

Abstract

According to an international law, if persons of any nationalities reside in the territory of one State, he must accept and comply with the laws and customs of that State. At the same time that State cannot treat an alien however it likes, but must treat to them according to the rules of an international law. That is, the State shall not treat the alien worse than the international minimum standard. If the State fails to comply with the international minimum standard and causes injury to an alien; additionally, the alien has exhausted all local remedies but did not get fair treatment; the responsibility in international law will be raised against that State. As a result, the State which has legal relation to the injured person has a discretionary right to exercise diplomatic protection on behalf of such a person in order to claim on the respondent State for redress of injury. Therefore it may be said that diplomatic protection is one of the mechanisms designed to secure reparation for injury in an international law. The notion of diplomatic protection originated from Vattel, who said: "Whoever ill-treats a citizen indirectly injures the State, which must protect that citizen. The sovereign of the injured citizen must avenge the deed and, if possible, force the aggressor to give full satisfaction or punish him, since otherwise the citizen will not obtain the chief end of civil society, which is protection."

Although diplomatic protection may be exercised by both natural persons and legal persons, in the case of natural persons who have been injured, they could not directly claim in international court the same as legal persons. Furthermore diplomatic protection is a rule in an international law to which every State can apply. That is different from the human rights treaties binding only the States which are parties to treaties. Thus the rule of diplomatic protection is essential to natural persons. Because it is the only way that natural persons can equally have access to redress in international law.

Nevertheless in international law, the details of the conditions of diplomatic protection are not prescribed. Therefore the International Law Commission studied

diplomatic protection in order to make this subject clear. The result of the study is set out in the Draft Articles on Diplomatic Protection, which consists of two parts; a codification of customary international law concerning diplomatic protection, and another part, development of some rules in order to be clear. Thus even though the draft article does not effect as a treaty, but some rules which are about codification of customary international law bind States as the law. For rules which are progressive development, though they have not in effect as law as it exists, but if several States accept and comply until they are obviously in practice, they will continue to develop into the law binding States.

In consideration of the draft article which will be met when the State which exercises diplomatic protection must regard four significant conditions. Firstly, the State shall consider whether they can be attributed to the conduct of the State which constitutes a breach of an international obligation. Secondly, the State which will exercises diplomatic protection has a legal relation to the person who obtains diplomatic protection or not; in the event of the State and injured persons having such relation. Thirdly, the State also considers that having continuous in such relation or not, which in this case is continuous nationality of a natural person. And the last condition which the State shall consider is whether injured persons have exhausted local remedies. If it is considered all conditions that are abovementioned apply, the State can exercise diplomatic protection to such person.