



**Statement on
behalf of South Africa**

by

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at the

**Department of International Relations and
Cooperation of the Republic of South Africa in
the Sixth Committee of the General Assembly**

under Agenda Item

“Effects of the Armed Conflict on Treaties”

20 October 2017

Mr Chairman

At the outset, let me associate myself with the statement delivered by the representative of Algeria speaking on behalf of the African Group. The International Law Commission is commended for the completion of its work on the Draft Articles on the effects of armed conflicts on treaties and its adoption of the Draft Articles and a detailed commentary on the subject. The effects of armed conflicts on treaties is a topic that remains burning and relevant due to the increasing number of armed conflicts in our time, and more particularly, the sustained high levels of non-international armed conflicts. Therefore, we welcome the report of the Secretary General of 16 June 2017 whereby Member States were informed of the positions of three States on the matter. We commend the Secretary General for the commencement of the debate on whether the Draft Articles are to be recorded in a binding international instrument, or whether the Draft Articles should be developed into a set of guiding principles.

Mr Chairman

We also compliment the International Law Commission for its work in clarifying and potentially developing this area of law, which can be viewed as underdeveloped and vague. Acknowledging that the Vienna Convention on the Law of Treaties remains the benchmark for the interpretation of Treaties, it must be considered that the Law of Treaties, and International Humanitarian Law constitute two separate bodies of Public International Law. In attempting to address issues that are closely connected to International Humanitarian Law through the Law of Treaties, certain conflicts arise that may make agreement on the exact terms of the law impossible. The divergent definitions of 'armed conflict' in the Draft Articles, as compared to the definition of 'armed conflict' in International Humanitarian Law Treaties and international judicial decisions is an example, and it is not desirable to create two differing definitions of a concept that is so central to relations between States.

Mr Chairman

As the General Assembly commended once again the Draft Articles on the effects of armed conflicts on treaties to the attention of Governments without prejudice to the question of their future adoption or other appropriate action, and included it in the provisional agenda of its seventy-second session with a view to examining, inter alia, the question of the form that might be given to the Draft Articles, we commend Australia, Austria and El Salvador for the views that they expressed to the Secretary General. These views enrich the constructive debate around the issue of the effects of armed conflicts on treaties, and in particular, the form to be given to the Draft Articles.

Mr Chairman

Prefaced by Article 73 of the Vienna Convention on the Law of Treaties that confirm that the provisions of that Convention does not prejudge any question that may arise

in regard to a Treaty from the outbreak of hostilities between States, it is imperative that the Draft Articles, which indeed attempts to adjudicate questions that arise in regard to a Treaty from the outbreak of hostilities (as referred to in the Vienna Convention) between States, are clear in its scope and field of application. While the Draft Articles has the potential to contribute much to the development of international law, we do not support the elaboration of the Draft Articles into a binding legal instrument. If transformed into a Treaty, the Draft Articles risk the fragmentation of international law in that it touches upon both Treaty Law and International Humanitarian Law, and has the potential to influence definitions of aspects in International Humanitarian Law that were not intended initially to be developed.

Mr Chairman

The criteria developed in Article 6 of the Draft Articles to establish whether a Treaty is susceptible to termination, withdrawal or suspension is quite helpful, especially in the format that it is currently crafted in to constitute a non-exhaustive list. However, the benefits of Article 6 are paled in compared to the insufficient explicit distinction between situations where a State in an armed conflict intends to terminate Treaties with other belligerent States, versus the situation where a State in an armed conflict intends to terminate Treaties with third States not involved in the armed conflict. It is not apparent that the same rules should apply to third States as to other belligerent States. Therefore, we are of the view that 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, and this is a position that we share with some States that have commented. The basic principle that armed conflict does not necessarily 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 remainder of the Draft Articles primarily serves to clarify and expand on this rule.

Mr Chairman

South Africa encourages the Sixth-Committee to continue its important work on this matter, and my delegation will continue to participate in discussions to advance this matter.

I thank you for your attention.