

**Check against delivery**

**Sixty-eighth session**

**Sixth Committee**

Agenda item 82

**Diplomatic protection**

**Oral report of the Chairman of the Working Group,**

Mr. Thembile **Joyini** (South Africa)

Mr. Chairman,

I have the honour to present the report of the Working Group on Diplomatic Protection for this year's session.

Pursuant to General Assembly resolution 65/27 of 6 December 2010, the Sixth Committee decided, at its 2nd meeting, on 7 October 2013, to establish a working group to further examine, in the light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second and sixty-fifth sessions of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the articles on diplomatic protection and to also identify any difference of opinion on the articles. The Sixth Committee also decided to open the Working Group to all States members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency.

At the 14th meeting, held on 18 October 2013, I had the honour of being elected, by the Sixth Committee, to Chair the Working Group.

The Working Group had before it the written comments of Governments issued in the most recent report of the Secretary-General, contained in document A/68/115 and Add.1.

The Working Group held one meeting on 23 October 2013, at which time the history of the consideration of the agenda item, by the Sixth Committee, was recalled. Taking into account the differences of opinion, which were expressed during the debate in the Plenary, the primary task of the working group was to obtain the views of Governments on a feasible way forward, which would be reflected in the draft resolution to be negotiated at the present session. In light of the plenary debate, two possible options were identified: either to decide to start a process towards the eventual negotiation and adoption of a treaty; or to simply postpone any decision on the matter over to a future session.

Several delegations took the floor to reiterate their positions expressed during the Plenary debate. Those who spoke in favour of the eventual adoption of the draft articles as a convention, stressed, *inter alia*, the important role the articles have played in clarifying and developing rules of customary international law, and placed emphasis on the legal certainty which a convention would bring. Other delegations continued to oppose such outcome, including for the reason that the negotiation of a convention would be premature in the absence of a consensus on the substance of the articles. Reference was also made to concerns regarding specific provisions of the articles on diplomatic protection, which had been raised during the Plenary debate.

The following is my assessment of the various positions in the Working Group:

- First, there exists support, among a number of States, for the possibility of starting a process towards the adoption of an international convention on the basis of the articles prepared by the International Law Commission;

- Second, despite such support, there remain some States who oppose the conclusion of a convention, including for reasons regarding concerns relating to specific provisions of the articles on diplomatic protection; and
- Third, there exist a further group of States who would prefer to defer a decision on how to proceed, one way or the other, until the final decision on the fate of the articles on the responsibility of States for internationally wrongful acts is taken.

With these conclusions in mind, there was agreement in the Working Group that the most feasible way forward, at the present session, was to work on the basis of a draft resolution deferring a decision on the fate of the articles on diplomatic protection to a future session.

The discussions on a text for such a draft resolution were subsequently undertaken on the basis of bilateral contacts, which I had with delegations, and which I will refer to upon introducing the draft resolution for the present agenda item.

Before concluding, I would like to thank all delegations for the constructive spirit in which the discussion in the Working Group was held.

This concludes my report of the Working Group.

Thank you, Mr. Chairman.