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Seventy-fourth session  
Sixth Committee  
Agenda item 80

## **Diplomatic protection**

### **Oral report of the Chair of the Working Group**

Mr. Thabo **Molefe** (South Africa)

Mr./Mdm. Chair,

I have the honour to present the report of the Working Group on Diplomatic Protection for this session.

Pursuant to General Assembly resolution 71/142 of 13 December 2016, the Sixth Committee decided, at its 1st meeting on 7 October 2019, to establish a working group to further examine, in the light of the written comments of Governments, as well as views expressed in the debates held at the sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions of the General Assembly, the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the articles on diplomatic protection and to also identify any difference of opinion on the articles. The Sixth Committee also decided to open the Working Group to all States Members of the United Nations or members of specialized agencies or of

the International Atomic Energy Agency. It was an honour for me to be elected by the Sixth Committee as the Chair of the Working Group.

The Working Group held two meetings on 16 and 23 October 2019. The Working Group had before it the report of the Secretary-General containing the written comments received from Governments from 2017 to 2019 (A/74/143), in addition to the previous reports of the Secretary-General for the sixty-second, sixty-fifth, sixty-eighth and seventy-first sessions (A/62/118 and Add.1, A/65/182 and Add.1, A/68/115 and Add.1, and A/71/93 and Corr.1).

At the beginning of our meetings, I recalled the history of the consideration of the agenda item by the Sixth Committee. In particular, the Working Group had met every three years in 2010, 2013 and 2016 to examine the articles on diplomatic protection, which were adopted by the International Law Commission in 2006, and annexed to General Assembly resolution 62/67 of 6 December 2007. I observed that delegations had expressed diverging views on the question of whether to proceed with the elaboration of a convention on the basis of the articles on diplomatic protection, and that the consideration of the item had, so far, been linked to that of the 2001 articles on the responsibility of States for internationally wrongful acts. I also expressed my readiness to develop a road map, as previously suggested, if delegations were in a position to suggest specific elements for such a road map to guide the work of the Working Group. With that background in mind, the main task of the Working Group was to reach agreement on the best way forward, which would be reflected in a draft resolution to be negotiated at this session.

During the discussions of the Working Group, several delegations reiterated their views expressed during the plenary debate, highlighting substantive concerns with certain provisions of the articles on diplomatic protection, while other delegations spoke in favour of the eventual adoption of the articles as a convention. The continued solicitation of views from Governments on the articles on diplomatic protection was welcomed as a useful exercise. At the same time, it was observed that more time was needed for State practice to develop before any action could be taken on the articles. Moreover, attention was drawn to the ongoing consideration of the fate of the articles on State responsibility.

A number of suggestions were made for the Sixth Committee to organize its work on the articles on diplomatic protection more effectively in relation to its work on the articles on State responsibility. Some delegations took the position that the Sixth Committee should continue its consideration of both items in parallel, focusing on a closer analysis of the substantive issues and concerns raised by States. The possibility of engaging in intersessional work on the articles on diplomatic protection was also raised. A proposal was made to merge the agenda items concerning State responsibility and diplomatic protection, with the latter as a sub-item, in order to combine consideration of the question of future action on the two sets of articles. In that regard, differing opinions were voiced in respect of the feasibility of such a proposed merger of items, which raised concerns that it might complicate discussions on the questions surrounding both topics. During the deliberations, various options regarding the timing of convening the Working Group were explored, such as suspending the

three-year cycle of its work, or reducing the time allocated to it at a future session.

In the light of the discussions in the Working Group, proposals for a draft resolution were considered, aimed at streamlining the work of the Sixth Committee on the articles on diplomatic protection with its work on the articles on State responsibility, taking into account any developments regarding the latter. I will be introducing the draft resolution in due course.

Before I conclude, I wish to call on delegations to keep the item under consideration during the intersessional period, with a view to making concrete proposals on how to proceed in the future.

Finally, I thank delegations for the constructive discussions held in the Working Group and the Secretariat for the assistance provided.

This concludes my report of the Working Group.

Thank you, Mr./Mdm. Chair.