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**STATEMENT  
ON BEHALF OF THE AFRICAN GROUP  
BY AMBASSADOR KINGSLEY MAMABOLO,  
PERMANENT REPRESENTATIVE OF THE PERMANENT  
MISSION OF SOUTH AFRICA TO THE UNITED NATIONS**

**IN THE  
SIXTH COMMITTEE OF THE GENERAL ASSEMBLY  
UNDER AGENDA ITEM "EFFECTS OF ARMED CONFLICTS  
ON TREATIES"**

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*Check against delivery*

## **Mr Chairman**

My delegation has the honour to deliver this statement speaking on behalf of the African Group. At the outset, the African Group would like to thank the Secretary-General for his report. At its sixty-sixth session, in 2011, the General Assembly, under the item entitled "Report of the International Law Commission on the work of its sixty-third session", considered chapter VI of the report of the Commission which contained the draft articles on effects of armed conflicts on treaties together with a recommendation that the Assembly take note of the draft articles and that it consider, at a later stage, the elaboration of a convention on the basis of the draft articles. The Assembly took note of the articles, the text of which was annexed to resolution 66/99, and commended them to the attention of Governments without prejudice to the question of their future adoption or other appropriate action. The item is included in the agenda of the 69<sup>th</sup> session of the General Assembly with a view to examining, inter alia, the question of the form that might be given to the articles.

## **Mr Chairman**

The African Group commends the International Law Commission for its work in clarifying and developing this area of law, which has until now been underdeveloped and vague. Having said that, the African Group is of the view that the Vienna Convention on the Law of Treaties remains the primary instrument regarding the interpretation of Treaties. In this specific instance, regard should also be had to the rules of International Humanitarian Law, that have been developed over a long period of time. And care should be taken to ensure that the Draft Articles are compatible with these established areas of law, noting that the definition of "armed conflict" in the Draft Articles differs from the definition in International Humanitarian Law, which has been adopted and applied in case law. Instruments like the Draft Articles on the Effect of Armed Conflict on Treaties should not depart from established rules and principles of international law but should support and enhance the already established rules and principles of international law with regard to armed conflict.

## **Mr Chairman**

While the Draft Articles contribute much to the development of international law, the Africa Group does not support the elaboration of the Draft Articles into a binding legal instrument. The Draft Articles attempt to clarify an area of law where there are not many rules, which is extremely valuable. However, there are also risks associated with the Draft Articles. For example, the Draft Articles risk the fragmentation of international law in that they touch on both Treaty Law and International Humanitarian Law without relying exactly on key concepts in these areas, specifically, International Humanitarian Law

concepts. Furthermore, the Draft Articles contain an indicative list of types of treaties that should be presumed not to be susceptible to termination or suspension in an armed conflict situation. However, it would be preferable if a criteria could be established to determine what types of agreements would not be susceptible to termination or suspension during armed conflict, rather than drawing up a list, in order to avoid a situation where the list changes over time and needs to be amended in the final document. Suffice to say that a treaty will normally expressly state when it can be suspended or derogated from.

**In conclusion, Mr Chairman**

The African Group is of the view that the Draft Articles should rather be elaborated into a set of principles or guidelines that States could refer to should the need arise rather than to the elaboration thereof into a binding convention. The basic principle that armed conflict does not lead to the termination or suspension of treaties is already supported by customary international law, and as such would be binding on States regardless of the status of the Draft Articles. The Draft Articles should, therefore, serve to compliment the already established rules and principles of international law in relation to armed conflict.

**I thank you for your attention.**