Mr Chair,

Like others, including the EU, New Zealand has a range of procedural concerns about this open-ended intergovernmental working group, including the lack of a renewed resolution after resolution 26/9 which was adopted in 2014. It was not a straightforward matter to decide to participate today. We are not in a position to participate beyond the opening session.

Nevertheless, since views expressed by States at the time of treaty negotiation and elaboration are highly relevant for customary international law, we considered it appropriate to attend and register some key concerns.

We wish to make it clear that our silence should not be interpreted as tacit agreement to any of the provisions of the draft treaty. In effect we wish to reserve our position on the entire draft text.

We are not yet convinced of the need for a treaty, but if one were to be elaborated it must include *all* businesses. Why does the treaty only apply to ‘for profit’ business activities of a transnational character? The potential exclusion of activities of State Owned Enterprises is a significant flaw in the draft text. Even if we accepted the need for a legally binding instrument, it should be to all business enterprises regardless of size and whether operating for profit or otherwise.

The material scope of the draft treaty is unclear. The text says “This Convention shall cover all international human rights and those rights recognized under domestic law” Does this cover all of the major human rights treaties + ILO Conventions, and customary international human rights law?

We also have concerns that Article 9 may go too far in creating a duty to prevent rather than the usual due diligence standard of ‘seeking to prevent’, and wonder how broadly the threshold of ‘sufficiently close relationship’ between a business enterprise and the entity in the supply chain (Article 10(6)(b)) might be defined?

This concludes the New Zealand participation in the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. We request that our reservations and this statement be included in the record of the session.

Thank you Mr Chair.