

A. Draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties, 2021^{*}

Guide to Provisional Application of Treaties

Guideline 1 Scope

The present draft guidelines concern the provisional application of treaties by States or by international organizations.

Guideline 2 Purpose

The purpose of the present draft guidelines is to provide guidance regarding the law and practice on the provisional application of treaties, on the basis of article 25 of the Vienna Convention on the Law of Treaties and other relevant rules of international law.

Guideline 3 General rule

A treaty or a part of a treaty is applied provisionally pending its entry into force between the States or international organizations concerned, if the treaty itself so provides, or if in some other manner it has been so agreed.

Guideline 4 Form of agreement

In addition to the case where the treaty so provides, the provisional application of a treaty or a part of a treaty may be agreed between the States or international organizations concerned through:

- (a) a separate treaty; or
- (b) any other means or arrangements, including:
 - (i) 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;
 - (ii) a declaration by a State or by an international organization that is accepted by the other States or international organizations concerned.

^{*} Adopted by the International Law Commission at its seventy-second session, in 2021, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (A/76/10, para. 51, to be reproduced in *Yearbook of the International Law Commission, 2021*, vol. II, Part Two). The General Assembly, in resolution 76/113 of 9 December 2021 took note of the Guide to Provisional Application of Treaties. The footnote numbers reflected in the report of the International Law Commission have been retained.

Guideline 5 Commencement

The provisional application of a treaty or a part of a treaty takes effect on such date, and in accordance with such conditions and procedures, as the treaty provides or as is otherwise agreed.

Guideline 6 Legal effect

The provisional application of a treaty or a part of a treaty produces a legally binding obligation to apply the treaty or a part thereof between the States or international organizations concerned, except to the extent that the treaty otherwise provides or it is otherwise agreed. Such treaty or part of a treaty that is being applied provisionally must be performed in good faith.

Guideline 7 Reservations

The present draft guidelines are without prejudice to any question concerning reservations relating to the provisional application of a treaty or a part of a treaty.

Guideline 8 Responsibility for breach

The breach of an obligation arising under a treaty or a part of a treaty that is applied provisionally entails international responsibility in accordance with the applicable rules of international law.

Guideline 9 Termination

1. 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.
2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or international organization notifies the other States or international organizations concerned of its intention not to become a party to the treaty.
3. Unless the treaty otherwise provides or it is otherwise agreed, a State or an international organization may invoke other grounds for terminating provisional application, in which case it shall notify the other States or international organizations concerned.
4. Unless the treaty otherwise provides or it is otherwise agreed, the termination of the provisional application of a treaty or a part of a treaty does not affect any right, obligation or legal situation created through the execution of such provisional application prior to its termination.

Guideline 10

Internal law of States, rules of international organizations and observance of provisionally applied treaties

1. A State that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the provisions of its internal law as justification for its failure to perform an obligation arising under such provisional application.
2. An international organization that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the rules of the organization as justification for its failure to perform an obligation arising under such provisional application.

Guideline 11

Provisions of internal law of States and rules of international organizations regarding competence to agree on the provisional application of treaties

1. A State may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of a provision of its internal law regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
2. An international organization may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of the rules of the organization regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

Guideline 12

Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations

The present draft guidelines are without prejudice to the right of States or international organizations 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 or from the rules of international organizations.

Annex

Examples of provisions on provisional application of treaties

The following examples of provisions are intended to assist States and international organizations in drafting an agreement to apply provisionally a treaty or a part of a treaty. They do not cover all possible situations and are not intended to prescribe any specific formulation. These examples providing for the provisional application of treaties, found in both bilateral and multilateral treaties,²⁰¹ are organized according to certain issues that typically arise, as set out in sections A to E. The examples listed come from recent

²⁰¹ For purposes of the present draft annex, so-called “mixed agreements”, which are concluded between the European Union and its Member States, on the one part, and a third party, on the other part, are categorized as bilateral treaties.

practice,²⁰² and, to the extent possible, they reflect regional diversity. They are, however, not exhaustive.²⁰³

A. COMMENCEMENT OF PROVISIONAL APPLICATION

The examples of provisions on commencement of provisional application are as follows below.

1. FROM THE DATE OF SIGNATURE

(a) *Bilateral treaties*

1. *Undertaking between the Kingdom of the Netherlands and the Republic of the Philippines on the recognition of certificates under regulation 1/10 of the STCW 1978 Convention [Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978] (Manila, 31 May 2001).*²⁰⁴

Article 11

Without prejudice to Article 9, this Undertaking shall apply provisionally from the date of its signature and shall enter into force on the first date of the second month after both Parties have notified each other in writing that the procedures required for the entry into force of the Undertaking in their respective countries have been complied with.

2. *Agreement between the Government of the Kingdom of Denmark and the Council of Ministers of Serbia and Montenegro on the Succession to the Treaties Concluded between the Kingdom of Denmark and the Socialist Federal Republic of Yugoslavia (Copenhagen, 18 July 2003).*²⁰⁵

Article 3

...

(b) The provisions of this Agreement shall apply provisionally from the date of the signature of the Agreement.

3. *Agreement between the United Nations and the United Republic of Tanzania concerning the Headquarters of the International Residual Mechanism for Criminal Tribunals (Dar es Salaam, 26 November 2013).*²⁰⁶

Article 48

Entry into force

1. The provisions of this Agreement shall be applied provisionally as from the date of signature.

²⁰² See, in particular, the memorandum by the Secretariat on provisional application of treaties, A/CN.4/707[, reproduced at p. 311, below].

²⁰³ Non-inclusion of any example should not be interpreted as reflecting any position of the Commission with respect to said example.

²⁰⁴ United Nations, *Treaty Series*, vol. 2385, No. 43056, p. 403.

²⁰⁵ *Ibid.*, vol. 2420, No. 43679, p. 359.

²⁰⁶ *Ibid.*, vol. 2968, No. 51602, p. 237.

(b) Multilateral treaties

4. *Agreement between the Government of the Federal Republic of Germany, the United Nations and the Secretariat of the Convention on the Conservation of Migratory Species of Wild Animals concerning the Headquarters of the Convention Secretariat* (Bonn, 18 September 2002):²⁰⁷

Article 7
Final Provisions

...

(7) The provisions of this Agreement shall be applied provisionally, as from the date of signature, as appropriate, until its entry into force referred to in paragraph 9 below.

5. *Agreement on the Amendments to the Framework Agreement on the Sava River Basin and the Protocol on the Navigation Regime to the Framework Agreement on the Sava River Basin* (Ljubljana, 2 April 2004):²⁰⁸

Article 3

...

5. This Agreement shall be provisionally applied from the date of its signature.

6. *Agreement on Collective Forces of Rapid Response of the Collective Security Treaty Organization* (Moscow, 14 June 2009):²⁰⁹

Article 17

This Agreement shall provisionally apply as of the date of signature, unless it contravenes the national laws of the Parties, and shall enter into force on the date of receipt by the depositary of the fourth notification of the completion of the internal procedures necessary for its entry into force by the Parties that have signed it. ...

2. FROM A DATE OTHER THAN THE DATE OF SIGNATURE

(a) Bilateral treaties

7. *Exchange of notes constituting an agreement on the abolition of visas for holders of diplomatic passports* (Sofia, 16 December 1996):²¹⁰

Note from Bulgaria

...

6. This Agreement shall enter into force 30 days after the last notification through the diplomatic channel that the relevant internal legal requirements have been met. Its provisional application shall begin 10 days after the date of exchange of these Notes.

...

²⁰⁷ *Ibid.*, vol. 2306, No. 41136, p. 469.

²⁰⁸ *Ibid.*, vol. 2367, No. 42662, p. 697.

²⁰⁹ *Ibid.*, vol. 2898, No. 50541, p. 277.

²¹⁰ *Ibid.*, vol. 1996, No. 34151, p. 33.

Note from Spain

...

The Embassy of the Kingdom of Spain in Sofia has the honour to inform the Ministry of Foreign Affairs of the Republic of Bulgaria that the Government of the Kingdom of Spain accepts the proposal of the Government of Bulgaria and agrees that the aforementioned Note and this reply shall constitute an Agreement between the Governments, which shall enter into force and be applied provisionally in accordance with the provisions of paragraph 6.

...

8. *Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the Implementation of Air Traffic Controls by the Federal Republic of Germany above Dutch Territory and concerning the Impact of the Civil Operations of Niederrhein Airport on the Territory of the Kingdom of the Netherlands* (Berlin, 29 April 2003):²¹¹

Article 16

Ratification, entry into force, provisional application

...

3. This Treaty shall be applied provisionally with effect from 1 May 2003. ...

9. *Protocol to the Partnership and Cooperation Agreement Establishing a Partnership between the European Communities and their Member States, of the one part, and the Republic of Kazakhstan, of the other part, to Take Account of the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the European Union* (Brussels, 30 April 2004):²¹²

Article 5

...

3. Where not all the instruments of approval of this Protocol have been deposited before 1 May 2004, this Protocol shall apply provisionally with effect from 1 May 2004.

10. *Framework Agreement on Cooperation in the Field of Immigration between the Kingdom of Spain and the Republic of Mali* (Madrid, 23 January 2007):²¹³

Article 16

...

2. This Framework Agreement shall apply provisionally after a period of thirty days from its signature.

²¹¹ *Ibid.*, vol. 2389, No. 43165, p. 117.

²¹² *Ibid.*, vol. 2570, No. 45792, p. 254.

²¹³ *Ibid.*, vol. 2635, No. 46921, p. 3.

11. *Agreement between the Kingdom of the Netherlands and the Argentine Republic on Mutual Administrative Assistance in Customs Matters* (Buenos Aires, 26 September 2012):²¹⁴

Article 23
Entry into force

...

2. This Agreement shall be applied provisionally from the first day of the second month after its signature.

(b) *Multilateral treaties*

12. *Document Agreed among the States Parties to the Treaty on Conventional Armed Forces in Europe of November 19, 1990* (Vienna, 31 May 1996):²¹⁵

VI

1. This Document shall enter into force upon receipt by the Depositary of notification of confirmation of approval by all States Parties. Section II, paragraphs 2 and 3, Section IV and Section V of this Document are hereby provisionally applied as of 31 May 1996 through 15 December 1996.

3. UPON CONCLUSION OR NOTIFICATION

(a) *Bilateral treaties*

13. *Exchange of notes constituting an agreement concerning the abolition of visas for holders of diplomatic passports* (Madrid, 27 December 1996):²¹⁶

Note from Spain

...

Should the Government of Tunisia accept the foregoing proposal, on the basis of reciprocity, this Note and the reply to it from the Embassy of Tunisia shall constitute an Agreement between the Kingdom of Spain and the Republic of Tunisia, which shall be applied provisionally from the date of exchange of these Notes and shall enter into force on the date of the last notification of completion of the respective domestic requirements.

...

Note from Tunisia

...

The Embassy of the Republic of Tunisia in Madrid has the honour to inform the Ministry of Foreign Affairs that the Government of the Republic of Tunisia accepts the proposal of the Government of the Kingdom of Spain and agrees that the aforementioned Note and this reply should constitute an Agreement.

²¹⁴ *Ibid.*, vol. 2967, No. 51580, p. 123.

²¹⁵ *Ibid.*, vol. 2980, No. 44001, p. 195.

²¹⁶ *Ibid.*, vol. 1996, No. 34152, p. 45.

...

14. *Exchange of notes constituting an agreement amending the Agreement between the Kingdom of the Netherlands and the International Criminal Tribunal for the former Yugoslavia concerning the position of ICTY trainees in the Netherlands* (The Hague, 14 July 2010):²¹⁷

Note from the Netherlands

...

If the abovementioned proposal is acceptable to the UN-ICTY, the Ministry has the honour to propose that this Note and the affirmative Note in reply of the UN-ICTY shall constitute an amendment to the Interns Agreement, that shall be provisionally applied as from the date of receipt of the affirmative Note in reply, and shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

...

Note from the International Criminal Tribunal for the former Yugoslavia (UN-ICTY)

...

The UN-ICTY has further the honour to inform the Ministry that the proposals set forth in the Ministry's note are acceptable to the UN-ICTY and to confirm that the Ministry's note and this note shall constitute an amendment to the Interns Agreement, that shall be provisionally applied as from the date of receipt of this affirmative Note in reply, and shall enter into force on the day after both Parties have notified each other in writing that the legal requirements for entry into force have been complied with.

...

15. *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* (Brussels, 6 October 2010):²¹⁸

Article 15.10
Entry into force

...

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.

...

²¹⁷ *Ibid.*, vol. 2689, No. 41714, p. 93.

²¹⁸ *Official Journal of the European Union*, vol. 54, L 127, 14 May 2011, p. 6.

(b) *Multilateral treaties*

16. *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):²¹⁹

Article 41**Provisional application**

1. This Agreement shall be applied provisionally by a State or entity which consents 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.

17. *International Cocoa Agreement, 2001* (Geneva, 2 March 2001):²²⁰

Article 57**Notification of provisional application**

1. A signatory Government which intends to ratify, accept or approve this Agreement or a Government which intends to accede to the Agreement, 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 58 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.

2. A Government which has notified under paragraph 1 of this article that it will apply this Agreement either when it enters into force or at a specified date shall, from that time, be a provisional Member. It shall remain a provisional Member until the date of deposit of its instrument of ratification, acceptance, approval or accession.

18. *Convention on Cluster Munitions* (Dublin, 30 May 2008):²²¹

Article 18**Provisional application**

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

19. *Arms Trade Treaty* (New York, 2 April 2013):²²²

Article 23**Provisional Application**

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

²¹⁹ United Nations, *Treaty Series*, vol. 2167, No. 37924, p. 3.

²²⁰ *Ibid.*, vol. 2229, No. 39640, p. 2.

²²¹ *Ibid.*, vol. 2688, No. 47713, p. 39.

²²² *Ibid.*, vol. 3013, No. 52373[, p. 269].

B. FORM OF AGREEMENT ON PROVISIONAL APPLICATION

The examples concerning forms of agreement for provisional application are as follow below.

(a) Bilateral treaties

20. *Agreement on the Taxation of Savings Income and the Provisional Application Thereof* (Brussels, 26 May 2004, and The Hague, 9 November 2004):²²³

Letter from Germany

...

Pending the completion of these internal procedures and the entry into force of this “Convention concerning the automatic exchange of information regarding savings income in the form of interest payments”, I have the honour to propose to you that the Federal Republic of Germany and the Kingdom of the Netherlands in respect of Aruba apply this Convention provisionally, within the framework of our respective domestic constitutional requirements, as from 1 January 2005, or the date of application of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments, whichever is later.

...

Letter from the Netherlands in respect of Aruba

...

I am able to confirm that the Kingdom of the Netherlands in respect of Aruba is in agreement with the contents of your letter.

...

(b) Multilateral treaties

21. *Protocol on the Provisional application of the Agreement Establishing the Caribbean Community Climate Change Centre* (Belize City, 5 February 2002):²²⁴

Recalling that Article 37 of the *Agreement Establishing the Caribbean Community Climate Change Centre* (CCCCC) provided for its entry into force upon the deposit of the seventh Instrument of Ratification with the Government of the host country,

Desiring to provide for the expeditious operationalisation of the Caribbean Community Climate Change Centre (CCCCC),

Have agreed as follows:

Article I**Provisional Application of the Agreement Establishing the Caribbean Community Climate Change Centre**

The signatories of the *Agreement Establishing the Caribbean Community Climate Change Centre* have agreed, to apply the said Agreement among themselves provisionally, pending its definitive entry into force in accordance with Article 37 thereof.

²²³ *Ibid.*, vol. 2821, No. 49430, p. 3.

²²⁴ *Ibid.*, vol. 2953, No. 51181, p. 181.

22. *Agreement on the Provisional Application of Certain Provisions of Protocol No. 14 [to the Convention for the Protection of Human Rights and Fundamental Freedoms] Pending its Entry into Force (Madrid, 12 May 2009).*²²⁵

...

(b) any of the High Contracting Parties may at any time declare by means of a notification addressed to the Secretary General of the Council of Europe that it accepts, in its respect, the provisional application of the above-mentioned parts of Protocol No. 14. Such declaration of acceptance will take effect on the first day of the month following the date of its receipt by the Secretary General of the Council of Europe; the above-mentioned parts of Protocol No. 14 will not be applied in respect of Parties that have not made such a declaration of acceptance;

23. Resolution 365 (XII) of the General Assembly of the United Nations World Tourism Organization entitled "Future of the Organization".²²⁶

...

Noting with regret that the amendment to Article 14 of the Statutes which it adopted by resolution 134(V), aimed at conferring on the host State a permanent seat on the Executive Council, together with the right to vote and not subject to the principle of geographical distribution of Council seats, has not yet received approval from the requisite number of States,

2. Decides that this amendment will be applied provisionally pending its ratification.

C. OPT IN/OPT OUT OF PROVISIONAL APPLICATION

The examples of provisions on opt in/opt out of provisional application are as follow below.

24. *Agreement relating to 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).*²²⁷

Article 7

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;

²²⁵ Council of Europe, *Treaty Series*, No. 194.

²²⁶ United Nations World Tourism Organization, General Assembly resolution 365 (XII), adopted at its twelfth session in Istanbul, October 1997.

²²⁷ United Nations, *Treaty Series*, vol. 1836, No. 31364, p. 3.

- (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.

25. *Arms Trade Treaty* (New York, 2 April 2013):²²⁸

Article 23

Provisional application

Any State may at the time of signature or the deposit of its instrument of ratification, acceptance, approval or accession, declare that it will apply provisionally Article 6 and Article 7 pending the entry into force of this Treaty for that State.

D. LIMITATIONS TO PROVISIONAL APPLICATION DERIVING FROM INTERNAL LAW OF STATES OR RULES OF INTERNATIONAL ORGANIZATIONS

The examples of provisions on limitations to provisional application deriving from internal law of the States or rules of international organizations are as follow below.

(a) *Bilateral treaties*

26. *Agreement between the Kingdom of Spain and the Republic of El Salvador on Air Transport* (Madrid, 10 March 1997):²²⁹

Article XXIV

Entry into Force and Denunciation

1. The Contracting Parties shall provisionally apply the provisions of this Agreement from the time of its signature to the extent that they do not conflict with the law of either of the Contracting Parties. This Agreement shall enter into force when both Contracting Parties have notified each other through an exchange of diplomatic notes of the completion of their respective constitutional formalities.

27. *Agreement between the Government of the Kingdom of the Netherlands and the Cabinet of Ministers of Ukraine concerning Technical and Financial Cooperation* (Kiev, 11 May 1998):²³⁰

Article 7

Final Clauses

...

7.2. This Agreement shall be provisionally applied from the date of signing insofar as it does not contradict with existing legislation of both Parties.

²²⁸ See footnote 222 above.

²²⁹ United Nations, *Treaty Series*, vol. 2023, No. 34927, p. 341.

²³⁰ *Ibid.*, vol. 2386, No. 43066, p. 3.

28. *Agreement between the Government of the United States of America and the Government of the Republic of the Marshall Islands concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials by sea* (Honolulu, 13 August 2004):²³¹

Article 17
Entry into Force and Duration

...

2. Provisional Application. Beginning on the date of signature of this Agreement, the Parties shall apply it provisionally. Either Party may discontinue provisional application at any time. Each Party shall notify the other Party immediately of any constraints or limitations on provisional application, of any changes to such constraints or limitations, and upon discontinuation of provisional application.

29. *Agreement between the Government of the Federal Republic of Germany and the Council of Ministers of Serbia and Montenegro regarding Technical Cooperation* (Belgrade, 13 October 2004):²³²

Article 7

...

3. After signature, this Agreement shall be provisionally implemented in accordance with the appropriate domestic law.

30. *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* (Brussels, 12 December 2006):²³³

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.

31. *Agreement between the United States of America and the Kingdom of Spain on Cooperation in Science and Technology for Homeland Security Matters* (Madrid, 30 June 2011):²³⁴

Article 21
Entry into Force, Amendment, Duration and Termination

1. This Agreement shall apply provisionally upon signature of both Parties, consistent with each Party's domestic law. ...

²³¹ *Ibid.*, vol. 2962, No. 51490, p. 339.

²³² *Ibid.*, vol. 2424, No. 43752, p. 167.

²³³ *Official Journal of the European Union*, vol. 49, L 386, 29 December 2006, p. 57.

²³⁴ United Nations, *Treaty Series*, vol. 2951, No. 51275, p. 3.

(b) Multilateral treaties

32. *Agreement relating to 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):²³⁵

Article 7**Provisional application**

...

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.

33. *Grains Trade Convention, 1995* (London, 7 December 1994):²³⁶

Article 26**Provisional application**

Any signatory Government and any other Government eligible to sign this Convention, or whose application for accession is approved by the Council, may deposit with the depositary a declaration of provisional application. Any Government depositing such a declaration shall provisionally apply this Convention in accordance with its laws and regulations and be provisionally regarded as a party thereto.

34. *ECOWAS [Economic Community of West African States] Energy Protocol* (Dakar, 31 January 2003):²³⁷

Article 40**Provisional Application**

(1) Each signatory agrees to apply this Protocol provisionally pending its entry into force for such signatory in accordance with Article 39, to the extent that such provisional application is not inconsistent with its constitution, laws or regulations.

E. TERMINATION OF PROVISIONAL APPLICATION

The examples of provisions on termination of provisional application are as follow below.

1. UPON ENTRY INTO FORCE

(a) Bilateral treaties

35. *Free Trade Agreement between the Government of the Republic of Latvia and the Government of the Czech Republic* (Riga, 15 April 1996):²³⁸

²³⁵ See footnote 227 above.

²³⁶ United Nations, *Treaty Series*, vol. 1882, No. 32022, p. 195.

²³⁷ A/P4/1/03.

²³⁸ United Nations, *Treaty Series*, vol. 2069, No. 35853, p. 225.

Article 41
Provisional Application

Pending the entry into force of this Agreement according to Article 40, the Czech Republic shall apply this Agreement provisionally from 1 July 1996, provided that the Republic of Latvia shall notify prior to 15 June 1996, that its internal legal requirements for entry into force of this Agreement are fulfilled and that the Republic of Latvia shall apply this Agreement from 1 July 1996.

36. *Agreement between the Government of the Federal Republic of Germany and the Government of the Republic of Slovenia concerning the inclusion in the reserves of the Slovenian Office for Minimum Reserves of Petroleum and Petroleum Products of supplies of petroleum and petroleum products stored in Germany on its behalf* (Ljubljana, 18 December 2000).²³⁹

Article 8

...

2. This Agreement shall be applied provisionally from the date of signature until its entry into force.

37. *Air Transport Agreement between the Government of the Republic of Paraguay and the Government of the United States of America* (Asunción, 2 May 2005).²⁴⁰

Article 17
Entry into Force

This Agreement and its Annexes shall be provisionally applied from the date of signature and shall enter into force on the date of the later note in an exchange of diplomatic notes between the Parties confirming that each Party has completed the necessary internal procedures for entry into force of this Agreement. ...

38. *Agreement between the Kingdom of Spain and the International Air Transport Association (IATA) on the status of the IATA in Spain* (Madrid, 5 May 2009).²⁴¹

Article 12
Entry into force

1. This Agreement shall apply provisionally from the time of its signature, pending its ratification by Spain and its approval by the IATA.

39. *Agreement between the United Nations and the Government of Sudan concerning the status of the United Nations Interim Security Force for Abyei* (New York, 1 October 2012).²⁴²

XI
Miscellaneous Provisions

...

²³⁹ *Ibid.*, vol. 2169, No. 38039, p. 287.

²⁴⁰ *Ibid.*, vol. 2429, No. 43807, p. 301.

²⁴¹ *Ibid.*, vol. 2643, No. 47110, p. 91.

²⁴² *Ibid.*, vol. 2873, No. 50146, p. 125.

62. The present Agreement shall enter into force and shall be applied provisionally by the Government upon signature, pending the Government's notification that it has completed internal ratification procedures under the Constitution of Sudan.

(b) *Multilateral treaties*

40. *Agreement relating to 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)*.²⁴³

Article 7
Provisional application

...

3. Provisional application shall terminate upon the date of entry into force of this Agreement. In any event, provisional application shall terminate on 16 November 1998 if at that date the requirement in article 6, paragraph 1, of consent to be bound by this Agreement by at least seven of the States (of which at least five must be developed States) referred to in paragraph 1 (a) of resolution II has not been fulfilled.

41. *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Oslo, 18 September 1997)*.²⁴⁴

Article 18
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.

2. UPON NOTIFICATION NOT TO BECOME A PARTY TO THE TREATY

(a) *Bilateral treaties*

42. *Agreement between Spain and the International Oil Pollution Compensation Fund (London, 2 June 2000)*.²⁴⁵

Note from Spain

...

The provisional application of this Agreement shall terminate if Spain, through the Ambassador of Spain in London, notifies the Fund before 11 May 2001 that all the aforementioned procedures have been completed, or if prior to that date Spain notifies the Fund, through its Ambassador in London, that those procedures will not be completed.

...

Note from the International Oil Pollution Compensation Fund 1992

...

²⁴³ See footnote 227 above.

²⁴⁴ United Nations, *Treaty Series*, vol. 2056, No. 35597, p. 211.

²⁴⁵ *Ibid.*, vol. 2161, No. 37756, p. 45.

With regard to the Agreement signed by Spain and the Fund and your letter of today's date, I have the honour to inform you that the Fund is in agreement with the content of your letter, which should be considered as an instrument formulated by the two parties establishing the only possible interpretation of the Agreement.

...

43. *Treaty between the Federal Republic of Germany and the Kingdom of the Netherlands concerning the implementation of air traffic controls by the Federal Republic of Germany above Dutch territory and concerning the impact of the civil operations of Niederrhein Airport on the territory of the Kingdom of the Netherlands* (Berlin, 29 April 2003).²⁴⁶

Article 16

Ratification, entry into force, provisional application

...

3. This Treaty shall be applied provisionally with effect from 1 May 2003. Its provisional application shall be terminated if one of the Contracting Parties declares its intention not to become a Contracting Party.

44. *Agreement between the European Community and the Hashemite Kingdom of Jordan on Scientific and Technological Cooperation* (Brussels, 30 November 2009).²⁴⁷

Article 7

Final provisions

...

2. This Agreement shall enter into force when the Parties will have notified to each other the completion of their internal procedures for its conclusion. Pending the completion by the Parties of said procedures, the Parties shall provisionally apply this Agreement upon its signature. Should a Party notify the other that it shall not conclude the Agreement, it is hereby mutually agreed that projects and activities launched under this provisional application and that are still in progress at the time of the abovementioned notification shall continue until their completion under the conditions laid down in this Agreement.

(b) *Multilateral treaties*

45. *ECOWAS Energy Protocol* (Dakar, 31 January 2003).²⁴⁸

Article 40

Provisional Application

...

(3) (a) Any signatory may terminate its provisional application of this Protocol by written notification to the Depository of its intention not to become a Contracting Party to the Protocol. Termination of provisional application for any signatory shall take effect

²⁴⁶ *Ibid.*, vol. 2389, No. 43165, p. 117.

²⁴⁷ *Ibid.*, vol. 2907, No. 50651, p. 51.

²⁴⁸ See footnote 237 above.

upon the expiration of 60 days from the date on which such signatory's written notification is received by the Depository.

3. OTHER GROUNDS

(a) *Bilateral treaties*

46. *Agreement between the Government of the United States of America and the Government of the Republic of Liberia concerning cooperation to suppress the proliferation of weapons of mass destruction, their delivery systems, and related materials by sea* (Washington, 11 February 2004).²⁴⁹

Article 17

Entry into Force and Duration

...

2. Provisional Application. Beginning on the date of signature of this Agreement, the Parties shall, to the extent permitted by their respective national laws and regulations, apply it provisionally. Either Party may discontinue provisional application at any time. Each Party shall notify the other Party immediately of any constraints or limitations on provisional application, of any changes to such constraints or limitations, and upon discontinuation of provisional application.

47. *Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* (Brussels, 6 October 2010).²⁵⁰

Article 15.10

Entry into force

5. ...

(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.

48. *Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part* (Brussels, 21 March 2014).²⁵¹

Article 486

Entry into force and provisional application

...

7. Either Party may give written notification to the Depository of its intention to terminate the provisional application of this Agreement. ...

²⁴⁹ United Nations, *Treaty Series*, vol. 2963, No. 51492, p. 23.

²⁵⁰ See footnote 218 above.

²⁵¹ *Official Journal of the European Union*, vol. 57, L 161, 29 May 2014, p. 3.

(b) *Multilateral treaties*

49. *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):²⁵²

Article 41
Provisional Application

...

2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

50. *Agreement on the Provisional Application of Certain Provisions of Protocol No. 14 [to the Convention for the Protection of Human Rights and Fundamental Freedoms] Pending its Entry into Force* (Madrid, 12 May 2009):²⁵³

(e) the provisional application of the above-mentioned provisions of Protocol No. 14 will terminate upon entry into force of Protocol No. 14 or if the High Contracting Parties in some other manner so agree.

²⁵² See footnote 219 above.

²⁵³ Council of Europe, *Treaty Series*, No. 194.