



Statement on behalf of the European Union

By

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Mr. Chairperson,

1. The European Union has the honour to participate in the discussion of the 6th Committee regarding the topic of provisional application of treaties.

The Candidate Countries Turkey, the former Yugoslav Republic of Macedonia , Montenegro , Serbia and Albania , the country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina, as well as Ukraine and the Republic of Moldova, align themselves with this statement.

2. We thank the Special Rapporteur Mr. Juan Manuel Gomes-Robledo for his Fourth Report and the International Law Commission for its considerations of this topic.

3. The European Union takes a keen interest in this topic. This flows from the fact that the European Union's founding Treaties foresee the possibility of provisional application, and in particular as this possibility is also widely used in EU practice. Therefore the EU supports the work of the ILC in the interest of advancing stability of treaty relations subject to provisional application.

4. In this intervention we would like to make some general comments regarding the regime of provisional application in the light of the progress that the ILC has made this year. We will also make a comment on a specific point in the Fourth's Report relating to EU practice.

Mr. Chairperson,

5. It seems to us that there is no common view in the Commission as regards the methodology of the current work. While the Special Rapporteur proceeds on the basis of commentary on individual articles of the Vienna Convention and then largely draws conclusions by way of analogy, the ILC Report reflects a wide variety of views held by the members of the Commission. A number of ILC members question reliance on simple analogy and point to the need examine relevant international practice.

6. There is some truth with that methodological dilemma. Analogy goes as far as it goes – though we believe it goes quite far – but it should be appropriately combined with examination of

The former Yugoslav Republic of Macedonia, Montenegro, Serbia and Albania continue to be part of the Stabilisation and Association Process.

practice concerning selected or targeted questions for the work to bear fruit. The problem perhaps stems ultimately from Article 25 of the Vienna Convention itself. On the one hand, Article 25(1) provides that a treaty or a part of it can be applied provisionally and thus confirms that it has legal effects. Yet, it does not for instance specify which articles of the Convention apply; nor does it limit the legal effects of provisional application to not to defeat the object and purpose of a treaty, as in the case of signature (Article 18). On the other hand, Article 25(2) permits disengagement from the treaty obligations without formalities attached to it, for instance as regards form of notification or notification period.

7. In this light we welcome the decision of the Commission to request from the Secretariat a memorandum analysing State practice in respect of treaties (bilateral and multilateral), deposited or registered in the last 20 years with the Secretary-General, which provide for provisional application, including treaty actions related thereto (para. 258 of the ILC Report).

Mr. Chairperson,

8. In view of the analysis that the ILC has requested the Secretariat to undertake, the European Union considers that the guidelines would be best served when the focus of such analysis is on the main trends of treaty practice striving to study broad and recurring themes, questions and issues related to the topic.

9. The EU would suggest that, among others, the following elements connected with provisional application be considered:

-is provisional application provided for in the agreement itself or is it agreed in some other manner?

-is provisional application used for the entire agreement or certain parts of it?

-which provisions are subject to provisional application, the substantive/technical provisions or also the provisions of institutional nature?

-can the fields where provisional application is being used, or most often used, be grouped in a useful way?

-is there any correlation between the degree of complexity of the agreements and provisional application?

-do the agreements contain separate provisions for the termination or suspension of provisional application?

- does the mechanism of provisional application differ in any manner depending on the treaty being bilateral or multilateral?

10. The ILC should be in a position to form a general view of the main "pillars" or general categories around which the issues connected with provisional application can be usefully arranged. We would expect the final outcome of the guidelines to be simple and clear, staying with the main issues most often faced in practice. This could also usefully feed into the model clauses that the Special Rapporteur intends to propose as well as the commentaries. On the other hand, expression of views on isolated agreements or issues may not serve, or even distract from, the main interest of the guidelines, which should be to advance the stability of treaty relations when provisionally applied and provide guidance on the principal issues.

Mr. Chairperson,

I leave this oral intervention to that in the interest of time. We circulate the written version of the EU statement, which contains additional comments on specific issues in this year's reports by the ILC and the Special Rapporteur.

Thank you for your attention.