

## STATEMENT FOR UNCTAD EXPERT MEETING

### Taking Stock of IIA Reform

*16 March 2016*

Six months ago, the UN General Assembly adopted the Sustainable Development Goals. It is without a doubt that the investment will play a predominant role for achieving these goals. Unfortunately, the current investment regime is still not playing a role in contributing to achieving the SDGs.

In order to create the necessary policy environment that can truly channel through investment's positive impact on sustainable development, many have recognized the need of a reform so that balanced and coherent global and domestic investment governance frameworks can be established. For the past several years, World Investment Reports focused on developing a roadmap for such reform. We are gathering here today to take stock of where we stand on these reform path.

The latest IIA Issues Note provided a snapshot of reform options that are currently being implemented around the world. These options range from developing treaty models at the national level, to bilateral and regional cooperation, to efforts at the multilateral level tackling some of the concerns raised with respect to the current investment regime, such as transparency of the dispute settlement mechanism as well as clarification of the investors' obligations.

For the past two decades, IISD has been providing advisory services and capacity building to developing countries to maximize the positive contributions that investment law and policy can make to sustainable development. In the recent years, we have witnessed a surge of desire to reform investment regimes to safeguard policy space and achieving a better

balance in all the countries we worked in. We are pleased to see that through the joint efforts of our colleagues, many of those who are present today, either in the room or via internet, reform options are being carried out around the world and have received positive feedbacks from various stakeholders. More importantly, we have noticed that there is an increasing consensus for the need of more comprehensive reforms, rather than simply applying patchworks in response to recent arbitral decisions.

One of the actions that may lead to such a big change could be designing and establishing an international court, as suggested by UNCTAD as one of the options in reforming the investment dispute settlement mechanism. With the EU's latest proposal, this idea has now gained traction, although the existing proposals are not without limitations. Most importantly, they simply replace the current investor-state arbitration system with a more judicial, yet equally adversarial and narrow investor-to-state system. At IISD we are of the view that a well-designed dispute settlement system should not be geared to settle disputes in an adversarial way only, but should also strengthen cooperative and inclusive approaches. Alternative mechanisms to resolve and prevent disputes should be considered as an integral part of the system. In addition, a multilateral mechanism for settling investment-related disputes should go well beyond investor-state, as proposed by the EU, and allow active participation by all stakeholders, so that meaningful remedies can be provided to all those affected.

IISD has been and will continue to help nourish the debates and will propose concrete options on the possible design of a 21st century mechanism for investment-related disputes. We look forward to exciting discussions ahead, in the spirit of creating an investment regime that is sustainable and contributes to better lives and well-being for all.