



IRELAND

Statement by

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at the

Sixth Committee
United Nations General Assembly 73rd Session

Agenda Item 82:

The Report of the International Law Commission on the Work of its 70th Session

PART 2 – Chps V (Protection of the Atmosphere), VII (Provisional application of treaties)
and VIII (Peremptory norms of general international law (*just cogens*))

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Mr Chair,

1. My statement will address the topic *Provisional Application of Treaties*. Ireland aligns itself with the statement delivered by the European Union.
2. My delegation welcomes the adoption on first reading of a full set of draft Guidelines and Commentaries on this topic. We would like to express our gratitude to the Special Rapporteur, Mr Juan Manuel Gómez-Robledo, for his fifth report and the Drafting Committee for its consideration of the draft guidelines.
3. Turning first to draft Guideline 6, Ireland welcomes the decision of the Drafting Committee to amend the guideline and replace the phrase “the same legal effects” with “a legally binding obligation to apply the treaty or a part thereof”. The clarification in paragraph 5 of the Commentary that this new formulation does not imply that provisional application has same legal effect as entry into force is also a useful addition.
4. In relation to draft Guideline 7, Ireland takes note of the divergent views of Commission Members on whether it is necessary to include a provision on reservations in the context of provisional application of treaties. Furthermore, we note that no case where a treaty has provided for the formulation of reservations in relation to provisional application or where a State has formulated reservations to a treaty that is being applied provisionally has been identified. Bearing that in mind , and given that the Commission is only at an initial state of considering the question of reservations in this context, my delegation is of the view that further study of the practice of States and international organisations should be undertaken and referred to in the Commentaries if this guideline is to be adopted.
5. The development of model clauses provides useful assistance in cases where provisional application is considered appropriate. However, there is a need for flexibility in an area where different institutional and legal systems may seek to use provisional application. The tendency of states and international organisations to tailor their treaty obligations through the use of provisional application was noted by the Secretariat in its

memorandum. In particular, the Secretariat noted that this flexibility reveals itself with regard to the terminology used, the type of agreement on and conditions for provisional applications. If these model clauses are adopted, it would be important to note in the commentaries that they are provided simply as a useful guide for parties seeking to avail of provisional application.

6. Ireland looks forward to considering the entire set of draft Guidelines and commentaries in greater detail and hopes to provide comments and observations by December 2019.