

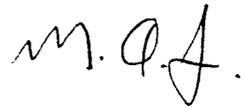
UNITED STATES MISSION TO THE UNITED NATIONS
NEW YORK

August 18, 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/18/3 of 10 March 2010, concerning a request for comments on draft articles and principles developed by an International Law Commission regarding the prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm. 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

A handwritten signature in black ink, appearing to be 'M. P. J.', located in the lower right quadrant of the page.

DIPLOMATIC NOTE

COMMENTS OF THE UNITED STATES
ON THE DRAFT ARTICLES ON PREVENTION OF TRANSBOUNDARY HARM FROM
HAZARDOUS ACTIVITIES, AND ON THE PRINCIPLES ON THE ALLOCATION OF LOSS
IN THE CASE OF TRANSBOUNDARY HARM ARISING OUT OF HAZARDOUS
ACTIVITIES

The United States once again extends its congratulations to the International Law Commission for completing its work regarding the prevention of transboundary harm from hazardous activities and the allocation of loss from such harm.

As we have previously stated, the Commission's draft articles on prevention have marked a positive step toward encouraging states to establish means to address such issues as notification in specific national and international contexts. The principles on allocation of loss are also a positive step, toward encouraging states to establish mechanisms to provide prompt and adequate compensation for victims of transboundary harm. The principles incorporate progressive ideas such as the responsibility of operators, the desirability of backup financial security measures, the importance of prompt response measures, and broad concepts of compensable harm. They also stress the importance of national, bilateral, regional and sectoral arrangements to carry out these ideas. The Commission urged States to take national and international action to implement the principles, and we similarly urge national action and State-to-State agreements in specific contexts, as that is what the principles were designed to encourage.

The General Assembly has commended both the draft articles on prevention and the principles on allocation of loss to the attention of Governments and invited comments on their form. We strongly support retaining these products in their current form. As we have previously noted, both the draft articles and draft principles go beyond the present state of international law and practice, and are clearly innovative and aspirational in character rather than descriptive of current law or State practice. Both documents were designed as resources to encourage national and international action in specific contexts, rather than to form the basis of a global treaty.

Accordingly, we continue to believe it is most appropriate for the principles to take the form of non-binding standards of conduct and practice, and for the work on prevention to remain formulated as draft articles. Retaining the current, recommendatory form of these the draft articles and principles increases the likelihood that they will gain widespread acceptance and fulfill their intended purpose.