



**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

**“Rule of Law at the National and International
levels”**

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Mr Chairman

On behalf of my delegation let me congratulate you and the members of the bureau on your election and ensure you of our support.

At the outset, let me associate myself with the statement delivered by the representatives of the Islamic Republic of Iran speaking on behalf of the Non-Aligned Movement and Algeria speaking on behalf of the African Group. South Africa attaches great importance to this topic and has actively contributed to the discussions of the rule of law at the national and international level since its introduction into the Sixth Committee in 2006. South Africa wishes to thank the Secretary-General for his comprehensive report (A/72/268) which my delegation has studied with keen interest. We commend the efforts of the international community in prioritising the rule of law as a critical component in peace building, conflict prevention and the realisation of the 2030 Agenda for Sustainable Development.

Mr Chairman

Part II of the SG's report confirms that there is no single model for the development of the rule of law at the national level. This has not, however, dissuaded the UN from offering its expertise and support to countries at different stages in their development. Such efforts include the promotion of capable and accountable justice and security institutions, access to justice for marginalized groups and security and justice for women and girls. My delegation touched on the issue of access to justice in its statement to the Sixth Committee last year, highlighting the need for meaningful attempts at access to justice and legal aid for the most impoverished in a society.

Mr Chairman

For the Seventy Second Session, Member States are requested to focus their observations on ways and means to further disseminate international law to strengthen the rule of law. With a view to promoting the discussion and dissemination of international law at the regional level, South Africa participated in the Fifth Forum of the African Union Commission on International Law (AUCIL) and African Union Law on the Role of Africa in Developing International Law that was hosted by the Republic of Ghana in Accra from 5 – 6 December 2016. A number of salient themes emanating from the AUCIL Forum speak directly to the SG's report.

Mr Chairman

South Africa's Constitution contains a unique founding provision, which entrenches the supremacy of the Constitution and the rule of law. Section 232 of the Constitution of the Republic of South Africa, provides that customary international law is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament. This is emphasized by Section 233 of the Constitution, which provides that: When interpreting any legislation, every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law. Some of the clauses in the

Constitution refer expressly to international law. Section 37(4) provides that any legislation enacted in consequence of a declaration of a state of emergency may derogate from the Bill of Rights only to the extent that, *inter alia*, the legislation 'is consistent with the Republic's obligations under international law applicable to states of emergency'. Section 35(3)(l) recognizes the right 'not to be convicted of an act or omission that was not an offence under either national or international law at the time when it was committed or omitted. The clearest evidence of the desire to achieve harmony between South African and international human rights jurisprudence is provided by Section 39(1) which declares that: When interpreting the Bill of Rights, a court, tribunal or forum - (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law.

Mr Chairman

My delegation once said that the great proponent of "fairness of international law", the late Professor Thomas advocated for decolonization in the 1950s and 1960s as he saw it as a critical element of the foundations of an emerging and more humane international law. Unsurprisingly he contributed to the constitution-making process of a number of African countries as they emerged from ashes of colonialism. Franck will, of course, be remembered primarily for authoring a ground-breaking book *Fairness in International Law and Institutions* in 1995. In it Franck says the following:

International law has entered its post-ontological era. Its lawyers need no longer defend the very existence of international law. Thus emancipated from the constraints of defensive ontology, international lawyers are now free to undertake a critical assessment of its content [including the question] is international law fair.

Thus while compliance with international law obligations and the proper and regular use of judicial settlement mechanisms are important angles from which to consider the rule of law at the international level, the quote from Thomas Franck challenges us to understand that compliance with international law will not, in and of itself, lead to the entrenchment of the rule of law.

Mr Chairman

The content of the international law with which we must comply must itself be fair if it is to promote the rule of law. As Franck notes, fairness has both substantive or normative and procedural dimensions – the latter being necessary for the legitimacy of law. Time does not allow a detailed assessment of whether the substance of international law or the process of international law-making is fair: what is important is recognition that if we are to promote the rule of law, we cannot ignore the fairness of international law. We also encourage states and international organizations, in the process of making international law, to stop and ask themselves a question: Are these rules and/or international law we are making truly fair?

I thank you for your attention.