



General Assembly

Distr.: General
19 November 2021

Original: English

Seventy-sixth session
Agenda item 82

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

Report of the Sixth Committee

Rapporteur: Ms. Ana L. Villalobos (Costa Rica)

I. Introduction

1. The item entitled “Report of the International Law Commission on the work of its seventy-second session” was included in the provisional agenda of the seventy-sixth session of the General Assembly in accordance with Assembly resolution [75/135](#) of 15 December 2020.
2. At its 2nd plenary meeting, on 17 September 2021, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.
3. The Sixth Committee considered the item at its 16th to 25th meetings, and on its 29th meeting, from 25 to 29 October, on 1 to 3 November and on 18 November 2021. The views of the representatives who spoke during the Committee’s consideration of the item are reflected in the relevant summary records.¹
4. For its consideration of the item, the Committee had before it the report of the International Law Commission on the work of its seventy-second session ([A/76/10](#)).
5. The Chair of the International Law Commission at its seventy-second session introduced the report of the Commission on the work of that session at the 16th meeting, on 25 October, and the Committee considered the report in three clusters, namely: cluster I (chapters I to V and X) at its 16th to 19th meetings, from 25 to 28 October, cluster II (chapters VI and IX) at its 19th to 23rd meetings, on 28 and 29 October and on 1 and 2 November, and cluster III (chapters VII and VIII) at its 23rd to 25th meetings, on 2 and 3 November.

¹ [A/C.6/76/SR.16](#), [A/C.6/76/SR.17](#), [A/C.6/76/SR.18](#), [A/C.6/76/SR.19](#), [A/C.6/76/SR.20](#), [A/C.6/76/SR.21](#), [A/C.6/76/SR.22](#), [A/C.6/76/SR.23](#), [A/C.6/76/SR.24](#), [A/C.6/76/SR.25](#), and [A/C.6/76/SR.29](#).



II. Consideration of proposals

A. Draft resolution [A/C.6/76/L.16](#)

6. At the 29th meeting, on 18 November, the representative of Peru, on behalf of the Bureau, introduced a draft resolution entitled “Report of the International Law Commission on the work of its seventy-second session” ([A/C.6/76/L.16](#)).

7. At the same meeting, the Committee adopted draft resolution [A/C.6/76/L.16](#) without a vote (see para. 12, draft resolution I).

B. Draft resolution [A/C.6/76/L.15](#)

8. At the 29th meeting, on 18 November, the representative of Greece, on behalf of the Bureau, introduced a draft resolution entitled “Protection of the atmosphere” ([A/C.6/76/L.15](#)).

9. At the same meeting, the Committee adopted draft resolution [A/C.6/76/L.15](#) without a vote (see para. 12, draft resolution II).

C. Draft resolution [A/C.6/76/L.13](#)

10. At the 29th meeting, on 18 November, the representative of Colombia, on behalf of the Bureau, introduced a draft resolution entitled “Provisional application of treaties” ([A/C.6/76/L.13](#)).

11. At the same meeting, the Committee adopted draft resolution [A/C.6/76/L.13](#) without a vote (see para. 12, draft resolution III).

III. Recommendation of the Sixth Committee

12. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolutions:

Draft resolution I

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

The General Assembly,

Having considered the report of the International Law Commission on the work of its seventy-second session,¹

Emphasizing the importance of furthering the progressive development and codification of international law as a means of implementing the purposes and principles set forth in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,²

Recognizing the desirability of referring legal and drafting questions to the Sixth Committee, including topics that might be submitted to the International Law Commission for closer examination, and of enabling the Sixth Committee and the Commission to enhance further their contribution to the progressive development and codification of international law,

Recalling the need to keep under review those topics of international law which, given their new or renewed interest for the international community, may be suitable for the progressive development and codification of international law and therefore may be included in the future programme of work of the International Law Commission,

Recalling also the role of Member States in submitting proposals for new topics for the consideration of the International Law Commission, and noting in this regard the recommendation of the Commission that such proposals be accompanied by a statement of reasons,

Reaffirming the importance for the successful work of the International Law Commission of the information provided by Member States concerning their views and practice,

Recognizing the importance of the work of the special rapporteurs of the International Law Commission,

Noting that, due to the coronavirus disease (COVID-19) pandemic, the International Law Seminar was not convened in 2020 or 2021, stressing the importance and usefulness of holding the Seminar, and noting with appreciation the voluntary contributions made to the United Nations trust fund for the International Law Seminar,

Acknowledging the importance of facilitating the timely publication of the *Yearbook of the International Law Commission* and of eliminating the backlog,

Stressing the usefulness of focusing and structuring the debate on the report of the International Law Commission in the Sixth Committee in such a manner that

¹ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*

² Resolution 2625 (XXV), annex.

conditions are provided for concentrated attention to each of the main topics dealt with in the report and for discussions on specific topics,

Wishing to enhance further, in the context of the revitalization of the debate on the report of the International Law Commission, the interaction between the Sixth Committee as a body of governmental representatives and the Commission as a body of independent legal experts, with a view to improving the dialogue between the two bodies,

Welcoming initiatives to hold interactive debates, panel discussions and question time in the Sixth Committee, as envisaged in General Assembly resolution 58/316 of 1 July 2004 on further measures for the revitalization of the work of the Assembly,

1. *Takes note* of the report of the International Law Commission on the work of its seventy-second session;³

2. *Expresses its appreciation* to the International Law Commission for the work accomplished at its seventy-second session, and notes in particular:

(a) The completion of the second reading of the draft guidelines on the protection of the atmosphere and the commentaries thereto;⁴

(b) The completion of the second reading of the draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties, and the commentaries thereto;⁵

3. *Recommends* that the International Law Commission continue its work on the topics in its current programme of work, taking into account the comments and observations of Governments, whether submitted in writing or expressed orally in debates in the Sixth Committee;

4. *Draws the attention* of Governments to the importance for the International Law Commission of having their views by 31 December 2021 or, as the case may be, by 30 June 2022, on the various aspects of the topics on the agenda of the Commission, in particular on all the specific issues identified in chapter III of its report,⁶ regarding:

- (a) Immunity of State officials from foreign criminal jurisdiction;
- (b) Succession of States in respect of State responsibility;
- (c) General principles of law;
- (d) Sea-level rise in relation to international law;

³ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*

⁴ *Ibid.*, chap. IV, sect. E.

⁵ *Ibid.*, chap. V, sect. E.

⁶ See *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*

5. *Encourages* the International Law Commission to continue the examination of the topics that are in its long-term programme of work;⁷

6. *Also encourages* the International Law Commission to take particular account of the capacity and views of Member States, as well as of the workload of the Commission, when including topics in its current programme of work;

7. *Takes note* of paragraphs 301 and 302 of the report of the International Law Commission,⁸ and notes, in particular, the inclusion of the topic “Subsidiary means for the determination of rules of international law” in the long-term programme of work of the Commission,⁹ and in this regard calls upon the Commission to take into consideration the comments, concerns and observations expressed by Governments during the debate in the Sixth Committee;

8. *Also takes note* of paragraphs 313 and 316 of the report of the International Law Commission, and expresses its appreciation to the Commission for successfully convening a hybrid session despite the challenges outlined in these paragraphs;

9. *Further takes note* of paragraph 317 of the report of the International Law Commission, and requests the Secretary-General to continue his efforts to identify concrete options for support for the work of special rapporteurs, additional to those provided under General Assembly resolution [56/272](#) of 27 March 2002;

10. *Welcomes* the efforts of the International Law Commission to improve its methods of work, and encourages the Commission to continue this practice;

11. *Invites* the International Law Commission to continue to take measures to enhance its efficiency and productivity and to consider making proposals to Member States to that end;

12. *Recalls* the importance of an in-depth analysis of State practice and the consideration of the diversity of legal systems of Member States to the work of the International Law Commission;

13. *Takes note* of paragraph 321 of the report of the International Law Commission, recalls the paramount importance of multilingualism as set forth in General Assembly resolutions [69/324](#) of 11 September 2015 and [73/346](#) of 16 September 2019 on multilingualism, underlines the importance of having the documents of the Commission published in due time in the six official languages of the United Nations while ensuring their accuracy in all official languages, and to this end requests special rapporteurs to submit their reports within the time limits specified by the Secretariat, and the Secretariat to give due consideration to the quality of the translation of the documents of the Commission in the six official languages;

⁷ The following topics are currently in the long-term programme of work of the International Law Commission: “Ownership and protection of wrecks beyond the limits of national maritime jurisdiction”, “Jurisdictional immunity of international organizations”, “Protection of personal data in transborder flow of information”, “Extraterritorial jurisdiction”, “The fair and equitable treatment standard in international investment law”, “Settlement of international disputes to which international organizations are parties”, “Evidence before international courts and tribunals”, “Universal criminal jurisdiction”, “Reparation to individuals for gross violations of international human rights law and serious violations of international humanitarian law”, “Prevention and repression of piracy and armed robbery at sea” and “Subsidiary means for the determination of rules of international law”.

⁸ See *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10* (A/76/10).

⁹ *Ibid.*, para. 302.

14. *Encourages* the International Law Commission to continue to take cost-saving measures at its future sessions, without prejudice to the efficiency and effectiveness of its work;

15. *Recalls* that the seat of the International Law Commission is at the United Nations Office at Geneva;

16. *Takes note* of paragraph 328 of the report of the International Law Commission, and decides that the next session of the Commission shall be held at the United Nations Office at Geneva from 18 April to 3 June and from 4 July to 5 August 2022;

17. *Stresses* the desirability of further enhancing the dialogue between the International Law Commission, in particular the special rapporteurs, and the Sixth Committee, and in this context encourages, inter alia, the continued practice of informal consultations in the form of discussions between the members of the Sixth Committee and the members of the Commission throughout the year;

18. *Encourages* delegations, during the debate on the report of the International Law Commission, to continue to adhere as far as possible to the structured work programme agreed to by the Sixth Committee and to consider presenting concise and focused statements;

19. *Encourages* Member States to consider being represented at the level of legal adviser during the first week in which the report of the International Law Commission is discussed in the Sixth Committee (International Law Week) to enable high-level discussions on issues of international law;

20. *Underlines* in this regard the necessity to allow sufficient time for the consideration of the report of the International Law Commission in the Sixth Committee;

21. *Requests* the International Law Commission to continue to pay special attention to indicating in its annual report, for each topic, any specific issues on which expressions of views by Governments, either in the Sixth Committee or in written form, would be of particular interest in providing effective guidance for the Commission in its further work;

22. *Takes note* of paragraphs 330 to 332 of the report of the International Law Commission with regard to cooperation and interaction with other bodies, and encourages the Commission to continue the implementation of articles 16 (e), 25 and 26 of its statute in order to further strengthen cooperation between the Commission and other bodies concerned with international law, having in mind the usefulness of such cooperation;

23. *Notes* that consulting with national organizations and individual experts concerned with international law may assist Governments in considering whether to make comments and observations on drafts submitted by the International Law Commission and in formulating their comments and observations;

24. *Reaffirms* its previous decisions concerning the indispensable role of the Codification Division of the Office of Legal Affairs of the Secretariat in providing assistance to the International Law Commission, including in the preparation of memorandums and studies on topics on the agenda of the Commission;

25. *Also reaffirms* its previous decisions concerning the documentation and summary records of the International Law Commission;¹⁰

26. *Takes note* of paragraph 319 of the report of the International Law Commission, stresses the need to expedite the preparation of the summary records of the International Law Commission, welcomes the continuation of the measures taken to streamline the processing of summary records during the sixty-fifth session of the Commission,¹¹ which have led to a more rational use of resources, and expresses its satisfaction that the summary records of the Commission, constituting *travaux préparatoires* in the progressive development and codification of international law, will not be subject to arbitrary length restrictions;

27. *Welcomes* the institutionalization of the practice of the Secretariat to include on the website of the International Law Commission the provisional summary records in English and French relating to the work of the Commission;

28. *Also welcomes* the efforts of the Secretariat in seeking to ensure the timely and efficient processing of the documents of the International Law Commission and the institutionalization of the experimental measures taken during the sixty-eighth session of the Commission to streamline the editing of those documents;

29. *Takes note* of paragraph 318 of the report of the International Law Commission, and underlines the importance of the publications of the Codification Division to the work of the Commission, welcomes in particular the issuance of the ninth edition of *The Work of the International Law Commission* also in Chinese, French, Russian and Spanish, and reiterates its request that the Secretary-General continue to publish *The Work of the International Law Commission* in all six official languages at the beginning of each quinquennium, the *Reports of International Arbitral Awards* in English or French and the *Summaries of the Judgments, Advisory Opinions and Orders of the International Court of Justice* in all six official languages every five years;

30. *Also takes note* of paragraph 323 of the report of the International Law Commission, stresses the unique value of the *Yearbook of the International Law Commission*, and requests the Secretary-General to ensure its timely publication in all official languages;

31. *Expresses its appreciation* to Governments that have made voluntary contributions to the trust fund on the backlog relating to the *Yearbook of the International Law Commission*, and encourages further contributions to the trust fund;

32. *Takes note* of paragraph 324 of the report of the International Law Commission, expresses its satisfaction with the remarkable progress achieved in the past few years in reducing the backlog of the *Yearbook of the International Law Commission* in all six languages, welcomes the efforts made by the Division of Conference Management of the United Nations Office at Geneva, especially its Editing Section, in effectively implementing relevant resolutions of the General Assembly calling for the reduction of the backlog, encourages that Division to provide continuous necessary support to the Editing Section in advancing the *Yearbook of the International Law Commission*, and requests that updates on progress made in this respect be provided to the Commission on a regular basis;

¹⁰ See resolutions 32/151, para. 10, and 37/111, para. 5, and all subsequent resolutions on the annual reports of the International Law Commission to the General Assembly; see also *Yearbook of the International Law Commission* 1982, vol. II (Part Two), paras. 267–269 and 271, as well as all subsequent annual reports of the International Law Commission.

¹¹ *Official Records of the General Assembly, Sixty-eighth Session, Supplement No. 10 (A/68/10)*, para. 183.

33. *Welcomes* the continuous efforts of the Codification Division to maintain and improve the website relating to the work of the International Law Commission;

34. *Takes note* of paragraph 329 of the report of the International Law Commission proposing the consideration of the establishment of a trust fund to support the special rapporteurs, particularly those from developing regions, to obtain the necessary assistance to undertake the research required for the preparation of their reports, and to address any budgetary shortfalls in provision for full attendance of its secretariat, stresses the importance of ensuring necessary allocations for the Commission and its secretariat in the regular budget, and requests that more information about the constraints and shortfalls referred to in paragraph 329 be provided, as well as available options to address them, including information regarding the terms of reference of the proposed trust fund, for consideration by the General Assembly at its seventy-seventh session;

35. *Also takes note* of paragraphs 334 and 335 of the report of the International Law Commission, expresses the hope that the International Law Seminar will continue to be held in connection with the sessions of the International Law Commission and that an increasing number of participants representing the principal legal systems of the world and from different countries in the various regions, including in particular those from developing countries, will be given the opportunity to attend the Seminar, as well as delegates to the Sixth Committee, and appeals to States to continue to make urgently needed voluntary contributions to the United Nations trust fund for the International Law Seminar;

36. *Requests* the Secretary-General to provide the International Law Seminar with adequate services, including interpretation, as required, and encourages him to continue to consider ways to improve the structure and content of the Seminar;

37. *Underlines* the importance of the records and topical summary of the debate in the Sixth Committee for the deliberations of the International Law Commission, and in this regard requests the Secretary-General to forward to the Commission, for its attention, the records of the debate on the report of the Commission, together with such written statements as delegations may circulate in conjunction with their oral statements, and to prepare and distribute a topical summary of the debate, following established practice;

38. *Requests* the Secretariat to circulate to States, as soon as possible after the conclusion of the session of the International Law Commission, chapter II of its report containing a summary of the work of that session, chapter III containing the specific issues on which the views of Governments would be of particular interest to the Commission and any draft provisions adopted on either first or second reading by the Commission;

39. *Also requests* the Secretariat to make the complete report of the International Law Commission available as soon as possible after the conclusion of the session of the Commission for the consideration of Member States with due anticipation and no later than the prescribed time limit for reports in the General Assembly;

40. *Encourages* the International Law Commission to continue to consider ways in which specific issues on which the views of Governments would be of particular interest to the Commission could be framed so as to help Governments to have a better appreciation of the issues on which responses are required;

41. *Recommends* that the debate on the report of the International Law Commission at the seventy-seventh session of the General Assembly commence on 24 October 2022.

Draft resolution II

Protection of the atmosphere

The General Assembly,

Having considered chapter IV of the report of the International Law Commission on the work of its seventy-second session,¹ which contains the draft preamble and guidelines on the protection of the atmosphere,

Taking note of the recommendation of the International Law Commission contained in paragraph 37 of its report,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of protection of the atmosphere is of major importance in international relations,

1. *Welcomes* the conclusion of the work of the International Law Commission on the protection of the atmosphere and its adoption of the draft preamble and guidelines on the protection of the atmosphere and commentaries thereto;²

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the views and comments expressed in the debates of the Sixth Committee on the subject, including those made at the seventy-sixth session of the General Assembly,³ after the International Law Commission had completed its consideration of this topic in accordance with its statute;

4. *Also takes note* of the preamble and guidelines on the protection of the atmosphere, the text of which is annexed to the present resolution, with the commentaries thereto, brings them to the attention of States, international organizations and all who may be called upon to deal with the subject, and encourages their widest possible dissemination.

¹ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*

² *Ibid.*, paras. 39 and 40.

³ See A/C.6/76/SR.16, A/C.6/76/SR.17, A/C.6/76/SR.18, A/C.6/76/SR.19, A/C.6/76/SR.20, A/C.6/76/SR.21, A/C.6/76/SR.22, A/C.6/76/SR.23, A/C.6/76/SR.24, A/C.6/76/SR.25 and A/C.6/76/SR.29. The statements made in the Sixth Committee are available in full (in the original languages) on the website of the Sixth Committee, at www.un.org/en/ga/sixth/.

Annex

Guidelines on the protection of the atmosphere

Preamble

Acknowledging that the atmosphere is a natural resource, with a limited assimilation capacity, essential for sustaining life on Earth, human health and welfare, and aquatic and terrestrial ecosystems,

Bearing in mind that the transport and dispersion of polluting and degrading substances occur within the atmosphere,

Considering that atmospheric pollution and atmospheric degradation are a common concern of humankind,

Aware of the special situation and needs of developing countries,

Noting the close interaction between the atmosphere and the oceans,

Noting in particular the special situation of low-lying coastal areas and small island developing States due to sea-level rise,

Recognizing that the interests of future generations of humankind in the long-term conservation of the quality of the atmosphere should be fully taken into account,

Recalling that the present guidelines were elaborated on the understanding that they were not intended to interfere with relevant political negotiations or to impose on current treaty regimes rules or principles not already contained therein,

Guideline 1

Use of terms

For the purposes of the present guidelines:

- (a) “atmosphere” means the envelope of gases surrounding the Earth;
- (b) “atmospheric pollution” means the introduction or release by humans, directly or indirectly, into the atmosphere of substances or energy contributing to significant deleterious effects extending beyond the State of origin of such a nature as to endanger human life and health and the Earth’s natural environment;
- (c) “atmospheric degradation” means the alteration by humans, directly or indirectly, of atmospheric conditions having significant deleterious effects of such a nature as to endanger human life and health and the Earth’s natural environment.

Guideline 2

Scope

1. The present guidelines concern the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. The present guidelines do not deal with and are without prejudice to questions concerning the polluter-pays principle, the precautionary principle and the common but differentiated responsibilities principle.
3. Nothing in the present guidelines affects the status of airspace under international law nor questions related to outer space, including its delimitation.

Guideline 3

Obligation to protect the atmosphere

States have the obligation to protect the atmosphere by exercising due diligence in taking appropriate measures, in accordance with applicable rules of international law, to prevent, reduce or control atmospheric pollution and atmospheric degradation.

Guideline 4

Environmental impact assessment

States have the obligation to ensure that an environmental impact assessment is undertaken of proposed activities under their jurisdiction or control which are likely to cause significant adverse impact on the atmosphere in terms of atmospheric pollution or atmospheric degradation.

Guideline 5

Sustainable utilization of the atmosphere

1. Given that the atmosphere is a natural resource with a limited assimilation capacity, its utilization should be undertaken in a sustainable manner.
2. Sustainable utilization of the atmosphere includes the need to reconcile economic development with the protection of the atmosphere.

Guideline 6

Equitable and reasonable utilization of the atmosphere

The atmosphere should be utilized in an equitable and reasonable manner, taking fully into account the interests of present and future generations.

Guideline 7

Intentional large-scale modification of the atmosphere

Activities aimed at intentional large-scale modification of the atmosphere should only be conducted with prudence and caution, and subject to any applicable rules of international law, including those relating to environmental impact assessment.

Guideline 8

International cooperation

1. States have the obligation to cooperate, as appropriate, with each other and with relevant international organizations for the protection of the atmosphere from atmospheric pollution and atmospheric degradation.
2. States should cooperate in further enhancing scientific and technical knowledge relating to the causes and impacts of atmospheric pollution and atmospheric degradation. Cooperation could include exchange of information and joint monitoring.

Guideline 9

Interrelationship among relevant rules

1. The rules of international law relating to the protection of the atmosphere and other relevant rules of international law, including, inter alia, the rules of international trade and investment law, of the law of the sea and of international human rights law, should, to the extent possible, be identified, interpreted and applied in order to give rise to a single set of compatible obligations, in line with the principles of harmonization and systemic integration, and with a view to avoiding conflicts. This

should be done in accordance with the relevant rules set forth in the Vienna Convention on the Law of Treaties, including articles 30 and 31, paragraph 3 (c), and the principles and rules of customary international law.

2. States should, to the extent possible, when developing new rules of international law relating to the protection of the atmosphere and other relevant rules of international law, endeavour to do so in a harmonious manner.

3. When applying paragraphs 1 and 2, special consideration should be given to persons and groups particularly vulnerable to atmospheric pollution and atmospheric degradation. Such groups may include, inter alia, indigenous peoples, people of the least developed countries and people of low-lying coastal areas and small island developing States affected by sea-level rise.

Guideline 10 **Implementation**

1. National implementation of obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation, including those referred to in the present guidelines, may take the form of legislative, administrative, judicial and other actions.

2. States should endeavour to give effect to the recommendations contained in the present guidelines.

Guideline 11 **Compliance**

1. States are required to abide by their obligations under international law relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation in good faith, including through compliance with the rules and procedures in the relevant agreements to which they are parties.

2. To achieve compliance, facilitative or enforcement procedures may be used as appropriate, in accordance with the relevant agreements:

(a) facilitative procedures may include providing assistance to States, in cases of non-compliance, in a transparent, non-adversarial and non-punitive manner to ensure that the States concerned comply with their obligations under international law, taking into account their capabilities and special conditions;

(b) enforcement procedures may include issuing a caution of non-compliance, termination of rights and privileges under the relevant agreements, and other forms of enforcement measures.

Guideline 12 **Dispute settlement**

1. Disputes between States relating to the protection of the atmosphere from atmospheric pollution and atmospheric degradation are to be settled by peaceful means.

2. Since such disputes may be of a fact-intensive and science-dependent character, due consideration should be given to the use of scientific and technical experts.

Draft resolution III

Provisional application of treaties

The General Assembly,

Having considered chapter V of the report of the International Law Commission on the work of its seventy-second session,¹ which contains the Guide to Provisional Application of Treaties,

Taking note of the recommendation of the International Law Commission contained in paragraph 49 of its report,

Emphasizing the continuing importance of the codification and progressive development of international law, as referred to in Article 13, paragraph 1 (a), of the Charter of the United Nations,

Noting that the subject of the provisional application of treaties is of major importance in international relations,

Underlining the essentially voluntary and optional nature of the provisional application of treaties,

1. *Welcomes* the conclusion of the work of the International Law Commission on the provisional application of treaties, and its adoption of the draft guidelines and draft annex constituting the Guide to Provisional Application of Treaties, and the commentaries thereto;

2. *Expresses its appreciation* to the International Law Commission for its continuing contribution to the codification and progressive development of international law;

3. *Takes note* of the views and comments expressed in the debates of the Sixth Committee on the subject, including those made at the seventy-sixth session of the General Assembly,² after the International Law Commission had completed its consideration of this topic in accordance with its statute;

4. *Also takes note* of the Guide to Provisional Application of Treaties, including the guidelines, the text of which is annexed to the present resolution, brings the Guide to the attention of States and international organizations for their consideration, and encourages its widest possible dissemination;

5. *Requests* 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.

¹ *Official Records of the General Assembly, Seventy-sixth Session, Supplement No. 10 (A/76/10).*

² See [A/C.6/76/SR.16](#), [A/C.6/76/SR.17](#), [A/C.6/76/SR.18](#) and [A/C.6/76/SR.19](#). The statements made in the Sixth Committee are available in full (in the original languages) on the website of the Sixth Committee, at www.un.org/en/ga/sixth/.

Annex**Text of the guidelines on provisional application of treaties****Guideline 1****Scope**

The present guidelines concern the provisional application of treaties by States or by international organizations.

Guideline 2**Purpose**

The purpose of the present guidelines is to provide guidance regarding the law and practice on the provisional application of treaties, on the basis of article 25 of the Vienna Convention on the Law of Treaties and other relevant rules of international law.

Guideline 3**General rule**

A treaty or a part of a treaty is applied provisionally pending its entry into force between the States or international organizations concerned, if the treaty itself so provides, or if in some other manner it has been so agreed.

Guideline 4**Form of agreement**

In addition to the case where the treaty so provides, the provisional application of a treaty or a part of a treaty may be agreed between the States or international organizations concerned through:

- (a) a separate treaty; or
- (b) any other means or arrangements, including:
 - (i) a resolution, decision or other act adopted by an international organization or at an intergovernmental conference, in accordance with the rules of such organization or conference, reflecting the agreement of the States or international organizations concerned;
 - (ii) a declaration by a State or by an international organization that is accepted by the other States or international organizations concerned.

Guideline 5**Commencement**

The provisional application of a treaty or a part of a treaty takes effect on such date, and in accordance with such conditions and procedures, as the treaty provides or as is otherwise agreed.

Guideline 6**Legal effect**

The provisional application of a treaty or a part of a treaty produces a legally binding obligation to apply the treaty or a part thereof between the States or international organizations concerned, except to the extent that the treaty otherwise provides or it is otherwise agreed. Such treaty or part of a treaty that is being applied provisionally must be performed in good faith.

Guideline 7

Reservations

The present guidelines are without prejudice to any question concerning reservations relating to the provisional application of a treaty or a part of a treaty.

Guideline 8

Responsibility for breach

The breach of an obligation arising under a treaty or a part of a treaty that is applied provisionally entails international responsibility in accordance with the applicable rules of international law.

Guideline 9

Termination

1. The provisional application of a treaty or a part of a treaty terminates with the entry into force of that treaty in the relations between the States or international organizations concerned.
2. Unless the treaty otherwise provides or it is otherwise agreed, the provisional application of a treaty or a part of a treaty with respect to a State or an international organization shall be terminated if that State or international organization notifies the other States or international organizations concerned of its intention not to become a party to the treaty.
3. Unless the treaty otherwise provides or it is otherwise agreed, a State or an international organization may invoke other grounds for terminating provisional application, in which case it shall notify the other States or international organizations concerned.
4. Unless the treaty otherwise provides or it is otherwise agreed, the termination of the provisional application of a treaty or a part of a treaty does not affect any right, obligation or legal situation created through the execution of such provisional application prior to its termination.

Guideline 10

Internal law of States, rules of international organizations and observance of provisionally applied treaties

1. A State that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the provisions of its internal law as justification for its failure to perform an obligation arising under such provisional application.
2. An international organization that has agreed to the provisional application of a treaty or a part of a treaty may not invoke the rules of the organization as justification for its failure to perform an obligation arising under such provisional application.

Guideline 11

Provisions of internal law of States and rules of international organizations regarding competence to agree on the provisional application of treaties

1. A State may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of a provision of its internal law regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. An international organization may not invoke the fact that its consent to the provisional application of a treaty or a part of a treaty has been expressed in violation of the rules of the organization regarding competence to agree to the provisional application of treaties as invalidating its consent unless that violation was manifest and concerned a rule of fundamental importance.

Guideline 12

Agreement to provisional application with limitations deriving from internal law of States or rules of international organizations

The present guidelines are without prejudice to the right of States or international organizations to agree in the treaty itself or otherwise to the provisional application of the treaty or a part of the treaty with limitations deriving from the internal law of States or from the rules of international organizations.
