



Statement on behalf of the European Union

by

**Mr. Lucio GUSETTI
Principal Legal Adviser, Director
European Commission Legal Service**

at the Sixth Committee

on the agenda item 82-1

**Report of the International Law Commission on the work of its Seventy Second Session
(Cluster 1)**

on

Protection of the Atmosphere

and

Provisional Application of Treaties

United Nations, New York

25 October 2021

— CHECK AGAINST DELIVERY —

Protection of the Atmosphere

Ms/Mr Chairperson,

1. The European Union has the honour to address the 6th Committee on the topic of the protection of the atmosphere, which was considered by the International Law Commission (ILC) and which is discussed in Chapter IV of its report.
2. The Candidate Countries the Republic of North Macedonia*, Montenegro*, Serbia* and Albania*, the country of the Stabilisation and Association Process and potential candidate Bosnia and Herzegovina, as well as Ukraine, the Republic of Moldova and Georgia, align themselves with this statement and that on Provisional Application of Treaties which I will read later.
3. The European Union refers to the draft guidelines on the protection of the atmosphere, that the General Assembly is invited to take note of in a resolution and to ensure their widest possible dissemination.
4. The European Union fully supports this invitation, and welcomes the adoption of the guidelines and of their commentaries, which build on a strong body of customary international law and on international conventions, as well as the relevant principles of the Rio Declaration.
5. In particular, the European Union supports and welcomes the integrated approach to addressing the air pollution and climate issues as ‘one atmosphere’.
6. The European Union furthers welcomes the careful and balanced drafting of the guidelines, which clarify and facilitate the correct implementation of the States’ obligations to protect the atmosphere from pollution and degradation. The principle of “do no harm” is very relevant in this respect, notably in the context of guideline 7. The European Union reiterates the importance of the precautionary principle in this regard, and its application through impact assessments.

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

7. Finally, the European Union welcomes point (4) of the commentary concerning guideline 3, which confirms that States can discharge their obligations to protect the atmosphere “acting jointly”, and the reference to the cooperation with international organisations in point (2) of the commentaries of guideline 8. This is also reflected in Article 191 of the Treaty on the Functioning of the European Union, which tasks the European Union with promoting measures at international level to deal with regional or worldwide environmental problems. This is why the European Union will apply those guidelines in light of the powers conferred to it under the Treaty, both for the production of norms and for their implementation, as illustrated explicitly by point (3) of the commentaries of guideline 10 on implementation (“the term ‘national implementation’ also applies to obligations of regional organisations such as the European Union”).

Ms/Mr Chairperson,

8. In conclusion, the European Union congratulates the ILC and in particular Special Rapporteur Mr. Shinya Murase for the excellent work done on a matter that is of very high importance for the whole international community and the future generations.

Provisional Application of Treaties

Mr/Ms Chairperson,

1. The European Union has the honour to address the 6th Committee on the topic of provisional application of treaties, considered by the International Law Commission (ILC), in particular in light of the adoption by the ILC on second reading of the Guide to Provisional Application of Treaties, the annex and the commentaries to it, as well as the decision of the ILC to submit those to the General Assembly.
2. At the outset, the European Union would like to congratulate the ILC and the Special Rapporteur Mr. Juan Manuel Gomes Robledo for the successful completion of the

consideration of this topic and to express its appreciation for the work done on this very important topic.

3. The European Union welcomes the adoption of the Guide as well as the recommendation of the ILC to compile the practice of States and international organizations in the provisional application of treaties, as furnished by the latter over the years, together with other materials relevant to the topic. The European Union has been actively involved in the discussions on this topic and is pleased to see that some of its observations and suggestions are reflected in the final outcome.
4. The European Union will limit its intervention to making only a few remarks in relation to the text of the Guide and the commentaries thereto, as adopted.

Mr/Ms Chairperson,

5. The European Union notes with great satisfaction that the scope *ratione personae* of the draft guidelines is not limited to States but also includes international organisations.
6. Throughout its previous interventions, the European Union has advocated that the practice of States and international organisations on provisional application of treaties should be examined in depth. The European Union thus appreciates the fact that the ILC has considered the practice of the European Union and refers to it in the commentaries to the Guide, as well as in the annex containing examples of provisions on provisional application of treaties.
7. The European Union welcomes that the ILC emphasises the flexible nature of the provisional application of treaties and recognizes that international organisations may agree on solutions not identified in the Guide, if they consider them more appropriate to the purposes of a given treaty.
8. The European Union welcomes that guideline 4 on the form of agreement on provisional application recognizes that provisional application may be agreed also through an act of an international organisation adopted in accordance with its rules or by a declaration of an international organisation which is accepted by a State or other international organisations concerned. The European Union notes that subparagraph (b) of guideline 4 is intended to give examples and does not constitute an exhaustive list of means or arrangements through which provisional application may be agreed. The European

Union observes that in case where the provisional application is agreed through a declaration, the commentary states that the declaration must be expressly accepted by the other States or international organisations concerned, for the treaty to become provisionally applicable in relation to those States or international organisations. The commentary further mentions that the guideline retains a certain degree of flexibility to allow for modes of acceptance other than written form on the condition that such acceptance is express. In addition, the commentary states that “[t]he term “*declaration*” is not meant to refer to the legal regime concerning unilateral declarations of States, which does not deal with the provisional application of treaties”. The European Union notes that the ILC did not provide the clarifications requested by the Union, in particular with respect to the requirement for express acceptance and on the inapplicability of the legal regime of unilateral declarations.

9. The European Union observes the “*without prejudice*” nature of guideline 7 on reservations relating to provisional application and notes that the commentaries do not provide for more guidance on the legal effects of such reservations and their termination when a treaty enters into force. As the European Union has stressed in its previous interventions, in its view the effect of such reservations would end with the termination of the provisional application. The European Union notes with regret that due to the lack of significant practice concerning reservations relating to provisional application the ILC could not provide more clarifications on this matter.
10. Finally, the European Union notes with appreciation that the commentary to draft guideline 9 concerning the termination of provisional application recognizes the possibility that grounds other than those anticipated in paragraph 2 of Article 25 of the 1969 Vienna Convention may also be invoked by a State or an international organisation for the termination of provisional application. The European Union observes with satisfaction that the commentary mentions, among others, the situation of a material breach, in case of which a State or international organisation may seek to terminate or suspend the provisional application vis-à-vis the State or international organization that has committed the material breach, while still continuing to provisionally apply the treaty in relation to other parties.

Mr/Ms Chairperson,

11. In conclusion, the European Union wishes to once again express its appreciation for the work done by the ILC on this important topic and is looking forward to continue engaging in further debates on the matter in the 6th Committee.

Thank you for your attention.