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and wastes, Mr. Baskut Tuncak**

**Introductory remarks on draft elements for promotion, implementation and
monitoring**

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corporations and other business enterprises with respect to human rights

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Thank you your Excellency, and good afternoon Excellencies, distinguished delegates, friends and colleagues. It a pleasure to offer a few thoughts on this crucial section of the elements paper.

Last month, the High Commissioner noted the hypocrisy of the “internal-external gap,” States promoting human rights abroad while ignoring the needs and rights of their own people. This is often the case with my mandate, as States conveniently use the invisibility of exposure to hazardous substances, the challenge of proving the cause of an adverse human rights impact resulting from exposure, and the natural existence of scientific uncertainty to delay action or simply to turn a blind eye to evident impacts of toxic pollution and waste by business activities.

But, in the case of my mandate, there is another gap, equally significant, a gap that is external-internal, if one were to use the same nomenclature. As the evidence of the risks of toxic pollution has grown, certain States have taken steps to mitigate these risks to human rights at home, while failing to do so abroad.

This treaty, in my view, has the potential to help to close both of these accountability gaps. With the right mechanisms for promotion, implementation and monitoring, it can help to address the problem of companies that operate with impunity, often commercializing and implementing practices which are illegal in their country of

origin, but permitted or inadequately monitored in States with weaker regulatory systems.

But this is up to the States. If States and other stakeholders do not wish for this agreement to successfully build upon the Guiding Principles, this is one of the most likely sections where they are likely to undermine its purpose, objective and relevant obligations.

The draft elements paper correctly notes the need for mechanisms at both the national and international levels. It suggests National level mechanisms may be independent of or part of the functions of an NHRI, and may include an Ombudsman. At the international level, judicial and non-judicial mechanisms elements are presented.

In considering the merits of these and any other possible elements for promotion, implementation and monitoring, I suggest they are designed paying specific attention to four core principles.

First, accountability: If this treaty is to help closing a global accountability gap, the accountability of those with obligations under the treaty must be best in class. Lessons should be drawn, for example, from mechanisms of international financial institutions and mechanisms of treaties outside the human rights arena that regulate business conduct, for what has worked to ensure accountability. From the history of the World Bank's inspection panel, members of the panel have noted that projects tended to be designed as "inspection panel proof" overtime, diminishing the ability to use the panel effectively for accountability. This should be avoided at all costs in this agreement.

Second, transparency. Quite understandably, trust between relevant actors continues to be eroded. Not only for the purpose of accountability, but if the integrity and legitimacy of this treaty is to withstand time, it must have fully

transparency relating all obligations therein. As mentioned before, information is crucial to this treaty, as a key component to permit prevention and to also allow for effective remedies, as well as promotion, implementation and monitoring, and may warrant consideration as a separate section.

Third, participation. All stakeholders must play a role in the promotion, implementation and monitoring of the treaty. Meaningful participation in national and international levels is essential. That said, care must be exercised to ensure that opportunities for participation by the private sector do not serve as a vehicle to delay progress, as it seems to be the case in many national and regional experiences.

Fourth and finally, cooperation. The issues that are raised under this convention requires strong mechanisms for cooperation. While referenced in subject 8, the importance for this subject is worth emphasizing certain aspects here.

Numerous ministries and agencies at the national level are implicated, requiring effective cooperation mechanisms to ensure promotion, implementation and monitoring of the treaty. Furthermore, States must cooperate with each other on transnational activities of their businesses, and there should be avenues for good faith dialog and cooperation between all stakeholders and any mechanisms created to help ensure implementation.

What I have seen work in the case of some issues is the creation of collaborative networks at national, regional and global levels, which many be worth considering as a means of promotion, implementation and monitoring. In particular, such a network could be essential for the functions of the possible treaty body. It may also be worth considering different sectoral cooperation networks for promotion, implementation and monitoring. For example, networks on extractives, manufacturing, agriculture, energy, among others could be envisioned to provide greater resolution and disaggregation of data.

I offer these four principles as one option for evaluating and developing more concrete elements for promotion, implementation and monitoring. I look forward to hearing other views and thank you again for the opportunity to participate and share a few thoughts.