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As of today there are more than 3,000 bilateral investment treaties. The first such treaty was established in 1959 as protection against expropriation in the politically volatile world of cold war. Their number exploded in the 1990s at the peak of the Washington consensus when the belief prevailed that such agreements would lead to higher investment needed for strong growth. But UNCTAD's Trade and Development Report proves this common conviction wrong. It shows that there is no strong correlation between the existence of BITs (including ISDS or not) and investment. Indeed, other variables are much more decisive on the flow of investment, such as the market size, labour-force skills, corruption and institutional development.

Today Ecuador, Indonesia and others are withdrawing from such treaties. The international trade union movement welcomes this development. We strongly recommend that all countries need to denounce or at least let all ISDS-containing BITs expire without renewal. To make it very specific, the international trade union movement just adopted at the ITUC Congress in May the following position: "We oppose the ISDS and we will campaign to see it removed".

It is important to underline that the increase in financial flows exceeds by far the increase in trade. Investment today has many different shapes ranging from direct green field investment and the real estate market to a variety of financial products broadly aggregated as portfolio investments. Specifically the facilitation of rather toxic financial investments has contributed to an increased volatility of financial flows and a higher frequency of financial crises. Also the direction of financial flows has changed towards middle and lower income countries, which has facilitated access to loans and other types of finance. However, it has also resulted in rapid outflows of developing economies when risk assessments deteriorated and led to exchange rate crisis, like in Asia in 1997, and in some emerging economies in the beginning of 2014 when the US considered slowing down their quantitative easing program.

IIAs impose strict limitations to capital control measures that are needed by governments, not only to cope with balance of payment problems, but most importantly to *prevent* balance of payment problems. Strengthened by financial services liberalisation they have rewarded speculation over patient capital, and they shifted risk from private capital to tax payers and governments. Even the IMF has recognised the need for capital controls, however, governments all around the world are pressured to accept the unacceptable.

The IIAs created a supranational arbitration structure which puts foreign investors' interests above those of sovereign nations, of millions of people. IIAs have been turned into an instrument for companies to claim damages under vague terms like "fair and equitable treatment" when social, environmental and other regulations were under discussion or reform threatening to reduce their profits. IIAs created a very perverted power relation between Governments and corporations. However, governments have the obligation – not the right – to put legislation in place in order to promote a safe and sustainable environment, to guarantee human and labour rights and to promote development. This is their ultimate function.

ISDS has been used to prevent exactly this. Governments have been inhibited to execute regulatory changes. I will give only two examples. For the labour movement, a particularly egregious case is the one of Veolia versus Egypt. The Egyptian Government was sued by the French company Viola over an increase of the minimum wage. The company claims that this increase reduced its profitability. In another case, the government of Libya was forced to pay USD 935 million for annulling a tourism project to a Kuwaiti company. An investment of USD 5 million that never materialised was awarded USD 935 million to be paid by a government that faces internal conflict – almost a civil war – and has more important priorities to spend its limited budget on.

Those defending ISDS argue that those are rare cases and that the majority are legitimate. But we argue that all this outrages cases have happened in a legal framework established by ISDS, which grants a special category of individuals – the foreign investors – more rights than the rest of us and even then domestic investors.

UNCTAD finds that in one third of the known cases investors win, and in another third of the cases there is a compromise between the government and the investor before an award is reached. Hence, in most of the cases, governments have to take steps back from their initially intended policies/measures. If you add the chilling effect that threats have on regulation[1] the policy impact of ISDS is magnified. And then please consider that at the moment the majority of investment is not directly covered under an ISDS-containing treaty. But if the TTIP and the TPP pass with ISDS, the number of cases will explode. To this end, we call the EU and Canada to extract the ISDS from the CETA – a disaster is in the making.

The trade union movement welcomes that more and more Governments consider these IIAs problematic and started to act. Some have renegotiated such agreements or even denounced them. We call UNCTAD to take a strong stance against BITs with ISDS, and to start encouraging governments to denounce this travesty.

[1] Tienhaara, Kyla (2010) Regulatory chill and the threat of arbitration: a view from political science, http://ssrn.com/abstract=2065706 [16-11-2012]