Thank you, Chair.

I deliver this statement on behalf of the International Organisation of Employers (IOE).

Taken together, Articles 7 and 9 create a jurisdictional scope so vast that businesses are faced with grave uncertainties as to where they may be hauled into court, or to which set of laws they will be subject.

As just one example, under Article 7, a business could be sued in the court of a country where neither the business is located, nor where the alleged harm occurred, but in a third country where it is deemed to have “substantial business interests.” Indeed, this phrase “substantial business interests” is not defined, and can easily be interpreted in an overbroad manner.

Article 9 allows for one state’s courts to apply the public laws of another state, which is not a generally accepted practice under international law. Not only does this create uncertainties as to which laws will apply, it also creates issues of competence in that jurists in one country may not be equipped to interpret the laws of another. Consider for instance the difficulties inherent in a scenario where an Afghan municipal court interprets American law, or vice versa.

While the current draft has done away with any explicit mention of universal jurisdiction, the vagaries in Article 7, coupled with those in Article 9, means that there is no significant improvement to the jurisdictional scope of the treaty. Suffice to say, these articles allow claimants to engage in the shopping of forums and the law that would apply in those forums.

Article 8 on statute of limitations also suffers from unclear language in that it calls for the suspension of any statute of limitation on “the most serious crimes of concern to the international community as a whole.” This phrase is not defined and has no legal pedigree, and is therefore subject to overbroad interpretations. As for statute of limitations that apply to civil claims it is unclear what a “reasonable period” for investigation and prosecution means, and can again lead to abusive interpretations.

Thank you.