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**IOE-USCIB Joint Statement on article 11 of the draft LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

**Article 11. Applicable law (removed)**

I speak on behalf of the IOE and continue to appreciate sharing our views in this forum. We appreciate the ability to share our views on this very important topic, and remain committed to assisting business with its responsibility to respect internationally-recognised human rights consistent with the UNGPs.

As general comment, let reaffirm the third revised draft treaty remain far from possible **implementation**. Strong international support of this draft is what is currently missing, and we regret the fact that the Chair’s proposals which are a step in the good direction to achieve this aim are not regarded as a more balanced basis of negotiation.

Regarding article 11, we welcome the Chair’s proposal for its entire removal.

Turning to the third revised draft treaty:

We wish to begin by restating our comments in connection with Article 8 and 9, as those comments apply with equal force here.

As we have noted, any treaty should not, of course, simply retrench the status quo of existing judicial and adjudicative infrastructures. The choice of law issue is critical for many of the same reasons that venue is critical and, beyond their myriad concerns regarding comity and sovereignty, also disregard fundamental state obligations under Pillar I of the UNGPs. Making applicable law the subject of rights-holder choice, for example, not only reinforces existing imbalances that foster adverse impacts but also, importantly, creates potentially double-standards for actors in certain jurisdictions but also compliance conundrums for companies seeking simply to comply with applicable domestic law in a particular jurisdiction. There are well-worn precedents for how legal standards should be applied to certain disputes. Again – we need not complicate this or legislate this issue here. Doing so simply reinforces existing imbalances.

Thank you.