



**Statement**  
**on behalf of the**  
**Republic of South Africa**  
**by**  
**Alternatively Thabo Molefe: Legal Adviser**  
**Before the Sixth Committee of the**  
**74<sup>th</sup> Session of the United Nations General Assembly**

**Under Agenda Items 75 and 80**  
**“Responsibility of States for internationally wrongful**  
**acts” and “Diplomatic Protection”**

**16 October 2019**

## **Chair**

Thank you for affording me the floor. We wish to thank the Secretary-General for the efforts in preparing two reports in relation to responsibility of states for internationally wrongful acts, namely on the compilation of decisions of international courts, tribunals and other bodies referring to the articles, and a report containing the comments and information received from Governments, both of which are indeed most useful.

In 2001, the draft Articles on Responsibility of States for internationally wrongful acts, which was adopted by the International Law Commission opened the way for the consideration of a future international convention based on the draft Articles.

Nearly 20 years later, the question of a convention on responsibility of states for internationally wrongful acts remains unresolved and states continue to be divided on this question.

## **Chair**

Numerous decisions of international courts and tribunals as well as other bodies and national courts have referred to the draft Articles. It appears that the draft Articles have widespread support. Yet certain states remain unconvinced that a convention is necessary or that the time is ripe for one. Whilst South Africa supports a convention, the continued debates in the sixth committee on whether there is a need for a convention may be preventing the sixth committee from engaging in discussions on substantive aspects of the draft Articles. Perhaps the time has come to shift focus to

engaging in such discussions, which may ultimately address the concerns of those states hesitant to support a convention, rather than to continue back and forth discussions on whether a convention is appropriate or not.

## **Chair**

With your permission, I now turn to the item 80 on Diplomatic Protection. We wish to once again express our gratitude to the Secretary-General for its report and for those states that have provided written inputs. Diplomatic protection is a form of the implementation of state responsibility. Accordingly, the two agenda items, Diplomatic Protection and the Responsibility of States for internationally wrongful acts, are interlinked and discussions surrounding the responsibility of states will invariably have an impact on the draft Articles on Diplomatic Protection, adopted by the International Law Commission in 2006.

The tendency is to await the outcome of the question of a convention regarding state responsibility before taking a decision on a convention on diplomatic protection.

South Africa supports the work of the International Law Commission regarding diplomatic protection. However, it is hesitant about the scope of some of the articles, specifically draft Article 19 which provides that states should give due consideration to the possibility of exercising diplomatic protection. Provisions such as draft Article 19 could establish a general obligation on states to provide diplomatic protection. However, South African courts have, for instance, addressed diplomatic protection and have

found that there is no obligation on South Africa to provide diplomatic protection, there is only a constitutional duty to rationally apply its mind to the request for diplomatic protection.

The increased status ascribed to the draft Articles could result in them developing into customary international law. Such a development may be unfavourable to states, which is why South Africa supports the development of a convention on diplomatic protection as it will afford states the opportunity to make inputs and provide legal certainty.

I thank you for your attention.