

STATEMENT

Permanent Mission of the Republic of the Philippines to the United Nations
Agenda Item - 82: Report of the International Law Commission
on the work of its seventy-second session

Cluster I - Protection of the Atmosphere, Provisional Application of Treaties, and Other Decisions

Sixth Committee

76th Session of the United Nations General Assembly
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UN Headquarters New York

Madam Chair,

The Philippines thanks the International Law Commission (ILC) through its Chair, Mr. Mahmoud D. Hmoud (Jordan), for introducing its comprehensive report on its seventy-second session, which took place in hybrid format at the United Nations Office at Geneva from April to

This delegation is cognizant of the parameters within which work on this topic was undertaken. Nevertheless, we wish to express our deep appreciation to the Special Rapporteur, Mr. Shinya, for shepherding this work, and for this succinct outcome, which reflects, to an extent, the aspirations of many states, and signals, as well, progressive development of international law in this field.

The Philippines welcomes the adoption by the ILC of the entire Guide to Provisional Application of Treaties, including the commentaries thereto.

As a general observation, in relation to the Guide, we considered the possibility of a rule of construction that a treaty shall not be deemed subject to provisional application unless the text of the treaty or other instrument expressly and categorically provides it. This would be consistent with our practice and takes into account realities of republican states where the executive negotiates treaties but shares foreign policy powers with other bodies, so provisional application which derogates from the sharing should not be presumed.

In terms of its own state practice, consistent with Article 25 of the Vienna Convention on the Law of Treaties, the Philippines observes the concept of “provisional application” of treaties and international agreements under its national guidelines.

Specifically, Executive Order No. 459 (Providing for the Guidelines in the Negotiation of International Agreements and its Ratification), under Section 6, states that:

b. No treaty or executive agreement shall be given provisional effect unless it is shown that a pressing national interest will be upheld thereby. The Department of Foreign Affairs, in consultation with the concerned agencies, shall determine whether a treaty or an executive agreement, or any amendment thereto, shall be given provisional effect.

Under Section 2 of the same executive issuance, the term “Provisional Effect” is defined as the “

