

UNITED STATES MISSION TO THE UNITED NATIONS  
NEW YORK

May 27, 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 No. LA/COD/38 dated August 11, 2009, regarding a request for comments on any further action regarding the draft articles on diplomatic protection. 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 Diplomatic Protection**

The United States once again expresses its appreciation to the International Law Commission for its valuable contribution to the topic of diplomatic protection. We continue to believe that the draft articles are most valuable to States in their present form, and that no further action with regard to the draft articles is necessary.

In its report on its fifty-eighth session, the Commission “decided in accordance with article 23 of its Statute, to recommend to the General Assembly the elaboration of a convention on the basis of the draft articles on Diplomatic Protection.” In Resolution 62/67, the General Assembly “commend[ed] the draft articles on diplomatic protection, the text of which is annexed to the present resolution, to the attention of Governments, and invite[d] them to submit in writing to the Secretary-General any further comments concerning the recommendation by the Commission to elaborate a convention on the basis of the articles.” The General Assembly additionally decided to consider future action on the draft articles in a working group of the Sixth Committee during its sixty-fifth session.

During the sixty-second session of the Sixth Committee, the United States, among other countries, expressed concern that a limited number of draft articles deviate from well-settled customary international law. Nevertheless, to the extent that the draft articles reflect the large body of State practice in this area, they represent a major contribution to the law of diplomatic protection, and are thus valuable to States in their present form.

We fear that the process of negotiating a convention risks undermining the substantial contributions of the draft articles. The United States therefore believes that the General Assembly should take no further action on the draft articles at this time.