Thank you, Chairperson-Rapporteur.

This intervention is a combined response to Article 9 (Adjudicative Jurisdiction), Article 10 (Statute of Limitations), and Article 11 (Applicable Law) of the Second Revised Draft Treaty.

The proposed scope of adjudicative jurisdiction reflects a concept of extraterritorial jurisdiction so vast that businesses are faced with grave uncertainties as to where they may be hauled into court and to which laws they may be subject.

Indeed, the new draft allows for concurrent jurisdiction in the company’s host country where the harm occurred, the home country where the company is located, or even in a third country if the claim is “closely connected” to that country. The term “closely connected” is vague and has no clear legal pedigree.

The vastness of the draft’s jurisdictional scope is further enhanced when considering the breadth of the “business activities” to be regulated, which we addressed in our previous interventions.

Adding to this jurisdictional uncertainty, the new draft explicitly rejects *forum non conveniens*, which is a procedural mainstay in many jurisdictions designed to prevent forum shopping.

Contrary to many bodies of law, the new draft grants the victim wide discretion to select the applicable law. This undermines the general principle that the applicable law is that of the forum State. 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.

The jurisdictional uncertainties created by Articles 9, 10 and 11 are exacerbated by the erosion of an important safeguard in Article 12. Under international law, an important check on a foreign court’s adjudicative jurisdiction has been the power of a national court to refuse to recognize the enforcement of that foreign court’s decision over a defendant located in the country of the national court. This important safeguard has been eroded by Article 12 because it mandates that all State Parties recognize and enforce another State Party’s court order – with very limited exceptions. Thus, Articles 9, 10, 11 and 12, taken together create enormous jurisdictional uncertainties for businesses, without the relief of a well-established guardrail.

Moreover, by creating these uncertainties, these provisions appear to ignore the general presumption against extraterritorial jurisdiction, which is based on the basic principles of state sovereignty, equality of states, and non-interference in domestic affairs.

Thank you.

*/s/ Lavanga V. Wijekoon*

Lavanga V. Wijekoon