

**United States Statement at the 74th General Assembly Sixth Committee
Agenda Item 80: Diplomatic Protection
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Thank you, Chair.

First, let me thank the Secretary General for his helpful report compiling the written comments of States on possible future action on the draft articles on diplomatic protection.

As we indicated in 2016, the United States shares the view that where the draft articles on diplomatic protection reflect State practice, they represent a substantial contribution to the law on the topic and are thus valuable to States in their current form. The United States has concerns, however, that certain draft articles are inconsistent with well-settled customary international law. For more details, please see the statement delivered by the United States on October 19, 2007, as reported in document A/C.6/62/SR.10.

To highlight just one significant remaining concern, we would point to Article 15 on exceptions to the local remedies rule. Draft Article 15 would not require exhaustion where there is no reasonably available local remedy for effective redress or the local remedies provide no reasonable possibility of such redress. In our comments to the International Law Commission, we opposed this standard as too lenient, noting that the customary international law standard was that the exhaustion requirement was excused only where the local remedy is “obviously futile” or “manifestly ineffective.” While the ILC, in its commentary, regarded the customary international law rule as too burdensome – a conclusion with which we respectfully disagree – we maintain that any articles considered in a convention on diplomatic protection should reflect the well-established customary international law on this subject.

We maintain similar concerns regarding, for example, Articles 10 and 11, which were also detailed in our previous written submissions and our 2007 statement. As we stated in 2007, the United States is also concerned that the negotiation of a convention risks undermining contributions already achieved by the draft articles.

We look forward to engaging further on this agenda item.

Thank you, Chair.