**5th Session of the IGWG on TNCs and OBEs**

**Comments by the State of Palestine on Article 5**

**Article 5 – Prevention**

The Treaty must recognize that corporations have legal responsibilities to respect human rights, and in that sense to set out a legal frame work to ensure that these legal responsibilities are observed in practice. This can be done through processes of mandatory human rights due diligence. In that regard we would like to suggest the following amendments to Article(5)(1), so the paragraph would read:

Current text – Art 5(1): State Parties shall regulate effectively the activities of business enterprises within their territory or jurisdiction. For this purpose, States shall ensure that their domestic legislation requires all persons conducting business activities, including those of a transnational character, in their territory or jurisdiction, to respect human rights and prevent human rights violations or abuses.

**Proposed text for amendment**:  State Parties have an obligation to prevent human rights abuses or violations resulting from activities by business entities and shall therefore regulate the operations and activities of these entities whether in the home or host States. For this purpose, States shall ensure that their domestic legislation and public procurement procedures require all persons conducting business activities, including those of a transnational character, in their territory or jurisdiction, to respect human rights and prevent human rights violations and abuses.

In regards to article 5(2) we regret that the language on holding corporation liable for failing to conduct human rights due diligence was removed and to that effect we suggest adding Article (5)(2) bis that would read:

**Proposed text to add as Article 5 (2) bis**: States shall require that business enterprises shall be held liable for failing to conduct human rights due diligence and impact assessment as articulated in this Article.

In Article 5 (2)(b), it should be clearer  that parent companies will have a prevention responsibility regarding companies in its supply chain or subsidiaries that fall under its control even if there are no direct contracts between these companies. Accordingly, the following amendment is suggested.

**Current text** – Art 5(2)(b): Take appropriate actions to prevent human rights violations or abuses in the context of its business activities, including those under their contractual relationships;

**Proposed text for amendment**: Take appropriate actions to prevent human rights violations or  abuses,in the context of its business activities and business relationships, including those by companies in their supply / value chain or those in any form of business relationship with the parent company.

**Current text** - Art 5(2)(c): Monitor human rights impact of their business activities, including those under their contractual relationships;

**Proposed text for amendment:** Monitor human rights impact of their

business activities and business relationships, including those under their contractual relationships;

We welcome the language added in article 5(3) (e), particularly on conflict-affected and occupation settings.

However we believe that it requires addition to ensure that state parties impose mandatory enhanced human rights due diligence and recommend that it further requires State Parties to impose mandatory enhanced human rights due diligence for businesses operating or plan to operate in conflict-affected areas, including more urgent and immediate preventive measures, divestment and disengagement policies to avoid corporate involvement in and/or contribution to human rights violations in their activities and relationships.

For this, we suggest the following amendments to Article (5)(3)(e):

Current text – Article (5)(3)(e): Adopting and implementing enhanced human rights due diligence measures to prevent human rights violations or abuses in occupied or conflict-affected areas, arising from business activities, or from contractual relationships, including with respect to their products and services;

**Proposed text for amendment**: Adopting and implementing enhanced human rights due diligence, and urgent and immediate preventive measures, including divestment and disengagement policies, to avoid corporate involvement in or contribution to human rights abuses in their activities and relationships, as well as measures to prevent human rights violations or abuses in occupied or conflict-affected areas, arising from business activities, or from contractual business relationships across the value chain, including with respect to their products and services; companies must further not to pursue or start operations in certain situations in which no due diligence assessment can guarantee that there will not be complicity or contribution to violations.

Regarding Article 5(5) We would like to once again reiterate our support on prevention addressing concerns regarding the imbalances that states face from corporate representatives and other vested interests, and the undue influence they exert over government policies and laws. and we commend the decision taken in moving it from implementation to prevention. However, we would like to suggest the deletion of “in accordance with domestic law” at the end of the paragraph and to add the following, so the paragraph would read:

Current text – Article 5(5): In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State Parties shall act to protect these policies from commercial and other vested interests of persons conducting business activities, including those of transnational character, in accordance with domestic law.

**Proposed text for amendment**: In setting and implementing their public policies with respect to the implementation of this [binding Treaty on TNCs and other business enterprises], State Parties shall act to protect these policies from commercial and other vested interests of transnational corporations and other business enterprises.