



STATEMENT DELIVERED BY SOUTH AFRICA

GENERAL FRAMEWORK DISCUSSION

**3RD SESSION OF THE OPEN-ENDED INTERGOVERNMENTAL WORKING
GROUP ON TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS
ENTERPRISES WITH RESPECT TO HUMAN RIGHTS,**

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23 OCTOBER 2017

Chairperson,

We thank the Chair for the General Framework contained in the elements document which broadly covers the elements that were discussed in the first two sessions.

On the general framework, including the preamble, South Africa is of the view that this section needn't be lengthy and some issues can be more appropriately addressed in other sections such as on State obligations.

The purposes, principles and objectives of the treaty should be covered under one section of the treaty particularly as many of the areas overlap in the General Framework.

Key to the preamble is for States to recognize that the phenomenon of globalization and its negative impact on the economies of developing countries are precipitated by the transnational character of the TNCs and OBEs. South Africa is also of the view that reaffirmation of the Guiding Principles on Business and Human Rights cannot be correct in this process as they were not inter-governmentally negotiated as per the envisaged path we are embarking on in line with Resolution 26/9.

Key issues to be included on the objectives, purposes and principles, some covered in the elements document are as follows:

That States agree that:

- The general rules of international law must be applicable to all actors subject to the treaty, including States and TNCs;
- The Peremptory principles of international law in regard to extra-territoriality must be strictly enforced. International law impose duties on States with regards to international cooperation and which is a fundamental issue to be addressed by the envisaged treaty;
- Criminal liability of States acquiescing in violations of human rights by TNCs and OBEs, including grave breaches of international human rights and humanitarian law;
- The right to an effective remedy by competent national tribunals for acts violating human rights through constitutional and/or legislative provisions
- A mechanism/body at the international level must be created to deal with all allegations and with a mandate and competencies to provide effective remedies as well as combatting impunity on the part of the TNCs and OBEs who commit these violations;
- TNCs and OBEs are under obligation to observe the international human rights law principles of *universality, indivisibility, participation, accountability, transparency, equality, equity, and non-discrimination*
- The key provisions of the Instrument should be predicated on the civil, administrative and criminal liability of TNCs and Other Business Enterprises with transnational character;
- That TNCs and Other Business Enterprises must contribute to the requisite means of implementation for the realization of the Right to Development and the civil, cultural, economic, political, and social rights globally with a view to ending global poverty;

Finally Chairperson, we believe that going forward the Chair must distil a draft treaty taking into account these proposals and further inputs for substantive negotiations.