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Unlike some civil society groups we believe in globalization and liberalization but with safety nets. We do believe that unless trade and investment regimes are liberalized countries cannot grow, which becomes an imperative to poor countries which need to grow, create jobs and ameliorate poverty. Our philosophy is supported by many CSOs and governments in the developing world.

Countries endeavour to attract foreign investment so as to fill the gap between resources mobilised and the resources needed to achieve growth and development targets. Foreign investment plays an important role in complementing developmental processes at the national level by enhancing export competitiveness, creating employment opportunities and providing opportunities to local labour to develop new skills. It is indeed desirable to attract foreign investment towards realizing the goal of sustainable development, whose meaning need not be restricted to the commonly understood paradigm of just ecology.

There are three major challenges that developing countries face in in their endeavour to attract foreign investment. First, how to ensure that foreign investment is responsible? Second, how to ensure that Bilateral Investment Treaties (BITs) or International Investment Agreements (IIAs) do not curtail the policy space of developing countries. Over the last decade or so, large and wide gamut of sovereign regulatory measures related to protection of public health, environment, human rights etc have been adjudicated under the investor-state dispute settlement (ISDS) mechanism provided by IIAs. Some of these cases have resulted in awards of substantive damages to foreign investors,[1] and thus resulting in diversion of taxpayer's money to foreign investors. Adjudication of such large range of regulatory measures coupled with diversion of tax payer's money as damages to foreign investors have fuelled the debate on IIAs encroaching upon the policy space of the host country. As a result, some countries have terminated their BITs and thus, pulled out of international investment law regime. One such country is Ecuador, which has witnessed third-highest claims by foreign investors after Argentina and Venezuela. In 2008, Ecuador denounced nine of its BITs. In July 2009, Russian Federation terminated the provisional application of the Energy Charter Treaty. In September 2012, South Africa terminated its BIT with Belgium and Luxembourg followed by terminating the BITs with Spain and Germany in 2013.

1 See *Former Yukos Shareholders awarded US $ 50 billion in damages against Russia*, 28 July 2014, *FT World,* available at <http://www.ft.com> [accessed 21 October 2014].

Third, how to ensure that domestic investors are not disadvantaged vis-à-vis foreign investors? This is a major challenge in context of BITs and IIAs, which allow foreign investors to bring claims against host state at international forums, often at times even without exhausting local remedies. However, domestic investors cannot bring claims against regulatory measures of state at international arbitration. This puts domestic investors at a disadvantage with respect to foreign investors. For this very reason Brazil has not entered into an IIA.

In terms of solutions to the problems faced by the IIA regime, there is a need to move towards an alternative dispute resolution (ADR) system and/or create an Ombudsman. This has been suggested by many countries, such as The Netherlands, Mexico and Thailand, in this session also. Although arbitration is an ADR, in IIAs, it follows a very formal court-like structure because of which disputes are not settled expeditiously. Disputes taking longer time to be settled raise the costs for foreign investors and also hurt the interest of host countries. Thus, there is a need to consider other forms of ADR like conciliation and mediation to expeditiously settle disputes between foreign investors and host states.