



PERMANENT MISSION OF GREECE TO THE UNITED NATIONS
866 SECOND AVENUE · NEW YORK, NY 10017-2905
Tel: 212-888-6900 Fax: 212-888-4440
e-mail: grdel.un@mfa.gr

www.mfa.gr/un

76TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

Sixth Committee

Agenda Item 82

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

**Chapter IV: Protection of the Atmosphere
Chapter V: Provisional Application of Treaties**

**Statement by
H.E. Ambassador Maria Theofili
Permanent Representative of Greece to the United Nations**

**NEW YORK
October 2021**

Madam Chair,

At the outset allow me to express my country's gratitude to the International Law Commission for its contribution at this Session. We also thank the Chairperson of the Commission, Mr. Mahmoud D. Hmoud, for his comprehensive report to the Sixth Committee. I wish also to most warmly thank the Codification Division of the Secretariat and its director, Mr. Huw Llewellyn, for their excellent work and support to the Commission.

While fully aligning with the Statement submitted by the European Union, Greece would like to share some additional remarks on the following topics:

Chapter IV: Protection of the Atmosphere

Madam Chair,

On the topic of the protection of the atmosphere, Greece welcomes the adoption by the International Law Commission on second reading of a set of 12 Guidelines and commentaries and takes the opportunity to congratulate the Special Rapporteur Mr. Shinya Murase for the high quality of his six Reports.

Greece fully supports the ILC's consideration of atmospheric pollution and atmospheric degradation as a common concern of humankind, given the unity of the atmosphere, its importance for life on Earth and the interest of the entire international community in its protection.

Given that various human activities, often regulated by specific rules, have an impact upon the atmosphere, we note with appreciation guideline 9, aiming to ensure compatibility, mutual supportiveness and complementarity between the law relating to the protection of the atmosphere and relevant norms stemming from other branches of international law.

We highly appreciate the overall structure of the guidelines, in particular the link established by the Commission between the due diligence obligation of States to protect the atmosphere as expressed in guideline 3 and the ensuing obligations to conduct Environmental Impact Assessments (EIAs) and use the atmosphere in a sustainable, equitable and reasonable manner as enunciated in guidelines 4, 5 and 6 respectively. In fact, guideline 3 provides for the overarching duty of care for the protection of the

atmosphere, while the obligations contained in the three following guidelines flow from and concretize aspects of this general duty.

Regarding in particular guideline 4, we note the threshold of “significant adverse impact” for the triggering of the EIA procedure. In our view, the proposed threshold is based on solid ground, stemming from relevant ICJ and ITLOS case law, treaty practice, in particular the Espoo Convention, and principle 17 of the 1992 Rio Declaration. Finally, turning to the commentary of this provision, we should have preferred, for the sake of clarity and in line with Principle 19 of the Rio Declaration, that the wording of its paragraph 1 explicitly stated that notification and consultations should include any potentially affected State.

Chapter V: Provisional Application of Treaties

Madam Chair,

Greece expresses its gratitude to the International Law Commission for the adoption, on second reading, of the Guide to Provisional Application of Treaties, together with commentaries thereto and an annex containing examples of provisions on provisional application, as it constitutes a valuable tool providing guidance and assistance to States and international organizations regarding the applicable law, in light of contemporary practice.

We would also like to extend our gratitude and congratulations to the Special Rapporteur, Mr. Juan Manuel Gomez Robledo, for his 6th Report on Provisional Application of Treaties, as well as for his overall contribution to the Commission’s study of the topic. The efforts made by the Special Rapporteur in his 6th Report to take stock of and accommodate the various comments and concerns expressed by States are highly appreciated, as they provide an important example of the kind of interaction and constructive dialogue that should exist between the International Law Commission and the UNGA Sixth (Legal) Committee.

Turning now to the Guide on Provisional Application of Treaties, and by way of general comment, Greece supports the pragmatic approach taken by the Commission, which recognizes the usefulness but also the flexible and inherently voluntary nature of provisional application, while at the same time cautioning against it being used as a

substitute for securing entry into force, that remains the natural vocation of treaties, or as a means of circumventing domestic procedures.

Greece also welcomes that the Guide is in general intended to reflect the current *lex lata* and notes with appreciation the restraint exercised by the Commission in relation to aspects of provisional application where practice has not sufficiently developed yet.

In this respect, and given the purpose set forth in Guideline 2, that is “to provide guidance regarding the law and practice on the provisional application of treaties”, it would have been useful if the Commission had specified which are the rules of international law, other than Article 25 of the 1969 and 1986 Vienna Conventions on the Law of Treaties, that reflect the law applicable to the matter, in relation to each corresponding draft guideline contained in the Guide.

In the same vein, regarding Guideline 6, Greece fully agrees with the distinction made by the Commission between provisional application and entry into force, in terms of legal effect, but would welcome a more thorough explanation of how these two are different, including by providing relevant examples from contemporary practice.

Having said that, Greece commends the Commission for its outstanding contribution in bringing more clarity on critical aspects of provisional application of treaties with significant legal and practical implications, including on the terminology used, the commencement of provisional application and its termination.

Greece would also like in particular to express its support for Guideline 4 on the form of agreement, on the basis of which a treaty may be applied provisionally, and the analysis made by the Commission in the commentary thereto, as well as for Guideline 12, which has been drafted in a way that duly takes into account the current practice and the inherently voluntary nature of provisional application.

With these concluding remarks, Greece wishes once again to warmly thank the Commission and its Special Rapporteur for their tireless efforts and persistent work that led to the expeditious and successful conclusion of the work on this topic.

I thank you Madam Chair.