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The focus of this UNCTAD Forum is on global capital and how it can transform economies, especially States needing capital to spur development. Key to the conversation are thousands of IIAs, old-generation or new ones, and whether they suit today's dynamic investment environment, one in which various actors have differing interests and ultimately varying levels of ability to reform the system. The increased flow of intangible property, such as data and IP rights, mentioned by Her Excellency Rebeca Grynspan this morning, adds new and substantial dimensions for the public, such as environmental, human rights and national security, and thus it is ripe for host State regulation.

The UNCTAD Guiding Principles for IIA Reform acknowledge the need for legitimacy of IIAs and link legitimacy to the State's fundamental responsibility to protect society while ensuring that investment promotes sustainable development. The UNCTAD Guiding Principles acknowledge that IIAs and reform of them allow States to interject these public values and do so within a State on a harmonized basis, thereby promoting clarity and predictability, garnering trust at multiple levels within the State and beyond.

When challenges to IIAs, especially as to investor-state arbitration, first surfaced, Judge Charles Brower observed that investment treaties can play an important rule of law function, and I tend to prescribe to his position. Thus, it is encouraging that the UNCTAD Guiding Principles are aligned with this observation. An alternative that eliminated treaties could mean ad hoc agreements between investors and host States in which public oversight could be lacking.

In negotiating an IIA the host State brings to the table the collective values of its community and thus a clear sense of them is needed. This is a major challenge, and by way of example consider that States are struggling in developing a comprehensive understanding of "sustainability." The UNCTAD Guidelines mention "responsible and inclusive investment," which is fused with normative elements, some highly political hot potatoes. In federal states in which power is diffused I foresee unique challenges, as local states and the federal government would need to be in sync. One need only think of the Lowen case in the US or the many water cases in Argentina as examples.

The UNCTAD Guidelines encourage dispute prevention and ADR preventive actions including conciliation and mediation. When used as a precursor to mandatory arbitration

these can be highly useful, yet we need skilled mediators and strict rules as to the mediation process to ensure that the efforts to reach an agreement are not futile or serve to delay an efficient and fair resolution.

Finally, looming large in our conversation are issues of national security and national resilience which States deem to have a priority. Balancing investment in intangible property with national security related issues will be a thorny issue going forward.