

*Translated from Arabic*

## **Observations and views of the Kingdom of Saudi Arabia regarding the draft articles on diplomatic protection of nationals**

First, the focus of the draft articles on diplomatic protection is primarily diplomatic action to protect nationals following injuries arising from internationally wrongful acts. Article 1 provides that diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility. The draft contains no definition of internationally wrongful act, nor the scope thereof defined. The Special Rapporteur, in paragraph 6 of his seventh report, dated 7 March 2006, stated that the fate of the draft articles on international protection is closely bound up with that of the draft articles on responsibility for internationally wrongful acts. Given that the draft articles on the responsibility of States for internationally wrongful acts are still being discussed and studied, it might be premature to have a discussion on the draft articles on diplomatic protection, because the latter are closely related to the former.

Second, paragraph 1 of article 6 provides that any State of which a dual or multiple national is a national may exercise diplomatic protection in respect of that national against a State of which that person is not a national, while paragraph 2 of that article provides that two or more States of nationality may jointly exercise diplomatic protection in respect of a dual or multiple national. It is not clear what would happen if more than one State were to exercise diplomatic protection in respect of one of its nationals (dual or multiple national) against a third State.

Third, article 15 contains several expressions of a general nature that may present problems with regard to interpretation. Those expressions include “reasonably”, “effective redress”, “undue” and “manifestly precluded”. The meaning of the expression “relevant connection”, in paragraph (c) of that same article, is also unclear. Article 15 is one of the most important of the draft articles, as it exempts States invoking diplomatic protection from a fundamental requirement, namely, exhaustion of local remedies. Accordingly, it is important to formulate the exemption in a manner that is clear and does not lend itself to multiple interpretations.

Fourth, article 5, paragraph 2, of the draft articles provides that a State may exercise diplomatic protection in respect of a person who is its national at the date of the official presentation of the claim but was not a national at the date of injury, etc. It might be appropriate, however, to limit the scope of the State’s jurisdiction when exercising diplomatic protection in respect of any person, and make it conditional on the person being a national of the State at the time of the injury. It should not cover any exceptional situations.

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