

CHECK AGAINST DELIVERY



STATEMENT

by

TURKEY

On agenda item 83

**“Report of
the International Law Commission”**

Chapter XI: “Provisional Application of Treaties”

at the

Sixth Committee

11 November 2015, New York

Mr. Chairman,

In the last statement of my delegation under this agenda item, we wish to address the topic "**Provisional Application of Treaties**".

On this topic, we note the Third Report of the Special Rapporteur. Provisional application is an important instrument of international treaty practice. The term is widely known, yet the legal regime that applies to the provisional application deserves analysis by the Commission and would provide a useful guide for States which resort to provisional application, and for States whose legislation do not permit the provisional application of treaties, alike.

That being said, we would like to reiterate that, the study should not be aimed at persuading states to utilize the mechanism of provisional application. Instead, it should provide a practical guide on various aspects of provisional application. In this vein we welcome the approach of the Special Rapporteur, favouring guidelines rather than draft articles. In this framework, we concur with the view that the drafting of model clauses could be of practical importance in the context of draft guidelines.

Furthermore, we would like to draw attention to the importance of domestic law in this respect. It is after all for individual states to determine whether or not their legal systems allows for provisional application. We therefore remain convinced that a comparative study on domestic provisions relating to the provisional application would be useful for proper consideration of this topic.

The question of the legal effects of the provisional application of treaties lies at the very heart of the study undertaken by Commission. In this regard, we would echo the call made by some members of the Commission to the Special Rapporteur to substantiate his conclusion that the legal effects of provisional application were the same as those after

entry into force of the treaty. Indeed, since the Special Rapporteur indicated in his first report that "provisional application" and "provisional entry into force" are not synonymous and refer to different legal concepts, further clarification on the view of the Special Rapporteur according to which the legal effects and legal obligations arisen from the provisional application could be the same as if the treaty were itself in force would thus be important.

On the way forward, we welcome that the Special Rapporteur intends to further study the relationship between provisional application and other provisions of the Vienna Convention on the Law of Treaties, and we believe that article 19 relating to reservations would be particularly relevant in this context.

Although the study of provisional application with regard to international organizations might prove useful for the understanding of the issue, we believe that it would be appropriate to first undertake the examination of questions related to the provisional application of treaties concluded by States and only afterwards to proceed to the consideration of provisional application of treaties with the participation of international organizations, as expressed by some members of the Commission.

Mr. Chairman,

In concluding, let me share some comments on the draft guidelines proposed by the Special Rapporteur. On draft guideline 2, we believe that the reference to "a resolution by an international conference or by any other arrangement between a State or an international organization" should be clarified.

We believe that draft guideline 4, which deals with the legal effects of provisional application, a key provision of the draft guidelines, could be further elaborated.

And on draft guideline 5, we would welcome further clarification as to whether the term "entry into force" refers to the entry into force of the treaty itself, or the entry into force with regard to one State.

Thank you Mr. Chairman.