

# **TAKING STOCK OF INTERNATIONAL INVESTMENT AGREEMENT REFORM**

**16 MARCH 2016**

## **INTRODUCTORY REMARKS**

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Excellencies,

Distinguished Experts,

Ladies and Gentlemen,

It is timely to take stock of ongoing global efforts to reform the international investment agreement regime. Establishing a sustainable-development-friendly IIA regime is high on countries' policymaking agendas all over the world.

Formulating the "right type" of investment policies that mobilize investment and channel it to key sustainable development sectors is an important objective today. Developing the right policy mix can help minimize the potential negative impact of investment. The need to do so is also recognized in the Addis Ababa Action Agenda, the outcome document of the Third United Nations Financing for Development Conference, which took place in July last year.

In paragraph 91 of the Addis outcome document, UN Member States refer to a core objective of IIA reform: balancing the rights and obligations of firms and States.

- They declare that – and I cite – “[t]he goal of protecting and encouraging investment should not affect our ability to pursue public policy objectives. We will endeavor to craft trade and investment agreements with appropriate safeguards so as not to constrain domestic policies and regulation in the public interest.”

In the Action Agenda, UN Member States also ask UNCTAD to continue its work on IIAs.

- They “request UNCTAD to continue its existing programme of meetings and consultations with Member States on investment agreements.”

Our meeting here responds to this mandate. Today, UNCTAD is convening Member States, as well as the investment and development community, to share their experience with IIA reform.

Our preliminary stocktaking prior to this meeting indicates that significant progress has been achieved on IIA reform, but challenges remain. This meeting will give experts and stakeholders the platform to exchange best practice and identify lessons learned. By doing this, it will help shape the way forward for the IIA regime.

Allow me to set the stage for an effective and constructive exchange of experience, by presenting to you some key findings of UNCTAD's research on this topic. I would like to highlight:

- Recent trends in international investment policymaking, and
- A preliminary stocktaking of IIA reform, that is, what have countries been doing at the national, bilateral, regional and multilateral levels

## **1. Recent IIA developments**

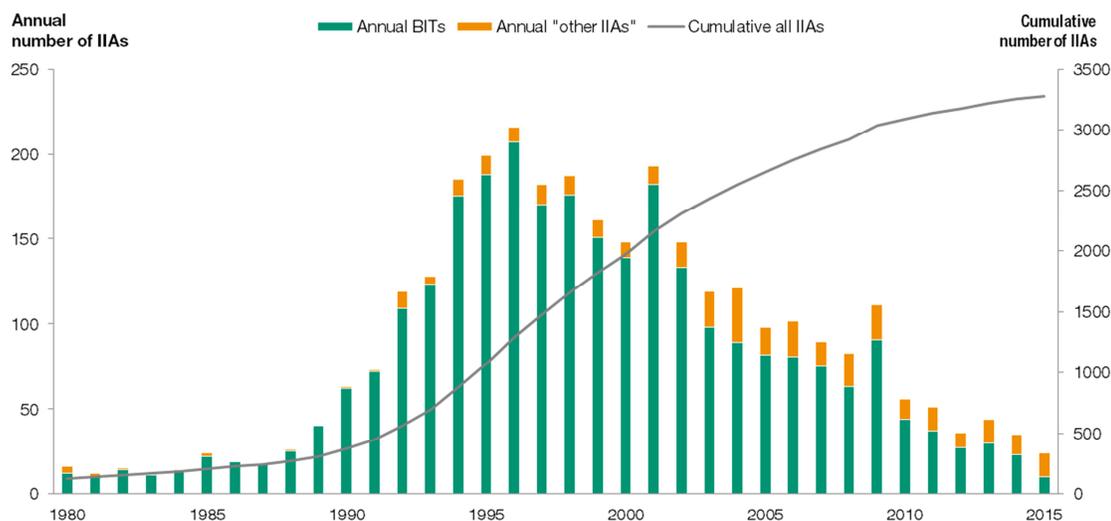
Today, the IIA regime consists of over 3,280 treaties (close to 2,930 BITs and over 350 economic agreements with investment provisions). In 2015, 24 new IIAs were concluded:

- 10 bilateral investment treaties (BITs) and
- 14 economic agreements with investment provisions (or so-called “other IIAs”).

For the first time, the annual number of “other IIAs” surpassed the annual number of BITs, confirming the trend that countries are increasingly adopting an integrated approach to trade and investment issues.

You can access information on the most recent IIAs on the UNCTAD “IIA Navigator” – the world’s most comprehensive collection of IIAs.

## Trends in IIAs signed, 1980-2015

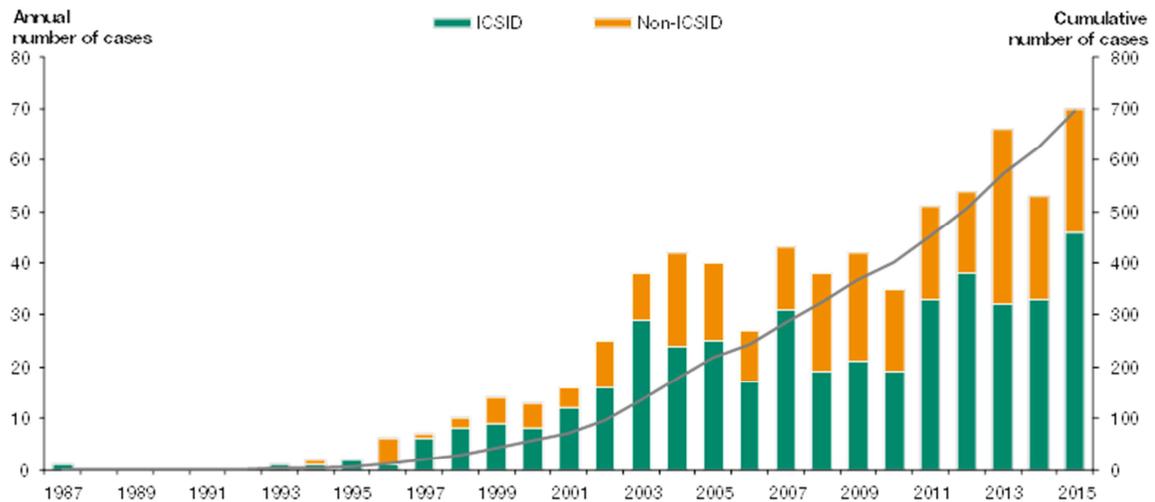


Source: ©UNCTAD.

In recent years, IIAs have attracted a considerable amount of public attention as a result of a number of systemic issues. Public attention has intensified, in particular on negotiations of so-called megaregional agreements, such as the Trans-Pacific Partnership Agreement (the TPP) and the Transatlantic Trade and Investment Partnership (the TTIP). (The TPP was signed a few weeks ago, while negotiations on the TTIP continue.)

Arguably, investor-State dispute settlement (ISDS) is the most controversial issue in this debate. Our latest research shows that the number of ISDS cases reached a record high in 2015. Last year investors initiated 70 known ISDS cases pursuant to IIAs. As of 1 January 2016, the total number of publicly known ISDS claims has reached close to 700 (696 cases). One hundred and seven countries have been respondents to one or more known ISDS claims. Some countries faced their first (known) ISDS claims in 2015. Detailed information on the publicly known cases is included in the UNCTAD Investment Dispute Settlement Navigator.

## Known ISDS cases, annual and cumulative, 1987-2015



Source: ©UNCTAD.

IIA reform is taking place against this complex and expanding regime of IIAs and the increasing number of ISDS cases. Clearly, the policy debate is not the same as five years ago. It is not the same as one year ago either.

Today it is no longer a question of whether to reform or not. The investment and development community is looking for answers on the "what, how and extent" of such reform. To deliver answers is not an easy undertaking. IIA reform is a formidable challenge.

In the background document for this meeting, we have taken stock of countries' efforts to undertake such reform. Significant progress has been made, but much remains to be done. I am pleased to see you all here with us, lined up to share your country's and your stakeholder's experience with IIA reform.

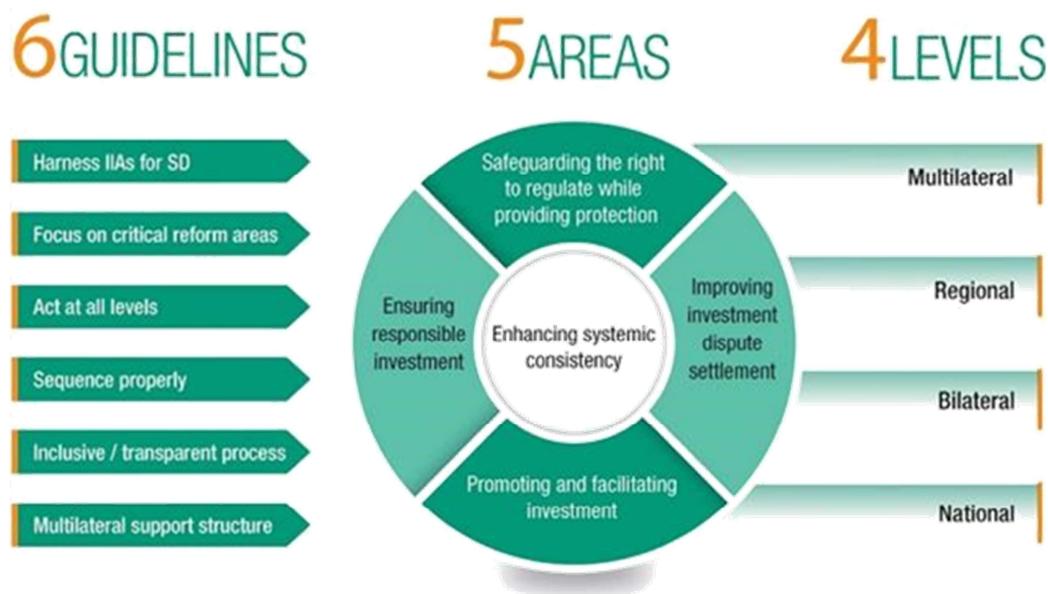
## 2. Stocktaking of IIA reform

IIA reform is already happening. A preliminary stocktaking of IIA reform suggests that efforts to develop a more sustainable-development-friendly IIA regime are being undertaken at all levels of governance.

To assist countries in their efforts, UNCTAD developed a Roadmap for IIA reform:

- The Roadmap addresses actions at four levels of policymaking, tackling five main reform areas and providing six overall guidelines for reform actions.

### UNCTAD's Roadmap for IIA Reform



Source: © UNCTAD.

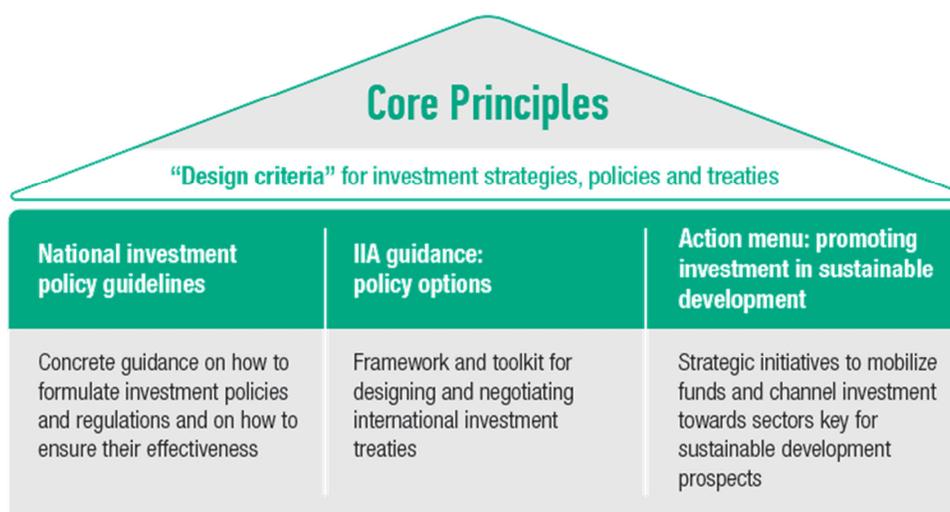
At least 110 countries have been engaged in IIA reform at different levels since the launch of UNCTAD's Investment Policy Framework in 2012.

- At the national level, many reviews resulted in the development of a new IIA model that is in line with "new generation" investment policymaking. New IIA models are just one option among other reform actions being undertaken.
- At the bilateral level, there is a clear shift in drafting practice. Recently signed IIAs contain a number of policy options that preserve countries' right to regulate or are otherwise conducive to sustainable development.
- We observe similar developments at the regional level. Megaregionals or regional IIA models tend to include more reform-oriented policy options. Some inputs into megaregional negotiations break new ground with respect to IIA and investment dispute settlement reform.

- At the multilateral level, a number of forums touch upon issues related to IIA reform. For example, UNCITRAL on transparency in ISDS; others on business and human rights, or financing for development. IIA reform was also a prominent issue at UNCTAD's World Investment Forum in 2014, its Investment Commission in 2015 as well as our Trade and Development Board in September 2015. Some of you attended the events.

UNCTAD's advocacy for a systemic and sustainable-development-oriented approach to reforming the international investment regime started in 2010. The World Investment Report 2010 highlighted the need to reflect broader policy considerations in IIAs, with a view to formulating a "new generation" of investment policies. Even before 2010, we were working on some IIA reform issues but we did not use the term "IIA reform" at that time.

*Investment Policy Framework for Sustainable Development*



Source: © UNCTAD.

Benefiting from 20 years of experience with our Work Programme on IIAs, UNCTAD developed a number of policy tools in recent years:

- The World Investment Report 2012 launched the UNCTAD Policy Framework, offering concrete policy options to negotiate sustainable-development-friendly IIAs.
- In 2013, the WIR proposed five paths of reform for investor-State arbitration.
- In 2014, UNCTAD presented four pathways of reform for the IIA regime, emerging from State practice. With its thematic focus on investing in

the sustainable development goals (SDGs), the WIR 2014 linked these pathways to the overall objective to mobilize foreign investment and channel it to key SDG sectors.

- In 2015, the WIR laid out a comprehensive Action Menu and a Roadmap for IIA Reform. The Roadmap for IIA Reform was developed in response to calls from the 2014 IIA Conference, held as part of the World Investment Forum. The WIR 2015 took a broader perspective, complementing its Roadmap for IIA Reform with a set of guidelines for formulating coherent international tax and investment policies aimed at realizing the synergies between investment policy and initiatives to counter tax avoidance. The Roadmap was considered by Member States in the 62nd Session of the UNCTAD Trade and Development Board (TDB), in September 2015. It was met with positive feedback and, since its launch, has been used in policymaking processes all over the world.
- Another prominent example of UNCTAD's policy tools is UNCTAD's Action Menu on Investment Facilitation launched on 26 January 2016. The Action Menu proposes 10 action lines with a series of options for investment policymakers to adapt and adopt for national and international policy needs. It is based on UNCTAD's Investment Policy Framework, which proposed a set of actions on investment promotion and facilitation already in its first edition in 2012. It is also based on earlier work, including a 2008 study on investment promotion provisions in IIAs. Overall, the Action Menu draws on UNCTAD's rich experience and lessons learned in investment promotion and facilitation efforts worldwide over the past decades.

## **Concluding remarks**

We look forward to hearing what countries and stakeholders have been doing in that context – the approaches and strategies you have adopted and the challenges you faced related to IIA reform.

The outcome of this Meeting can help provide common ground on which to continue global efforts on IIA reform with the prime objective to advance sustainable development. We are all aware that the reform of the IIA regime is a formidable challenge. As shown by our initial stocktaking, significant progress has been made, but much remains to be done.

Comprehensive reform requires a two-pronged approach: that is, to modernize existing treaties and treaty models, and second, to formulate new ones, both in line with today's sustainable development imperative.

Only a common approach and concerted effort at all levels (national, bilateral, regional, as well as multilateral) will deliver an IIA regime in which stability, clarity and predictability can help achieve the objectives of all stakeholders: that is, to effectively harness international investment relations for the pursuit of sustainable development.

UNCTAD stands ready to provide the investment and development community with the necessary backstopping in this regard. The IIA Conference at the 2016 WIF, scheduled for 19 July in Nairobi, Kenya, provides the next opportunity for the investment and development community to bring a new level of consensus to global IIA reform.

We look forward to hear from you what IIA reform efforts are happening around the world and how to continue IIA reform in the coming years.

I wish you successful deliberations. Thank you very much.

