



Date: January 8, 2008

Context: Blue Planet Project's Solidarity with Civil Society Organizations

Subject: INTERNATIONAL SIGN-ON STATEMENT TO WORLD BANK
PRESIDENT ON BOLIVIA INVESTMENT CASE

Background:

Blue Planet Project is proudly supporting an effort led by the **Institute for Policy Studies in Washington, DC to uphold democratic values in Bolivia.**

Over 200 organizations from five continents have already signed a letter addressed to the President of the World Bank. In May 2007, the government of Bolivia challenged the excessive and anti-democratic powers of global corporations by withdrawing from the World Bank's investment arbitration court. Today, this same court is refusing to respect the Bolivian government's actions and is allowing a case brought by a European telecommunications company to proceed.

The objective of the letter is to pressure the World Bank to create an independent panel to examine the concerns raised around the world about a system that grants excessive rights to international investors.

Letter:

Robert B. Zoellick, President, World Bank
World Bank
1818 H Street, NW
Washington, DC 20433

RE: Refusal to respect Bolivia's withdrawal from investment dispute court

Dear Mr. Zoellick:

We are writing to express our concerns and make recommendations regarding recent actions by the International Center for the Settlement of Investment Disputes (ICSID), whose Administrative Council you chair.

On October 31, 2007, ICSID registered a case against Bolivia submitted by Euro Telecom International, an Italian/Spanish/Dutch corporation. ICSID is preparing to constitute a tribunal for this case by the end of January 2008.

We find these actions objectionable for three reasons:

1. ICSID is allowing this case to go forward, despite the fact that the Bolivian government has withdrawn from the ICSID convention.

On May 2, 2007, the Bolivian government became the first in the world to withdraw its consent to allow ICSID to arbitrate disputes arising from investments in its territory. In taking this step, the government followed proper procedures in accordance with the ICSID convention and thus now denies that it is subject to ICSID jurisdiction. Determining jurisdiction in this case requires deciding on the meaning of the Convention itself regarding the rules of exit. This is not an appropriate question for an investment tribunal, particularly one that is associated with the World Bank, the administrator of the Convention.

The Bolivian government has also raised justifiable concerns about an investor-to-state dispute settlement system that allows private corporations to undermine democratic processes and places unjust financial burdens on governments, particularly in the developing world. The previous Bolivian administration spent five years fighting a case brought by Aguas del Tunari, a subsidiary of Bechtel, over a failed water privatization project. Although Bechtel eventually settled the case for a token sum, the Bolivian government incurred considerable legal costs, draining funds that could have been used to meet basic needs in South America's poorest country.

Recommendation: ICSID should respect the Bolivian government's decision and stop the ETI case from going forward. Failure to respect the Bolivian government's decision to withdraw from ICSID would only give further credence to the view that this is a system which undermines national sovereignty in favor of the interests of private corporations.

2. ICSID's moves appear designed to make an example of Bolivia, at a time when other countries are questioning the investor-to-state arbitration system.

On November 23, 2007, the Ecuadorian government notified ICSID that it would not accept its jurisdiction in cases stemming from disputes over nonrenewable resources. The Argentine government has also raised concerns over flaws in the system, after being hit by more than 30 investor claims in recent years, many of them in retaliation for actions taken to alleviate the pain of financial crisis on average citizens. Venezuela and Nicaragua joined Bolivia in a joint declaration criticizing ICSID on April 29, 2007, while the Australian government refused to accept investor-state dispute resolution in a 2004 trade pact with the United States.

***Recommendation:** ICSID/World Bank officials should treat these concerns seriously, rather than sending a signal that governments are trapped in this system — even if they take proper steps to withdraw. The World Bank should establish an independent review panel to examine how ICSID (and the investment treaties and trade agreements it enforces) undermines other international treaties that promote social, economic, and human rights, as well as developing countries' capacity to reduce external debts and achieve the Millennium Development Goals.*

3. The subject of ETI's dispute, telecommunications regulation, is an issue with broad social implications that is inappropriate for an international commercial arbitration tribunal

Governments should have every right to ensure that the telecommunications sector meets social objectives, including universal, affordable access to services and sustainable employment. The World Bank, however, has consistently promoted privatization and deregulation as the only means of developing this (and most other) economic sectors. Thus, it is particularly inappropriate for ICSID to handle the ETI case, which stems from constitutionally sanctioned actions by the Bolivian government to ensure that telecommunications privatization benefits Bolivian society and to explore options for increasing the government's ownership share of the system.* It is also worth noting that although ETI claims that the Bolivian government has "destroyed the value" of its investment, the company continues to operate and generate profits in that country.

***Recommendation:** ICSID should decline to handle the ETI v Bolivia case, not only because Bolivia is no longer a party to the ICSID convention, but also because this matter would best be handled through domestic regulatory and legal remedies, as the Bolivian government has suggested.*

Thank you for your attention to this serious matter.

Sincerely,

[organization, country]

cc:

Ana Palacio, ICSID Secretary-General

Franco Bernabè, CEO, Telecom Italia S.p.A.:

César Alierta Izuel, CEO, Spanish Telefónica

** Currently, ETI owns 50% of ENTEL, a company that provides more than 60% of the country's telephone services. The Bolivian government owns 47%, while individual investors control the remainder. ETI is incorporated in The Netherlands and wholly owned by another Dutch company, International Communication Holding (ICH) N.V. ICH is in turn 100% owned by Telecom Italia International N.V., also a Dutch company, in turn owned 100% by Telecom Italia S.p.A., an Italian company which is owned by Spanish Telefónica (42.3%), among others.*