



UNCTAD High-level International Investment Agreements (IIA) Conference 2018

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1. It is my pleasure to address the UNCTAD High Level Conference on International Investment Agreements, on behalf of the International Institute for Trade and Development (ITD), a knowledge bridge and capacity building centre established jointly by UNCTAD and the Thai Government during the 10th Session of UNCTAD held in Bangkok, Thailand in the year 2000. Our main objective is to strengthen the capacities of Asian and other countries to deal with a broad range of regional and international trade, investment and development issues by providing a venue for training, capacity-building activities, seminar and workshop in the Asia Pacific region.

2. I am particularly pleased to make a statement by sharing some outcomes of the Regional Workshop on Phase 2 of IIA Reform under the theme of “Modernising the Existing Stock of Treaties for Asia-Pacific policy makers” which was co-organized by ITD and UNCTAD in February this year in Bangkok, Thailand. The workshop was the first initiative of its kind for the region, in the areas of IIA capacity building (Phase 2) organized specifically for policy makers directly involved with investment treaties.

3. Over the course of the workshop discussions, participants have agreed on two main themes for IIA reform in order to improve overall investment policy coherence. The first theme is reforming international norms and the second theme is a reform of domestic institutions.

4. The reform of international norms focuses at reforming provisions of IIA to reflect a balance of responsibility between foreign investors and host states. As it is evident that most of IIA provisions impose unilateral obligations on states, the consensus has been reached that IIAs can no longer maintain such unilateral position and that there should be obligations imposed on investors to allow states to have regulatory space to deliver policies that meet their

economic and social objectives. In this regard, there have been proposals to incorporate soft law obligations into the provisions of IIAs such as UN Guiding Principles and Sustainable Development Goals (SDGs) to achieve a balance of responsibility between investors and states.

5. The second theme is reforming domestic institutions. It is accepted that an investor-state dispute settlement (ISDS) is a major challenge for many developing countries due to the lack of capacities to effectively manage investor's claims. It is also argued that ISDS claims are eminent to states when IIA provisions impose sole obligations on states but not on investors. Participants recognized that even though a balance of responsibility has been achieved in IIA provisions, this may not suggest a sustainable solution since investor-state claims, in an absence of IIAs, can still arise from violation of existing investment contracts (in many cases, concession contracts).

6. Therefore, it is crucial to reform domestic institutions to develop fair, transparent and effective process to prevent mistreatment for investors and host countries. Alternatively, it has been raised that states may employ a domestic process that could provide amicable means of dispute resolution through domestic channels (e.g. claim prevention process and investment ombudsman) in order to mitigate disputes at international level.

7. At the closing session, several participants shared their opinions and recommendations on how UNCTAD and ITD can assist countries in the region be better prepared and in a more timely fashion, become equally knowledgeable on variety of areas of the IIIA. Namely, the "how to strategies" to help them navigate through the myriads of complex issues both legal and non-legal in nature, identify and address growing going-concerns. Some of these recommendations included

- Conducting annual regional workshops including topical based workshops and seminars;
- Developing regional common platform to share, disseminate and exchange information on latest issues and remedies on IIAs and PPPs;
- Collection of case studies i.e. success, failures for IIAs, ISDS and PPPs
- Funding member countries to global meeting such as the WIF 2018 meeting in October