

WEEK OF  
aCTION ON

INVESTMENT TREATIES

AND FOR AN ALTERNATIVE  
INVESTMENT REGIME

BRUSSELS 5-8 NOV

PROGRAMME

# WEEK OF ACTION ON INVESTMENT TREATIES AND FOR AN ALTERNATIVE INVESTMENT REGIME

## 5 – 8 NOVEMBER 2011, BRUSSELS

### CONTEXT AND BACKGROUND

International investment agreements (IIAs) – in the form of Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) - pose a threat to democratic governance and the public interest. These agreements undermine the right of governments to regulate in favour of human rights, decent work, livelihoods and right to health and environmental sustainability.

IIAs give transnational corporations (TNCs) extraordinary rights without any obligations – allowing corporations to sue sovereign states before international tribunals such as the International Center for Settlement of Investment Disputes (ICSID). There is no such International tribunal where governments or citizens can bring TNCs to justice, nor impose binding regulations for TNC accountability. Investors and law firms are increasingly making use of these arrangements and do not hesitate to challenge governments' social, environmental and economic regulations if these appear to reduce the profitability of their corporate investments.

### SUMMARY OF EVENTS

Date	Event	Time	Venue
5 Nov	International Forum on BITs and Alternative Investment Regime	09:00-18:00	Maison des Associations Internationales – MAI, Rue Washington, 40
6 Nov	Debating Europe: For a Just EU investment policy	10:30-12:00	Polak room, Résidence Palace, Rue de la Loi 155 - Bloc C
7 Nov	European Parliament Forum Cross Regional responses to the EU's current Trade and Investment Policy	15:00-18:00	Room A5G3, European Parliament
8 Nov	Coming to grips with the international investment regime <i>Capacity building workshop with international lawyers and academics</i>	09:00-15:00	JINT office, Rue Grétry 26, Brussels

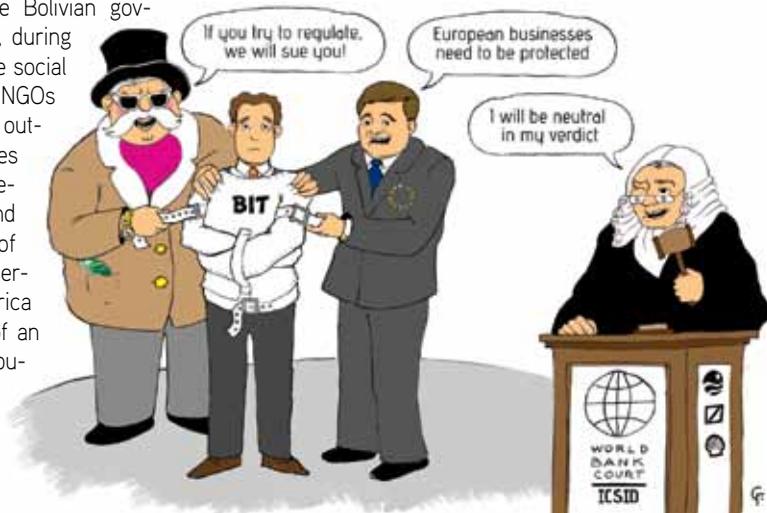
Evidence is unequivocal in showing that an investment framework based on investors' rights without binding obligations does not contribute to sustainable development. Nevertheless, since the 90s', developed countries have consistently pursued a binding investor protection framework, while resisting any type of investors obligations. In the context of the global economic crisis, both the US and the EU, but also other G20 countries are intensifying pursuit of both IIAs and FTAs which will increasingly carry investment chapters.

The agenda of Investment regimes has currently acquired a high political profile in the Europe Union (EU), where under the Lisbon Treaty, competency for investment shifted from the member states to the EU level. As is the case with Free Trade Agreement negotiations, the European Commission (EC) has now acquired the power to negotiate IIAs. This 'post-Lisbon' shift in competencies also means that Investment Chapters will be integrated into FTAs – as is for example currently the case with the EU-India, EU-Canada and EU-Singapore FTAs. In this way, TNCs are provided with an architecture of impunity that allows them to demand far reaching changes in financial, economic and social policy in the countries where they plan to operate.

## WAYS FORWARD: STEPPING UP THE PRESSURE

In the case of the Multilateral Agreement on Investment (MAI) and in the current raft of IIAs and FTAs, social movements and civil society organisations have engaged and campaigned against this trade and investment regime which places corporate interests above the well being of people and the planet. These resistances have succeeded not only in exposing the corporate interests and violations of human rights, but have also had significant victories in the defeat of the MAI, the Free Trade Agreement of the Americas (FTAA) as well as in specific ICSID cases – such as Bechtel and ETI brought against the Bolivian government. Moreover, during the past half decade social movements and NGOs have highlighted outstanding case studies that expose the widespread economic and ecological crimes of European TNCs operating in Latin America in the framework of an architecture of impunity provided by BITs and FTAs.

**IN THIS CONJUNCTURE, THIS 4-DAY EVENT WILL BRING TOGETHER SOCIAL ACTIVISTS, CAMPAIGNERS AND EXPERTS FROM ALL OVER THE WORLD WITH ACCUMULATED EXPERIENCE OF CRITICAL ENGAGEMENT WITH THE CURRENT INVESTMENT REGIME AND THE POWER OF TNCs IN ORDER TO ARTICULATE COMMON CAMPAIGNING STRATEGIES AND DISCUSS ALTERNATIVES.**



# INTERNATIONAL FORUM ON BITS AND ALTERNATIVE INVESTMENT REGIME

5 NOVEMBER The current global investment regime

**8:30 - 9:00** Registration

**9:00 - 9:15** *Welcome, introduction, agenda & purpose of meeting*

**9:15 - 10:15** *Unpacking the international investment regime*

\* Busting the myths about the need for investment protection [Alberto Arroyo](#), [RMALC](#), Mexico

\* IIAs and architecture of impunity: TNCs rights [Juan Hernández Zubizarreta](#), [EHU-UPV](#), Basque Country

Open forum

**Break**

**10:30 - 11:45** \* Investment treaties and the constraints on policy space: the relevant State obligations [Nathalie Bernasconi](#), [IISD](#), Switzerland

\* Investor-to-state arbitration: What's wrong with ICSID and some key cases [Gus van Harten](#), [Osgoode Hall Law School - York University](#)

Open forum

## OBJECTIVES FOR THE DAY

- Mapping the state of play of the international investment regime
- Strengthening the link between different campaigns on investment: BITS, FTAs, ICSID, TNCs
- Build our capacity to critically engage with the international investment framework and investor-state dispute settlement mechanisms

**Break**

**12:00 - 13:00** *Governments challenges to current system: efforts to roll back IIAs and investors rights*

\* Ecuador: termination of BITS and UNASUR dispute settlement mechanism [Adrian Cornejo](#), [Comisión Ecuatoriana Presidencial/Nueva Arquitectura Financiera Regional - Banco del Sur](#)

Open forum

**Lunch**

Venue

Maison des Associations  
Internationales – MAI.  
Rue Washington, 40 - 1050  
Brussels

**14:00 - 15:30** *EU investment policy*

\* State of play in the European Union [Marc Maes](#), 11.11.11

\* EU-India FTA [Leena Menghaney](#), [MSF/ Forum on FTAs](#), India

\* Canada-EU Trade Agreement [Stuart Trew](#), [Trade Justice Network/ Quebec Network on Hemispheric Integration](#), Canada

**Break**

**16:00 - 16:30** *State of play US investment policy & campaigning*  
[Sarah Anderson](#), [IPS](#), US

**16:30 - 18:00** *State of investment regimes & campaigns in the Global South*

\* State of Investment regime in ASEAN [Joseph Purugganan](#), [Focus on the Global South/EU-ASEAN FTA campaign](#)

\* State of investment regime in Africa [Sylvester Bagooro](#), [Third World Network-African Trade Network](#), Ghana

\* State of investment regime in Latin America [Hector Moncayo](#), [Hemispheric Social Alliance](#)

**9:00 - 10:15** **Taking stock and discussion on objectives for the day**

**10:30 - 12:00** **Alternatives to current investment regime**

**Parallel Working groups to discuss alternatives**  
*Each working group will start with a 15' input which launches some ideas for discussion. Each will have 1 facilitator and 1 note-taker and should take the last 10 minutes to prepare its input into the plenary, focusing on the key elements for an alternative investment regime as they emerged from the discussion*

**Beyond CSR: Economic & Ecological crimes and an International Tribunal that can bring TNCs to justice** (coordinated by Enlazando Alternativas network)

*The neoliberal trade and investment regime serves as a legal framework "an architecture of impunity" that protects transnational corporations' operations and allows them to commit widespread violations of human rights. To put the peoples' rights before those of corporations, a new international framework which includes binding obligations for TNCs, is needed to hold them accountable for their economic crimes and to reign in and dismantle their power. The debate will focus on this framework as an alternative.*

**Alternatives to current Investor-State dispute settlement mechanisms** (coordinated by IISD)  
*Treaty-based investor-State dispute settlement is fraught with problems, such as secrecy, lack of arbitrator independence, unpredictability, and high costs. This session discusses alternatives to the dispute settlement system. Additionally it proposes concrete*

*ways to address some of the problems until proper alternatives can be implemented.*

**Investment and natural resources (land, water): what alternatives?** (coordinated by Oxfam Solidarity)

*Today, the world's natural resources are under increasing pressure and are often object of important power struggles between corporations, states and communities. As foreign investments in land, water and other natural resources grow in number and magnitude, international investment treaties have become more and more relevant. Will this system weaken development countries' capacity to regulate their food, land and water sectors? What alternatives/kind of reform do we need?*

**Mining for Profits in International Tribunals. Action to Stop Transnational Corporations Suits over Oil, Mining and Gas Disputes** (coordinated by IPS)

*In the context of high global prices for natural resources, developing countries seeking to increase the benefits of those resources for their own people while protecting the environment are finding themselves increasingly at odds with Transnational corporations who are increasingly using the right to sue governments in international tribunals. This right is granted under the complex web of Free Trade Agreements and thousands of BITS. What are the alternatives?*

**Investment and Health: what alternatives?** (coordinated by India Forum on FTA)

*The workshop will highlight the investment provisions to watch out for in FTA negotiations and their potential adverse impact on public health as well as approaches to intellectual property, health policies and other measures governments may adopt to ensure access to affordable medicines.*

**OBJECTIVES FOR THE DAY**

- Attain a good overview of alternative elements, processes, struggles and debates that are already happening in different countries/regions
- Advance the common knowledge of possible elements of an alternative investment regime
- Agree on some key elements of an alternative investment regime (and also recognise areas of disagreement that need further discussion)
- Agree on some key strategies for campaigning (outreach, networking, synergies)

**12:00** Reports back from groups  
**13:00**

**Lunch**

**14:00 - 15:45** **Resisting the current investment regime: Strategies for Action**

*Each working group should have 1 facilitator and 1 note-taker*

*Parallel Working groups to discuss campaigning strategies*

**Break**

**16:00 - 17:00** Report back from WGs and summing up the arguments and angles for international campaigning

**17:00 - 18:00** **Summing up key elements of an alternative investment regime & consolidating next steps**

Facilitators: **Jim Shultz and S2B**

7 NOVEMBER

## Debating Europe For a just EU investment policy

Investment is increasingly promoted as a development tool by the EU and its member states. At the same time, there is a growing international recognition that business activities, in particular those of powerful transnational investors, can have serious and far-reaching effects on human rights and sustainable development. The Lisbon Treaty of 2009 offers a unique window of opportunity to reassess the principles underpinning the frameworks for investment protection of the EU and its member states. "Lisbon" has moved the competency to negotiate investment agreements from the member states to the EU level. The wider EU human rights' principles as laid down in its founding Treaties must guide the EU's future common investment policy.

Panellists will debate the current EU investment policy as embedded in the mandates for negotiation of investment chapters with Canada, India and Singapore, particularly the fact that investment agreements only include investor rights and not investor obligations; as well as alternatives policy proposals to the current Member States Bilateral Investment Treaties (BITs) model.

Time

10:30

-

12:00

Venue

Résidence Palace - International Press Centre, Polak room, Rue de la Loi 155 - Bloc C, 1040 Brussels

KEY SPEAKERS: **Mr Leopoldo Rubinacci**, Head of Unit, Services and investment (B1), DG Trade, European Commission

**Mr. Pascal Buffin**, Belgian representative in the Trade Policy Committee, European Council

**Mr. Marc Maes**, 11.11.11

**MEP S&D** (tbc)

Moderator: **Juliane von Reppert Bismarck**, EU trade correspondent, Reuters

7 NOVEMBER

## European Parliament Forum

### Cross Regional responses to the EU's current Trade and Investment Policy: the case for a new regulatory regime for TNCs and Investments

Time

Venue

15:00

-

18:00

Room A5G3, European Parliament

entrance MAIL of the Spinelli Building (Luxembourg place side). *You need to be there at 14:00 to get a badge*

*This European Parliament Forum will facilitate a dialogue between social activists and MEPs about the premises of the EU's current investment policy and the global investment regime and the challenges to advance proposals for an alternative investment regime and for binding codes on Transnational Corporations.*

15:00

-

15:20

#### Introduction

Framing the Forum

MEP Helmut SCHOLZ, GUE-NLG

Context and Background

Brid Brennan, TNI

15:20

-

16:10

#### Session 1: The new EU investment policy: what happens to States right to regulate in the public interest?

New EU investment mandates: a disregard for the EP position? Roos van Os, SOMO

EP responses to EU's new investment policy

Martin Koehler, adviser to on trade and investment policy, Group of the Greens/European Free Alliance

MEP Helmut SCHOLZ, GUE-NLG

MEP David Martin, S&D (tbc)

Moderator: Burghard Ilge, Both Ends

Open Forum Debate

16:10

-

17:00

#### Session 2: Architecture of Impunity and Economic and Ecological Crimes

##### Exemplary Cases

'emblematic' cases from different regions – especially those that could relate to Session 1

How BITs and FTAs allow TNCs to operate with impunity Juan Hernandez Zubizarreta Professor University Pais Vasco -UPV-EHU

Case 1 Latin America

Case 2 Rangarirai Machedmedze, SEATINI, Zimbabwe

Case 3 Asia

Open Forum Debate

Moderator: Gabi Zimmer – Coordinator Development Committee, ACP Delegation, DIE LINKE, Germany

17:00

-

17:45

#### Session 3: Time for binding obligations for TNCs

New International Instrument/bodies Alfonso Moro, FAL/Enlazando Alternativas network

Alternatives to EU investment regime Roeline Knottnerus, Seattle to Brussels network

Open Forum Debate

Moderator: Gonzalo Berron, HSA

17:45

-

18:00

#### Closing Remarks

Gabi Zimmer – Coordinator Development Committee, ACP Delegation, DIE LINKE, Germany

#### Organised by GUE/NGL

In cooperation with: Europe-Latin America biregional network Enlazando Alternativas, Seattle to Brussels (S2B) network, Network for Justice in Global Investment (NJGI), EU-ASEAN FTA network, Campaign against BITs and ICSID Latin America, Hemispheric Social Alliance

8 NOVEMBER

# Coming to grips with the international investment regime

## Capacity building workshop with international lawyers and academics

Time

Venue

9:00  
-  
15:00

JINT office,  
Rue Grétry 26, Brussels

To date, the increased importance and complexity of the international investment regime has not been met with a sound knowledge of its implications on the side of policy-makers, civil society, academics and journalists. They need to better understand the threats IIAs pose to economic, social, cultural and environmental rights, as well as to democracy and people's sovereignty. This workshop, open to activists, academics, journalists, parliamentarians and their assistants, with highly qualified international lawyers and academics aims to fill this gap. It will provide:

- sound knowledge about the problematic aspects in international investment treaties and the workings of investor-to-state dispute settlement processes;
- sound knowledge of legal approaches to alternative investment treaties;
- argumentative strength through a strong knowledge about the most common arguments of the defenders of the existing investment regime and about how to rebut them.

9:00  
-  
9:45

**Welcome, introduction to the workshop & introductory round**

9:45  
-  
11:15

**Problematic aspects of international investment treaties**

*Nathalie Bernasconi-Osterwalder, senior international lawyer at the International Institute for Sustainable Development (IISD), Geneva*

Coffee Break

11:30  
-  
13:00

**Legal approaches to an alternative investment policy**

*Gus van Harten, associate professor, Osgoode Hall Law, Toronto*

Lunch

14:00  
-  
15:00

**Argumentation training**

### The experts

*Nathalie Bernasconi-Osterwalder* is a senior international lawyer and heads the investment programme of the International Institute on Sustainable Development (IISD). She previously was the managing attorney of the Center for International Environmental Law's Geneva office. In the past she has also worked in Hanoi, Vietnam, for a legal reform project of the United Nations Development Programme (UNDP) as well as for the Australian law firm Phillips Fox. In Switzerland, Ms. Bernasconi worked for the Justice Department, Berne, in the Section for International Law.

*Gus Van Harten* is a professor at Osgoode Hall Law School, where he teaches Administrative Law and International Investment Law. He obtained his PhD from the London School of Economics and is the author of *Investment Treaty Arbitration and Public Law*. Open access to his research publications: <http://ssrn.com/author=638855>. Open access to his database on international investment arbitration: [www.iiapp.org](http://www.iiapp.org).

## THE WEEK OF ACTION IS CALLED BY

Seattle to Brussels (S2B) network, Network for Justice in Global Investment (NJGI), EU-ASEAN FTA network, Campaign against BITs and ICSID Latin America, Hemispheric Social Alliance, Europe-Latin America biregional network Enlazando Alternativas

## THE WEEK OF ACTION IS CO-ORGANISED BY

Transnational Institute (TNI), SOMO, PowerShift, Corporate Europe Observatory (CEO), 11.11.11, Traidcraft UK, Oxfam Solidarity, Chamber of Labour, Austria, Institute for Policy Studies (IPS), Democracy Center, Focus on the Global South and Equit.

## THE WEEK OF ACTION WAS MADE POSSIBLE THANKS TO THE SUPPORT OF

Rosa Luxemburg Stiftung, 11.11.11, Oxfam Solidarity, Oxfam International, Henrich Boell Foundation Mexico, European Commission, Ministry of Foreign Affairs Netherlands.

For further information, you can visit:

**[WWW.S2BNETWORK.ORG](http://WWW.S2BNETWORK.ORG)**

**[WWW.ENLAZANDOALTERNATIVAS.ORG](http://WWW.ENLAZANDOALTERNATIVAS.ORG)**

**[WWW.JUSTINVESTMENT.ORG](http://WWW.JUSTINVESTMENT.ORG)**

**[WWW.ASC-HSA.ORG](http://WWW.ASC-HSA.ORG)**

INTERNATIONAL INVESTMENT AGREEMENTS POSE A THREAT TO DEMOCRATIC GOVERNANCE AND THE PUBLIC INTEREST. THESE AGREEMENTS UNDERMINE THE RIGHT OF GOVERNMENTS TO REGULATE IN FAVOUR OF HUMAN RIGHTS, DECENT WORK, RIGHT TO HEALTH AND ENVIRONMENTAL SUSTAINABILITY. THEY ALLOW CORPORATIONS TO MAKE THE WORLD A GLOBAL CASINO AND SUE SOVEREIGN STATES BEFORE SECRET AND UNACCOUNTABLE INTERNATIONAL ARBITRATION TRIBUNALS. IT IS THE RULES OF INVESTMENT THAT GIVE TRANSNATIONAL CORPORATIONS EXTRAORDINARY RIGHTS WITHOUT ANY OBLIGATIONS, LIMITLESS AMOUNTS OF POWER AND FACILITATE RISK-FREE INVESTMENTS.

**It's time to challenge  
them back!**