

STATEMENT OF THE PHILIPPINES

Item 79 Diplomatic Protection

Sixth Committee, 71st session of the United Nations General Assembly
Monday, 10 October 2016

Thank you, Mr. Chairman.

The question of diplomatic protection is of major importance in the relations between States, as we recognized when we last considered this subject three sessions ago. Diplomatic protection has been relevant long before nation-states

Under customary international law, there are two main requirements for the exercise of diplomatic protection, i.e., the exhaustion of local remedies and effective and continuous nationality.

First, the injured person must first give the host state a chance to repair the injury through its own judicial or quasi-judicial system. Draft Article 15 codifies this rule. We believe that this provision is clear enough, but should interpretation be needed, it should be interpreted *in strictissimi juris*, including exceptions (c) and (d), as all exceptions to a general rule should be interpreted. Otherwise, the reputation and even independence of the judiciary may be affected, to the detriment of the fair administration of justice and the rule of law.

Second, the natural or juridical person who has been injured should, as a general rule, maintain the nationality of the espousing state from the moment of injury until at least the presentation of the claim. Here, *Nottebohm* reminds us of the importance of effective and genuine link. Specific rules are also outlined in Part II of the draft articles, including with respect to direct injury to corporate shareholders, stateless persons, refugees, and persons with dual or multiple nationalities.

The last category is particularly important for the Philippines. In 2003, we enacted our dual nationality law, which could affect up to 10 million Filipinos living overseas and who have a second or third nationality. In this regard, we would be very interested in the operationalization of the definition of “predominant nationality” under draft Article 7.

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While diplomatic protection exists under customary international law,