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Draft report of the International Law Commission on the work of its seventy-second session

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Chapter V Provisional application of treaties

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Chapter V

Provisional application of treaties

A. Introduction

1. At its sixty-fourth session (2012), the Commission decided to include the topic “Provisional application of treaties” in its programme of work and appointed Mr. Juan Manuel Gómez Robledo as Special Rapporteur for the topic.¹ In its resolution 67/92 of 14 December 2012, the General Assembly subsequently noted with appreciation the decision of the Commission to include the topic in its programme of work.

2. The Commission considered the first report of the Special Rapporteur at its sixty-fifth session (2013); the second report at its sixty-sixth session (2014); the third report at its sixty-seventh session (2015); the fourth report at its sixty-eighth session (2016) and the fifth report at its seventieth session (2018).² The Commission also had before it three memorandums, prepared by the Secretariat, which were submitted at the sixty-fifth (2013), sixty-seventh (2015) and sixth-ninth sessions (2017), respectively.³ On the basis of the draft guidelines proposed by the Special Rapporteur in the third, fourth and fifth reports, the Commission provisionally adopted 12 draft guidelines as the draft Guide to Provisional Application of Treaties, together with commentaries thereto, on first reading (2018).⁴

B. Consideration of the topic at the present session

3. At the present session, the Commission had before it the sixth report of the Special Rapporteur (A/CN.4/738), as well as comments and observations received from Governments and international organizations (A/CN.4/737). The Special Rapporteur, in his report, examined the comments and observations received from governments and international organizations on the draft Guide, as adopted on first reading, and on several draft model clauses, which he had proposed to Commission at its seventy-first session (2019).⁵ He made proposals for consideration on second reading, in the light of the comments and observations, and proposed a recommendation to the General Assembly.

4. At its 3514th meeting and its 3516th to 3522nd meetings, held from 4 to 14 May 2021, the Commission considered the sixth report of the Special Rapporteur.

5. Following its debate on the report, the Commission, at its 3522nd meeting, held on 14 May 2021, decided to refer draft guidelines 1 to 12, together with five draft model clauses, as contained in the Special Rapporteur’s sixth report, to the Drafting Committee, taking into account the debate in the Commission.

6. At its ... meeting, held on 3 June 2021, the Commission considered an interim report of the Drafting Committee. At its ... meeting, held on ... 2021, the Commission considered the final report of the Drafting Committee (A/CN.4/L.952/Rev.1), and adopted the draft Guide to Provisional Application of Treaties, including the draft model clauses, on second reading (see sect. E.1 below).

7. At its ... to ... meetings, held on ... 2021, the Commission adopted the commentaries to the draft Guide, including the narrative component of the draft model clauses (see sect. E.2 below).

¹ *Yearbook ... 2012*, vol. II (Part Two), para. 267.

² A/CN.4/664 (first report), A/CN.4/675 (second report), A/CN.4/687 (third report), A/CN.4/699 and Add.1 (fourth report), and A/CN.4/718 and Add.1 (fifth report).

³ A/CN.4/658, A/CN.4/676 and A/CN.4/707. The consideration of document A/CN.4/707 was postponed to the seventieth session.

⁴ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/73/10), paras. 85–86 and 89–90.

⁵ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 10* (A/74/10), annex A.

8. In accordance with its statute, the Commission submits the draft Guide, together with the draft model clauses, to the General Assembly, with the recommendation set out below (see sect. D below).

C. Recommendation of the Commission

9. At its ... meeting, held on ... 2021, the Commission decided, in accordance with article 23 of its statute, to recommend that the General Assembly:

(a) take note of the Guide to Provisional Application of Treaties of the International Law Commission in a resolution, annex the Guide to the resolution and encourage its widest possible dissemination;

(b) commend the Guide, and the commentaries thereto, to the attention of States and international organizations;

(c) request the Secretary-General to prepare a volume of the *United Nations Legislative Series* compiling 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.

D. Tribute to the Special Rapporteur

10. At its ... meeting, held on ... 2021, the Commission, after adopting the draft Guide to Provisional Application of Treaties, adopted the following resolution by acclamation:

“The International Law Commission,

Having adopted the draft Guide to Provisional Application of Treaties,

Expresses to the Special Rapporteur, Mr. Juan Manuel Gómez Robledo, its deep appreciation and warm congratulations for the outstanding *contribution* he has made to the preparation of the draft Guide through his tireless efforts and devoted work, and for the results achieved in the elaboration of the draft Guide to Provisional Application of Treaties.”
