

High-level International Investment Agreements Conference 2023

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

Good afternoon, thanks UNCTAD for inviting the OECD to present at this Conference and for choosing climate change as the topic of the Conference on International Investment Agreements.

In the first session, we have heard a lot of views regarding what governments are doing in their agreements to facilitate sustainable green investment and to safeguard the right and duty of States to regulate in areas of public interest such as climate change.

At the OECD, we have been working with governments and stakeholders, under the Future of Treaties platform, approaching this issue of climate change and investment treaty in a different way and I would like not only to share this perspective with you today, but also to invite you to engage in our discussions.

I do not need to explain to this audience, how the investment regime has changed during the last years. Increasingly investment treaties have become controversial in international economic law and in the public opinion more general.

These controversies have increasingly focused on climate, particularly due to dispute cases brought by investors against States that were taking initiatives to align their economies with Paris commitments.

And this is the starting point of the Track 1 work focus on climate.

The focus is on alignment of investment treaties with the commitment made in article 2.1c of the Paris Agreement.

The article 2.1.c Paris agreement calls for alignment of finance with a low greenhouse gas emission pathway, to keep the global warming under 2 and 1,5 degrees.

Governments around the world are saying we need more green and less brown investment; climate experts are loud saying that fossil fuel production need significant to scale down if we are serious about this challenge.

Investment treaties have been agnostic on climate change; however, they can be seen as providing insurance-type financial services (covering some risks) and/or as incentives to support investment.

This has been the first challenge in our discussions with governments, to be aware that this goes beyond policy space.

The issue of finance alignment is happening in many policy areas, such as where political risk insurers are asked to align their portfolios with climate objectives.

In other words, the question is not if the measures taken by governments are legitimate or not but what economic activities governments are supporting? And what are their emissions?

In this context, taking Paris Agreement seriously means governments will need to apply the same logic to investment treaties that they are applying in other areas of economic policies.

In fact, is there a justification for maintaining investment protection for new investment in coal?

Governments have agreed with the International Energy Agency and the IPCC that these activities need to be phased out or cease to meet objectives of the Paris agreement therefore we need to work together to align investment agreements to this goal.

I have focused my presentation on the “do not harm” part, but as we hear from governments’ presentations, there are initiatives and political will from governments to use investment treaties to increase international investment in low carbon activities and “do good”.

These initiatives are more recent, and we are planning at the OECD, under Track 1 also to look at their effectiveness and see ways to strengthen them.

However, it is important in the short term, to work jointly in the reform of the bulk of treaties that are in force and were negotiated in a different climate; maybe governments could decide at a multilateral level some types of investments to exclude from coverage in the interest of climate. Coal is an obvious example. There is urgency.

In parallel, governments should continue working on including elements that facilitate investment in renewables and adaptation and reforming key provisions of their old investment treaties to represent better the new and innovative way that these provisions have been included in new treaties.

Different international Organisations are helping governments to achieve reforms, the OECD is glad to join forces in this effort.