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[76<sup>th</sup> Session of the General Assembly

Report of the International Law Commission on the work of its 72<sup>nd</sup> session:  
Protection of the Atmosphere  
Provisional Application of Treaties  
Other decisions ]

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New York, ]25<sup>th</sup> October, 2021 |

**Check against Delivery**

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mechanism for giving immediate effect to all or some of the provisions of a treaty, prior to the fulfillment of the conditions and formalities required for

While the Guide consist of only 12 guidelines, these guidelines and commentaries thereto address in concise manner the most pertinent issues of provisional application of treaties. We will mention at least some of them.

Guideline 4 (Form of agreement) clarifies that in addition to the case where the treaty so provides, the provisional application of a treaty or its part may be agreed through four different forms listed therein. It also reveals that the basis for provisional application of a treaty is an agreement between the States or international organizations concerned.

Hence, as further provided in Guideline 6 (Legal effect), unless the treaty provides otherwise or it is otherwise agreed, provisional application produces legally binding obligation to apply the treaty or a part thereof. This aspect is convincingly explained in paragraph 2 of the commentary to this guideline. Such treaty or a part thereof must be performed in good faith. We agree both with the principle announced in this guideline, and the element of flexibility reflected in the formulation of the guideline.

As a logical consequence, Guideline 8 (Responsibility for breach) provides that the breach of an obligation arising under the treaty which is provisionally applied entails international responsibility –a conclusion we fully support.

We appreciate that Guideline 7 on reservations is formulated as a saving clause, in view of insufficient practice in this field.

Finally, we welcome that Guideline 9 on termination of provisional application includes further clarifications in addition to restating elements of article 25 of the 1969 Convention. Paragraph 3, analogically with rules governing the termination of the treaty, envisages possibility of additional grounds for termination of provisional application, while paragraph 4 clarifies another important element of the termination of provisional application, namely that such termination does not affect rights, obligations or legal situations created through provisional application prior to its termination. This provision contributes significantly to strengthening of legal certainty and stability of legal relations.

The Czech delegation is confident that the Guide to Provisional Application of Treaties will provide useful guidance to the States and international organizations and contribute to further consolidation and unification of the practice in this field. We therefore support the recommendation of the Commission to the General Assembly to take note of the Guide, to

