SLOVENIA

STATEMENT

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Report of the International Law Commission on the work of its seventieth session: Chapter: VII (Provisional application of treaties)

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Mr Chairperson,

It is my pleasure to address the Sixth Committee regarding the work of the International Law Commission on the Cluster 2 topic <u>Provisional Application of Treaties</u>.

Slovenia appreciates the work of the Special Rapporteur Juan Manuel Gómez-Robledo and the Commission as a whole on this topic, and the opportunity to submit comments to the draft Guide to Provisional Application of Treaties by 15 December 2019.

Mr Chairperson,

Since this is a topic of great practical interest to states and international organisations, the end result should be aimed at assisting states and international organisations in their treaty practice by providing comprehensive guidance both on the concept and practical aspects of provisional application. This year, we have been concentrating on the concept, because we believe that a solid understanding of the concept leads to better practice.

In that sense, with regard to draft Guideline 6 and its commentary – similar to this years' comments by the European Union – we would like to emphasise, as we have in the past in this Committee, that the issue of the source of the provisional application is still not sufficiently clear. The commentary on draft guideline 6 does mention that the binding legal effect derives from the agreement to provisionally apply the treaty, but it does not say why that agreement should be considered as binding. If the treaty provides for consent to be bound to be expressed by certain means, e.g. ratification, does that imply that there is double consent in cases where provisional application is agreed to? This conceptualisation of the agreement to provisionally apply the treaty is essential, and has an impact on its other aspects. This is also the point where the Commission could provide added value, since the binding effect has already been determined in the *travaux préparatoires* to Article 25 VCLT, whereas its source has not. Since the issue of agreement as necessary precondition for provisional application is an important issue, in our view it should be reflected in the text itself of draft Guideline 6, for example by stating at the beginning that "The agreement to provisionally apply a treaty…produces a legally binding obligation". This is also in accordance with the end of this draft guideline, where agreement is implied in the wording "unless…otherwise agreed".

Mr Chairperson

The foregoing conceptual underpinning of provisional application as based on agreement is, for example, relevant for unilateral declarations. In this regard, we believe that in such a case the agreement to provisionally apply the treaty should also exist if agreement is the basis for consent to provisional application. However, that agreement does not necessarily need to be explicit. As we have already stated in our previous statements, the regulation of provisional application in the Vienna Convention on the Succession of States in regard to Treaties could be relevant in this regard. There, Articles 27 and 28 provide that a treaty shall apply provisionally between States if they expressly so agree, or if by reason of their conduct it is to be considered that they have so agreed. In our opinion, this would mean that an implied agreement exists. We see no reason why this would apply only in the case of the succession of treaties and therefore could not be possible in the case of Article 25 of the VCLT, especially since the *travaux* to that convention do state that provisional application in it is based on Article 25.

Slovenia wishes to reiterate the importance of the topic and expresses its support to the work of the Special Rapporteur and the Commission in this regard.

Thank you.