



Ministero degli Affari Esteri
e della Cooperazione Internazionale

Sixth Committee

77th Session of the General Assembly

Agenda item n. 79 – Diplomatic Protection

Statement of Italy

Delivered by Mr Walter Ferrara

Mr. Chairman/Madam Chair,

At the outset, let me underline the relevance of the ILC Draft Articles on diplomatic protection as an important contribution to the understanding and development of international law.

As previously stated, Italy endorses the individual-oriented approach adopted by the Commission in formulating the Draft Articles. In particular, we wish to express Italy's appreciation for the phrasing of Draft Article 1, which captures **the importance of emphasizing the role of the individual** as the victim of the foreign State wrongful conduct triggering the invocation of diplomatic protection. In this vein, we also welcome the insertion of Draft Article 19, as recommended practice to be adopted by States. At the same time, we wish to underline that under current international law the right to exercise diplomatic protection exclusively belongs to the State, which can exercise it discretionally. This is asserted by the draft Article 2, whose wording Italy endorses.

Italy would also like to take this opportunity to suggest two courses of action with the aim of further contributing to the work of this Committee on this topic and of avoiding a deferral *ad infinitum* of the decision as to what kind of action to take with respect to the Draft Articles on diplomatic protection.

Mr. Chairman/Madam Chair,

As a **first course of action**, Italy suggests the adoption of a **soft law instrument** that would incorporate the entire set of Draft articles on diplomatic protection adopted by the ILC. A non-binding resolution of this General Assembly might indeed encourage States to apply the rules set forth in the Draft Articles, thereby reinforcing the legal value of the work conducted by the ILC and stimulating the further development of State practice on those aspects of diplomatic protection, which are not yet recognized as customary international law.

Mr. Chairman/Madam Chair,

As a **second course of action**, in line with what my delegation has expressed in the general debate of agenda item on State Responsibility, Italy invites this Committee to consider **including a chapter on diplomatic protection in Part III on implementation of State responsibility of any future Convention on State Responsibility**. As the ILC has noted and in line with the view expressed by a plurality of States since the beginning of the work on the topic, diplomatic protection is closely linked to the subject of State responsibility. Indeed, given the evolution of the relevant norms and their scope, diplomatic protection no longer applies only in response to violations of the norms on the treatment of aliens abroad, but is one of the possible ways to obtain redress after any internationally wrongful conduct of a foreign State against natural or legal persons, including violations of fundamental human rights. This proposal, where implemented, would have the advantage of promoting a systematic approach involving key provisions of the Draft Articles on Responsibility of States (ARSIWA). In this view, Italy wishes to endorse an extensive interpretation of Article 48, para. 1 b) of the ARSIWA which may encompass the entitlement of any State other than the State of nationality of the injured person to invoke diplomatic protection in case of breaches of obligations owed to the international community as a whole.

These two proposals may be taken on board either in the alternative or the soft law instrument could prepare the ground for the future codification of diplomatic protection in a convention on the law of State responsibility.

Our delegation stands ready to engage with other delegations on this important topic.

Thank you Mr. Chairman/Madam Chair.