



Statement on behalf of the European Union

By

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at the General Assembly Sixth Committee

on

Item 83

"Provisional application of treaties"

United Nations

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- CHECK AGAINST DELIVERY -

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 align themselves with this statement.

1. The European Union has the honor to address the 6th Committee on the topic of provisional application of treaties, considered by the International Law Commission (ILC).

2. We welcome the progress made by the Special Rapporteur Mr. Juan Manuel Gomez-Robledo and the ILC in the consideration of this important topic. We also note that some of the draft guidelines have already been submitted to the Drafting Committee, but it is our understanding that the three draft guidelines are at this stage presented only for information as they have not yet been formally adopted by the ILC.

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

3. As already indicated in our previous statements, the 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 and, as it could be noted, in almost half of the fifty agreements identified by the Secretariat the European Union is a contracting party.

4. 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.

5. 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 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).

6. 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 in point 5 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.

7. The European Union is also pleased to see that in his third report of the Special Rapporteur has begun his initial analysis of the relationship of provisional application to other provisions of the Vienna Convention on the Law of Treaties and envisages expanding and deepening the consideration of that aspect in his future work. The Union has already highlighted in its previous interventions the practical relevance of such analysis and efforts of the Special Rapporteur and the ILC to that effect should be encouraged.

8. Based on its own rich experience with provisional application of treaties, the EU looks forward to continue the dialogue with the ILC, especially as its work on the guidelines advances further.

Thank you for your attention.