IOE Intervention (ECOSOC Status)

Speaker: Mr Matthias Thorns (in person delivery)

Tuesday, 27 October

Item 4

* Article 3. Scope
* Article 4. Rights of Victims

Dear Chair

Thank you for giving me the floor.

I speak on behalf of the International Organisation of Employers and is members in 150 countries, representing more than 50 million companies.

In view of the short time I have I would like to make the three comments:

**On Article 3:** The Scope has been a controversial issue from the very beginning. Originally, the treaty was intended to cover only multinational companies. Even though the new draft broadens the scope “to all business enterprises, including but not limited to transnational corporations,” the Intergovernmental Working Group (IWG) Chair announced during recent consultations, that the scope will only be decided at the very end of the negotiation process. It is not acceptable to first negotiate a treaty, and then decide on its scope. Moreover, any treaty must be consistent with the UN Guiding Principles and should not be limited only to MNEs. On the contrary, public entities and non-profit organisations should be explicitly included in the scope, as they are also exposed to human rights risks and have a responsibility to respect human rights.

Furthermore, although the business community appreciates that the revised draft treaty explicitly covers also State-owned enterprises, the revised draft inexplicably creates in Article 3.2 a loophole that potentially allows States to exempt State-owned enterprises and “other businesses” from the more onerous obligations in the treaty. Thus, in effect, the scope of this treaty may once again focus only on multinational enterprises, failing to articulate the key message to urge States “to lead by example on business and human rights, starting with those enterprises closest to them - State-owned enterprises” and creating an uneven playing field.

**On Art. 4:** The treaty focuses on the rights of the plaintiffs, but ignores the rights of the defendants, such as due process and confidentiality rights. Moreover, the rules on legal aid must, on the one hand, ensure that the victims of human rights violations have access to justice, and on the other hand, they must not facilitate abusive claims. To achieve this balance of interests, certain conditions for a right to legal aid are needed. Furthermore, the draft treaty foresees the possibility of collective redress/class actions. However, the introduction of group lawsuits against companies is not a concept that is recognised in many legal systems.