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UNITED NATIONS GENERAL ASSEMBLY SIXTH COMMITTEE

Diplomatic Protection

Statement by Ms Adrienne Elmitt, Adviser

Mr Chair,

I have the honour to speak today on behalf of CANZ: New Zealand and Canada as well as my own country, Australia.

CANZ has welcomed the adoption by the International Law Commission of the Draft Articles on Diplomatic Protection and commentaries thereto. To the extent that the Draft Articles articulate important aspects of customary international law, we consider the Draft Articles to provide useful guidance to States and international bodies and consider them valuable in their current form.

We take this opportunity to reiterate our view that it would not be appropriate to adopt a convention based on the Draft Articles at this time. We believe that the process of negotiating such a convention could undermine the influence and value of the Draft Articles by opening up debate on their contents.

Mr Chair,

CANZ considers the Draft Articles on Diplomatic Protection to be closely bound to the Articles on the Responsibility of States for Internationally Wrongful Acts. This is recognised in the International Law Commission's commentaries to the Draft Articles on Diplomatic Protection, which note that many of the principles contained in the Articles on State Responsibility are relevant to diplomatic protection – in particular, the provisions dealing with the legal consequences of an internationally wrongful act.

In the absence of a clear consensus on the elaboration of a convention on the basis of the Articles on State Responsibility, CANZ considers it would be premature to commence negotiations on a convention based on the Draft Articles on Diplomatic Protection.

In our view, certain aspects of the Draft Articles on Diplomatic Protection also go beyond existing customary international law relating to diplomatic protection, and there is unlikely to be international consensus on whether those aspects should be made the subject of a convention.

Mr Chair,

CANZ continues to see the International Law Commission's work on the Draft Articles as valuable in clarifying and developing customary international law on diplomatic protection. We view the Draft Articles as serving a useful purpose in informing and assisting to settle State practice in this important area over time.