

ARTICLES ON DIPLOMATIC PROTECTION

The International Law Commission commenced its discussion of the topic “Diplomatic protection” in 1995, in the course of its forty-seventh session, following the recommendation of the Working Group on the Long-term Programme of Work (A/51/10, Add. 1). On 11 December 1995, in resolution 50/45, the General Assembly noted the suggestion of the Commission to include diplomatic protection as a topic on its agenda and invited Governments to submit comments on this suggestion for consideration by the Sixth Committee during the fifty-first session of the General Assembly.

At its fifty-first session, the General Assembly adopted resolution 51/160, inviting the Commission to examine the topic “Diplomatic protection”, and to indicate the scope and the content of the topic in the light of the comments and observations made during the debate in the Sixth Committee and any written comments that Governments may wish to submit. The Commission thus began its consideration of the topic at its forty-eighth session, in 1996, and adopted a general outline of the main legal issues raised under the topic to assist Governments in deciding whether to approve further work (Report of the International Law Commission on the work of its forty-eighth session, A/51/10, Annex II, Addendum 1).

At its forty-ninth session, in 1997, the Commission established a Working Group to examine the topic and to indicate its scope and content in accordance with General Assembly resolution 51/160. In the same session, the Commission appointed Mr. Mohamed Bennouna as Special Rapporteur for the topic. By virtue of its resolution 52/156 of 15 December 1997, the General Assembly once more endorsed the decision of the Commission to include diplomatic protection in its agenda.

At its fiftieth session, in 1998, the Commission considered the preliminary report of the Special Rapporteur, Mr. Bennouna (A/CN.4/484). The General Assembly, in resolution 53/102 of 8 December 1998, invited Governments to submit to the Commission the most relevant national legislation, decisions of domestic courts and State practice relevant to diplomatic protection in order to assist the Commission in its future work on the topic.

At its fifty-first session, in 1999, the Commission, following Mr. Bennouna’s resignation from the Commission, appointed Mr. John R. Dugard as Special Rapporteur for the topic. The first report of the newly appointed Special Rapporteur (A/CN.4/506, Corr.1 and Add.1), was considered by the Commission at its fifty-second session, in 2000. The second report (A/CN.4/514, Corr.1 and Corr.2) was considered at the Commission’s fifty-third session, in 2001. The third report (A/CN.4/523) was considered during the fifty-fourth session in 2002. During the fifty-fourth session the Commission adopted seven articles, along with their commentaries (A/CN.4/L.613/Rev.1). The fourth report (A/CN.4/530) was considered in 2003, at the Commission’s fifty-fifth session, during which three additional draft articles were provisionally adopted (A/CN.4/L.631). At its fifty-sixth session, in 2004, the Commission had before it the fifth report of the Special Rapporteur (A/CN.4/538). The Commission considered the report of the Drafting Committee and adopted on first reading a set of 19 draft articles on diplomatic protection, with commentaries (A/CN.4/L.647). The Commission further decided to transmit the draft articles, through the Secretary-General, to Governments for comments and observations.

The work of the Commission on the topic proceeded in accordance with the successive resolutions adopted by the General Assembly under the item relating to the report of the International Law Commission (resolutions 54/111 of 9 December 1999,

55/152 of 12 December 2000, 56/82 of 12 December 2001, 57/21 of 19 November 2002 and 59/41 of 2 December 2004). In these resolutions, the Assembly reiterated its invitation to Governments to submit relevant materials to assist the Commission in its work on the topic.

During its fifty-eighth session, in 2006, the Commission had before it comments and observations received from Governments on the draft articles adopted on first reading in 2004, in addition to the seventh report (A/CN.4/567) of the Special Rapporteur containing proposals for the consideration of draft articles 1 to 19 on second reading, as well as a proposal for an additional draft article, in light of the comments and observations received from Governments. At the same session the Commission adopted the draft articles on diplomatic protection, on second reading, together with commentaries. In accordance with article 23 of its Statute, the Commission decided to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles (Report of the International Law Commission on the work of its fifty-eighth session, A/61/10).

The General Assembly, on 4 December 2006, adopted resolution 61/34, in which it expressed its appreciation to the International Law Commission for the work accomplished at its fifty-eighth session, *inter alia*, for the completion of the second reading of the draft articles on diplomatic protection. On the same day, the Assembly adopted resolution 61/35, in which it took note of the draft articles on diplomatic protection presented by the Commission and invited Governments to submit comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles. The Assembly further decided to include in the provisional agenda of its sixty-second session (2007) an item entitled "Diplomatic protection". The Assembly, in two resolutions thereafter, namely resolutions 62/67 of 6 December 2007 and 65/27 of 6 December 2010, commended the articles on diplomatic protection to the attention of governments and invited them to submit comments concerning the elaboration of a convention based on the articles. By virtue of the latter resolution, the Assembly also decided to include in the provisional agenda of its sixty-eighth session, in 2013, the item entitled "Diplomatic protection" and, within the framework of a working group of the Sixth Committee of the General Assembly, to further examine the question of a convention on diplomatic protection, or any other appropriate action, on the basis of the above-mentioned articles.