

High-level International Investment Agreements Conference 2023

Statement by Mr. Mohammad Usman Piracha, Chairperson, ISDS Reform
Negotiations (OIC)

15:30 – 18:00 CET, Wednesday, 18 October 2023

Climate change is a pressing global challenge that demands immediate and transformative actions at both national and international levels. Reforming the IIA regime is crucial to create policy space for states to address climate change, minimize the risk of Investor-State Dispute Settlement (ISDS) claims related to climate policies, and promote sustainable investment. These discussions are thus a very important step towards a just and efficient system for resolving investment disputes amongst OIC Member States and otherwise.

As we are aware, IIAs have traditionally focused on investor protection and promoting foreign investment, sometimes hindering climate action. A major challenge is the potential for ISDS claims, in allowing investors to challenge climate-related policies. These claims can burden governments and deter strong climate action. ISDS frameworks enable investors to sue governments if they perceive their investments are harmed, leading to hesitancy in enacting ambitious climate policies. However approaches exist for States to manage and overcome these challenges.

At the national level, states can introduce reform actions at various levels that can include amending IIAs to promote sustainable energy investments, removing obstacles to low-carbon and climate friendly technologies, while providing incentives where possible.

At Regional and Global Levels, the acknowledgement of the need for regulatory flexibility in climate action, incorporation of general exceptions, and alignment with global climate commitments is necessary to instill the necessary reforms.

States can encourage alternative dispute resolution methods within IIAs, promote negotiation and mediation, and ensure climate measures are not subject to ISDS claims. Negotiators should include language in new IIAs recognizing states' right to regulate in the public interest. They should consider carve-out clauses for specific energy investments while limiting the principle of fair and equitable treatment where possible, and include general climate action exceptions.

OIC led discussions as undertaken at Inter-Governmental Expert Group (IGGE) meetings for the creation of a new dispute resolution mechanism and protocol, emphasize procedural and substantive reform. Experts in these meetings contributed valuable insights to the proposed OIC protocol. Their discussions, guided by concepts of consistency, coherence, and predictability, aim to create a forward-looking dispute settlement mechanism aligned with sustainable development goals. OIC's General Secretariat, in collaboration with the Islamic Centre for Trade Development and the Islamic Development Bank, will incorporate proposals and observations into the draft Protocol's relevant articles.

Member States are thus encouraged to submit such observations and comments on the Protocol for consideration at future meetings of the IGGE. The progress in these meetings reflects OIC Member States' commitment to address investment disputes comprehensively, aligning with modern challenges and opportunities. These discussions mark a crucial step toward the integrity, fairness, and sustainability of investment agreements amongst the OIC Member States. The progress made reflects the commitment of OIC Member States to address challenges and opportunities related to investment disputes in our changing world.

Procedural reform thus involves a permanent Dispute Settlement Mechanism and Protocol under the OIC. However, substantive reforms need to be undertaken at the state level also – such as introducing provisions to exempt climate actions from ISDS claims, or otherwise limiting its scope.

The urgency of the climate crisis necessitates comprehensive IIA reform. Let us remember that our actions today shape a sustainable, resilient, and climate change-free future.

Finally may I take this opportunity to second The Kingdom of Saudi Arabia's support for UNCTAD's aim to establish a global platform to exchange best practices on IIA reform. We as part of the OIC's 1st Intergovernmental Group of Experts negotiations on the creation of a new dispute resolution mechanism and protocol, benefited immensely from UNCTAD's participation and facilitation, and it would be wonderful to have that support led by UNCTAD in IIA reforms too.