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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

UNITED NATIONS GENERAL ASSEMBLY, SIXTH COMMITTEE,
DIPLOMATIC PROTECTION
(NEW YORK, 21 OCTOBER 2013)

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Mr. Chairman,

On the previous occasions, when the Sixth Committee has discussed whether any further action should be taken in relation to the ILC's Draft Articles on Diplomatic Protection, the United Kingdom has taken view that the fate of the Articles on Diplomatic Protection is closely bound up with that of the Articles on State Responsibility. This is, moreover, a view that the ILC's Special Rapporteur on the topic himself took.

Article 1 of the Articles on Diplomatic Protection defines diplomatic protection in terms of the invocation of the responsibility of another State, and the provisions of the Articles on Diplomatic Protection can be seen as giving content to the admissibility requirements of Article 44 of the Articles on State Responsibility in the specific context of diplomatic protection. Thus, in the absence of consensus on the elaboration of a convention on the basis of the Articles on State Responsibility, which we noted in relation to the previous agenda item, any decision to begin negotiating a convention in respect of the Articles on Diplomatic Protection would be premature.

We also consider that the Articles on Diplomatic Protection go beyond the straightforward codification of the current law and contain elements that would amount to progressive development of customary international law on the topic. We also note that some of those elements of progressive development of the law would conflict with our current practice, and we do not consider that they constitute a desirable change in the law. In this connection we would mention, in particular, that the apparently non-binding Article 19, entitled "Recommended practice", seems inappropriate for inclusion in a treaty and risks undermining the wide discretion of a State to decide whether or not to exercise diplomatic protection.

As the United Kingdom has emphasised previously, the elaboration of the Articles on Diplomatic Protection into a convention should not be seen as the only possible successful conclusion to this body of work. The most appropriate final form of the Articles is that which best serves the development of the law. At present, and in the absence of a convention on State Responsibility, the United Kingdom remains of the view that that would be best achieved by allowing the Articles to inform and influence State practice without moving to negotiate a convention. We would suggest the further consideration of this agenda item be deferred until it is clear that the time is ripe for further action by this Committee.

Thank you, Mr. Chairman.