



STATEMENT DELIVERED BY SOUTH AFRICA

**OPEN-ENDED INTERGOVERNMENTAL WORKING GROUP ON THE
ELABORATION OF AN INTERNATIONAL LEGALLY BINDING INSTRUMENT ON
TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES
WITH RESPECT TO HUMAN RIGHTS**

**PANEL II AND III: PRINCIPLES AND SCOPE OF AN INTERNATIONAL LEGALLY
BINDING INSTRUMENT ON TRANSNATIONAL CORPORATIONS (TNCS) AND
OTHER BUSINESS ENTERPRISES WITH RESPECT TO HUMAN RIGHTS**

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Chairperson,

International human rights law lays down obligations of States to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups.

On the other hand, the lack of international human rights law binding on TNCs and Other Business Enterprises corresponds to the current state of international custom. Hence there is a major legal void in international human rights law that needs to be closed to end the impunity for human rights violations committed by these entities. Furthermore, the current realities show that many States are unequal in their power relations with TNCs. The proposed treaty thus would create the legal framework, including a number of principles in terms of which some of these complex issues would be resolved. The legally binding instrument would thus provide legal protection, effective remedies and a range of other measures in the quest for maximum protection of victims.

Human rights obligations must be unlimited in their reach. They are grounded in human dignity, which must inhere in all individuals regardless of who is in a position to affect these obligations. This is embodied in the Universal Declaration of Human Rights-the foundation of international human rights law, which speaks of the entitlement of everyone to the rights enumerated in it and does not indicate the duty bearers of the concomitant obligations. The legal obligations on actors other than states should thus not be preclude from this theory. Indeed, states are hardly the only entities capable of infringing upon human dignity. Optimally, the respect for, promotion, protection and fulfilment of all human rights should therefore extend to all situations in which these rights are violated, irrespective of who places them in jeopardy.

In this respect, TNCs and Other Business Enterprises must conform to the United Nations core values and principles and existing United Nations human rights treaties. Already the influence of TNCs on the decision-making of the United Nations bodies has been felt in the entire system. It is therefore essential to take all necessary measures to prevent and provide remedies for human rights violations committed.

There are basic principles of human rights law which should equally apply to TNCs and Other Business Enterprises. These include principles of *universality*;

indivisibility, participation, accountability, transparency, equality, equity, non-discrimination and international co-operation.

Chairperson, the Right to Development which embodies these principles can guide the Council's response to a series of contemporary issues and challenges, including addressing the responsibilities of TNCs and Other Business Enterprises with respect to Human Rights. These principles as enshrined in the Declaration on the Right to Development entitles every human person and all peoples to participate in, contribute to and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. Such a process would indeed have important consequences for 'real people in real places' and most importantly the victim community.

Great strides have been made in the adoption of the Guiding Principles on Business and Human Rights and elaboration of an international Convention would thus be a logical extension and advancement of this process. In this context, we firmly believe, that a shift of understanding is needed for corporate responsibility to be human rights law rather than merely a societal expectation and the direction this Council has to take.

I thank you.