

**Check against delivery**

**Seventy-first session**

**Sixth Committee**

Agenda item 79

**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 68/113 of 16 December 2013, the Sixth Committee decided, at its 1<sup>st</sup> meeting, on 3 October 2016, 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, sixty-fifth and sixty-eighth 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 same meeting, 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/71/93 and Corr.1.

The Working Group held two meetings on 17 and 19 October 2016, respectively, at which time the history of the consideration of the agenda item by the Sixth Committee was recalled.

In light of the differences of opinion, which were expressed during the debate in the Plenary, the primary task of the working group was to solicit the views of Governments on a feasible way forward, which would be reflected in the draft resolution to be negotiated at the present 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 an 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, as well as in light of the continued consideration of the fate of the 2001 articles on the responsibility of States for internationally wrongful acts. Reference was also made to concerns regarding specific provisions of the articles on diplomatic protection.

The suggestion was made in the Working Group that a road map be developed to help guide its work into the future. However, it was recalled that the inconclusive nature of the work on the State responsibility articles had made it difficult in the past to develop some such coherent plan of action for the articles on diplomatic protection. The possibility of “de-linking” the work on the two sets of articles was raised, but received little support. Likewise, at the present stage, delegations were not in a position to suggest more specific elements of a “road map”.

My sense of the state of play is that delegations continue to need more time to consult and in order to further develop and articulate their respective positions on a process to move the work forward. No doubt, as already indicated, developments in the work on the State responsibility articles will have a bearing on those views and positions.

With these general conclusions in mind, the focus of the Working Group at the present session was on reaching agreement on a draft resolution deferring a decision on the fate of the articles on diplomatic protection to a future session. The Working Group successfully concluded its consideration of a proposal for such a draft resolution, which I will introduce in due course.

Before concluding, I wish to call on delegations to continue to keep the matter of the draft articles on diplomatic protection under consideration during the inter-sessional period, with a view to making concrete proposals on how to proceed the next time the topic is discussed.

In particular, thought might be given to developing a “dual-track” approach, whereby delegations could exchange views on both the content and possible final form of the draft articles, especially in light of the fact that they include elements of both codification and progressive development of international law. Such reflection would be preliminary in nature, and without prejudice to the other “track” of work being undertaken in the context of the articles on State responsibility. Indeed, such an initial conversation at a future meeting of the Working Group could include precisely an examination of the nature and extent of the linkage between the two sets of articles.

I offer these thoughts by way of a modest suggestion on how to proceed in the future, and in the hope that they might serve to inspire member States to think about and propose a specific formula for the work that needs to be undertaken on the draft articles on diplomatic protection in the future.

Finally, permit me to thank all delegations for the constructive spirit in which the discussion in the Working Group was held, and the Secretariat for all the assistance it provided.

This concludes my report of the Working Group.

Thank you, Mr. Chairman.