

**Remarks at UNCTAD High Level IIA Conference  
13 November 2019, Geneva  
Maite Llanos, ITUC**

**Breakout Session: Multilateral Processes and their contribution to Phases 1 and 2 of SD-oriented IIA reforms “Preserving the right to regulate, while providing protection”.**

The right to regulate is a new concept both dangerous and humiliating for our governments.

Governments are (or should ideally be) the legitimate form of collective representation in the international community.

Our governments do not have rights. They have powers.

Rights are reserved for individuals and groups – not governments. In fact, human rights and collective rights (as in indigenous People’s Rights) were conceived as protection from state authoritarianism.

The right to regulate is a misnomer: it is really the “power to regulate”.

Talking of states’ “right to regulate” is a result of our times’ non-sensical global governance.

The so called “right to regulate” is evidence of the power of corporations and the weakness of our governments.

It’s reflective of the fact that the 26 richest individuals have as much wealth as the bottom 3.8 billion people.

We the people, are those who control our governments and (ideally) through our governments, we impose regulation onto corporations to ensure that they do no harm, that they create opportunities, they pay taxes, and in general they contribute positively to the economy and society.

But now, our collective power to regulate is reduced to a right that needs protection. Protection from who, if not from aggressive corporate stakeholder interests.

How did we reach here?

Are there sovereign governments in this room? That represent us, the people? Think of investors’ rights. There are no international conventions establishing investors’ rights. Yet you all use this term without reservation. Beware of the use of these dangerous terms as they create precedents. We’d all better use the term “investors’ privileges and property rights” to be more accurate.

I should not mention the absence of investors’ responsibilities because that would take us down another rabbit-hole. It is not an issue of balancing investors privileges with obligations – and then everything is fine.

We have stated open our views about BITs with ISDS.

They should not be reformed because they cannot be improved. There is no way we could defend the elevation of foreign individuals’ interests above the interests of the society. We cannot defend reserved access to private arbitration for foreigners where they can claim billions of dollars of our money.

At the same time, the developed world is understanding this. The EU's getting rid of the intra-EU BITs. The new NAFTA is massively reducing the scope of ISDS.

In order to get back your power to regulate for the good of your people, the international trade union movement has committed to support any country that denounces BITs.

The UNCITRAL process presents an opportunity. It would be ideal if the process produced a new instrument (Convention or other) that gives different options for the reform of the ISDS. And the last option for ISDS reform should be: the power to withdraw totally from the BITs. So that countries can quickly cancel many BITs – many of which have been signed in 'UNCTAD signing parties' a couple of decades ago without any consultation.

The ITUC believes that between the MIC and a Reform Convention, the latter would be preferable as it avoids entrenching the system, guarantees rapid reform of the 3300 bilateral investment treaties (BITs) currently in force and therefore a quick alleviation of some ISDS asymmetries. Members should agree to include as a last option the termination of investment treaties or the withdrawal of consent for ISDS, as CCSI also advocates, that would terminate the ISDS provisions in all its investment treaties.

In this way, governments would start taking power back from corporations and enjoy an array of tools to develop our economy, provide decent work, and attract long-term productive investment – tools that do not need to be defended as rights to regulation but are exercised proudly by our governments in the name of our people.