

UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK

February 5, 2010

The United States Mission to the United Nations presents its compliments to the United Nations and has the honor to refer to the Secretariat's note LA/COD/26 dated March 6, 2009, regarding a request for comments on any further action regarding the draft articles on the Responsibility of States for internationally wrongful acts. The Government of the United States hereby presents its comments and requests the Secretariat's assistance in transmitting this response to the International Law Commission.

The United States Mission avails itself of this opportunity to renew to the United Nations the assurances of its highest consideration.

Enclosure

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DIPLOMATIC NOTE

**Comments of the United States of America
on Future Action Regarding The Draft Articles on State Responsibility**

The United States once again extends its congratulations to the International Law Commission for completing in 2001 its important project on the topic of the responsibility of States for internationally wrongful acts, and its appreciation to the five Special Rapporteurs who contributed significantly to the completion of the project.

The Sixth Committee and the General Assembly have considered the future of the draft articles on three occasions. In 2001, the General Assembly welcomed the draft articles in Resolution 65/83, the text of which was annexed to the resolution, and “commend[ed] them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action.” In 2004, the General Assembly postponed further consideration of the final form of the draft articles in the General Assembly until the sixty-second session. In 2008, the General Assembly decided to “further examine, within the framework of a working group of the Sixth Committee, the question of a convention... or other appropriate action on the basis of the articles” in its sixty-fifth session and requested “the Secretary-General to invite Governments to submit their written comments on any future action regarding the articles,” in Resolution 62/61.

The United States believes that the action of the General Assembly in 2001 in commending the draft articles to the attention of Governments with no further action at that time

was the right course of action to adopt. We continue to believe that no further action with regard to the draft articles is necessary.

There is a large body of well-established State practice pertaining to many of the issues covered by the draft articles. The ILC's draft articles have shown themselves to be useful in their current, non-binding form, as a guide to States and other international actors on either what the law is or how the law might be progressively developed. It is difficult to see what would be gained by the adoption of a convention. Indeed, the negotiation of a convention would risk undermining the very important work that has been undertaken by the Commission on this topic, particularly if a significant number of states did not ratify the resulting convention. For these reasons, the United States believes that no further action need be taken on this topic.