**5th Session of IGWG on TNCs and OBEs with respect to Human Rights**

**Comments on Article 6**

**Permanent Observer Mission of The State of Palestine**

Thank you, Mr. Chairperson for giving me the floor and we would also like to thank the experts for their insightful input.

**Article 6 – Legal Liability**

In order to ensure the legal liability of companies in both home and host States, the legally binding instrument must clearly articulate this Article.

While Article 6(1), provides a clearer provision on legal liability than the zero Draft, we believe that there are still some points that must be addressed, including the reference to comprehensive and adequate system of liability. In this regard we propose the following amendment:

**Current text** – Art 6(1): State Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability for human rights violations or abuses in the context of business activities, including those of transnational character.

**Proposed text for amendment**: State Parties shall ensure that their domestic law, in accordance with this Treaty and international law, provides for a comprehensive and adequate system of criminal, civil, and administrative legal liability of both natural and legal persons for committing or contributing to human rights violations or abuses in the context of business activities and business relationships, including those of transnational character at home or host State.

On provision 6(7), we welcome the additions made to this provision and we believe that the presence of a defined list of offences in the text of the legally binding instrument shall make it more conceivable to trigger legal liability under domestic law. However, the reference to specific criminal offenses could be interpreted narrowly, to indicate that other offenses do not require a comprehensive system of liability, such as the violation of economic, social, and cultural rights. In addition, the specific list of offenses could also be interpreted to suggest that no other offenses should be met with criminal liability under domestic law. Therefore, it is important that the legally binding instrument clarifies the necessity of imposing liability for a broader range of human rights violations and that states should continue, jointly and individually, to develop criminal liability beyond the specific offenses that are listed.

Another point on the same provision, the inclusion of a reference to domestic law twice in this provision weakens the Article as a whole making it redundant. To that effect, we propose the following amendments.

**Current text** – Article 6 (7): Subject to their domestic law, State Parties shall ensure that their domestic legislation provides for criminal, civil, or administrative liability of legal persons for the following criminal offences…

**Proposed text for amendment**: State Parties shall ensure that their domestic legislation provides for criminal, civil, and administrative liability or its equivalent of legal persons for the following criminal offences…

It is also important to reinclude provision 11 under Article 10 from the zero draft in the current Article 6 that reads:

**Proposed text to reinclude as Article 6 (10):** Where applicable under international law, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations that amount to international crimes.

And we also believe that it is important to include a provision in this article that states "a parent company shall be held liable to acts conducted by its subsidiaries or any other companies controlled by the parent company "

I thank you.