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UNITED STATES MISSION TO THE UNITED NATIONS

**Statement by the United States of America
72nd General Assembly Sixth Committee
Agenda Item 86 – Effects of Armed Conflicts on Treaties
Mark A. Simonoff, Minister Counsellor
October 20, 2017**

The United States once again extends its congratulations to the International Law Commission (ILC) for completing, in 2011, its work on the draft articles and commentaries on the effects of armed conflicts on treaties. As the United States has noted previously, the draft articles reflect the continuity of treaty obligations during armed conflict when reasonable, take into account particular military necessities, and provide practical guidance to States by identifying factors relevant to determining whether a treaty should remain in effect in the event of armed conflict.

The Sixth Committee and the General Assembly have considered the future of these draft articles on several occasions. In December 2011, the General Assembly in resolution 66/99 took note of and commended to the attention of Governments the draft articles contained in the annex to that resolution, without prejudice to the question of future adoption of the draft articles or other appropriate action. Three years later, in resolution 69/125, the General Assembly again commended the draft articles to the attention of Governments, also without prejudice to future action on them.

It has been and remains the United States' view that the draft articles are best used as a resource that States may consider when determining the effect of particular armed conflicts on particular treaties. Moreover, in light of our continued concerns about aspects of the draft articles, we do not support the elaboration of a convention on this topic. For example, we continue to have concerns about the definition of "armed conflict" in draft article 2(b). Rather than defining the term, the better approach would have been to make clear that armed conflict refers to the set of conflicts covered by common articles 2 and 3 of the 1949 Geneva Conventions (*i.e.*, international and non-international armed conflicts), which enjoy nearly universal acceptance among States. Additionally, with respect to draft article 15, we do not believe that it should be interpreted to suggest that illegal uses of force that fall short of aggression would necessarily be exempt from this provision.

The United States believes the action of the General Assembly in 2011 and again in 2014 commending the draft articles to the attention of Governments with no further action was the right course. We continue to believe that no further action with regard to the draft articles is necessary.