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**STATEMENT
BY
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OF SOUTH AFRICA TO THE UNITED NATIONS,**

**IN THE
SIXTH COMMITTEE OF THE GENERAL ASSEMBLY
UNDER THE AGENDA ITEM "CONSIDERATION OF
PREVENTION OF TRANSBOUNDARY HARM FROM
HAZARDOUS ACTIVITIES AND ALLOCATION OF LOSS IN
THE CASE OF SUCH HARM"**

**NEW YORK
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Mr Chairman

Thank you for affording us the opportunity to share some thoughts on the agenda item "Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm". My delegation welcomes the decision of the General Assembly to include this item in the provisional agenda of its sixty-eighth session as it is important for this item to continue to be under the consideration of the General Assembly. My delegation commends the work of the International Law Commission on this topic as it is an important contribution to the progressive development of international law and its codification.

Mr Chairman

The draft articles and the principles are already playing an important role as authoritative guidance for States and judicial bodies. These Draft Articles have already had some influence in international law and have been referred to in a number of cases including in the dissenting opinion of Judge Palmer *The Request for an Examination in Accordance with paragraph 63 of the 1974 judgment in the Nuclear Tests (New Zealand v France) case* (1995) and the *Pulp Mills on the River Uruguay (Argentina v Uruguay)* judgment. In the latter case the court addressed the relationship between the need for an Environmental Impact Assessments whereby the planned activity was liable to cause harm to a shared resource and transboundary harm. In addition, the Draft Articles have been referred to in arbitral awards and decisions of the International Tribunal for the Law of the Sea, notably in *Responsibilities and Obligations of States Sponsoring Persons and entities with Respect to Activities in the Area* advisory opinion of ITLOS and the arbitral award in the *Dispute of Access to Information under Article 9 of the OSPAR Convention between Ireland and the United Kingdom of Great Britain and Northern Ireland*.

Mr Chairman

My delegation is of the view that the main focus in the debate should be on the form that the draft articles and the draft principles should take as there is a need to have a unified draft covering both the prevention and the liability aspects. We must bear in mind at all times the recommendations of the International Law Commission which are that the General Assembly should adopt an international convention on the basis of the draft articles

on prevention, and that the draft principles be endorsed in a resolution. The draft principles and the draft articles create a coherent system whereby tribunals and the International Court of Justice can make decisions and judgments. As a result, South Africa remains part of the progressive forces that are supportive of translating the draft principles and the draft articles into a convention as this would strengthen the system and contribute meaningfully to the progressive development of international law and its codification.

Mr Chairman

My delegation would like to reiterate that the work of the International Law Commission on this topic is an important contribution to the progressive development of international law and its codification. These draft articles and the principles are already playing an important role as authoritative guidance for States and judicial bodies and this means that they have already had some influence in international law and they have been referred to in a number of cases. It is for this reason that my delegation is of the view that elaboration of a Convention would have the added benefit of revitalising the work of the Sixth Committee.

I thank you for your attention.