



**PERMANENT MISSION OF CUBA TO
THE UNITED NATIONS**

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**STATEMENT BY THE CUBAN DELEGATION UNDER AGENDA
ITEM 82 “DIPLOMATIC PROTECTION”.
New York, October 2019**

Mr. President,

We appreciate the report submitted by the Secretary-General on diplomatic protection contained in document A/74/143, which includes views of Member States regarding the recommendation of the International Law Commission to draft a Convention on diplomatic protection.

We would also like to express our appreciation to the International Law Commission for its valuable contributions to achieving a Convention on Diplomatic Protection, and we reiterate our willingness to work with

all Member States to ensure that those contributions become international instruments.

Mr. President,

The adoption of a Convention on Diplomatic Protection would make it possible to harmonize and integrate all existing practice and jurisprudence on the subject, including the one contained in the judgments of the International Court of Justice. Cuba attaches great significance to these draft articles, especially because they also contain the customary norms and principles formed from the practice of States on this matter.

Cuba believes that a Convention based on the draft articles would contribute to the codification and progressive development of international law, in particular, to the consolidation of the set of rules relating to the conditions that must be satisfied to present a claim for diplomatic protection.

We regret that not all States make appropriate use of diplomatic protection as a subsidiary mechanism for the protection of the rights of their nationals, using it, sometimes, as an instrument of pressure against certain States and in favor of transnational economic interests.

The exercise of diplomatic protection constitutes a sovereign right of States and is an institution of vital importance for the promotion of the Rule of Law at all levels; while it guarantees a more effective protection of the human rights and fundamental freedoms of individuals. The applicability recognized in such regime of diplomatic protection to refugees and stateless persons contributes in a very special way, to the protection of the rights of these highly vulnerable groups. However, for the establishment of a future convention, it must be taken into consideration that not all states are signatories to international instruments relating to refugees.

In this regard, it would be laudable that a future convention specifies whether, in the case of persons with multiple nationality, the State with the capacity to claim is the State with which the individual has an effective link.

Mr. President,

Cuba considers that this topic contributes in a particular way, to the strengthening of the Rule of Law at the national level because, as the draft articles of the Convention provide, the exhaustion of domestic remedies should be required as a prerequisite for the exercise of diplomatic protection, therefore, for the drafting of a future Convention, it would be appropriate to evaluate the incorporation of this topic.

Furthermore, we consider that it should be clearly examined whether the conduct of the individual in favor of whom the protection is exercised was contrary to the domestic law of the State against which the claim is filed

or to International Law, since it may somehow have an influence on the effects of the exercise of the protection and the consequences in which it is found.

It becomes significant that the draft articles do not unquestionably regulate one of the requirements that both, the general doctrine and jurisprudence, consider necessary for a State to offer diplomatic protection, which consists in the fact that the injured person has acted transparently and has not committed an unlawful act that could in any way justify a legitimate retaliation on the part of the State.

As set forth in article 1 of the draft, an International Convention on diplomatic protection would strengthen the right of States to invoke, through diplomatic action or other means of peaceful settlement, the responsibility of another State for an injury suffered by an internationally wrongful act.

Cuba considers that the draft articles of the Convention are closely linked to the project on the Responsibility of States for internationally wrongful acts. Diplomatic protection pursues the protection of the rights of individuals against an unlawful act of a foreign State, as provided for in the draft articles on Responsibility of States; therefore, both should be accorded equal importance in order to contribute to better compliance with International Law.

Mr. President,

The Cuban delegation considers it positive that, in order to promote the broadest consensus regarding the materialization of these proposals, the Working Group will continue the study of the draft articles proposed by the International Law Commission.

The Working Group is responsible for finalizing the details of the future Convention on Diplomatic Protection for the purposes of improving its text and achieving its

greater acceptance by Member States. We hope that the results will be positive and that we will be able to reach consensus on the issue.

Cuba reiterates its full readiness to work together with the view to achieve the desired objective of an International Convention on Diplomatic Protection.

Thank you