol. II (Part One), document A/CN.4/675, paras. 32–43.

[198] *Treaty Handbook*, p. 1.

[199] *Yearbook of the International Law Commission, 2013*, vol. II (Part One), document A/CN.4/664, para. 38.

> 3.4 Provisional application […]
>
> Some treaties provide for provisional application, either before or after their entry into force. For example, article 7 (1) of the *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea* of 10 December 1982, 1994, provides "If on 16 November 1994 this Agreement has not entered into force, it shall be applied provisionally pending its entry into force". The *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*,[200] of 1995, also provides for provisional application, ceasing upon its entry into force. Article 56 of the *International Cocoa Agreement*,[201] of 2010, also provides for provisional application with effect from the entry into force of the Agreement or, if it is already in force, at a specified date.
>
> A State provisionally applies a treaty that has entered into force *when it unilaterally undertakes*, in accordance with its provisions, to give effect to the treaty obligations provisionally, even though its domestic procedural requirements for international ratification, approval, acceptance or accession have not yet been completed. The intention of the State would generally be to ratify, approve, accept or accede to the treaty once its domestic procedural requirements have been met. The State may unilaterally terminate such provisional application at any time unless the treaty provides otherwise (see article 25 of the 1969 Vienna Convention). In contrast, a State that has consented to be bound by a treaty through ratification, approval, acceptance, accession or definitive signature is governed by the rules on withdrawal or denunciation specified in the treaty as discussed in section 4.5 (see articles 54 and 56 of the Vienna Convention 1969).[202]

142. This citation reveals the way in which the United Nations Secretariat understands, and therefore processes, situations involving provisional application in the performance of its functions.

143. Moreover, in response to regular requests from the General Assembly, the United Nations Secretariat prepared and published a *Handbook on Final Clauses of Multilateral Treaties*, most recently issued in 2003.[203] As the Secretary-General notes in his Foreword, the *Handbook* "incorporates recent developments in the practice of the Secretary-General as depositary of multilateral treaties with regard to matters normally included in the final clauses of these treaties".

144. In section G (Provisional application of a treaty), the *Handbook* again draws attention to the assumption of a unilateral decision as a point of departure for the implementation of article 25 of the 1969 Vienna Convention and provides some examples of provisional application clauses contained in some multilateral treaties, either before or after their entry into force.[204]

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[200] *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (New York, 4 August 1995), United Nations, *Treaty Series*, vol. 2167, No. 37924, p. 3.

[201] *International Cocoa Agreement*, 2001 (Geneva, 13 March 2001), UNCTAD, TD/COCOA.9/7.

[202] Emphasis added.

[203] *Final Clauses of Multilateral Treaties: Handbook*, United Nations publication, Sales No.: E.04.V.3, 2003.

[204] *Ibid*., pp. 42–43.

145. Furthermore, the *Handbook* reflects the distinction found in final clauses of multilateral treaties, as described in the previous section, between the definitive entry into force of a treaty and the so-called provisional entry into force.

146. It is interesting to note, however, that the two Secretariat handbooks referred to by the Special Rapporteur in the present report do not appear to call into question the obligatory character of the provisions of a treaty that States have decided to apply provisionally.

147. Moreover, in addition to the two handbooks cited above, the Secretariat uses the above-mentioned *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties.*

148. Clearly, the United Nations Secretariat can record only what States provide to it, while trying to systematize the information coherently and in conformity with the 1969 Vienna Convention and the practice of States. The source of the ambiguous use of the two concepts is the States themselves, not the United Nations.

149. In conclusion, it is worth considering the merits of the idea that, in due time, the Commission should recommend to the Sixth Committee that the 1946 regulations on registration should be revised in order to adapt them to the current state of practice relating to the provisional application of treaties. This would serve as a guide to practice in line with the scope and content of article 25 of the 1969 Vienna Convention, which in turn would enable the Secretariat to reflect at a later time, both in the above-mentioned handbooks and in the *Summary of Practice of the Secretary-General as Depositary of Multilateral Treaties*, the new trends in the matter that are developing in accordance with contemporary practice.

2. World Food Programme (WFP)

Communication transmitted to the Secretariat, 4 August 2022:

> In general, WFP drafts treaties such so they enter into force upon signature of all parties involved.
>
> However, when the counterparty informs WFP that it is obligated by its own regulations to undertake additional internal processes in order for the treaty to enter into force, WFP may agree alternatively that entry into force takes place on the date of receipt by WFP of a notification from the other party that internal constitutional requirements have been met.
>
> In such case, the text of the agreement provides for its provisional application pending entry into force either at the date of signature or at another date as may be specifically set out in each case. Provisional application continues in general without limitation until the date of entry into force. However, in two previous cases, WFP has agreed with counterparties to limit the period of provisional application to a fixed duration of one year.
>
> Generally speaking, the provisional application of WFP's Basic Agreements has passed without incident. One exception concerned the *Basic Agreement between the Government of the Islamic Republic of Mauritania and the World Food Programme*. This agreement includes the following provisions:
>
> > The present Basic Agreement, and any amendment that may be made thereto, shall enter into force at the date on which the Executive Director of WFP receives a written notification sent by the Government by diplomatic means which indicates that it has completed its internal constitutional processes leading to ratification.
> >
> > […]
> >
> > The present Basic Agreement shall be provisionally applicable from the date of its signature and in the sense of Article 25 of the Vienna Convention on the Law of Treaties dated 23 May 1969, until the Government has completed its internal constitutional processes leading to ratification.[205]
>
> In accordance with the above provisions, the agreement became provisionally applicable on the date of its signature by both parties, *i.e.*, 19 December 2018. WFP has subsequently operated in Mauritania under the terms of the Basic Agreement while awaiting notification of formal ratification by the Mauritanian Government. In this context, in June 2021, the Government requested the amendment of the provisionally applicable agreement. With guidance from the Office of Legal Affairs, WFP and the Mauritanian Government then concluded an amendment to the agreement via an exchange of letters executed between January and April 2022. As of July 2022, ratification of the amended agreement remains pending before the National Assembly.
>
> For further reference, please find in annex hereto a compilation of relevant examples of provisions of treaties to which WFP is party that regulate the provisional application of such treaties.
>
> **Annex**
> **Compiled Provisions of Treaties to Which WFP is Party that Regulate Provisional Application**
>
> *Basic Agreement between the Government of the Lebanese Republic and the World Food Programme (WFP):*

[205] *Accord de base entre le Gouvernement de la République Islamique de Mauritanie et le Programme Alimentaire Mondial* (PAM) of 19 December 2018, at Article XXII(1) and (2).

Article 14
Entry into Force and Termination

Section 38

The Present Agreement shall enter into force after 30 days from the date in which WFP receives written notification from the Government of completing the conclusion of this Agreement in accordance with its internal constitutional procedures, however it shall come into effect provisionally on the date of its signature.

Agreement between the World Food Programme and the Government of the Federal Republic of Germany concerning the Office of the World Food Programme in the Federal Republic of Germany:

Article 5
Final Provisions

(1) This Agreement shall enter into force on the day following the date of receipt of the last of the notifications by which the Parties will have informed each other on the completion of their respective formal requirements. It shall be provisionally applied as might be necessary from the date of its signature until the formal requirements for entry into force mentioned in the first sentence above have been fulfilled.

[…]

Basic Agreement Between the World Food Programme (WFP) and the Government of the State of Kuwait on the Establishment of a Country Office in the State of Kuwait:

Article 23
Entry into Force and amendments and termination

(1) This Agreement shall enter into force on the date of receipt by the Executive Director of a written notification from the Government, to be conveyed through diplomatic channels, that the latter has fulfilled its internal constitutional procedures.

(2) The Basic Agreement will be applied provisionally after signature, in the spirit of Article 25 of the Vienna Convention on the Laws of the Treaties—1969, until the Government of the State of Kuwait has fulfilled its internal constitutional procedures.

Basic Agreement Between the Government of the Kingdom of the Netherlands and the UN/FAO World Food Programme Concerning Assistance from the World Food Programme to the Netherlands Antilles:[206]

Article 7
General Provisions

1) (*a*) After the approval constitutionally required in the Kingdom of the Netherlands has been obtained, this Agreement shall enter into force on the date of receipt by the World Food Programme of a relevant notification from the Government of the Kingdom.

(*b*) Nevertheless, the Government of the Kingdom and the World Food Programme shall provisionally apply the provisions of the present Agreement for a period not exceeding one year from the date in which the Agreement is signed.

[206] This treaty became provisionally applicable on 13 August 1971. It came into force on 1 February 1972, the date of receipt by WFP of the notification described in Article 7(*a*), which preceded the expiration of the one-year period of provisional application set forth in Article 7(*b*).

Basic Agreement Between the Government of the Kingdom of Spain and the World Food Programme for the Establishment of Offices of the World Food Programme in Spain:

Article 21
Entry into Force, Duration and Termination

(1) This Agreement and any amendments hereto shall enter into force as of the date on which the Parties notify each other, through an exchange of instruments, that the respective internal formal procedures have been completed. The provisions of this Agreement shall, as of the date of signature, be applied provisionally pending its entry into force.

[…]

Agreement Between the Government of the United Arab Emirates and the World Food Programme (WFP) Regarding the WFP Office Dubai:

Article 13
Entry into Force

(1) This Agreement shall be signed in both Arabic and English and both versions shall equal effect. The Agreement shall enter into force temporarily after signature until ratified by the UAE Government according to constitutional requirements.

[…]

Accord de base entre le Gouvernement de la République Islamique de Mauritanie et le Programme Alimentaire Mondial (PAM):[207]

Article 22
Entrée en vigueur et dénonciation

(1) Le présent Accord de base, et tout amendement qui y aura été apporté, entre en vigueur à la date à laquelle le Directeur exécutif du PAM reçoit une notification écrite transmise par le Gouvernement par voie diplomatique indiquant que ce dernier a accompli ses propres procédures constitutionnelles jusqu'à sa ratification. […]

(2) Le présent Accord de base s'applique à titre provisoire à partir de la date de sa signature et dans l'esprit de l'article 25 de la Convention de Vienne sur le droit des traités en date du 23 mai 1969, jusqu'à ce que le Gouvernement ait accompli ses propres procédures constitutionnelles jusqu'à sa ratification.

[207] Unofficial translation by the United Nations Secretariat:

Basic Agreement between the Government of the Islamic Republic of Mauritania and the World Food Programme (WFP)

Article 22
Entry into force and denunciation

(1) This Basic Agreement, and any amendments thereto, shall enter into force on the date on which the Executive Director of WFP receives a written notification from the Government, to be conveyed through diplomatic channels, that the latter has fulfilled its internal constitutional procedures. […]

(2) This Basic Agreement will be applied provisionally from the date of its signature and in the spirit of Article 25 of the *Vienna Convention on the Law of Treaties* of May 23, 1969, until the Government has completed its internal constitutional procedures for ratification.

3. Food and Agriculture Organization (FAO)

Communication transmitted to the Secretariat, 28 July 2022:

The Organization is pleased to provide the following examples of the Organization's practice in relation to the provisional application of treaties:

Multilateral Treaties

The *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* was approved by the FAO Conference at its Thirty-sixth Session (held in Rome, from 18 to 23 November 2009) pursuant paragraph 1 of Article XIV of the FAO Constitution, through Resolution No 12/2009 dated 22 November 2009 ("PSMA" or "Agreement"). The Agreement, for which the FAO Director-General is the Depositary, entered into force on 5 June 2016. Article 32 provides for provisional application as follows:

> 1. This Agreement shall be applied provisionally by States or regional economic integration organizations which consent to its provisional application by so notifying the Depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
>
> 2. Provisional application by a State or regional economic integration organization shall terminate upon the entry into force of this Agreement for that State or regional economic integration organization or upon notification by that State or regional economic integration organization to the Depositary in writing of its intention to terminate provisional application.

As reflected in the Circular State Letter ("CSL") issued on 21/I/2021, on 1 January 2021, the United Kingdom on Great Britain and Northern Ireland ("United Kingdom") deposited an instrument of accession to the PSMA. While, according to its Article 29, paragraph 3, the Agreement entered into force for the United Kingdom on 31 January 2021, the instrument of accession was accompanied by a notification from the United Kingdom of its consent to the provisional application of the Agreement, pursuant to its Article 32, paragraph 1, as from the date of receipt of that notification by FAO, *i.e.* 1 January 2021. This instrument and notification were transmitted following the expiry of the *Agreement concerning the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community*, as reflected in the CSL issued on 3 March 2020. As provided in Article 32, paragraph 2, provisional application terminated upon the entry into force of the Agreement for the United Kingdom on 31 January 2022.[208]

Bilateral treaties

FAO has concluded a number of bilateral agreements for the establishment of FAO representations and liaison offices, and the provision of related privileges, immunities and exemptions, which have been applied on a provisional basis pending the completion of internal procedures by the Member Nations concerned, such as ratification by parliamentary bodies.

[208] Relevant information and material can be accessed at: https://www.fao.org/port-state-measures/resources/detail/en/c/1111616/ and https://www.fao.org/treaties/results/details/en/c/TRE-000257.

4. International Labour Organization (ILO)

Extracts from the fifth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur: [209]

> 47. Among the conventions concluded under the auspices of ILO, only the *Seafarers' Identity Documents Convention* (No. 185)[210] provides for provisional application, in article 9.

[209] Doc. A/CN.4/718 (2018).

[210] *ILO Convention (No. 185) revising the Seafarers' Identity Documents Convention*, 1958 (Geneva, 19 June 2003), United Nations, *Treaty Series*, vol. 2304, No. 41069, p. 121. See also www.ilo.org/dyn/normlex/en/.

5. International Atomic Energy Agency (IAEA)

Communication transmitted to the Secretariat, 26 July 2022:

The work of the IAEA involves many treaties, including those for which the IAEA is the depositary, treaties to which the IAEA is a party, and treaties related to the work of the IAEA. Based on a survey of the relevant practice, those treaties that contain clauses on provisional application are included below.

Relevant treaties under IAEA auspices

Convention on Early Notification of a Nuclear Accident, 1986

> *Article 13*
> *Provisional application*
>
> A State may, upon signature or at any later date before this Convention enters into force for it, declare that it will apply this Convention provisionally.

Relevant treaty actions:

Algeria, People's Democratic Republic of, ratified 15 January 2004, upon signature: "Article 13 […] The People's Democratic Republic of Algeria declares that it will apply the Convention provisionally in accordance with Article 13".

Belarus, Republic of, ratified 26 January 1987, upon signature: "The Byelorussian SSR […] declares that it accepts provisionally the obligations under the conventions in question from the time of their signature and until their ratification. […]".

China, People's Republic of, ratified 10 September 1987, upon signature: "[…] In view of the urgency of the question of nuclear safety, China accepts article 13, the provisionally applicable clause of the Convention before the Convention's entry into force for China."

Democratic People's Republic of Korea (not ratified yet), upon signature: "[…] In view of the urgency of the question of nuclear safety the Democratic People's Republic of Korea will apply [the Convention] provisionally."

Germany, Federal Republic of, ratified 14 September 1989, upon signature: "1. With reference to article 13 of the aforementioned Convention, the Federal Republic of Germany will as of today, in accordance with the law applicable in the Federal Republic of Germany, apply the Convention provisionally. […]"

Greece (Hellenic Republic), ratified 6 June 1991, upon signature: "According to [Article 13 thereof, the Convention] will be provisionally applied in Greece within the framework of the existing internal legislation."

Netherlands, Kingdom of the, accepted 23 September 1991, upon signature: "[…] in accordance with article 13 of that Convention, [the] Government, anticipating the entry into force of the Convention for the Kingdom of the Netherlands, will apply its provisions provisionally. This provisional application will come into effect thirty days from today, or, in case the Convention will not be in force for at least one other State at that time, on the date on which the Convention will have become applicable to one other State either by means of entry into force or by means of a declaration of provisional application."

Russian Federation, ratified 23 December 1986, upon signature by the USSR: "From the time of signature and until the [convention] enter[s] into force for the USSR, the latter will apply [the convention] provisionally."

Ukraine, ratified 26 January 1987, upon signature: "The Ukrainian SSR […] declares that it accepts provisionally the obligations under the Conventions in question from the time of their signature and until their ratification. […]"

United Kingdom of Great Britain and Northern Ireland, ratified 9 February 1990, upon signature: "The United Kingdom will apply this Convention provisionally from today's date to the extent permitted by its existing laws, regulations and administrative arrangements […]"

Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, 1986

> *Article 15*
> *Provisional application*
>
> A State may, upon signature or at any later date before this Convention enters into force for it, declare that it will apply this Convention provisionally.

Relevant treaty actions:

Algeria, People's Democratic Republic of, ratified 15 January 2004, upon signature: […] "The People's Democratic Republic of Algeria declares that it will apply the Convention provisionally in accordance with Article 15."

Belarus, Republic of, ratified 26 January 1987, upon signature: "The Byelorussian SSR also declares that it accepts provisionally the obligations under the convention […] from the time of their signature and until their ratification. […]"

China, People's Republic of, ratified 10 September 1987: "In view of the urgency of the question of nuclear safety, China accepts article 15, the provisionally applicable clause of the Convention before the Convention's entry into force for China."

Democratic People's Republic of Korea (not ratified yet), upon signature: "[…] 2. In view of the urgency of the question of nuclear safety the Democratic People's Republic of Korea will apply [the Convention] provisionally."

Germany, Federal Republic of, ratified 14 September 1989, upon signature: "[…] with reference to article 15 of the aforementioned Convention, that the Federal Republic of Germany will as of today, in accordance with the law applicable in the Federal Republic of Germany, apply the Convention provisionally."

Greece (Hellenic Republic) ratified 6 June 1991, upon signature: "According to their respective articles 13 and 15, the above two conventions will be provisionally applied in Greece within the framework of the existing internal legislation."

Netherlands, Kingdom of the, accepted 23 September 1991, upon signature: "[…] in accordance with Article 15 of that Convention, [the] Government, anticipating the entry into force of the Convention for the Kingdom of the Netherlands, will apply its provisions provisionally. This provisional application will come into effect thirty days from today, or, in case the Convention will not be in force for at least one other State at that time, on the date on which the Convention will have become applicable to one other State either by means of entry into force or by means of a declaration of provisional application. The provisions of article 10, second paragraph, are being excluded from this provisional application."

Russian Federation, ratified 23 December 1986, upon signature by the USSR: "From the time of signature and until [the convention] come[s] into force for the USSR, the latter will apply [the convention] provisionally."

Ukraine, ratified 26 January 1987, upon signature: "The Ukrainian SSR […] declares that it accepts provisionally the obligations under the Conventions in question from the time of their signature and until their ratification."

United Kingdom of Great Britain and Northern Ireland, ratified 9 February 1990, upon signature: "The United Kingdom will apply this Convention provisionally from today's date to the extent permitted by its existing laws, regulations and administrative arrangements."

Relevant agreements to which the IAEA is a party

Safeguards agreements

Safeguards agreements concluded by the IAEA do not contain provisions for provisional application.

Additional protocols to safeguards agreements concluded by the IAEA on the basis of the '*Model Protocol Additional to the Agreement(s) Between State(s) and the International Atomic Energy Agency for the Application of Safeguards*' (INFCIRC/540 (Corrected)) may be applied provisionally at any time before they enter into force in accordance with Article 17.b. of INFCIRC/540 (Corrected).

While the provision set out in Article 17.*b.* of INFCIRC/540 (Corrected) on provisional application has been included in all additional protocols concluded by the IAEA, only four States have decided to apply their additional protocol provisionally and informed the IAEA accordingly. Three of these States have brought into force their additional protocol and one State has no longer provisionally applied the additional protocol in accordance with Article 17.*b.*

> *Article 17*
> *Entry into force*
>
> *a.* This Protocol shall enter into force on the date on which the Agency receives from … written notification that …'s statutory and/or constitutional requirements for entry into force have been met.
>
> OR
>
> upon signature by the representatives of … and the Agency.
>
> *b.* … may, at any date before this Protocol enters into force, declare that it will apply this Protocol provisionally.
>
> *c.* The Director General shall promptly inform all Member States of the Agency of any declaration of provisional application of, and of the entry into force of, this Protocol'.

Technical co-operation

The legal basis for implementing technical cooperation is the *Revised Supplementary Agreement Concerning the Provision of Technical Assistance by the IAEA* (RSA). The RSA expressly incorporates the provisions of the Standard Basic Assistance Agreement (SBAA), as concluded between the relevant Member State and United Nations Development Programme.

> *Article XIII*
> *General Provisions*
>
> 1. This Agreement shall [enter into force upon signature, and] [be subject to ratification by the Government, and shall come into force upon receipt by UNDP of notification from the Government of its ratification. Pending such ratification, it shall be given provisional effect by the Parties.] It shall continue in force until terminated under

paragraph 3, below. Upon the entry into force of this Agreement, it shall supersede existing Agreements concerning the provision of assistance to the Government out of UNDP resources and concerning the UNDP office in the country, and it shall apply to all assistance provided to the Government and to the UNDP office established in the country under the provisions of the Agreements now superseded.

6. International Civil Aviation Organization (ICAO)

Communication transmitted to the Secretariat, 27 July 2022:

Precedents concerning the provisional application of treaties concluded under the auspices of ICAO

There has been one occasion when the provisional application of treaties has occurred at ICAO. The *Protocol for the amendment of the 1956 Agreement on the Joint Financing of Certain Air Navigation Services in Iceland and the Protocol for the amendment of the Agreement on the Joint Financing of Certain Air Navigation Services in Greenland and the Faroe Islands*, both done at Montreal on 3 November 1982, provide, at their respective Articles 13 and 14, for their provisional application from 1 January 1983. However, these Protocols of amendment formally entered into force on 17 November 1989. It should be noted that the *Iceland Joint Financing Agreement* as well as the *Greenland Joint Financing Agreement* have 25 and 24 Contracting States, respectively.

Consideration by ICAO bodies of the provisional application of treaties

Consideration by the ICAO Assembly of a proposal for provisional application of an amendment to the Convention on International Civil Aviation (1989)

During the 27th Session of the ICAO Assembly (Montreal, 19 September—6 October 1989) which adopted an amendment to Article 56 of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 (Chicago Convention) to increase the membership from 15 to 19 of the Air Navigation Commission (ANC), 21 delegations co-sponsored a working paper (A27-WP/67) inviting the Assembly "to express unanimous consent that the amended Article 56 of the Convention should be provisionally applied from 1 January 1990 pending its entry into force". Article 94 of the Chicago Convention provides that the number of ratifications required for the entry into force of any proposed amendment shall not be less than two-thirds of the total number of Contracting States. Provisional application was proposed in this case, given the length of time anticipated until the formal entry into force of the amendment. A27-WP/67 took the position that the consent of all Contracting States, and not just those represented at the Assembly, was necessary for provisional entry into force of the amendment, and that States not represented at the Assembly would also have to signify their consent. It was also asserted that such a procedure was legally permissible under the general international law of treaties as expressly confirmed in Article 25 of the *Vienna Convention on the Law of Treaties*, 1969 (VCLT). During the consideration of the working paper by the Executive Committee of the 27th Session of the ICAO Assembly, concern was expressed that such an action would strongly affect the manner in which any future amendment of the Chicago Convention was approached. Questions were also raised concerning the form in which unanimous consensus would have to be sought in order to have true force and effect. For example, it was questioned whether delegates to the Assembly were empowered to take such action. One delegation, suggesting that the action proposed should only be used in exceptional circumstances and questioning whether increase in the membership of the ANC could be considered such a circumstance, indicated that it would not participate in any consensus. In view of the reservations that had been expressed, the Executive Committee agreed not to recommend to the Assembly the action proposed concerning provisional application (A27-WP/220).

Consideration by the ICAO Assembly of the problem of the slow progress of ratification of air law instruments (1994)

At the Twenty-Second Meeting of its 143rd Session (16 December 1994), the ICAO Council requested the Secretary General to

> "present a paper dealing with the problem of the slow progress of ratification of ICAO international instruments, and the fact that such air law instruments only came into force in respect of the parties which ratified them."

During its consideration of C-WP/10197 at the Fourth Meeting of its 145th Session (31 May 1995), the Council decided that a paper would be presented to the Legal Commission of the 31st Session of the Assembly held later that year which would include possible solutions to the slow progress of ratification (A31-WP/26).[211]

A31-WP/26 differentiated between amendments to the *Chicago Convention*, since these are governed principally by Article 94 of the *Chicago Convention*, and the other international air law instruments adopted under the auspices of the Organization. The paper outlined action taken by the Organization to enhance ratification of international air law instruments, including amendments to the *Chicago Convention*. It examined the level and speed of ratification of these instruments, the procedures for amending the Chicago Convention and for the adoption of other international air law instruments, and certain possible legal solutions such as the provisional application of treaties under Article 25, VCLT, entry into force by signature, modification under Article 41, VCLT, and in specific reference to the *Chicago Convention*, an amendment to Article 94 thereto. It further examined possible administrative action to enhance ratification, such as an increase in the number of regional legal seminars and specific missions to States by Legal Bureau staff. A few delegations expressed concern about the slow progress in the ratification of international air law instruments, and suggested that the Legal Committee should be invited to consider the possible solutions envisaged in A31-WP/26.[212] It was pointed out, *inter alia*, that the constitutional and legislative procedures of some member States sometimes posed difficulties for the provisional application of treaties. The Assembly requested the Council to explore ways and means to expedite the ratification of international instruments taking into account the suggestions made by the Legal Commission.

Consideration by the ICAO Council of the problem of the slow progress of ratification of air law instruments (1996)

Pursuant to the aforementioned Assembly's decision, the Council, at the Fifth Meeting of its 147th Session (28 February 1996), considered C-WP/10360. Noting the slow pace of ratification and the entry into force of various air law instruments described in the working paper and the necessity of remedying the situation, the Council requested the Secretary General to present another paper at its next session identifying the various options available for expediting the entry into force of amendments to the *Chicago Convention* as well as other international air law instruments and, in doing so, to recommend which of

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[211] The Legal Commission is a subsidiary body of the ICAO Assembly established at each Assembly Session pursuant to Rule 18 of the *Standing Rules of Procedure of the Assembly of the International Civil Aviation Organization* (Doc. 7600), which states that "[t]he Assembly may establish such commissions as it may consider to be necessary or desirable". The Legal Commission has responsibility in legal matters and, similarly to the other subsidiary bodies of the Assembly, reports to the Plenary.

[212] Pursuant to its Constitution (Assembly Resolution A7–5), the Legal Committee is a permanent Committee of the Organization, constituted by the ICAO Assembly and responsible to the ICAO Council. It is composed of legal experts designated as representatives of and by Contracting States, and shall be open to participation by all Contracting States. Among its duties and functions, the Legal Committee advises the Council on matters relating to the interpretation and amendment of the *Chicago Convention*, referred to it by the Council; and, by direction of the Assembly or the Council, or on the initiative of the Committee and subject to the prior approval of the Council, to study problems relating to private air law affecting international civil aviation, to prepare drafts of international air law conventions and to submit reports and recommendations thereon.

the issues should be referred to the Legal Committee for consideration. Accordingly, the Council considered C-WP/10418 at the Seventh Meeting of its 148th Session (5 June 1996).

Measures proposed regarding air law instruments in general

C-WP/10418 proposed a number of possible measures to be considered by the Legal Committee to accelerate the rate of ratification and entry into force of international air law instruments, other than amendments to the *Chicago Convention*, namely: *a*) incorporating a new formula for final clauses; *b*) provisional application; *c*) modification between certain States only; and *d*) improving communication between ICAO and Governments in relation to Diplomatic Conferences. These proposals were referred to the Legal Committee. The Council directed the Legal Bureau to prepare a plan of administrative action to accelerate the entry into force of amendments to the *Chicago Convention* and other air law instruments. It was indicated in C-WP/10418 that the elements of such a plan would include, *inter alia*, the preparation of a package of ratification material.

Measures proposed specific to the Chicago Convention

As regards amendments to the *Chicago Convention*, C-WP/10418 also proposed further measures as follows: an amendment of Article 94(*a*) of the Convention; the provisional application of future amendments to the Convention; the provisional application of existing amendments to the Convention; and a modification of the Convention between certain like minded Contracting States only, in conformity with Article 41, VCLT. The proposals in relation to *Chicago Convention* amendments were referred to the Legal Bureau for further study as to their viability. The Council subsequently, at the Third Meeting of its 149th Session (12 November 1996), examined the further analysis made by the Secretariat concerning certain specific legal options to accelerate the application of amendments to the *Chicago Convention* (C-WP/10505). The Council was invited to refer two of these legal solutions for further consideration by the Legal Committee, *i.e.* the provisional application of Protocols of amendment to the *Chicago Convention*, and the modification of the Convention among a group of interested States, in conformity with Article 41, VCLT. The Council also decided that the matter should be documented for consideration by the Legal Commission of the next ordinary session of the Assembly in 1998, as a follow up to A31-WP/26; the Assembly would be the most appropriate body for establishing a legal and political approach with the objective of finding an acceptable solution for the provisional application of such amendments to air law instruments and to the *Chicago Convention*.

Preference shown in the ICAO Legal Committee for practical rather than legal solutions (1997)

At its 30th Session in April/May 1997, the Legal Committee considered the non-*Chicago Convention* instruments on the basis of LC/30-WP/4–5. A large number of delegations expressed the view that the principal motivation for a State to become bound by an international instrument was the interest in the matter, and that practical measures were preferable to the legal solutions contemplated in the paper, such as provisional application to accelerate ratification and entry into force (Doc. 9693-LC/190, para. 4–26). Solutions of a legal nature were less likely to be effective means of expediting the ratification of international air law instruments than measures of a practical nature relating to administrative action.

Legal Commission of the ICAO Assembly notes administrative action to accelerate ratification of air law instruments (1998)

When the Council considered *Chicago Convention* amendments at the Eighth and Ninth Meetings of its 153rd Session (9 and 11 March 1998) on the basis of a draft Assembly working paper contained in C-WP/10769, it expressed a clear preference for administrative action, as opposed to legal measures, to accelerate ratification and entry into force.

In this regard, A32-WP/10 presented to the Legal Commission of the 32nd Session of the Assembly in September/October 1998, stated that the provisional application of a treaty

> "could be used for future amendments (sic) [to the *Chicago Convention*] by having the amendment expressly provide for the possibility of its provisional application, and setting out the conditions related thereto such as the number of provisional consents necessary."

It further recognized that

> "[i]f an Assembly would make a positive determination in a particular case, then delegates possessing appropriate full powers could sign at the Assembly a document expressing the consent of their Government to the provisional application of the Protocol. For those delegations unable to do so during the Assembly, a subsequent letter expressing such consent could be addressed to ICAO as depositary."

Further to its consideration of the paper, the Legal Commission noted only the administrative action to accelerate the ratification and entry into force of air law instruments presented therein.[213]

ICAO Council not in favour of fast-tracking an amendment of the Chicago Convention (2015)

The Council, at the Ninth Meeting of its 206th Session (20 November 2015), considered C-WP/14345 concerning, *inter alia*, the possibility of examining alternatives to facilitate the entry into force as early as possible of the amendment to Article 50 (*a*) (increasing the size of the Council). The President of the Council noted that the majority of the Representatives was clearly not in favour of fast-tracking the entry into force of an amendment to Article 50 (*a*) (or to Article 56 which would increase the size of the ANC) and considered that it was necessary to respect the provisions of the *Chicago Convention*, in particular Article 94.

[213] See: Doc. 9728, A32-LE, pages 10–11.

7. International Maritime Organization (IMO)

Communication transmitted to the Secretariat, 26 July 2022:

Provisional application of the 2006/2008 amendments to the Convention on the International Mobile Satellite Organization (IMSO)

Introduction

The *Convention on the International Mobile Satellite Organization* (IMSO), of which the IMO is the Depositary, was adopted on 3 September 1976 and entered into force on 16 July 1979.[214] It does not include a provision on provisional application. However, there have been a few instances of provisional application of amendments to the IMSO Convention. These largely allow for administrative arrangements to be undertaken in anticipation of expanded organizational responsibilities, as follows:

the 2006 amendments, adopted by the IMSO Assembly at its 18th session on 29 September 2006, and whose provisional application was decided by the IMSO Assembly at its 19th (extraordinary) session, in March 2007; and

the 2008 amendments, adopted by the IMSO Assembly at its 20th session, on 2 October 2008, and whose provisional application was decided at that same session.

The procedure for amendments to enter in force is enshrined in Article 20 of the IMSO Convention, which provides that the instrument of acceptance of the amendments should be deposited with the Depositary of the Convention, the Secretary-General of the International Maritime Organization (IMO). The amendments shall enter into force 120 days after the Depositary has received notices of acceptance from two-thirds of those States which, at the time of their adoption by the IMSO Assembly, were Parties to the IMSO Convention.

The 2006 amendments and the decision on their provisional application

The 2006 amendments to the IMSO Convention were adopted at the Eighteenth Session of the IMSO Assembly.[215] The amendments regulate the *Global Maritime Distress and Safety System* (GMDSS) and the *Long Range Identification and Tracking of Ships* (LRIT).[216] In short, these amendments aim to extend the oversight functions of IMSO to all GMDSS providers in the future, and to give IMSO the task of overseeing LRIT. The amendments were adopted in accordance with Article 18 of the IMSO Convention, therefore, they would enter into force

[214] The *International Maritime Satellite organization* (INMARSAT) was established in 1979 at the behest of the IMO as a non-profit intergovernmental organization pursuant to the *Convention on the International Maritime Satellite Organization*, 1976. The objective of the Organization was to establish a satellite communications network for the maritime community, with the main aim of improving the safety of life at sea and the management of distress situations, particularly through the Global Maritime Distress and Safety System (GMDSS). The mission of the Organization was further extended to land mobile and aeronautical communications. INMARSAT was privatized in 1999 and was divided into two entities, both based in London: the *International Mobile Satellite Organization* (IMSO) as an intergovernmental regulatory body for satellite communications, and the UK-based company *Inmarsat Ltd* managing the INMARSAT's operational unit. This privatization was established through amendments to the INMARSAT Convention and the Operating Agreement between telecommunications entities public or private, which were adopted by the INMARSAT Assembly in 1998. In 1999, the Assembly and Council of INMARSAT decided to implement the amendments pending their formal entry into force which happened in 2001.

[215] See: Doc. ASSEMBLY/18/16/RD, paras. 4.1.2 and 4.2.7.

[216] Set out in Annexes IV to VII of Doc. ASSEMBLY/18/16/RD.

> "one hundred and twenty days after the Depositary has received notices of acceptance from two-thirds of those States which, at the time of adoption by the Assembly, were Parties."

The IMO Maritime Safety Committee (MSC), at its 82nd session, decided to appoint IMSO as the LRIT Co-ordinator and invited IMSO to take whatever action it could in order to ensure the timely implementation of the LRIT system (document MSC 82/24, paragraph 8.49). MSC was informed by IMSO that the IMSO Assembly would be convened in 2007 to consider the measures to fulfil the LRIT Co-ordinator functions through provisional application of the amendments. At its 82nd session, MSC noted that:

> "the IMSO Assembly had yet to make a decision on the provisional implementation of these adopted amendments and an extraordinary session of the IMSO Assembly would be convened in March 2007 to consider the measures required".[217]

At 19th extraordinary session, held from 5 to 6 March 2007, the IMSO Assembly

> "decided that the amendments to the IMSO Convention adopted at the Eighteenth Session of the Assembly should enter into force on the basis of provisional application from 7 March 2007, pending their formal entry into force in accordance with Article 18 of the IMSO Convention".[218]

Thus, the implementation of the provisional application of the 2006 amendments was formulated through a decision of the IMSO Assembly contained in the Record of Decisions (document A 19/8/RD). This agreement therefore takes the form of a "resolution, decision or other act adopted by an international organization or at an intergovernmental conference, in accordance with the rules of such organization or conference, reflecting the agreement of the States or international organizations concerned" as envisaged by Guideline 4, paragraph (*b*)(i) of the *Guide to Provisional Application of Treaties* of the ILC providing for the form that the agreement on provisional application may take.[219]

The decision of the Assembly provides that the amendments should be provisionally applied from 7 March 2007.[220] The decision also provides that the end date of provisional application should coincide with the entry into force of the amendments. In this sense, it is in line with Guideline 9, paragraph 1 which states that

> "the provisional application of a treaty or a part of a treaty terminates with the entry into force of that treaty in the relations between the States or international organizations concerned."

The need for provisional application to follow a formal entry into force in accordance with the Convention's procedure is recalled in the decision, where the Assembly

> "urge[s] all Parties to use their best endeavours to accept the amendments in accordance with Article 18 of the IMSO Convention as soon as possible so as to expedite their formal entry into force".[221]

In the case of IMSO, the States adopted a clause subordinating the decision to national law requirements:

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[217] See: Doc. MSC 82/24, para. 8.11.

[218] See: Doc. ASSEMBLY/19/8, para. 7.5.

[219] See: Part Two, Sec. A, below, at p. 218..

[220] See: Doc. ASSEMBLY 19/8, para. 7.5.

[221] See: Doc. ASSEMBLY 19/8/RD, para.7.7.

> "The Assembly noted that such provisional application would mean that Parties will conduct themselves, in their relationships with each other and the Organization, within the limits allowed by their national constitutions, laws and regulations, as if the amendments were in force with effect from such date."[222]

This seems to echo Guideline 12 of the Guide of the ILC which guarantees

> "the right of the States […] to agree in the treaty itself or otherwise to the provisional application of the treaty or a part of the treaty with limitations deriving from the internal law of States."[223]

The 2008 amendments

After the decision on provisional application of the amendments was taken at the 19th extraordinary session of the IMO Assembly, several State Parties led by the United States objected to that decision. They also considered that the decision to provisionally apply the amendments "was flawed because it was not taken by consensus".[224] The United States proposed revision of the 2006 amendments and provisional application of the new version.[225]

In its proposal, the United States set out reasons for establishing provisional application of the new amendments as follows:

> "formal entry into force of the amendments […] may take years and is unlikely to occur quickly enough to meet the need to promptly establish a firm legal foundation upon which IMSO can perform its duties and functions as LRIT Coordinator".[226]

Provisional application would be "a way forward to allow the Organization to promptly and properly perform its role as LRIT Coordinator".[227] The US explained that they wanted to modify the amendments adopted by the IMSO Assembly at its 18th session because

> "it believed that the one sentence amendment adopted at the Eighteenth Session of the IMSO Assembly was substantively deficient and did not provide the necessary legal framework for IMSO to undertake the necessary functions and duties of the LRIT Coordinator".[228]

The 20th Assembly adopted, by consensus, the new amendments and decided, at that same session, that they should be applied provisionally from 6 October 2008, pending their formal entry into force in accordance with Article 18 of the IMSO Convention.[229] In order to give way to the provisional application of the 2008 amendments, which incorporate the 2006 amendments while modifying their content, the Assembly decided at its 20th session to terminate its decision to apply the 2006 amendments on a provisional basis.[230]

Provisional application of the amendments to the 2009 London Protocol

The *1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (London Protocol) was adopted in 1996 in order to

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[222] See: Doc. ASSEMBLY/19/8, para. 7.6.

[223] Guideline 12, reproduced below, at p. 210.

[224] See: Doc. ASSEMBLY/20/13.2, para. 1.1.

[225] See: Doc. ASSEMBLY/20/13.2.

[226] See: Doc. ASSEMBLY/20/13.2, para. 1.5.

[227] *Ibid.*

[228] See: Doc. ASSEMBLY/20/13.1, annex 1, page 1.

[229] See: Doc. ASSEMBLY/20/16/RD, paras. 13.2.8 and 13.2.9.

[230] See: Doc. ASSEMBLY/20/Record, para. 13.2.13.

modernize and eventually replace the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972* (the "London Convention"). The London Protocol entered into force in 2006 and established more restrictive provisions than the London Convention by prohibiting all dumping of wastes at sea unless explicitly permitted. Annex 1 to the Protocol provides a list of wastes and other matter which may be considered for dumping at sea, subject to permit.

Article 21 of the Protocol provides for the amendment procedure and requires explicit acceptance by two thirds of the Contracting Parties for the amendment to enter into force. The Protocol does not provide for its provisional application.

In 2009, the Meeting of Contracting Parties adopted resolution LP.3(4) amending Article 6 of London Protocol. The amendment added a second paragraph to Article 6 providing that "the export of carbon dioxide streams for disposal in accordance with annex 1 may occur, provided that an agreement or arrangement has been entered into by the countries concerned".

By October 2019, the London Protocol had 53 Contracting Parties but only six States accepted the amendment. To remedy this situation, the Contracting Parties to the London Protocol, at the 14th Meeting on 11 October 2019, adopted resolution LP.5(14) on provisional application of the 2009 amendment, pending its entry into force. The resolution requires those Contracting Parties who want to provisionally apply the amendment (and therefore enter into agreements to export carbon dioxide streams for disposal) to deposit a declaration to that effect.

The 2021 *Guide to Provisional Application of Treaties* of the International Law Commission (ILC) provides, in its Guideline 4 ("Form of agreement", paragraph *b*), that provisional application of treaties can be agreed by "any other means or arrangements [than a separate treaty], including: (i) a resolution, decision or other act adopted by an international organization or at an intergovernmental conference …". Thus, Resolution LP. 5(14) providing for provisional application of the amendment to article 6 complies with the Guide.

There are currently 9 acceptances of the 2009 amendment, out of which Norway, the Netherlands, Denmark and the Republic of Korea have declared its provisional application.

International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention)

The *International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM)* was adopted in February 2004 and entered into force in September 2017. The Convention contains standards with which the ships of the States Parties must comply and sets a fixed date for compliance with those standards. In 2013, the compliance dates provided in the Convention were approaching, however the treaty was not yet in force. Therefore, IMO Member States embarked on a discussion on how to amend the compliance dates in a treaty that has not yet entered into force. It was of an utmost importance for the shipping industry to have clarity about the compliance dates and uncertainty concerning this issue delayed the ratification process.

A Correspondence Group on the application of the BWM Convention was established to consider options to relax the implementation schedule of regulations included in the Convention. It submitted its report at the 65th session of the Marine Environment Protection Committee (MEPC). Among the proposed options was the provisional application of Article 19 of the Convention (Option C) which provides for the amendment procedure of the treaty.[231]

Article 19 allows a classical amendment procedure and a tacit acceptance procedure. The proposal suggested that the tacit acceptance procedure of Article 19 should be provision-

[231] See: Doc. MEPC 65/2/11, paras. 31 to 33 and annex 7.

ally applied in order to amend the Convention and to change the dates of implementations of specific standards of the Convention which were too close in time.

The proposal referred to Article 25(1)(*b*) of the *Vienna Convention of Law on Treaties* (VCLT) which allows negotiating States, when the treaty does not provide for provisional application, as in the case of the BWM Convention, to enter into an agreement "in some other manner" to bring the treaty into force provisionally. Thus, it was proposed that the negotiating States to the BWM Convention should agree on the provisional application of Article 19 through an Assembly resolution allowing [the opening of] the amendment procedure. According to the proposal, provided that such a resolution embodied the intent of the Member States represented in the Assembly to adopt a binding agreement concerning the provisional application of Article 19 of the BWM Convention, it would qualify as an agreement in terms of Art. 25(1)(*b*) of the VCLT. The agreement (adopted by way of IMO Assembly resolution) to apply certain parts of the treaty would provisionally constitute a separate binding ("subsidiary") agreement and the proposal suggested that the negotiating States that agree on provisional application would subsequently be treated as "States Parties" to the Convention.

Following the work of the Correspondence Group and its proposal for an Assembly resolution on the provisional application of Article 19 of the BWM Convention, the IMO Secretariat provided legal advice to the 65th session of MEPC[232] in which it did not recommend the option of provisional application.[233]

Issues raised by this proposal

Whereas provisional application usually concerns substantive provisions, in this case the proposal was to provisionally apply an article regulating the amendment procedure of the Convention. Article 25 of the VCLT does not limit provisional application to substantive articles only. However, as the legal advice of the Secretariat states, the use of Article 25 of the VCLT to provisionally apply a procedural provision would be "untested and without precedent".[234]

The proposal was also problematic from the point of view of the status of States who would have concluded the agreement on provisional application. In accordance with the VCLT, only negotiating States can agree on provisional application, that is States which took part in drawing up and adopting the text of the treaty. In the case of the BWM Convention, those States would have been those present at the diplomatic conference in 2004, not the MEPC Members or the Assembly (both composed of all Members of the IMO). Furthermore, it was unclear whether Article 25(1)(*b*) requires all of the negotiating States to agree on the provisional application or whether only some may so agree.

The proposal suggested also that the negotiating States that would agree on provisional application of Article 19 would subsequently be treated as "States Parties" to the Convention.[235] Thus, a State which would have participated in the negotiation of the BWM Convention, but which would not be a contracting State having expressed its consent to be bound by the Convention, could have agreed on provisional application of Article 19 and would have the right to amend the Convention, without being bound by the whole treaty. It would enable States that had not ratified the Convention itself to participate in amending its substantive provisions such as, *e.g.* those contained in the regulations. Conversely, a contracting State that would have not agreed on the provisional application of Article 19

[232] See: Doc. MEPC 65/2/18.

[233] *Ibid*., para. 20.

[234] *Ibid*., para. 20.1.

[235] See: Doc. MEPC 65/2/11, annex 6, para. 3.

of the BWMC would have no right to amend the treaty. The right of negotiating States to provisionally apply a treaty should not be confused with the right of States Parties to amend that treaty.[236]

Another problem was that the amendment procedure could not be applied while the Convention was not in force. Indeed, such provisional application would infringe Article 39 of the VCLT, whereby only parties can amend a treaty. Pursuant to Article 2(1) of the VCLT, a "party" is a "State which has consented to be bound by the treaty and for which the treaty is in force". As long as the treaty is not in force, there are no "parties". Thus, the amendment procedure of Article 19 of the BWM Convention could not be applied before the Convention entered into force. The legal advice of the Secretariat argued that:

> "So long as the BWM Convention does not enter into force, there are no Parties (as opposed to negotiating States or Contracting States), so that no one can utilize the procedure set out in the article".[237]

The proposal on provisional application of Article 19 on amendment procedure of the BWM Convention was not supported by the Marine Environment Protection Committee. In any case, the provisional application of the amendment procedure would also not resolve the problem of the compliance dates as the amendments adopted by virtue of the tacit acceptance take around 24 months to enter into force which would be already beyond the compliance dates.

[236] See: Doc. MEPC 65/2/18, para. 20.5.

[237] *Ibid.*, para. 20.4.

8. Universal Postal Union (UPU)

Communication transmitted to the Secretariat, 28 July 2022:

> The Acts of the UPU[238] consist of the *Constitution of the UPU, the General Regulations of the UPU, the Universal Postal Convention* (and its Final Protocol), the optional *Postal Payment Services Agreement* (and its Final Protocol), as well as any Additional Protocols thereto; such a definition also comprises the *Regulations to the Universal Postal Convention* (and their Final Protocol) as well as the *Regulations to Postal Payment Services Agreement* (and their Final Protocol).
>
> Insofar as the Acts of the UPU are concerned, it is important to emphasize that these Acts do not require a minimum number of approvals, acceptations, ratifications or accessions. Accordingly, they enter into force on the date specified therein as decided by the relevant UPU body (*i.e.* the Congress or, in the case of the aforementioned Regulations, the Postal Operations Council) adopting such Acts.
>
> The UPU has not, to date, resorted to the provisional application of those Acts in the manner contemplated in article 25 of the *Vienna Convention on the Law of Treaties*. This is also the case for treaties to which the UPU is a party.

[238] As defined in article 21 of the Constitution of the UPU.

9. International Organization for Migration

Communication transmitted to the Secretariat, 17 December 2019:

> [The International Organization for Migration (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 *Convention on the Privileges and Immunities of the United Nations*, 1946, nor the *Convention on the Privileges and Immunities of the Specialized Agencies*, 1947. 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 the 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.

10. International Tribunal for the Law of the Sea (ITLOS)

Communication transmitted to the Secretariat, 21 February 2022

The International Tribunal for the Law of the Sea has concluded agreements containing clauses concerning their provisional application.

Article 11, paragraph 2, of the *Agreement between the International Tribunal for the Law of the Sea and the Government of the Federal Republic of Germany on the Occupancy and Use of the Premises of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg* (Additional Agreement in accordance with article 3 of the Headquarters Agreement) provides:

> After being signed by the Parties, this Agreement shall enter into force on the same day as the Headquarters Agreement. It shall be applied provisionally as from the date of signature.

Article 14, paragraph 2, of the *Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea* provides:

> Pending such approval the present Agreement shall be applied provisionally from the date of its signature by the Secretary-General of the United Nations and the President of the International Tribunal.

Prior to the entry into force of the *Agreement between the International Tribunal for the Law of the Sea and the Government of the Federal Republic of Germany regarding the Headquarters of the Tribunal* ("Headquarters Agreement"), relations with the host country were governed by a provisional ordinance adopted by the latter in 1996, which applied, *mutatis mutandis*, the relevant provisions of the *Convention on the Privileges and Immunities of the Specialized Agencies*, 21 November 1947.[239] Pursuant to article 35 of the Headquarters Agreement, it entered into force on 1 May 2007.

[239] See: ITLOS Yearbook, 2006, p. 76.

11. United Nations Framework Convention on Climate Change (UNFCCC)

Communication by the Secretariat of the UNFCCC transmitted to the United Nations Secretariat, 29 July 2022:

Voluntary provisional application of the Doha Amendment to the Kyoto Protocol to the United Nations Framework Convention on Climate Change

The *Doha Amendment* to the Kyoto Protocol was adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (CMP) on 8 December 2012 through Decision 1/CMP.8. It sets out obligations for the second commitment period of the Kyoto Protocol, running from 2013 to 2020, for Parties included in Annex I that have quantified emission limitation and reduction commitments (QELRCs) inscribed in the third column of the table contained in Annex B to the Kyoto Protocol.

Decision 1/CMP.8 provides for the voluntary provisional application of the *Doha Amendment* pending its entry into force, as follows:

> …
>
> 5. Recognizes that Parties may provisionally apply the amendment pending its entry into force in accordance with Articles 20 and 21 of the Kyoto Protocol, and decides that Parties will provide notification of any such provisional application to the Depositary;
>
> 6. Decides also that Parties that do not provisionally apply the amendment under paragraph 5 will implement their commitments and other responsibilities in relation to the second commitment period, in a manner consistent with their national legislation or domestic processes, as of 1 January 2013 and pending the entry into force of the amendment in accordance with Articles 20 and 21 of the Kyoto Protocol.

The *Doha Amendment* entered into force on 31 December 2020, the ninetieth day after the receipt by the Depositary of 144 instruments of acceptance representing three-quarters of the Parties to the Kyoto Protocol, in accordance with Article 20, paragraph 4, and Article 21, paragraph 7, of the Kyoto Protocol.

The period of voluntary implementation of the *Doha Amendment*, as provided for in paragraph 6 of decision 1/CMP.8, expired on 31 December 2020, following its entry into force.

Authoritative information on acceptance and entry into force of the *Doha Amendment*, as well as information on corrections, is available from its Depositary, the Secretary-General of the United Nations.

12. World Trade Organization (WTO)

Extracts from the fifth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur: [240]

> 56. With respect to WTO, it is well known that the *General Agreement on Tariffs and Trade* (GATT)[241] is undoubtedly the multilateral treaty that was applied provisionally for the longest period of time (from 1947 to 1994), as noted in the third report.[242] The Special Rapporteur has identified a number of decisions taken by WTO dispute settlement mechanisms that concern the provisional application of the General Agreement; these are noted as examples of case law that were not included in the previous reports.[243]

[240] Doc. A/CN.4/718 (2018).

[241] General Agreement on Tariffs and Trade (Geneva, 30 October 1947), United Nations, *Treaty Series*, vol. 55, No. 814, p. 187.

[242] A/CN.4/687, para. 99.

[243] See: GATT, Report of the Panel, *United States—Measures affecting alcoholic and malt beverages*, DS23/R-39S/206, adopted on 19 June 1992; GATT, Report by the Panel, *Canada—Import, distribution and sale of certain alcoholic drinks by provincial marketing agencies*, DS17/R-39S/27, adopted on 18 February 1992; GATT, Report of the Panel, *Thailand—Restrictions on importation of and internal taxes on cigarettes*, DS10/R-37S/200, adopted on 7 November 1990; GATT, Report of the Panel, *Norway—Restrictions on imports of apples and pears*, L/6474–36S/306, adopted on 22 June 1989.

13. European Union[244]

Extracts from statements delivered by the representatives of the Observer delegation of the European Union

Statement made in the Sixth Committee, Sixty-eighth session (2013), 23rd meeting, 4 November 2013:

> Over the years the European Union has concluded, alone or along[side] its [Member States], a large number of agreements which provide for provisional application of the agreement or part of it. The Union makes use of provisional application primarily in sectors such as trade, fisheries, and aviation, but there are cases of provisional application in other areas as well.
>
> The possibility for provisional application of international agreements is envisaged in the EU's founding treaties, namely Article 218(5) of the *Treaty on the Functioning of the European Union* and the Council of the European Union may, in the context of signature, adopt a decision authorising provisional application of a treaty prior to its entry into force.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 25th meeting, 3 November 2014:[245]

> [T]he Union would like to point out that the possibility for provisional application of international agreements with third countries is explicitly envisaged in the Union's Founding Treaties (Article 218(5) TFEU) and this possibility is often used in practice by the EU.

Statement made in the Sixth Committee, Seventieth session (2015), 23rd meeting, 9 November 2015:[246]

> [T]he European Union makes regular use of the possibility of provisional application of treaties in various fields of law and the topic is of particular interest for the Union. Some part of the EU practice, more specifically relating to multilateral agreements, is well reflected in the Annex to the Third Report[247] and, as it could be noted, in almost half of the fifty agreements identified by the Secretariat[248] the European Union is a contracting party.
>
> The European Union would like to point out that, in addition to multilateral agreements, it uses provisional application also in its bilateral relations with third States, including in the case of Association Agreements and Partnership and Cooperation Agreements that the Union concluded with other countries. These kinds of agreements establish broad frameworks for cooperation and integration. These agreements can be very complex and wide-ranging agreements and their entry into force entails a long process of ratification. Provisional application offers a useful way to bring the practical application of such agreements to an early start.
>
> Recent examples include for instance the association agreements that the European Union has signed in 2014 with Ukraine, Georgia and the Republic of Moldova. As reflected in these agreements the provisional application covers not only provisions relating to trade, but also provisions relating to political dialogue, as well as institutional provisions. The

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[244] Editorial Note: For examples of European Union practice on provisional application of agreements with third States, see: Doc. A/CN.4/699/Add.1.

[245] Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/eu_3.pdf.

[246] Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/eu_3e.pdf.

[247] Editorial note: see A/CN.4/687.

[248] Editorial note: see A/CN.4/658 and A/CN.4/676 (and subsequently A/CN.4/707), reproduced in Part Three, at pp. 266–346, below.

Association agreement between the EU and its Member States and Ukraine is also an example of an agreement that provides explicitly for certain legal effects of provisional application as its Article 486 (5) states that:

> For the purpose of the relevant provisions of this Agreement, including its respective Annexes and Protocols, any reference in such provisions to the "date of entry into force of this Agreement" shall be understood to the "date from which this Agreement is provisionally applied" in accordance with paragraph 3 of this Article.

Furthermore, this agreement requires a six-month prior notification for both the termination of the Agreement and the termination of provisional application (see Articles 486(7) and 481(2) thereof).

The above examples demonstrate, on the one hand, that with respect to provisional application of treaties the Union acts in the same way as the other actors concerned. On the other hand, it shows that the European Union is an actor who is, in fact, actively contributing to shaping the practice in the field of provisional application of treaties. It should be noted, however, that when recourse is had to provisional application of a treaty where the Union and its Member States together are party to the agreement (the so called 'mixed agreements', as in the case of the agreements mentioned above), the provisional application may concern only matters falling within the competences of the Union and, from international law point of view, the agreement is applied provisionally only between the Union and the respective third State. In such cases, the Member States of the Union are bound to apply provisionally the agreement not as a matter of international law, but as a matter of EU law, in accordance with Article 216 (2) of the *Treaty on the Functioning of the European Union*.

Extracts from statements delivered by the representatives of Member States of the European Union referencing the practice of the European Union

Czech Republic

Communication transmitted to the Secretariat, 31 January 2014:

> [P]rovisional application is quite common for the treaties negotiated in the framework of the European Union (EU). The legal basis for the provisional application of international agreements concluded between the EU and third countries (or international organisations) is enshrined in Article 218(5) of the *Treaty on the Functioning of the European Union*.
>
> In practice, the EU regularly makes use of the provisional application especially in the case of the so-called mixed agreements which require ratification by all Member States and thus can be very time-consuming. As the provisional application of provisions falling within Member States' legal systems, only those matters covered by the agreements coming within the EU's competence are provisionally applied by the Union or the scope of the provisional application by the member States is limited by the requirement of conformity with internal procedures (or domestic legislation).
>
> Thus, the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, is being applied on a provisional basis by the Union, pending the competition of the procedures for its conclusion, and the same time provisions falling within the member States' competences are excluded from the provisional application [see Art. 3 of the Council Decision of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* (2011/265/EU)].
>
> As another example, Art. 3 of the Decision of the Council and of the Representatives of the Governments of the Member States, meeting within Council of 15 October 2010 on the

signature and provisional application of the *Common Aviation Area Agreement ("CAAA") between European Union and its Member States, of the one part, and Georgia, of the other part* (2012/708/EU) and Art. 29 of the CAAA itself establish that pending its entry into force, the CAAA shall be applied on a provisional basis by the Union and by the Member States, in accordance with their internal procedures and/or domestic legislation as applicable.

Hungary

Statement made in the Sixth Committee, Sixty-seventh session (2012), 20th meeting, 2 November 2012:[249]

[*Reference to the practice of the European Union*:]

[D]uring the last decade the number of international treaties containing provisional application clauses has substantially increased. This also applies to Hungary which as a member of the European Union has become a party to numerous multilateral international treaties which were concluded between the EU, its member states and third countries. These treaties would usually enter into force after all parties have ratified them. This would normally require twenty-nine ratifications, but to reduce the time before the full application, these treaties in almost every case include a provisional application clause.

The Netherlands

Communication transmitted to the Secretariat, 20 April 2016:

[*Reference to the practice of the European Union*:]

[T]he Kingdom of the Netherlands would like to add that, as a Member State of the European Union (EU), the Kingdom of the Netherlands participates in the so-called 'mixed agreements' concluded by the EU and its Member States and another (third) State. Such agreements may also provide for provisional application by the EU (and the third State) pending completion of the national approval procedures in each individual Member State, which may take considerable time. Provisional application of mixed agreements by the EU is necessarily limited to the topics falling under EU competence.[250] Such provisional application by the EU also binds the Kingdom of the Netherlands as a Member State of the European Union, which takes effect upon notification by the EU of the completion of its internal procedures (relevant EU Council Decisions allowing for provisional application), indicating the parts of the agreement that will be provisionally applied and the deposit of the instrument of ratification by the other (third) State.

Romania

Statement made in the Sixth Committee, Sixty-eighth session (2013), 24th meeting, 4 November 2013:[251]

[*Reference to the practice of the European Union*:]

One exception from the above-mentioned rule exists, however: treaties (even requiring ratification by Parliament) between the European Union and its Member States (Romania being an EU Member State), on the one side, and third States (the so-called "mixed treaties"), on the other side, can be applied provisionally before their entry into force if the treaty expressly provides so.

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[249] Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/hungary.pdf.

[250] Since mixed agreements largely cover subject matter falling under EU competence, in practice this means that a vast majority of its provisions are applied provisionally.

[251] Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/romania_3.pdf.

Slovenia

Statement made in the Sixth Committee, Seventy-fourth session (2019), 25th meeting, 30 October 2019:[252]

> [*Reference to the practice of the European Union*:]
>
> Slovenia is ready to submit a written proposal on draft model clause 1[253] and thus allow the states to complete the relevant internal treaty-making procedures before provisionally applying [the treaty]. The latter is of particular interest to those states that have internal limitations on the use of provisional application. Such a provisional application mechanism is applied by the European Union in the field of air transport agreements, which partly fall under the competence of EU Member States.

Spain

Statement made in the Sixth Committee, Sixty-seventh session (2012), 22nd meeting, 6 November 2012:[254]

> [*Reference to the practice of the European Union*:]
>
> Thus, among the wide variety of legal issues that arise, the use of provisional application that States and international organizations such as the European Union are doing in the agreements mixed of a commercial nature concluded with third States could be highlighted. Thus, through the mechanism of provisional application, within the framework of the European Union, it is possible to advance the application of that part of the treaty that falls under the exclusive competence of the Union.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:[255]

> [*Reference to the practice of the European Union*:]
>
> We would also like to draw attention to the importance of the practice of International Organizations on this issue, namely the European Union which has made extensive and quite interesting use of the provisional application of treaties as provided for in article 218.5 of the Treaty on the Functioning of the European Union. This is the case, for example, of some mixed agreements (between the Union and its member States, on the one hand, and a third party on the other hand) in which only the parts affecting matters within the Union's competence are provisionally applied.

Statement made in the Sixth Committee, Seventieth session (2015), 25th meeting, 11 November 2015:[256]

> [*Reference to the practice of the European Union*:]
>
> Regarding the provisional application of treaties concluded by international organizations, it may be appropriate to take into account the practice, common within the Euro-

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[252] Full text available at: https://www.un.org/en/ga/sixth/74/pdfs/statements/ilc/slovenia_1.pdf.

[253] Editorial note: See document A/74/10, annex A, for the text of draft model clause 1, as proposed by the Special Rapporteur for consideration by the International Law Commission).

[254] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/67/pdfs/statements/ilc/spain_3.pdf.

[255] Unofficial translation (from Spanish) by the United Nations Secretariat. Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/spain_3.pdf.

[256] Unofficial translation (from Spanish) by the delegation of Spain. Full text available at: https://www.un.org/en/ga/sixth/70/pdfs/statements/ilc/spain_3e.pdf.

pean Union, of mixed agreements (that is, agreements concluded jointly by the European Union and its Member States, on the one hand, and one or more third States, on the other). Such practice restricts provisional application to provisions that fall within the scope of EU competence and in which, therefore, the decision concerning provisional application is adopted by the EU, without the Member States *qua talis* having to intervene (beyond their presence as members in the Council of the European Union, a body to which Article 218.5 of the *Treaty on the Functioning of the EU* entrusts the decision on the application of the international agreements of the European Union).

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:[257]

156. The European Union submitted a document to the Special Rapporteur containing a list of examples of recent practice in relation to provisional application of agreements with third States. This document, which lists a total of 24 referenced treaties, specifies the name of the agreement, the article of the instrument that deals with provisional application and the corresponding reference of the decision by the Council of the European Union in that respect. Given the usefulness of this list, the Special Rapporteur has included it as a document annexed to the present report.

157. A recent example illustrating the constant practice of the European Union is the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part.[258] Article 486 of this treaty refers to "entry into force and provisional application" as follows:

1. The Parties shall ratify or approve this Agreement in accordance with their own procedures. The instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Union.

2. This Agreement shall enter into force on the first day of the second month following the date of deposit of the last instrument of ratification or approval.

3. Notwithstanding paragraph 2, the Union and Ukraine agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 4 of this Article, and in accordance with their respective internal procedures and legislation as applicable.

4. The provisional application shall be effective from the first day of the second month following the date of receipt by the Depositary of the following:

— the Union's notification on the completion of the procedures necessary for this purpose, indicating the parts of the Agreement that shall be provisionally applied; and

— Ukraine's deposit of the instrument of ratification in accordance with its procedures and applicable legislation.

5. For the purpose of the relevant provisions of this Agreement, including its respective Annexes and Protocols, any reference in such provisions to the "date of entry into force of this Agreement" shall be understood to be the "date from which this Agreement is provisionally applied" in accordance with paragraph 3 of this Article.

6. During the period of the provisional application, in so far as the provisions of the Partnership and Cooperation Agreement between the European Communities and their Member States, on the one hand, and Ukraine, on the other hand, signed

[257] Doc. A/CN.4/699 (2016).

[258] *Official Journal of the European Union*, L 161, 29.5.2014.

in Luxembourg on 14 June 1994 and which entered into force on 1 March 1998, are not covered by the provisional application of this Agreement, they continue to apply.

7. Either Party may give written notification to the Depositary of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect six months after receipt of the notification by the Depositary.

158. This provision is relevant for the purposes of the present report because, despite the fact that entry into force is, of course, subject to compliance with the requirements of the internal law of each member of the European Union, paragraph 5 expressly states that the date of entry into force of the Agreement is understood to be the date from which the Agreement is provisionally applied; this bears witness to the negotiating States' desire to confer on provisional application all the weight and legal effects that arise out of the entry into force of the treaty, without prejudice to the ability of any State, at any moment, to terminate the provisional application.

159. Once again, provisional application seems to be an attractive possibility in view of the uncertainty produced by the necessarily different ratification procedures in each of the 28 member States, some of which, as in the case of Belgium, require passage through three national parliaments.

160. One interesting case has been the discussion in European Union institutions—the Council, Commission and Parliament—about the advisability of putting an end to provisional application of treaties concluded with the so-called ACP States (Africa, the Caribbean and the Pacific) which deal with trade preferences, not because the Union has reached the conclusion that it will not eventually become a party to such treaties, in conformity with a strict reading of article 25, paragraph 2, of the 1969 Vienna Convention, but on the contrary because it wishes to put pressure on the other negotiating States to complete the necessary requirements for entry into force.[259]

161. This suggests that the wording of article 15, paragraph 2, has been interpreted in a broad sense to include situations that go beyond those expressly provided for in this provision, and this interpretation may imply an explicit preference in favour of provisional application in European Union practice.

[259] Lorand Bartels, "Withdrawing Provisional Application of Treaties: Has the EU made a mistake?", *Cambridge Journal of International and Comparative Law*, vol. 1, No. 1 (2012), pp. 112–118.

Examples of recent European Union practice on provisional application of agreements with third States, reflected in the Fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur[260]

Agreement	*Article in Agreement*	*Article in Council Decision*
Association Agreements		
Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other (*Official Journal of the European Union,* No. L 346, 15 December 2012, p. 3)	Article 353 (Entry into force), paragraphs 4–7 4. Notwithstanding paragraph 2, Part IV [Trade] of this Agreement may be applied by the European Union and each of the Republics of the CA [Central America] Party from the first day of the month following the date on which they have notified each other of the completion of the internal legal procedures necessary for this purpose. In this case, the institutional bodies necessary for the functioning of the Agreement shall exercise their functions. 5. By the date of entry into force as provided in paragraph 2, or by the date of application of this Agreement, if applied pursuant to paragraph 4, each Party shall have fulfilled the requirements established in Article 244 [System of Protection] and Article 245 [Established Geographical Applications], paragraph 1(*a*) and (*b*) of Title VI (Intellectual Property) of Part IV of this Agreement. If a Republic of the CA Party has not fulfilled such requirements, the Agreement shall not enter into force in accordance with paragraph 2 or shall not be applied in accordance with paragraph 4 between the EU [European Union] Party and such non-compliant Republic of the CA Party, until those requirements have been fulfilled. 6. Where a provision of this Agreement is applied in accordance with paragraph 4, any reference in such provision to the date of entry into force of this Agreement shall be understood to refer to the date from which the Parties agree to apply that provision in accordance with paragraph 4.	Article 3, Council Decision of 25 June 2012 on the signing, on behalf of the European Union, of the *Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America on the other*, and the provisional application of Part IV thereof concerning trade matters (2012/734/EU) (*Official Journal of the European Union*, No. L 346, 15 December 2012, p. 1) Part IV of the Agreement shall be applied on a provisional basis by the European Union in accordance with Article 353(4) of the Agreement, pending the completion of the procedures for its conclusion. Article 271 shall not be provisionally applied. In order to determine the date of provisional application the Council shall fix the date by which the notification referred to in Article 353(4) of the Agreement is to be sent to the Republics of Central America. That notification shall include reference to the provision which is not to be provisionally applied. The date from which Part IV of the Agreement will be provisionally applied shall be published in the Official Journal of the European Union by the General Secretariat of the Council.

[260] Doc. A/CN.4/699/Add.1 (2016).

Agreement	*Article in Agreement*	*Article in Council Decision*
	7. The Parties for which Part IV of this Agreement has entered into force in accordance with paragraph 2 or 4 of this Article may also use materials originating in the Republics of the CA Party for which the Agreement is not in force.	
Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (*Official Journal of the European Union*, No. L 352, 30 December 2002, p. 3)	Article 198 (Entry into force) 1. This Agreement shall enter into force the first day of the month following that in which the Parties have notified each other of the completion of the procedures necessary for this purpose. 2. Notifications shall be sent to the Secretary General of the Council of the European Union, who shall be the depository of this Agreement. 3. Notwithstanding paragraph 1, the Community and Chile agree to apply Articles 3 to 11 [Title II (Institutional framework) of Part I (General and institutional provisions)], Article 18 [Cooperation on standards, technical regulations and conformity assessment procedures], Articles 24 to 27 [Cooperation on agriculture and rural sectors and sanitary and phytosanitary measures; Fisheries; Customs cooperation; Cooperation on statistics], Articles 48 to 54 [Title VII (General Provisions) of Part III (Cooperation)], Article 55 (*a*), (*b*), (*f*), (*h*), (*i*) [some of the Objectives of Part IV (Trade and trade-related matters)], Articles 56 [Customs unions and free trade areas] to 93 [Articles 57 to 93 compose Title II (Free movement of Goods) of Part IV], Articles 136 to 162 [Title IV (Government procurement) of Part IV], and Articles 172 to 206 [Title VII (Competition), Title VIII (Dispute settlement), Title IX (Transparency), Title X (Specific tasks in trade matters of the bodies established under this Agreement) and Title XI (Exceptions in the area of trade) of Part IV, and Part V (Final provisions)], from the first day of the month following the date on which the Community and Chile have notified each other of the completion of the procedures necessary for this purpose.	Article 2, Council Decision of 18 November 2002 on the signature and provisional application of certain provisions of an *Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile*, of the other part (2002/979/EC) (*Official Journal of the European Union*, No. L 352, 30 December 2002, p. 1) The following provisions of the Association Agreement shall be applied on a provisional basis pending its entry into force: Articles 3 to 11, Article 18, Articles 24 to 27, Articles 48 to 54, Article 55(*a*), (*b*), (*f*), (*h*), (*i*), Articles 56 to 93, Articles 136 to 162, and Articles 172 to 206.

Agreement	*Article in Agreement*	*Article in Council Decision*
	4. Where a provision of this Agreement is applied by the Parties pending its entry into force, any reference in such provision to the date of entry into force of this Agreement shall be understood to be made to the date from which the Parties agree to apply that provision in accordance with paragraph 3. 5. From the date of its entry into force in accordance with paragraph 1, this Agreement shall replace the Framework Cooperation Agreement. By way of exception, the Protocol on Mutual Assistance in Customs Matters to the Framework Cooperation Agreement of 13 June 2001, shall remain in force and become an integral part of this Agreement.	
Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (*Official Journal of the European Union*, No. L 161, 29 May 2014, p. 3)	Article 486 (Entry into force and provisional application) 1. The Parties shall ratify or approve this Agreement in accordance with their own procedures. The instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Union. 2. This Agreement shall enter into force on the first day of the second month following the date of deposit of the last instrument of ratification or approval. 3. Notwithstanding paragraph 2, the Union and Ukraine agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 4 of this Article, and in accordance with their respective internal procedures and legislation as applicable. 4. The provisional application shall be effective from the first day of the second month following the date of receipt by the Depositary of the following:—the Union's notification on the completion of the procedures necessary for this purpose, indicating the parts of the Agreement that shall be provisionally applied; and—Ukraine's deposit of the instrument of ratification in accordance with its procedures and applicable legislation.	Article 4, Council Decision of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine*, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (2014/668/EU) (*Official Journal of the European Union*, No. L 278, 20 September 2014, p. 1) Pending its entry into force, in accordance with Article 486 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and Ukraine, but only to the extent that they cover matters falling within the Union's competence: – Title III: Articles 14 and 19;

Agreement	*Article in Agreement*	*Article in Council Decision*
	5. For the purpose of the relevant provisions of this Agreement, including its respective Annexes and Protocols, any reference in such provisions to the "date of entry into force of this Agreement" shall be understood to the "date from which this Agreement is provisionally applied" in accordance with paragraph 3 of this Article. 6. During the period of the provisional application, in so far as the provisions of the *Partnership and Cooperation Agreement between the European Communities and their Member States, on the one hand, and Ukraine, on the other hand*, signed in Luxembourg on 14 June 1994 and which entered into force on 1 March 1998, are not covered by the provisional application of this Agreement, they continue to apply. 7. Either Party may give written notification to the Depositary of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect six months after receipt of the notification by the Depositary.	– Title IV (with the exception of Article 158, to the extent that it concerns criminal enforcement of intellectual property rights; and Articles 285 and 286, to the extent that those Articles apply to administrative proceedings, review and appeal at Member State level). The provisional application of Article 279 shall not affect the sovereign rights of the Member States over their hydrocarbon resources in accordance with international law, including their rights and obligations as Parties to the 1982 United Nations Convention on the Law of the Sea. Provisional application of Article 280(3) by the Union shall not affect the existing delineation of competences between the Union and its Member States in respect of the granting of authorisations for the prospection, exploration and production of hydrocarbon, – Title V: Chapter 1(with the exception of Articles 338(*k*), 339 and 342), Chapter 6 (with the exception of Articles 361, Article 362(1)(*c*), Article 364, and points (*a*) and (*c*) of Article 365), Chapter 7 (with the exception of Article 368(3) and point (*a*) and (*d*) of Article 369), Chapters 12 and 17 (with the exception of Article 404(*h*)), Chapter 18 (with the exception of Articles 410 (*b*) and Article 411), Chapters 20, 26 and 28, as well as Articles 353 and 428, – Title VI, – Title VII (with the exception of Article 479(1)), to the extent that the provisions of this Title are limited to the purpose of ensuring the provisional application of the Agreement in accordance with this Article,

Agreement	*Article in Agreement*	*Article in Council Decision*
		– Annexes I to XXVI, Annex XXVII (with the exception of nuclear issues), Annexes XXVIII to XXXVI (with the exception of point 3 in Annex XXXII), – Annexes XXXVIII to XLI, Annexes XLIII and XLIV, as well as Protocols I to III.
Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (*Official Journal of the European Union*, No. L 260, 30 August 2014, p. 4)	Article 464 (Entry into force and provisional application) 1. The Parties shall ratify or approve this Agreement in accordance with their internal procedures. The instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Union. 2. This Agreement shall enter into force on the first day of the second month following the date of the deposit of the last instrument of ratification or approval. 3. Notwithstanding paragraph 2 of this Article, the Union and the Republic of Moldova agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 4 of this Article, and in accordance with their respective internal procedures and legislation, as applicable. 4. The provisional application shall be effective from the first day of the second month following the date of receipt by the depositary of this Agreement of the following: (*a*) the Union's notification on the completion of the procedures necessary for this purpose, indicating the parts of the Agreement that shall be provisionally applied; and (*b*) the Republic of Moldova's notification of the completion of the procedures necessary for the provisional application of this Agreement.	Article 3, Council Decision of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of the *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part* (2014/492/EU) (*Official Journal of the European Union*, No. L 260, 30 August 2014, p. 1) 1. Pending its entry into force, in accordance with Article 464 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and the Republic of Moldova, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy: (*a*) Title I; (*b*) Title II: Articles 3, 4, 7 and 8; (*c*) Title Ill: Articles 12 and 15;

Agreement	*Article in Agreement*	*Article in Council Decision*
	5. For the purposes of the relevant provisions of this Agreement, including its respective Annexes and Protocols, as laid down in Article 459, any reference in such provisions to the 'date of entry into force of this Agreement' shall be understood to the 'date from which this Agreement is provisionally applied' in accordance with paragraph 3 of this Article. 6. During the period of provisional application, in so far as the provisions of the *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part*, signed in Luxembourg on 28 November 1994 and which entered into force on 1 July 1998, are not covered by the provisional application of this Agreement, those provisions shall continue to apply. 7. Either Party may give written notification to the depositary of this Agreement of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect six months after receipt of the notification by the depositary of this Agreement.	(*d*) Title IV: Chapters 5, 9 and 12 (with the exception of point (*h*) of Article 68), Chapter 13 (with the exception of Article 71 to the extent that it concerns maritime governance and with the exception of points (*b*) and (*e*) of Article 73 and Article 74), Chapter 14 (with the exception of point (*i*) of Article 77), Chapter 15 (with the exception of points (*a*) and (*e*) of Article 81 and Article 82(2)), Chapter 16 (with the exception of Article 87, point (*c*) of Article 88 and points (*a*) and (*b*) of Article 89, to the extent that that point (*b*) concerns soil protection), Chapters 26 and 28, as well as Articles 30, 37, 46, 57, 97, 102 and 116; (*e*) Title V (with the exception of Article 278 to the extent that it concerns criminal enforcement of intellectual property rights, and with the exception of Articles 359 and 360 to the extent that they apply to administrative proceedings and review and appeal at Member State level); (*f*) Title VI; (*g*) Title VII (with the exception of Article 456(*1*), to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement as defined in this paragraph); (*h*) Annexes II to XIII, Annexes XV to XXXV, as well as Protocols I to IV. 2. The date from which the Agreement will be provisionally applied will be published in the Official Journal of the European Union by the General Secretariat of the Council.

Agreement	*Article in Agreement*	*Article in Council Decision*
Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (*Official Journal of the European Union*, No. L 261, 30 August 2014, p. 4)	Article 431 (Entry into force and provisional application) 1. The Parties shall ratify or approve this Agreement in accordance with their own procedures. The instruments of ratification or approval shall be deposited with the General Secretariat of the Council of the European Union. 2. This Agreement shall enter into force on the first day of the second month following the date of the deposit of the last instrument of ratification or approval. 3. Notwithstanding paragraph 2 of this Article, the Union and Georgia agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 4 of this Article, and in accordance with their respective internal procedures and legislation as applicable. 4. The provisional application shall be effective from the first day of the second month following the date of receipt by the depositary of this Agreement of the following: (*a*) the Union's notification on the completion of the procedures necessary for this purpose, indicating the parts of this Agreement that shall be provisionally applied; and (*b*) Georgia's deposit of the instrument of ratification in accordance with its procedures and applicable legislation. 5. For the purpose of the relevant provisions of this Agreement, including the respective Annexes and Protocols hereto, any reference in such provisions to the 'date of entry into force of this Agreement' shall be understood to the 'date from which this Agreement is provisionally applied' in accordance with paragraph 3 of this Article.	Article 3, Council Decision of 16 June 2014 on the signing, on behalf of the European Union, and provisional application of the *Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part* (2014/494/EU) (*Official Journal of the European Union*, No. L 261, 30 August 2014, p. 1) 1. Pending its entry into force, in accordance with Article 431 of the Agreement and subject to the notifications provided for therein, the following parts of the Agreement shall be applied provisionally between the Union and Georgia, but only to the extent that they cover matters falling within the Union's competence, including matters falling within the Union's competence to define and implement a common foreign and security policy: (*a*) Title I; (*b*) Title II: Articles 3 and 4 and Articles 7 to 9; (*c*) Title Ill: Articles 13 and 16; (*d*) Title IV (with the exception of Article 151, to the extent that it concerns criminal enforcement of intellectual property rights; and with the exception of Articles 223 and 224, to the extent that they apply to administrative proceedings and review and appeal at Member State level); (*e*) Title V: Articles 285 and 291;

Agreement	*Article in Agreement*	*Article in Council Decision*
	6. During the period of the provisional application, in so far as the provisions of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Georgia, of the other part, signed in Luxembourg on 22 April 1996 and which entered into effect on 1 July 1999, are not covered by the provisional application of this Agreement, they continue to apply. 7. Either Party may give written notification to the depositary of this Agreement of its intention to terminate the provisional application of this Agreement. Termination of provisional application shall take effect six months after receipt of the notification by the depositary of this Agreement.	(*f*) Title VI: Chapter 1 (with the exception of point (*a*) of Article 293, point (*e*) of Article 293, points (*a*) and (*b*) of Article 294(2)), Chapter 2 (with the exception of point (*k*) of Article 298), Chapter 3 (with the exception of Article 302(1)), Chapters 7 and 10 (with the exception of point (*i*) of Article 333), Chapter 11 (with the exception of point (*b*) of Article 338 and Article 339), Chapters 13, 20 and 23, as well as Articles 312, 319, 327, 354 and 357; (*g*) Title VII; (*h*) Title VIII (with the exception of Article 423(1), to the extent that the provisions of that Title are limited to the purpose of ensuring the provisional application of the Agreement as defined in this paragraph); (*i*) Annexes II to XXXI and Annex XXXIV, as well as Protocols I to IV. 2. The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.
Framework Agreements/Partnership and Cooperation Agreements		
Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part (*Official Journal of the European Union*, No. L 20, 23 January 2013, p. 2)	Article 49 (Entry into force, duration and termination) 1. This Agreement shall enter into force on the first day of the month following the date on which the Parties have notified each other of the completion of the legal procedures necessary for that purpose.	Article 2, Council Decision of 10 May 2010 on the signing, on behalf of the European Union, and provisional application of the *Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part* (2013/40/EU) (*Official Journal of the European Union*, No. L 20, 23 January 2013, p. 1)

Agreement	*Article in Agreement*	*Article in Council Decision*
	2. Notwithstanding paragraph 1, this Agreement shall be applied on a provisional basis pending its entry into force. The provisional application begins on the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures. 3. This Agreement shall be valid indefinitely. Either Party may notify in writing the other Party of its intention to denounce this Agreement. The denunciation shall take effect six months after the notification.	Pending the completion of the necessary procedures for its entry into force, the Agreement shall be applied on a provisional basis. The provisional application begins on the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for provisional application.
Framework Agreement between the United States of America and the European Union on the participation of the United States of America in European Union crisis management operations (*Official Journal of the European Union*, No. L 143, 31 May 2011, p. 2)	Article 10 (Entry into force and termination) 1. This Agreement shall enter into force on the first day of the first month after the Parties have notified each other of the completion of the internal procedures necessary for that purpose. 2. This Agreement shall be provisionally applied from the date of signature. 3. This Agreement shall be subject to regular review by the Parties. 4. This Agreement may be amended on the basis of a mutual written agreement between the Parties. 5. Either Party may terminate this Agreement upon six months' written notice to the other Party.	Article 3, Council Decision 2011/318/CFSP of 31 March 2011 on the signing and conclusion of the *Framework Agreement between the United States of America and the European Union on the participation of the United States of America in European Union crisis management operations* (*Official Journal of the European Union*, No. L 143, 31 May 2011, p. 1) The Agreement shall be applied on a provisional basis as from the date of signature thereof, pending the completion of the procedures for its conclusion.
Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part (*Official Journal of the European Union*, No. L 204, 31 July 2012, p. 20)	Article 117 (Provisional Application) 1. Notwithstanding Article 116, the Union and Iraq agree to apply Article 2 [Basis], and Titles II [Trade and investments], III [Areas of cooperation] and V [Institutional, general and final provisions] of this Agreement from the first day of the third month following the date on which the Union and Iraq have notified each other of the completion of the procedures necessary for this purpose. Notifications shall be sent to the Secretary-General of the Council of the European Union, who shall be the depository of this agreement.	Article 3, Council Decision of 21 December 2011 on the signing, on behalf of the European Union, and provisional application of certain provisions of the *Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Iraq, of the other part* (2012/418/EU) (*Official Journal of the European Union*, No. L 204, 31 July 2012, p. 18)

Agreement	*Article in Agreement*	*Article in Council Decision*
	2. Where in accordance with paragraph 1, a provision of this Agreement is applied by the Parties pending its entry into force, any reference in such provision to the date of entry into force of this Agreement shall be understood to be made to the date from which the Parties agree to apply that provision in accordance with paragraph 1.	Pending the completion of the necessary procedures for its entry into force, Article 2 and Titles II, III, and V of the Agreement shall be applied provisionally, in accordance with Article 117 of the Agreement only in so far as it concerns matters falling within the Union's competence, from the first day of the third month following the date on which the Union and Iraq have notified each other of the completion of the necessary procedures for provisional application.
Enhanced Partnership and Cooperation Agreement between the European Union and its Member States, of the one part, and the Republic of Kazakhstan, of the other part (*Official Journal of the European Union*, No. L 29, 4 February 2016, p. 3)	Article 281 (Entry into force, provisional application, duration and termination) 1. This Agreement shall enter into force on the first day of the month following the date on which the Parties notify the General Secretariat of the Council of the European Union through diplomatic channels of the completion of the procedures necessary for this purpose. 2. Title III (Trade and Business), unless otherwise specified therein, shall apply as of the date of the entry into force referred to in paragraph 1, provided that the Republic of Kazakhstan has become a Member of the WTO by that date. In case the Republic of Kazakhstan becomes a Member of the WTO after the date of entry into force of this Agreement, Title III (Trade and Business), unless otherwise specified therein, shall apply as of the date the Republic of Kazakhstan has become a Member of the WTO. 3. Notwithstanding paragraphs 1 and 2, the European Union and the Republic of Kazakhstan may apply this Agreement provisionally in whole or in part, in accordance with their respective internal procedures and legislation, as applicable.	

Agreement	*Article in Agreement*	*Article in Council Decision*
	4. The provisional application begins on the first day of the first month following the date on which: (*a*) the European Union has notified the Republic of Kazakhstan of the completion of the necessary procedures, indicating, where relevant, the parts of this Agreement that shall be provisionally applied; and (*b*) the Republic of Kazakhstan has notified the European Union of the ratification of this Agreement. 5. Title III (Trade and Business), unless otherwise specified therein, shall apply provisionally as of the date of provisional application referred to in paragraph 4, provided that the Republic of Kazakhstan has become a Member of the WTO by that date. In case the Republic of Kazakhstan becomes a Member of the WTO after the date of the provisional application of this Agreement but before its entry into force, Title III (Trade and Business), unless otherwise specified therein, shall apply provisionally as of the date the Republic of Kazakhstan has become a Member of the WTO. 6. For the purposes of the relevant provisions of this Agreement, including the Annexes and Protocols hereto, any reference in such provisions to the 'date of entry into force of this Agreement' shall be understood to also refer to the date from which this Agreement is provisionally applied in accordance with paragraphs 4 and 5. 7. Upon the entry into force of this Agreement, the *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part*, signed on 23 January 1995 and in force from 1 July 1999, shall be terminated.	

Agreement	*Article in Agreement*	*Article in Council Decision*
	During the period of the provisional application, in so far as the provisions of the *Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part*, signed in Brussels on 23 January 1995 and which entered into force on 1 July 1999, are not covered by the provisional application of this Agreement, they continue to apply. 8. This Agreement replaces the Agreement referred to in paragraph 7. References to that Agreement in all other agreements between the Parties shall be construed as referring to this Agreement. 9. This Agreement is concluded for an unlimited period, with the possibility of termination by either Party by means of a written notification delivered to the other Party through diplomatic channels. The termination shall take effect six months after receipt by a Party of the notification to terminate this Agreement. Such termination shall not affect ongoing projects commenced under this Agreement prior to the receipt of the notification. 10. Either Party may terminate the provisional application by means of a written notification delivered to the other Party through diplomatic channels. The termination shall take effect six months after receipt by a Party of the notification to terminate the provisional application of this Agreement. Such termination shall not affect ongoing projects commenced under this Agreement prior to the receipt of the notification.	

Agreement	*Article in Agreement*	*Article in Council Decision*
Other Agreements (services, etc.)		
Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (*Official Journal of the European Union*, No. L 127, 14 May 2011, p. 6)	Article 15.10 (Entry into force), paragraph 5 5. (*a*) This Agreement shall be provisionally applied from the first day of the month following the date on which the EU Party and Korea have notified each other of the completion of their respective relevant procedures. (*b*) In the event that certain provisions of this Agreement cannot be provisionally applied, the Party which cannot undertake such provisional application shall notify the other Party of the provisions which cannot be provisionally applied. Notwithstanding subparagraph (*a*), provided the other Party has completed the necessary procedures and does not object to provisional application within 10 days of the notification that certain provisions cannot be provisionally applied, the provisions of this Agreement which have not been notified shall be provisionally applied the first day of the month following the notification. (*c*) A Party may terminate provisional application by written notice to the other Party. Such termination shall take effect on the first day of the month following notification. (*d*) Where this Agreement, or certain provisions thereof, is provisionally applied, the term 'entry into force of this Agreement' shall be understood to mean the date of provisional application.	Article 3, Council Decision of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* (2011/265/EU) (*Official Journal of the European Union*, No. L 127, 14 May 2011, p. 1). 1. The Agreement shall be applied on a provisional basis by the Union as provided for in Article 15.10.5 of the Agreement, pending the completion of the procedures for its conclusion. The following provisions shall not be provisionally applied: – Articles 10.54 to 10.61 (criminal enforcement of intellectual property rights), – Articles 4(3), 5(2), 6(1), 6(2), 6(4), 6(5), 8, 9 and 10 of the Protocol on cultural cooperation 2. In order to determine the date of provisional application the Council shall fix the date by which the notification referred to in Article 15.10.5 of the Agreement is to be sent to Korea. That notification shall include references to those provisions which cannot be provisionally applied. The Council shall coordinate the effective date of provisional application with the date of the entry into force of the proposed Regulation of the European Parliament and of the Council implementing the bilateral safeguard clause of the EU-Korea Free Trade Agreement.

Agreement	*Article in Agreement*	*Article in Council Decision*
		3. The date from which the Agreement will be provisionally applied will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.
Agreement between the European Community and the Government of Australia on certain aspects of air services (*Official Journal of the European Union*, No. L 149, 7 June 2008, p. 65)	Article 7 (Entry into force) 1. This Agreement shall enter in force when the Contracting Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed. 2. Notwithstanding paragraph 1, the Contracting Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose. 3. Agreements and other arrangements between Member States and Australia which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*) [Air services agreements and other arrangements initialled or signed between the Commonwealth of Australia and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally]. This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.	Article 3, Council Decision of 7 April 2008 on the signing and provisional application of the *Agreement between the European Community and the Government of Australia on certain aspects of air services* (2008/420/EC) (*Official Journal of the European Union*, No. L 149, 7 June 2008, p. 63) Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for this purpose.
Agreement between the European Community and the Hashemite Kingdom of Jordan on certain aspects of air services (*Official Journal of the European Union*, No. L 68, 12 March 2008, p. 15)	Article 9 (Entry into force and provisional application) 1. This Agreement shall enter in force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed.	Article 3, Council Decision of 25 June 2007 on the signing and provisional application of the *Agreement between the European Community and the Hashemite Kingdom of Jordan on certain aspects of air services* (2008/216/EC) (*Official Journal of the European Union*, No. L 68, 12 March 2008, p. 14)

Agreement	*Article in Agreement*	*Article in Council Decision*
	2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose. 3. Agreements and other arrangements between Member States and the Hashemite Kingdom of Jordan which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*) [Air service agreements and other arrangements initialled or signed between Jordan and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally]. This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.	Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the parties have notified each other of the completion of the necessary procedures for this purpose.
Agreement between the European Community and the United Arab Emirates on certain aspects of air services (*Official Journal of the European Union*, No. L 28, 1 February 2008, p. 21)	Article 9 (Entry into force and provisional application) 1. This Agreement shall enter into force when the Contracting Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed. 2. Notwithstanding paragraph 1, the Contracting Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.	Article 3, Council Decision of 30 October 2007 on the signing and provisional application of the *Agreement between the European Community and the United Arab Emirates on certain aspects of air services* (2008/87/EC) (*Official Journal of the European Union*, No. L 28, 1 February 2008, p. 20) Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the Contracting Parties have notified each other of the completion of the necessary procedures for this purpose.

Agreement	*Article in Agreement*	*Article in Council Decision*
	3. Agreements and other arrangements between Member States and the United Arab Emirates which, at the date of the signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*) [Air services agreements and other arrangements initialled or signed between the United Arab Emirates and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally.—*Agreement between the Government of Romania and the Government of the United Arab Emirates relating to civil air transport* initialled at Abu Dhabi on 8 March 1989, hereinafter referred to as 'the United Arab Emirates-Romania Agreement' in Annex II; To be read together with the Confidential Memorandum of Understanding done at Abu Dhabi on 8 March 1989]. This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.	
Agreement between the European Community and the Government of the Kyrgyz Republic on certain aspects of air services (*Official Journal of the European Union*, No. L 179, 7 July 2007, p. 20)	Article 9 (Entry into force and provisional application) 1. This Agreement shall enter into force when the Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed. 2. Notwithstanding paragraph 1, the Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose. 3. This Agreement shall apply to all Agreements and other arrangements between Member States and the Kyrgyz Republic listed in Annex I which, at the date of signature of this Agreement, have not yet entered into force, upon their entry into force or provisional application.	Article 3, Council Decision of 30 May 2007 on the signing and provisional application of the *Agreement between the European Community and the Government of the Kyrgyz Republic on certain aspects of air services* (2007/470/EC) (*Official Journal of the European Union*, No. L 179, 7 July 2007, p. 20) Pending its entry into force, the Agreement shall be applied provisionally from the first day of the month following the date on which the Parties have notified each other of the completion of the procedures necessary for this purpose.

Agreement	*Article in Agreement*	*Article in Council Decision*
Agreement between the European Community and New Zealand on certain aspects of air services (*Official Journal of the European Union*, No. L 184, 6 July 2006, p. 26)	Article 8 (Entry into force) 1. This Agreement shall enter into force when the Contracting Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed. 2. Notwithstanding paragraph 1, the Contracting Parties agree to apply this Agreement provisionally from the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose. 3. Agreements and other arrangements between Member States and New Zealand which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*) [Air services agreements and other arrangements initialled or signed between New Zealand and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally]. This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.	Article 3, Council Decision of 5 May 2006 on the signing and provisional application of the Agreement between the European Community and New Zealand on certain aspects of air services (2006/466/EC) (Official Journal of the European Union, No. L 184, 6 July 2006, p. 25) Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for this purpose.
Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services (*Official Journal of the European Union*, No. L 243, 6 September 2006, p. 22)	Article 7 (Entry into force) 1. This Agreement shall enter into force when the Contracting Parties have notified each other in writing that their respective internal procedures necessary for its entry into force have been completed. 2. Notwithstanding paragraph 1, the Contracting Parties agree to provisionally apply this Agreement from the first day of the month following the date on which the Contracting Parties have notified each other of the completion of the procedures necessary for this purpose.	Article 3, Council Decision of 5 May 2006 on the signing and provisional application of the *Agreement between the European Community and the Government of the Republic of Singapore on certain aspects of air services* (2006/592/EC) (*Official Journal of the European Union*, No. L 243, 6 September 2006, p. 21) Pending its entry into force, the Agreement shall be applied provisionally from the first day of the first month following the date on which the Parties have notified each other of the completion of the necessary procedures for this purpose.

Agreement	*Article in Agreement*	*Article in Council Decision*
	3. Agreements and other arrangements between Member States and Singapore which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally are listed in Annex I(*b*) [Air services agreements and other arrangements initialled or signed between the Republic of Singapore and Member States of the European Community which, at the date of signature of this Agreement, have not yet entered into force and are not being applied provisionally]. This Agreement shall apply to all such Agreements and arrangements upon their entry into force or provisional application.	
Euro-Mediterranean Aviation Agreement between the European Community and its Member States, of the one part and the Kingdom of Morocco, of the other part (*Official Journal of the European Union*, No. L 386, 29 December 2006, p. 57)	Article 30 (Entry into force) 1. This Agreement shall be applied provisionally, in accordance with the national laws of the Contracting Parties, from the date of signature. 2. This Agreement shall enter into force one month after the date of the last note in an exchange of diplomatic notes between the Contracting Parties confirming that all necessary procedures for entry into force of this Agreement have been completed. For purposes of this exchange, the Kingdom of Morocco shall deliver to the General Secretariat of the Council of the European Union its diplomatic note to the European Community and its Member States, and the General Secretariat of the Council of the European Union shall deliver to the Kingdom of Morocco the diplomatic note from the European Community and its Member States. The diplomatic note from the European Community and its Member States shall contain communications from each Member State confirming that its necessary procedures for entry into force of this Agreement have been completed.	Article 1, Decision of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 4 December 2006 (2006/959/EC) (*Official Journal of the European Union*, No. L 386, 29 December 2006, p. 55) Signature and provisional application 1. The signing of the *Euro-Mediterranean Aviation Agreement between the European Community and its Member States, of the one part, and the Kingdom of Morocco, of the other part*, hereinafter 'the Agreement', is hereby approved on behalf of the Community, subject to the conclusion of the Agreement. 2. The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Community, subject to its conclusion. 3. Pending its entry into force, the Agreement shall be applied in accordance with Article 30(1) thereof. 4. The text of the Agreement is attached to this Decision.

Agreement	*Article in Agreement*	*Article in Council Decision*
Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon, of the other part (*Official Journal of the European Union*, No. L 143, 30 May 2006, p. 2)	Article 93 (Interim Agreement) In the event that, pending the completion of the procedures necessary for the entry into force of this Agreement, the provisions of certain parts of this Agreement, in particular those relating to the free movement of goods, are put into effect by means of an Interim Agreement between the Community and Lebanon, the parties agree that, in such circumstances, for the purposes of Titles II and IV of this Agreement and Annexes 1 and 2 and Protocols 1 to 5 thereto, the terms 'date of entry into force of this Agreement' mean the date of entry into force of the Interim Agreement in relation to obligations contained in these Articles, Annexes and Protocols.	Council Decision of 14 February 2006 concerning the conclusion of the *Euro-Mediterranean Agreement establishing an association between the European Community and its Member States of the one part, and the Republic of Lebanon, of the other part* (2006/356/EC) (*Official Journal of the European Union*, No. L 143, 30 May 2006, p. 1)
Protocol for the accession of Bulgaria, Croatia and Romania		
Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, to take account of the accession of the Republic of Croatia to the European Union (*Official Journal of the European Union*, No. L 373, 1 December 2014, p. 3)	Article 4 1. This Protocol shall be approved by the Parties, in accordance with their own procedures. The Parties shall notify each other of the completion of the procedures necessary for that purpose. The instruments of approval shall be deposited with the General Secretariat of the Council of the European Union. 2. This Protocol shall enter into force on the first day of the first month following the date of deposit of the last instrument of approval. 3. This Protocol shall apply provisionally after 15 days from the date of its signature. 4. This Protocol shall apply to the relations between the Parties within the framework of the Agreement as of the date of accession of the Republic of Croatia to the European Union.	Article 3, Council Decision of 23 July 2014 on the signing, on behalf of the European Union and its Member States, and provisional application, of the *Protocol to the Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Russian Federation, of the other part, to take account of the accession of the Republic of Croatia to the European Union* (2014/956/EU) (*Official Journal of the European Union*, No. L 373, 31 December 2014, p. 1) The Protocol shall be applied on a provisional basis, as from 1 July 2013, pending the completion of the procedures for its conclusion.

Agreement	*Article in Agreement*	*Article in Council Decision*
	Article 14 1. This Protocol shall enter into force on the first day of the first month following the date of the deposit of the last instrument of approval. 2. If not all the instruments of approval of this Protocol have been deposited before the first day of the second month following the date of signature, this Protocol shall apply provisionally. The date of provisional application shall be the first day of the second month following the date of signature.	Article 3, Council Decision of 14 April 2014 on the signing, on behalf of the European Union and its Member States, and provisional application of the *Protocol to the Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Serbia, of the other part, to take account of the accession of the Republic of Croatia to the European Union* (2014/517/EU) (*Official Journal of the European Union*, No. L 233, 6 August 2014, p. 1) The Protocol shall be applied on a provisional basis, in accordance with its Article 14, as from the first day of the second month following the date of its signature, pending the completion of the procedures for its conclusion.

14. Council of Europe

Extracts from statements delivered by the representatives of the Observer delegation of the Council of Europe

Statement made in the Sixth Committee, Seventy-second session (2017), 22nd meeting, 26 October 2017:[261]

> [T]he Council of Europe suggests including some examples of provisional application of specific treaty provisions from our long-standing Council of Europe practice in this field.
>
> The Memorandum [of the Secretariat[262]], at paragraphs 20 and 33, makes reference to the provisional applicability of certain provisions of *Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms* (CETS No. 194) by separate agreement, the so-called "Madrid Agreement", and Protocol 14bis to the *Convention for the Protection of Human Rights and Fundamental Freedoms* (CETS No. 204) including an express clause on provisional application.
>
> Apart from these examples with regard to the *European Convention on Human Rights* we would like to draw your attention to other examples of provisional application included in conventions and protocols concluded within the framework of the Council of Europe: the provisional application of the *General Agreement on Privileges and Immunities of the Council of Europe* (ETS No. 2) (Article 22) and the *Convention on the Elaboration of a European Pharmacopoeia* (ETS No. 50) (Article 17).
>
> Another unusual and peculiar example took place in 2016 in relation to the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* (CETS No. 217) which has entered into force recently (1 July 2017). Article 7 of that Protocol, provides for the setting up of a network of 24-hour-a-day national contact points facilitating the rapid exchange of information concerning persons travelling abroad for the purpose of terrorism. With a view to applying this article provisionally, the Committee of Ministers at its 126th Ministerial session on 18 May 2016 "called for the expeditious designation of the 24/7 contact points to facilitate the timely exchange of information, as provided for by the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* (CETS No. 217), pending its entry into force." [emphasis added]
>
> As a most recent example, when the *Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons*[263] will be opened for signature on 22 November 2017 in Strasbourg (France) the signatories will have the possibility to declare under Article 5 of the Amending Protocol that they will apply the provisions of the Protocol on a provisional basis.

Communication transmitted to the Secretariat, 20 August 2019:

> [As regards] the provisional application of a "part" of a treaty, we propose to include … a reference to the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism* (CETS No. 217), and the provisional application of its Article 7 (which provides for the setting up of a network of 24/7 national contact points to facilitate the rapid exchange of information concerning persons travelling abroad for the purpose of terrorism), which was decided by the Committee of Ministers of the Council of Europe, at

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[261] Full text available at: https://www.un.org/en/ga/sixth/72/pdfs/statements/ilc/council_of_europe_1.pdf.

[262] Editorial note: see A/CN.4/707, reproduced at p. 311, below.

[263] CM(2017)90.

its 126th Ministerial session on 18 May 2016, pending the entry into force of the Protocol (which took effect on 1 July 2017).

This example also illustrates the action of the Committee of Ministers of the Council of Europe as "[…] the competent organ of an international organisation […]" that agrees to provisionally apply a treaty obligation.

The [International Law Commission] acknowledges that provisional application of a treaty, "arising from contemporary practice", may be undertaken by States that are not negotiating States and/or are not connected to the treaty in question. In this respect:

> Article 36, paragraph 2, of the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223) allows a State that is not a Party to the parent *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (ETS No. 108) to "express its consent to be bound by this Protocol by accession", but only during the period from the opening for signature of the Protocol and its entry into force. This possibility would allow a third State to make a declaration about the provisional application of the Protocol (CETS No.223) without having been a Party to the Convention ETS No. 108 until that moment. Indeed, this provision establishes that a State "may not become a Party to the Convention without acceding simultaneously to this Protocol".
>
> Article 37, paragraph 3, of the Protocol amending the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (CETS No. 223), which opened for signature on 10 October 2018, allows the provisional application of this Protocol among signatories of the Protocol that are Parties to the parent Convention (*Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, ETS No. 108) and which make a declaration to this effect (see previous paragraph). The Protocol currently has 31 signatories, and two of them (Bulgaria and Norway) have made a declaration concerning the provisional application of the provisions of this Protocol.

[As regards the reference to] the fact that provisional application might not be possible under the internal law of States or the rules of international organisations], the Commission] provides examples [of] different clauses used in several Free Trade Agreements (*e.g.* "if its constitutional requirements permit", "if their domestic requirements permit"). We would like to propose to add an example concerning an international organisation, namely the *General Agreement on Privileges and Immunities of the Council of Europe* (ETS No. 2) and its Article 22 on the possible provisional application of this Agreement by its signatories (from the date of signature and pending its entry into force) "so far as it is possible to do so under their respective constitutional systems". A similar clause is found in Article 17 of the *Convention on the Elaboration of a European Pharmacopoeia* (ETS No. 50), whereby the signatories agree to provisionally apply the Convention "in conformity with their respective constitutional systems".

[A]s regards the latest developments in the Council of Europe in relation [to] the provisional application of treaties:

> Article 5 of the Protocol amending the *Additional Protocol to the Convention on the Transfer of Sentenced Persons* (CETS No. 222), not yet in force, provides that Parties to the Additional Protocol may declare (at the time of ratification, acceptance or approval of this Protocol or at any later moment) that they "will apply the provisions of this Protocol on a provisional basis". The Protocol has currently 13 signatories and one ratification by the Holy See, on 15 January 2019. The Holy See made a Declaration "acting in the name and on behalf of Vatican City State", stating that pending the entry into force of this Protocol, "it will apply its provisions on a provisional basis with respect to all other State Parties that make a declaration to the same effect".

Extracts from statements delivered by the representatives of Member States of the Council of Europe referencing the practice of the Council of Europe

Bulgaria

Communication transmitted to the Secretariat, 10 April 2020:

> [*Reference to the practice of the Council of Europe:*]
>
> In the process of negotiating the *Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of the Council of Europe* (CETS No 223) art 37 (3) was adopted at the suggestion of the Republic of Bulgaria. This article provides for declarations by States through which they may provisionally apply the provisions of the Protocol. At the time of ratification of the protocol, three states have made declarations to this effect.

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:[264]

> 162. As in other cases, the Special Rapporteur consulted the Council of Europe Treaty Office to inquire about the practice of that regional organization on the matter. As in the case of OAS, the preliminary view, subject to a pending final opinion, was that provisional application is infrequent in the practice of the Council of Europe.
>
> 163. The Special Rapporteur's attention was drawn to a document presented at the 51st meeting of the *Committee of Legal Advisers on Public International Law* (CAHDI), entitled Draft model final clauses for conventions, additional protocols and amending protocols concluded within the Council of Europe.[265] This document was distributed to the members of CAHDI on a restricted basis. Suffice it to say that no reference whatsoever is made in this set of model clauses to provisional application of treaties; this would appear to confirm the above-mentioned opinion.

Extracts from the fifth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:[266]

> 49. The Council of Europe provided the following examples of provisional application, in addition to those contained in the memorandum by the Secretariat on the provisional application of treaties.[267]
>
> 50. The first is the General Agreement on Privileges and Immunities of the Council of Europe,[268] of which article 22, second paragraph, provides for the provisional application of the Agreement by the signatory States pending its entry into force.
>
> "*Article 22.*
> *Final provisions*
>
> […] pending the entry into force of the Agreement in accordance with the provisions of the preceding paragraph, the signatories agree, in order to avoid any delay in the efficient working of the Council, to apply it provisionally from the date of signature, so far as it is possible to do so under their respective constitutional systems."

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[264] Doc. A/CN.4/699 (2016).

[265] CAHDI (2016) 8, of 12 February 2016.

[266] Doc. A/CN.4/718 (2018).

[267] A/CN.4/707[, reproduced at p. 311, below].

[268] General Agreement on Privileges and Immunities of the Council of Europe (Paris, 2 September 1949), Council of Europe, *European Treaty Series*, No. 2; available at: https://rm.coe.int/1680063729.

51. Reference was also made to the *Convention on the Elaboration of a European Pharmacopoeia*,[269] which contains the following clause on provisional application:

> "*Article 17.*
> *Provisional application*
>
> Pending the entry into force of the present Convention in accordance with the provisions of Article 11, the signatory States agree, in order to avoid any delay in the implementation of the present Convention, to apply it provisionally from the date of signature, in conformity with their respective constitutional systems."

52. Another example is the *Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism*,[270] which entered into force on 1 July 2017. The Protocol does not contain a provisional application clause. However, article 7 provides for the establishment of a network of national points of contact available on a 24-hour basis in order to strengthen the timely exchange of information concerning persons travelling abroad for the purpose of terrorism. In order to apply this article provisionally and set up the network as soon as possible, the Committee of Ministers of the Council of Europe adopted decision CM/PV(2016)126/2b-add1 at its 126th session, held in Sofia on 18 May 2016. In that decision, the Committee "called for the expeditious designation of the 24/7 contact points to facilitate the timely exchange of information, as provided for by the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism […], *pending its entry into force*".[271]

53. In this instance, it was the decision by the Committee of Ministers that led to the provisional application of article 7 of the Protocol.

54. Lastly, as the most recent example, the *Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons*[272] was cited. The Protocol contains the following clause on provisional application:

> "*Article 5.*
> *Provisional application*
>
> Pending the entry into force of this Protocol according to the conditions set under Article 4, a Party to the Additional Protocol may at the time of ratification, acceptance or approval of this Protocol or at any later moment, declare that it will apply the provisions of this Protocol on a provisional basis. In such cases, the provisions of this Protocol shall apply only with respect to the other Parties which have made a declaration to the same effect. Such a declaration shall take effect on the first day of the second month following the date of its receipt by the Secretary General of the Council of Europe."[273]

55. As at the time of submission of the present report, six States had signed the Protocol but none had made a declaration of provisional application.[274]

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[269] Convention on the Elaboration of a European Pharmacopoeia (Strasbourg, 22 July 1964), Council of Europe, *European Treaty Series*, No. 50; available at: https://rm.coe.int/168006ff4c.

[270] Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (Riga, 22 October 2015), *Council of Europe Treaty Series*, No. 217; available at: https://rm.coe.int/168047c5ea.

[271] Democratic security for all in Europe in challenging times. b. Tackling violent extremism and radicalisation leading to terrorism (CM/PV(2016)126-final), appendix 3, para. 3; available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806c9744. Emphasis added.

[272] Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 22 November 2017), *Council of Europe Treaty Series*, No. 222; available at: https://rm.coe.int/1680730cff.

[273] [Footnote 273 is not applicable to the English version of the present report.]

[274] See https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/222.

15. Organization of American States (OAS)

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur: [275]

> 150. The Special Rapporteur held an informal consultation with the Office of Legal Affairs of the OAS General Secretariat in relation to the Organization's practice in the use of provisional application of treaties concluded under its auspices or to which it is a party.
>
> 151. The unofficial response was that, with respect to OAS and the inter-American treaties deposited with the Secretary-General, in the past 20 years no treaty had been registered that provided for provisional application before its entry into force. It was also indicated that some provisions of the inter-American treaties might have been applied provisionally, but not under the treaty itself, but rather on the basis of some later agreement between the negotiating States.
>
> 152. A partial explanation of this absence of provisional application clauses in inter-American treaties might be the fact that these treaties usually contain provisions on entry into force which require a very small number of ratifications, frequently between 2 and 6, out of a total of 35 States members of OAS, in order for the treaty to enter into force; this practice makes it somewhat less attractive or desirable to resort to provisional application.
>
> 153. As an example, some inter-American treaties open to signature and ratification or accession in the 35 States members of OAS have been identified as having entry into force clauses like the one described above.
>
> 154. Thus, article X of the *Inter-American Convention on Transparency in Conventional Weapons Acquisitions* provides that six instruments of ratification acceptance approval or accession by the members of OAS are required to be deposited with the General Secretariat of the Organization in order for it to enter into force.[276] The same is true of the *Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities*[277] and the *Inter-American Convention against Terrorism*.[278]
>
> 155. In the case of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women*—"Convention of Belém do Pará", the number of ratifications necessary for entry into force is only two States.[279]

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[275] Doc. A/CN.4/699 (2016).

[276] Inter-American Convention on Transparency in Conventional Weapons Acquisitions (Guatemala City, 6 July 1999). Available at: http://www.oas.org/juridico/english/treaties/a-64.html.

[277] Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities (Guatemala City, 6 July 1999). Available at: http://www.oas.org/juridico/english/treaties/a-65.html.

[278] Inter-American Convention against Terrorism (Bridgetown, 2 June 2002), OAS, *Acts and Documents*, OAS/Ser.P/XXXII-O/02), vol. 1, AG/RES.1840 (XXXII-O/02).

[279] Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women—"Convention of Belém do Pará" (Belém do Pará, 6 September 1994). Available at http://www.oas.org/juridico/english/treaties/a-61.html.

16. Economic Community of West African States (ECOWAS)

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur: [280]

168. As the Special Rapporteur mentioned in the oral presentation of his third report to the Commission on 14 July 2015, he had received, on a date subsequent to the preparation and submission of the third report to the Secretariat for processing, a publication from the Ministry of Foreign Affairs of Nigeria entitled "*The Treaty, Protocols, Conventions and Supplementary Acts of the Economic Community of West African States (ECOWAS)*".[281]

169. This publication is a collection of a total of 59 treaties concluded under the auspices of ECOWAS in the period 1975–2010. After an exhaustive review of the 59 treaties, it was observed that only 11 of them did not provide for provisional application. Moreover, it was particularly interesting that the formula generally used in the remaining instruments is as follows:

> The treaty shall enter into force provisionally upon the signature by Heads of State and Government and definitively upon ratification.

170. Clearly, the use of the phrase "enter into force provisionally" instead of "provisional application" confirms that States continue to draw a precise distinction between the two concepts of the law of treaties, and this has an impact subsequently on the way in which universal organizations like the United Nations perform their registration and depository functions, as we have seen above. However, the reiteration of this formula shows that the States of this region are interested in ensuring the full effectiveness of the treaties they conclude as soon as possible.

171. Only one instrument, *ECOWAS Protocol A/P4/1/03 on Energy,*[282] refers explicitly in article 40 to its provisional application. This provision, which is quite long, sets out *in extenso* the rights and obligations arising out of provisional application as they apply to a State or regional economic integration organization.

172. The following temporal observation may also be made: from the adoption of the treaty establishing ECOWAS in 1975 until the adoption of the revised treaty in 1993, all instruments contained the same clause on provisional application.

173. For some reason, starting in 1993, this clause stops appearing in treaties concluded under the auspices of ECOWAS. It has been only since 2001 that the provisional application clause has been reincorporated in a protocol (A/SP.2/12/01), which has since remained, except in three cases: *Protocol A/P.1/10/06, on the establishment of a Criminal Intelligence and Investigation Bureau; the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials*; and *Protocol A/SP.1/06/06, amending the revised ECOWAS treaty*, all in 2006.

174. All these examples illustrate the importance of provisional application in regional commitments of States, the relationship of such application to international organizations and its vitality in the practice of the law of treaties.

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[280] Doc. A/CN.4/699 (2016).

[281] *The Treaty, Protocols, Conventions and Supplementary Acts of the Economic Community of West African States [1975–2010]*, Abuja, Ministry of Foreign Affairs, 2011.

[282] For the ECOWAS documents mentioned, see also https://ecowas.int/publication/treaty/.

17. North Atlantic Treaty Organization (NATO)

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur: [283]

> 165. According to a note received from the NATO Office of Legal Affairs,[284] this international organization is party to approximately 180 treaties, only 5 of which contain provisional application clauses, 3 of them referring to transit arrangements between NATO and its partners.
>
> 166. The note also explains that there is no previously determined policy with respect to provisional application. In relation to agreements involving the establishment of NATO offices, the Organization has developed the practice by which it requests States to ensure that headquarters agreements enter into force at the time of signature.
>
> 167. However, if this is not possible under the provisions of the internal law of the State in question, the NATO resorts to provisional application from the time of signature until the entry into force of the agreement. In cases where this is unacceptable to the contracting State, NATO waits until the completion of the time periods established by the internal requirements of that State.

[283] Doc. A/CN.4/699 (2016).

[284] Note dated 28 January 2016, on file with the Codification Division.

18. Energy Charter Treaty

Communication from the Secretariat of the Energy Charter Treaty (ECT) transmitted to the Secretariat, 28 July 2022:[285]

Article 45
(Provisional Application)

(1) Each signatory agrees to apply this Treaty provisionally pending its entry into force for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(2) (*a*) Notwithstanding paragraph (1) any signatory may, when signing, deliver to the Depository a declaration that it is not able to accept provisional application. The obligation contained in paragraph (1) shall not apply to a signatory making such a declaration. Any such signatory may at any time withdraw that declaration by written notification to the Depository.

(*b*) Neither a signatory which makes a declaration in accordance with subparagraph (*a*) nor Investors of that signatory may claim the benefits of provisional application under paragraph (1).

(*c*) Notwithstanding subparagraph (*a*), any signatory making a declaration referred to in subparagraph (*a*) shall apply Part VII provisionally pending the entry into force of the Treaty for such signatory in accordance with Article 44, to the extent that such provisional application is not inconsistent with its laws or regulations.

(3) (*a*) Any signatory may terminate its provisional application of this Treaty by written notification to the Depository of its intention not to become a Contracting Party to the Treaty. Termination of provisional application for any signatory shall take effect upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depository.

(*b*) In the event that a signatory terminates provisional application under subparagraph (*a*), the obligation of the signatory under paragraph (1) to apply Parts III and V with respect to any Investments made in its Area during such provisional application by Investors of other signatories shall nevertheless remain in effect with respect to those Investments for twenty years following the effective date of termination, except as otherwise provided in subparagraph (*c*).

(*c*) Subparagraph (*b*) shall not apply to any signatory listed in Annex PA. A signatory shall be removed from the list in Annex PA effective upon delivery to the Depository of its request therefor.

(4) Pending the entry into force of this Treaty the signatories shall meet periodically in the provisional Charter Conference, the first meeting of which shall be convened by the provisional Secretariat referred to in paragraph (5) not later than 180 days after the opening date for signature of the Treaty as specified in Article 38.

(5) The functions of the Secretariat shall be carried out on an interim basis by a provisional Secretariat until the entry into force of this Treaty pursuant to Article 44 and the establishment of a Secretariat.

(6) The signatories shall, in accordance with and subject to the provisions of paragraph (1) or subparagraph (2)(*c*) as appropriate, contribute to the costs of the provisional Secretariat as if the signatories were Contracting Parties under Article 37(3).

[285] Edited by the United Nations Secretariat.

> Any modifications made to Annex B by the signatories shall terminate upon the entry into force of this Treaty.
>
> (7) A state or Regional Economic Integration Organisation which, prior to this Treaty's entry into force, accedes to the Treaty in accordance with Article 41 shall, pending the Treaty's entry into force, have the rights and assume the obligations of a signatory under this Article.

Several signatories have provisionally applied the ECT, including the European Union and Euratom "to the extent that it has competence for the matters governed by the Treaty".[286]

An interesting notification is that of Liechtenstein (applying automatically, based on their Customs Union Agreement, the Swiss declaration in relation to trade matters).[287]

The Russian Federation terminated [its] provisional application of the ECT in 2009.[288] However, Article 45(3)(*b*) [provides] for a 20 year sunset clause (protection of existing investments). This was confirmed in the Yukos awards[289] and in later arbitration cases under the ECT.[290] Nevertheless, the Russian Federation continues to be involved in the activities of the Conference and its subsidiary bodies. In 2018, the Russian Federation sent a communication stating they were not to be considered as Signatories of the ECT as of 2009 and the Budget Committee decided to keep the question of the outstanding arrears of the Russian Federation under consideration.[291] On 19 October 2021, the Strategy Group took note of the country's status as no longer being an [Energy Charter Treaty] Signatory.[292] It was subsequently decided to remove the contributions of the Russian Federation from the budget.[293]

[The Energy Charter Conference at its Ad Hoc Meeting on 24 June 2022] decided to suspend Belarus' provisional application of the entire [Energy Charter Treaty].[294]

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[286] See: Council Decisions 94/998/EC and 94/1067/Euratom of 15.12.1994.

[287] See: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Depository_documents/Liechtenstein/ECT___PEEREA.pdf.

[288] See: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Founding_Docs/Letter_Russian_Federation_2009.pdf.

[289] See: https://www.energychartertreaty.org/details/article/yukos-universal-limited-v-russian-federation-pca-case-no-aa-227/.

[290] *Yukos Capital S.à.r.l* v. *Russian Federation, Final* Award, 2017, available at: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Cases/38_Yukos_Capital_SARL/2021.07.23_Final_Award.pdf; *Russian Federation* v. *Yukos Capital S.à.r.l*, Federal Court of Switzerland, Civil Law, Judgment of 20 July 2017, available at: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Cases/38_Yukos_Capital_SARL/Judgment_of_the_Swiss_Federal_Supreme_Court_on_Russia_s_Set-Aside_Application__French_.pdf; Financial Performance Holdings B.V. (discontinued in 2016); and *Luxtona Limited* v. *Russian Federation*, Interim award on Jurisdiction, 22 March 2017, available at: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Cases/65_Luxtona/2017.03.22_Interim_Award_on_Respondent_s_Objections_to_the_Jurisdiction_of_the_Tribunal.pdf.

[291] See: Document CCDEC/2018/14/NOT (27 November 2018), available at: https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2018/CCDEC201814_-_NOT_Report_of_the_Budget_Committee.pdf .

[292] See: Document CCDEC/2021/34/NOT (14 December 2021), available at: https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2021/CCDEC202134.pdf.

[293] See: Document CCDEC/2021/25/BUD (14 December 2021), available at: https://www.energycharter.org/fileadmin/DocumentsMedia/CCDECS/2021/CCDEC202125.pdf.

[294] See: Document CCDEC/2022/11/SGN (24 June 2022), available at: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/CCDECS/CCDEC202211.pdf.

According to Article 45(2)(*c*) of the ECT, Signatories who sent a declaration not accepting provisional application of the Treaty still applied Part VII of the treaty. Those included Iceland (until ratification in 2015), Norway and Australia (until 2021)[295] see notification).

Amendment to the Trade-Related Provisions of the ECT (the Trade Amendment)

Article 6
Provisional Application

(1) Each signatory which applies the Energy Charter Treaty provisionally in accordance with Article 45(1) and each Contracting Party agrees to apply this Amendment provisionally pending its entry into force for such signatory or Contracting Party to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

(2) (*a*) Notwithstanding paragraph (1):

(i) any signatory which applies the Energy Charter Treaty provisionally or Contracting Party may deliver to the Depositary within 90 days from the date of the adoption of this Amendment by the Charter Conference a declaration that it is not able to accept the provisional application of this Amendment;

(ii) any signatory which does not apply the Energy Charter Treaty provisionally in accordance with Article 45(2) may deliver to the Depositary not later than the date on which it becomes a Contracting Party or begins to apply the Treaty provisionally a declaration that it is not able to accept the provisional application of this Amendment.

The obligation contained in paragraph (1) shall not apply to a signatory or Contracting Party making such a declaration. Any such signatory or Contracting Party may at any time withdraw that declaration by written notification to the Depositary.

(*b*) Neither a signatory or Contracting Party which makes a declaration in accordance with subparagraph (*a*) nor Investors of that signatory or Contracting Party may claim the benefits of provisional application under paragraph (1).

(3) Any signatory or Contracting Party may terminate its provisional application of this Amendment by written notification to the Depositary of its intention not to ratify, accept or approve this Amendment. Termination of provisional application for any signatory or Contracting Party shall take effect upon the expiration of 60 days from the date on which such signatory's or Contracting Party's written notification is received by the Depositary. Any signatory which terminates its provisional application of the *Energy Charter Treaty* in accordance with Article 45(3)(*a*) shall be considered as also having terminated its provisional application of this Amendment with the same date of effect.

Several Contracting Parties are provisionally applying the amendments.

The 2022 amendments to the ECT

It is anticipated that Contracting Parties will also agree on potential provisional application (using similar wording as in the Trade Amendment) in the decision of the Conference to be approved on 22 November 2022.

[295] See: https://www.energychartertreaty.org/fileadmin/DocumentsMedia/Depository_documents/Australia_-_Notification_under_Article_45_3__a_.pdf.

19. European Free Trade Association (EFTA)

Extracts from the fifth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:[296]

> 48. EFTA … has a wealth of practice on the subject, and in general the relevant provisions of the treaties concluded under its auspices are similarly worded. The annex to the present report contains a table reproducing the relevant articles and the titles of the treaties containing them.

Annex
Provisional application of treaties negotiated within the European Free Trade Association (EFTA)

Free Trade Agreement between the EFTA States and Israel, signed 17 September 1992	*Article 33 (Entry into force)* 1. This Agreement shall enter into force on 1 January 1993 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Israel is among the States that have deposited their instruments of ratification or acceptance. 2. In relation to a Signatory State depositing its instrument of ratification or acceptance after 1 January 1993, this Agreement shall enter into force on the first day of the second month following the deposit of its instrument, provided that Israel is among the States that have deposited their instruments of ratification or acceptance. 3. Any Signatory State may already at the time of signature declare that, during an initial phase, it shall apply the Agreement provisionally, if the Agreement cannot enter into force in relation to that State by 1 January 1993, provided that in relation to Israel the Agreement has entered into force.
Interim Agreement between the EFTA States and the Palestine Liberation Organization for the benefit of the Palestinian Authority, signed 30 November 1998	*Article 39 (Entry into force)* 1. This Agreement shall enter into force on 1 July 1999 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that the Palestinian Authority has deposited its instrument of ratification or acceptance. 2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 July 1999, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to the Palestinian Authority this Agreement enters into force at the latest on the same date. 3. Any Signatory may already at the time of signature declare that, during an initial phase, it shall apply this Agreement provisionally if this Agreement cannot enter into force in relation to that Signatory by 1 July 1999. For an EFTA State provisional application is only possible provided that in relation to the Palestinian Authority this Agreement has entered into force, or that the Palestinian Authority is applying this Agreement provisionally.

[296] Doc. A/CN.4/718 (2018).

Free Trade Agreement between the EFTA States and the former Yugoslav Republic of Macedonia, signed 19 June 2000

Article 40 (Entry into force)

1. This Agreement shall enter into force on 1 January 2001 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Macedonia has deposited its instrument of ratification or acceptance.

2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 January 2001, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Macedonia this Agreement enters into force at the latest on the same date.

3. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 January 2001, provided that in relation to Macedonia this Agreement has entered into force or is provisionally applied at the latest as of the same date. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Mexico, signed 27 November 2000

Article 84 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 July 2001 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Mexico is among the States that have deposited their instruments of ratification or acceptance.

3. In relation to a Signatory State depositing its instrument of ratification or acceptance after 1 July 2001, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Mexico this Agreement enters into force at the latest on the same date.

4. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 July 2001. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Jordan, signed 21 June 2001

Article 40 (Entry into force)

1. This Agreement shall enter into force on 1 January 2002 in relation to those Signatories which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Jordan has deposited its instrument of ratification or acceptance.

2. In relation to a Signatory depositing its instrument of ratification or acceptance after 1 January 2002, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to Jordan this Agreement enters into force at the latest on the same date.

3. Any Signatory may already at the time of signature declare that, during an initial phase, it shall apply this Agreement provisionally, if this Agreement cannot enter into force in relation to that Signatory by 1 January 2002. For an EFTA State provisional application is only possible provided that in relation to Jordan this Agreement has entered into force, or that Jordan is applying this Agreement provisionally.

Free Trade Agreement between the EFTA States and Singapore, signed 26 June 2002

Article 72 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 January 2003 in relation to those Signatory States which by then have deposited their instruments of ratification, acceptance or approval with the Depositary, and provided that Singapore is among the States that have deposited their instruments of ratification, acceptance or approval.

3. In relation to a Signatory State depositing its instrument of ratification, acceptance or approval after 1 January 2003, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument, provided that in relation to the Republic of Singapore this Agreement enters into force at the latest on the same date.

4. Any Party may, if its constitutional requirements permit, apply this Agreement provisionally during an initial period starting on 1 January 2003. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Chile, signed 26 June 2003

Article 106 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 February 2004 in relation to those Signatory States which by then have ratified, accepted or approved the Agreement, provided they have deposited their instruments of ratification, acceptance or approval with the Depositary at least 30 days before the date of entry into force, and provided that Chile is among the States that have deposited their instruments of ratification, acceptance or approval.

3. In case this Agreement does not enter into force on 1 February 2004, it shall enter into force on the first day of the first month following the latter deposit of the instruments of ratification, acceptance or approval by Chile and at least one EFTA State.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Lebanon, signed 24 June 2004

Article 41 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 January 2005 in relation to those Signatory States which by then have ratified the Agreement, provided they have deposited their instruments of ratification or acceptance with the Depositary at least two months before the entry into force, and provided that Lebanon is among the States that have deposited their instruments of ratification or acceptance.

3. In case this Agreement does not enter into force on 1 January 2005 it shall enter into force on the first day of the third month following the latter date on which Lebanon and at least one EFTA State have deposited their instruments of ratification.

4. In relation to an EFTA State depositing its instrument of ratification, after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Tunisia, signed 17 December 2004

Article 45 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 June 2005 in relation to those Signatory States which by then have deposited their instruments of ratification or acceptance with the Depositary, provided that Tunisia is among the States that have deposited their instruments of ratification or acceptance.

3. In case this Agreement does not enter into force on 1 June 2005 it shall enter into force on the first day of the second month following the latter date on which Tunisia and at least one EFTA State have deposited their instruments of ratification.

4. In relation to an EFTA State depositing its instrument of ratification, after this Agreement has entered into force, the Agreement shall enter into force on the first day of the second month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and the Republic of Korea, signed 15 December 2005

Article 10.6 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 July 2006 in relation to those Signatory States which by then have ratified this Agreement, provided they have deposited their instruments of ratification, acceptance or approval with the Depositary at least one month before the entry into force, and provided that Korea is among the States that have deposited their instruments.

3. In case this Agreement does not enter into force on 1 July 2006, it shall enter into force on the first day of the second month following the latter date on which Korea and at least one EFTA State have deposited their instruments of ratification, acceptance, or approval with the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the second month following the deposit of its instrument.

5. If its constitutional requirements permit, any EFTA State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and the Southern African Customs Union States, signed 26 June 2006

Article 43 (Entry into Force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. If its constitutional requirements permit, any EFTA State or SACU State may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

3. This Agreement shall enter into force on 1 July 2006, provided all the Parties have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to, the Depositary at least one month before this date.

4. In case this Agreement does not enter into force on 1 July 2006 it shall enter into force on the first day of the second month following the date on which the last Party has deposited its instrument or notified provisional application.

Free Trade Agreement between the Arab Republic of Egypt and the EFTA States, signed 27 January 2007

Article 49 (Entry into force)

1. This Agreement shall enter into force in relation to those Signatory States which have ratified the Agreement on the first day of the second month following the exchange of their instruments of ratification or acceptance, provided that Egypt is among the States that have deposited their instruments of ratification or acceptance.

2. A Signatory State may, if constitutional requirements allow, apply this Agreement provisionally during an initial phase, provided that Egypt has ratified the Agreement. Provisional application of the Agreement shall be notified to the other Signatory States.

Free Trade Agreement between Canada and the EFTA States, signed 26 January 2008

Article 41 (Provisional application)

If their domestic requirements permit, Canada and any EFTA State may apply this Agreement and the bilateral Agreements on trade in agricultural products provisionally. Such provisional application shall commence as of the date of the entry into force of this Agreement between Canada and at least two EFTA States, in accordance with paragraph 2 of Article 42. Provisional application of such Agreements under this Article shall be notified to the Depositary.

Article 42 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the first day of the third month following the deposit by Canada and at least two of the EFTA States of their respective instruments of ratification, acceptance or approval with the Depositary, provided that the same Parties have exchanged their instruments of ratification, acceptance or approval in respect of the bilateral Agreement on trade in agricultural products concerned.

3. This Agreement shall enter into force for the other EFTA States at the date of the deposit of their respective instruments of ratification, acceptance or approval with the Depositary, provided Canada and the EFTA States concerned have exchanged instruments of ratification, acceptance or approval in respect of the corresponding bilateral Agreements on trade in agricultural products.

4. Should Canada and Liechtenstein apply this Agreement provisionally between them, this Agreement shall enter into force on the same date as for Switzerland, following Liechtenstein's deposit of its instrument of ratification, acceptance or approval with the Depositary.

Free Trade Agreement between the EFTA States and the Gulf Cooperation Council member States, signed 22 June 2009

Article 9.9 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. If its constitutional requirements permit, any Party may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

3. This Agreement shall not enter into force or be applied provisionally between an EFTA State and GCC unless the complementary agreement on trade in basic agricultural goods between the EFTA State and GCC enters into force or is applied provisionally simultaneously.

4. This Agreement shall enter into force on the first day of the third month after the GCC Member States and at least one EFTA State have deposited their respective instruments of ratification, acceptance or approval with the Depositary.

5. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force this Agreement shall enter into force on the first day of the third month following the deposit of its instrument with the Depositary.

Free Trade Agreement between Albania and the EFTA States, signed 17 December 2009

Article 42 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 April 2010 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that Albania is among those Parties.

3. In case this Agreement does not enter into force on 1 April 2010 it shall enter into force on the first day of the third month after Albania and at least one EFTA State have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

5. If its constitutional requirements permit, Albania or any EFTA State may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.

6. This Agreement shall not enter into force or be applied provisionally between Albania and an EFTA State unless the complementary agreement on trade in agricultural products between Albania and that EFTA State enters into force or is applied provisionally simultaneously. It shall remain in force between Albania and that EFTA State as long as the complementary agreement remains in force between them.

Free Trade Agreement between the EFTA States and Serbia, signed 17 December 2009

Article 54 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 April 2010 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that Serbia is among those Parties.

3. In case this Agreement does not enter into force on 1 April 2010 it shall enter into force on the first day of the third month after at least one EFTA State and Serbia have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

5. If its constitutional requirements permit, any EFTA State or Serbia may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.

6. This Agreement shall not enter into force or be applied provisionally between an EFTA State and Serbia unless the complementary agreement on trade in agricultural products between that EFTA State and Serbia enters into force or is applied provisionally simultaneously. It shall remain in force between that EFTA State and Serbia as long as the complementary agreement remains in force between them.

Free Trade Agreement between the EFTA States and Peru, signed 24 June 2010 (EFTA States), signed 14 July 2010 (Peru)

Article 13.2 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal and constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 June 2011, provided that Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary at least two months prior to that date.

3. In case the Agreement does not enter into force on 1 June 2011, it shall enter into force on the first day of the third month following the latter date on which Peru and at least one EFTA State have deposited their instruments of ratification, acceptance or approval with, or notified provisional application to the Depositary.

4. If an EFTA State deposits its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

5. Where Peru has ratified this Agreement, an EFTA State may, if its legal and constitutional requirements so permit, apply this Agreement provisionally pending ratification, acceptance or approval by that State. Provisional application of this Agreement shall be notified to the Depositary, and shall apply from the first day of the third month following the notification.

6. If the Agreement is not ratified, accepted or approved by a Party, and it had been provisionally applied by that Party, paragraph 1 of Article 13.5 (Withdrawal) shall apply mutatis mutandis. Provisional application shall continue for a period of six months following the date of the receipt of the Party's notification by the Depositary regarding the non-ratification, non-acceptance or non-approval of the Agreement.

Article 13.5 (Withdrawal)

1. Any Party may withdraw from this Agreement after it provides written notification to the other Parties. Such withdrawal shall be effective six months after the date on which the notification is received by the Depositary, except otherwise agreed by the Parties.

2. If Peru withdraws, this Agreement shall expire when the withdrawal becomes effective.

3. In case any EFTA State withdraws from the Convention establishing the European Free Trade Association, it shall withdraw at the same time from this Agreement in accordance with paragraph 1.

Free Trade Agreement between the EFTA States and Montenegro, signed 14 November 2011

Article 51 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on 1 July 2012 in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, at least two months before that date, and provided that at least one EFTA State and Montenegro are among them.

3. In case this Agreement does not enter into force on 1 July 2012, it shall enter into force on the first day of the third month after at least one EFTA State and Montenegro have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary.

4. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

5. If its constitutional requirements permit, a Party may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Bosnia and Herzegovina, signed 24 June 2013

Article 53 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective constitutional requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force, in relation to those Parties which have deposited their instruments of ratification, acceptance or approval, or notified provisional application to the Depositary, on the first day of the third month following the receipt of the latest deposit of instrument of ratification, acceptance or approval, or notification on provisional application, provided that at least one EFTA State and Bosnia and Herzegovina are among them.

3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument of ratification, acceptance or approval.

4. If its constitutional requirements permit, any EFTA State or Bosnia and Herzegovina may apply this Agreement provisionally pending ratification, acceptance or approval by that Party. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and the Central American States, signed 24 June 2013

Article 13.6 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective domestic legal procedures of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. If its respective legal requirements permit, a Party may apply this Agreement provisionally. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.

3. This Agreement shall enter into force 60 days after the date on which at least one Central American State and at least one EFTA State have deposited their instrument of ratification, acceptance or approval with the Depositary.

4. In relation to a Party depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force 60 days following the deposit of its instrument.

Free Trade Agreement between the EFTA States and the Philippines, signed 28 April 2016

Article 14.5 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and the Philippines have deposited their instrument of ratification, acceptance or approval with the Depositary.

3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, this Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

4. If its respective legal requirements permit, a Party may apply this Agreement provisionally, pending its entry into force for that Party. Provisional application of this Agreement shall be notified to the Depositary.

Free Trade Agreement between the EFTA States and Georgia, signed 27 June 2016

Article 13.5 (Entry into force)

1. This Agreement is subject to ratification, acceptance or approval in accordance with the respective legal requirements of the Parties. The instruments of ratification, acceptance or approval shall be deposited with the Depositary.

2. This Agreement shall enter into force on the first day of the third month following the date on which at least one EFTA State and Georgia have deposited their instrument of ratification, acceptance or approval with the Depositary.

3. In relation to an EFTA State depositing its instrument of ratification, acceptance or approval after this Agreement has entered into force, the Agreement shall enter into force on the first day of the third month following the deposit of its instrument.

4. If its respective legal requirements permit, a Party may apply this Agreement provisionally, pending its entry into force for that Party. Provisional application of this Agreement under this paragraph shall be notified to the Depositary.