STATEMENT

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Thank you for the opportunity to contribute to this important debate today. I am law professor working with Third World Network to track current developments with international investment agreements. We have found a disturbing trend.

The UNCTAD process has entered phase 2. It stresses the importance of options to exit problematic agreements and frame alternatives, which some countries are already doing.

Yet moves to address the systemic failures in the international investment regime risk getting lost in details of reforms to ISDS and a handful of rules.

Indeed, recent developments, such as the G20's investment principles and moves by some capital exporting countries to insert investment rules into the WTO, despite decades of resistance from the global South, ignore the reality that the investment regime is in crisis.

It is disappointing that even the SDGs call for an equitable trading system through the WTO, but don't mention IIAs or how they could impede the SDGs.

Yet there are a litany of rules and cases we could cite that challenge state's ability to take effective action, for example, on climate change (SDG13), hazardous chemicals and pollution (SDG3), corruption (SDG16), tax evasion and debt restructuring (SDG17), and many other SDGs.

The problems are not just with the old first generation BITS. New mega-agreements like the Trans-Pacific Partnership, and some bilateral treaties, are binding developing countries to even worse obligations.

These bad new generation agreements create precedents, and put new handcuffs on the regulatory sovereignty and policy space needed to achieve the SDGs.

Let us give three examples.

First, investment chapters need to be read alongside others dealing with decision making processes, such as chapters on transparency and regulatory coherence, and combine with sector-specific rules to increase the leverage that foreign investors, from big tobacco to mining to finance, have over government decisions. They are backed with the ultimate threat of an investment dispute if governments reject their arguments, creating the widely recognized chilling effect. The cumulative effect is to privilege investors' voice and interests over citizens and national priorities, especially the SDGs.

Second, new approaches to scheduling of investment and services commitments, with high 'benchmarks' even demanded of LDCs, further restrict governments' room to move. Most require pre-establishment commitments and use either negative lists or fetter positive lists with standstills, ratchets, and future commitments to liberalise.

Third, countries face chronic financial instability and mass tax avoidance. Yet chapters on financial services, investment and e-commerce increase the risks, especially to developing countries. Parties to some agreements are required to accept innovative and potentially toxic products just because they are permitted in another country. Governments are not allowed to require a commercial presence for cross-border services. The US is now applying localisation rules to financial services and investments, prohibiting requirements for local data storage and processing and a local presence. The US investment model even prohibits use of capital controls.

Over the last years, ten UN rapporteurs, including the Independent Expert on democratic governance and the Rapporteur on the Rights of Indigenous Peoples, have linked IIAs to breaches of human rights and reinforced the call for change.

If UN member states, especially the developed countries, are serious about delivering the SDGs they need to listen to their special advisers, address the systemic issues, stop insisting on new agreements that are as bad as, or worse than, the old BITs and work together on real alternatives, including the options for exit.