



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 VII: LEGAL LIABILITY OF TNCs AND OTHER BUSINESS
ENTERPRISES: WHAT STANDARD OF FOR CORPORATE LEGAL LIABILITY
AND FOR WHICH CONDUCTS**

Check against delivery

08 July 2015

Chairperson,

Footnote to Resolution 26/9 is legitimate and justifiable. All local business entities that have no transnational character in their local business are registered with national legislation adopted by Parliaments. This applies in a uniform manner to all sovereign states. The thresholds to the respect for, promotion, protection and fulfilment by these companies must be foreseen in such legislation.

The primary purpose of this exercise as clearly outlined in framework resolution 26/9 is to regulate in a uniform manner the operational activities of TNCs and Other Business Enterprises that have a transnational character.

The global reach of Transnational Corporations and other business enterprises in their operational activities have had social and political impacts, disproportionate to their legal and social obligations, nationally and internationally.

In this regard, the important connection between the recognition of binding obligations and the right to have access to a remedy is a necessity. Without an understanding of the obligations TNCs and Other Business Enterprises bear with respect to fundamental rights, it will not be possible for victims of rights violations to claim access to a remedy against these entities.

To this end, it is important to note media reports of last week, which confirm that BP has paid remedies for the disaster of Deepwater Horizon in total of 18.7 billion USD. This highlights the different relations of TNCs with countries in terms of their application of the same standards in their global operations, particularly in relation to developing countries.

This is primarily the objective of our discussions, which are to ensure effective remedies for victims and uniform human rights standards, be they in the area of environment, child labour, and decent wages to name a few. It is therefore inconceivable to equate local businesses with those TNCs who drive globalization and own a big share of the global wealth. South Africa remains steadfast that this footnote should not exclude the possibility that States are encouraged to enhance human rights standards in their national legislation; and strengthen the role and capacity of regional mechanisms and institutions. In this context, the proposed treaty would serve to complement and reinforce such measures.

Without prejudging the debate within the Working Group, South Africa believes that in considering elements of the envisaged treaty, we must create mechanisms for appropriate litigation and remedial measures against violations by the TNCs and Other Business Enterprises. We therefore seek the views of the panellists in this regard.

One serious matter that has not been considered so far and of crucial importance is that of PMSCs which are contracted by governments and companies for operations which can involve taking over the role of using military force which is normally the responsibility of governments. South Africa has specific legislation to prohibit our nationals and permanent residents from serving with such companies and yet we have faced them being actively recruited for military and security roles in Iraq and Afghanistan where they have been killed in combat and we have had to bring back the bodies. We are a member of the Montreux Document yet fellow members do not require the companies they contract not to recruit South Africans. We have called for this publicly as well as in the IGWG on PMSCs for several years and not a single member of the Montreux Document, which contracts PMSCs to require them to respect our law. There is an ever growing role of such PMSC companies and they are engaged in military and security operations through their killing machines. Their role also needs to be comprehensively studied by this OEIGWG.

I thank you.