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**STATEMENT
ON BEHALF OF SOUTH AFRICA
BY
MR MAHLATSE MMINELE,
DEPUTY PERMANENT REPRESENTATIVE
OF SOUTH AFRICA
TO THE UNITED NATIONS**

**IN THE
SIXTH COMMITTEE OF THE GENERAL ASSEMBLY
ON THE REPORTS OF THE INTERNATIONAL LAW
COMMISSION (ILC) ON THE "CRIMES AGAINST HUMANITY"**

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Mr Chairman

South Africa welcomes the first report on the topic "Crimes Against Humanity". South Africa wishes to commend Mr Sean Murphy, the Special Rapporteur, for producing not only the well-researched report under consideration, but also four draft articles in a short space of time.

Mr Chairman

Prevention is better than cure, the saying goes. We therefore find the focus on prevention and cooperation in draft Article 1 especially commendable. We support the approach that the draft articles not only apply to after-the-fact punishment of crimes against humanity, but also aims to prevent the commission of these heinous crimes in the first place. In this respect it is also important to note the horizontal focus of the draft articles: aimed at assisting States in adopting legislation in their domestic jurisdiction to criminalise, investigate, prosecute and punish crimes against humanity, and also to cooperate with other States in investigations and extraditions. The principle of complementarity recognises that charity begins at home: the most effective way to fight the scourge of crimes against humanity is in domestic jurisdictions.

Mr Chairman

With respect to draft Article 2, it goes without saying that the obligation to prevent and punish crimes against humanity must apply in both peacetime and in time of armed conflict. We agree with the conclusion that the terms "armed conflict" implicitly includes both international and non-international armed conflict, reflecting developments in the jurisprudence of international tribunals over the last two decades. However, it will do no harm to state the obvious, that the term "armed conflict" will include armed conflict of both international and internal/non-international nature, as is the case in Article 5 of the Statute of the International Tribunal for the Former Yugoslavia.

Mr Chairman

We agree with the Special Rapporteur's approach in draft Article 3 with respect to the definition of Crimes against Humanity, to take the well-trodden path of following the definition contained in Article 7 of the Rome Statute, with the necessary contextual changes. This definition has been widely accepted, not only as a treaty provision by the 123 States party to the Rome Statute, but has also found its way into the domestic legislation of a large number of States and is being applied in practice by the Court. It has therefore probably obtained the status of customary international law.

Finally, Mr Chairman

We also agree with the approach taken in draft Article 4, containing the obligation on States to prevent crimes against humanity, noting that South Africa has adopted legislation and procedures in its domestic law with this objective in mind. It goes without saying that exceptional circumstances should not be a justification for crimes against humanity, as is recognised in sub-Article (2).

I thank you for your attention.