





included in the Guide provide treaty negotiators with the essential elements to include in a provisional application provision.

Provisional application is an integral part of Canada's treaty adoption process, though we generally prefer to rely on entry-into-force provisions as a straightforward mechanism. Canada's current practice is that provisional application may only take effect following the signing of a treaty, and if no domestic implementing legislation is required. If implementing legislation is required, provisional application is delayed until the required legislation enters into force.

There have also been instances where provisional application has, in practice, been limited to specific provisions of a treaty, rather than to the treaty as a whole. Ultimately, the intent of the relevant parties needs to be reflected in the provisional application

an important subject that is intricately linked to ongoing work in other international fora, such as ongoing discussions surrounding climate change and prevention of ozone layer depletion, among others.

That said,

obligation to,” which would appear to extend beyond simple guidelines. This may be appropriate where the guidelines are reiterating established rules of international law.

While we do not necessarily disagree that States have obligations that may extend to atmospheric protection, it is not always apparent from the commentary how the ILC has determined that, in its view, these are current State obligations, in keeping with customary international law. Canada therefore considers these guidelines to be non-legally binding.

Mr./Madame Chair,

Canada would also like to take this opportunity to raise an issue not yet considered by the ILC, that being the issue of arbitrary detention as leverage in State-to-State relations. We consider this an emerging legal issue in international law, sitting at the juncture of consular and international human rights law. In February 2021, Canada launched the *Declaration Against the Use of Arbitrary Detention in State-to-State Relations*, which has been endorsed by more than 65 UN Member States to date. Canada also notes the 2021 *Annual Report of the Working Group on Arbitrary Detention*, which examines the *Declaration* as one of its thematic issues.

The use of arbitrary detention as leverage in State-to-State relations runs counter to basic principles of human rights law, such as the right to a fair trial for individuals whose detention may be influenced by extraneous and pretextual considerations. The

