Statement by
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On:

"Diplomatic Protection"

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Diplomatic Protection is one of the key topics developed and finalized
by the International Law Commission. We express our appreciation to the ILC for its continuous contribution to the codification and progressive development of international law. My delegation also takes note of the report of Secretary-General on this item contained in document A/71/93.

Diplomatic protection plays an important role in international relations today. A rather complex process, diplomatic protection remains a complex and multifaceted issue since it involves both the rights of individuals and the rights of States. Any legal regime on diplomatic protection should be based on a thorough understanding of these two elements and a proper balance between rights of individuals and those of the States. It is doubtful that the present set of Draft Articles as proposed by the ILC and reflected in resolution A/62/67 could satisfy these concerns.

In our view, some of the draft articles on diplomatic protection could
not be deemed as reflective of customary international law. For instance, the draft Article relating to diplomatic protection of stateless persons (Article 8), or the one relating to individuals with multiple nationality (Article 7), have been formulated either on the basis of the case-law of some regional tribunals or on the basis of the case-law of some sui generis tribunals; these case-laws could hardly reflect existing general international law.

We took note of the commentary of Article 7 in which explanations
are given about the use of term predominant instead of dominant or effective nationality to convey element of relativity. However, it would be difficult to define a decisive and harmonized criterion to establish predominance of a nationality over another nationality. Therefore, in our view this provision does not create a normative solution; rather, it increases uncertainty and ambiguity. It also goes contrary to the constitution of those countries which do not accept dual nationality or do not recognize its legal effects arising from secondary nationality of their citizens. In these cases, the exercise of diplomatic protection by one State of nationality against another State of nationality would create uncertainty and ambiguity in obligations of states. Furthermore, draft Article 15 (b) and (d) either looks vague or is hypothetical far from realities on the ground.

Last but not least, although in the commentary, the ILC has pointed
out that the draft articles are not going to deal with primary rules, in some provisions, we see contrary to this expression. For instance, it is for each State to decide in accordance with its laws who its national are. In this context, the final phrase in draft article 4 which stresses that the acquisition of nationality must not be inconsistent with international law and the example mentioned therein is not so clear.

Finally, we note that Member States have different views as to the future of these draft Articles. This is indicative of the fact that States still need more time to further consider the content of the Draft Articles. My delegation believes that it is still not ripe enough to elaborate the Draft Articles into a legally binding instrument until and unless certain concerns of Member States are duly met.

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