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INTERNATIONAL INVESTMENT AGREEMENTS CONFERENCE 2010

OPENING REMARKS

By

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Excellencies, Distinguished Delegates,

Let me welcome you to the International Investment Agreements Conference 2010. The International Investment Agreements – or IIA – Conference is the annual gathering of the global community of experts and practitioners in the field of International Investment Agreements. Some of you might remember the last IIA Conference, which took place in February 2009 in Geneva, Switzerland. This year, UNCTAD convenes the IIA Conference as part of the WIF, here in Xiamen.

I am pleased to see this room so full and vibrant. We have with us experts from governments, the private sector, academia, international organizations and civil society. All of you are joining together here to discuss salient issues in international investment law and development. I particularly appreciate the effort of those of you who have come a long way to attend this meeting here in Xiamen, China. Welcome again - to China!

Many others, however, could not join us here today. They will have the opportunity to join us virtually. There will be live webcasting of the event. There is also live blogging that will be fed into your deliberations, through the help of the Secretariat.

Let me come to the substance now. Today we will focus our discussions on some of the central development and systemic challenges facing the IIA regime.

Some of these challenges derive from the ever expanding IIA regime itself. As we mention in the World Investment Report 2010, the IIA regime consists of close to 6,000 agreements – more than 2,700 BITs, 2,900 DTTs, and almost 300 so-called “other IIAs”.

Other challenges have their origin in recent global economic and political developments, or they emerge from experiences with the IIA regime itself.

- First of all, the international investment landscape is emerging out of one of the deepest financial and economic crises in history. Global foreign direct investment flows have just begun to rebound – but there are major development challenges remaining ahead until we will have overcome the impact of the recent crisis.
- Secondly, climate change has become *the* key issue on the global policy agenda. Let me flag that climate change has also been taken up in this year's World Investment Report. Chapter IV of WIR 2010 discusses how to “invest in a low-carbon economy”. Let me remind you that WIR 2010 serves as the key background documentation to the deliberations in this forum.
- Thirdly, the global community is striving to achieve the Millennium Development Goals. We are currently preparing for the MDG Summit in New York later in September this year. Investment also has a role to play in this context.

In line with these and other global challenges, our World Investment Forum is being convened under the theme of “investing in sustainable development”.

Sustainability considerations are also increasingly important for the IIA regime. IIAs and IIA rule-making increasingly interact with public policy domains such as climate change, financial systems reform, national security, human rights or the pursuit of the Millennium Development Goals. Important public policy domains also relate to the emergence of new actors such as Sovereign Wealth Funds and State-owned Enterprises.

It is the purpose of this morning's session to discuss the points of contact between the IIA regime and these public policy issues. Let us explore how we can better manage this

interaction. Let us explore how we can increase synergies and ensure that IIAs contribute to sustainable development.

This afternoon we will have two breakout sessions to further explore the systemic evolution of international investment rules.

The first breakout session will focus on the evolution of the IIA regime through rule-making. There we will discuss current trends in the negotiation – or re-negotiation – of IIAs. There are several developments that deserve to be highlighted in this context:

- Most importantly, the IIA regime has become increasingly complex. Today's IIA regime involves not only bilateral investment treaties, but also comprehensive trade agreements with investment provisions, and a variety of other types of treaties. We have also seen a deepening of regional investment integration, with consequences for the entire IIA regime.

This leaves States with overlapping commitments in international investment policy. It also raises the challenge of how to manage multiple IIAs that interact with each other.

- Secondly, there is a trend towards the modernization of IIA content. This happens, for example, through the introduction of general exceptions, or the clarification of the scope and meaning of specific obligations. New IIAs increasingly have clauses on issues such as the environment, social practices or national security.

This is also reflected in new model international investment agreements that are being developed or refined in a variety of countries. The policy implications of all of that have - to date - been little explored.

The second breakout session will discuss the evolution of the investor-State dispute settlement system. Here also, the system is undergoing important changes.

- Some of these changes are spurred by concerns that have been raised by different stakeholders in the IIA community. Amongst others, such concerns relate to the predictability of the system and its legitimacy. All of this is taking place in an era where the number of investor-State arbitration cases is increasing year by year.

- IIA stakeholders are already exploring how to address these concerns. They explore how to refine the system, they consider changes to procedural rules and they explore less adversarial means of dispute settlement. The use of mediation and conciliation, or the establishment of dispute prevention policies are other examples. Moreover, some countries are re-evaluating their overall approach to investor-State dispute settlement more broadly.
- Other important developments include changes to the arbitration rules, for example, changes to the rules of the International Centre for Settlement of Investment Disputes - ICSID. There are also important discussions in the context of the United Nations Commission on International Trade Law and the International Chamber of Commerce – UNCITRAL. In this context, it is my pleasure to welcome to this conference Ms. Meg Kinnear, Secretary-General of the ICSID, and Mr. Renaud Sorieul, Director of the International Trade Law Division, Office of Legal Affairs, at UNCITRAL.

Alltogether there are many simultaneous, far-reaching developments. If harnessed properly, they could help move IIAs towards a more convergent and coherent body of international law.

The IIA regime's increased interaction with key and emerging global policies and its simultaneous consolidation may contribute to fostering a globally shared view on the way forward for the IIA regime towards sustainable development. Such a common view could include the evolution of a common understanding of key issues in IIAs and a more coherent – and development friendly – interpretation of IIA obligations.

In light of this, we would like to conclude the proceedings of today's IIA Conference with a closing roundtable. This closing round table will explore the future of international investment rulemaking, including future international cooperation in the area.

- Intensified international cooperation could have various positive outcomes: it could, for example, bring more coherence to the international investment regime, help rebalance the rights and obligations of investors and States and address the systemic problems of the investor-States dispute settlement system.

As a final item of today's agenda, UNCTAD, together with a group of 15 law schools with expertise in international investment law, will launch a collaborative network of law

schools. The establishment of this network is a pilot project. (It aims at deepening scholarly synergies in the study of international investment law and educating a new generation of IIA experts, including, in particular, experts from developing countries. The network shall also enable international investment policymakers to benefit more from the insights on international investment law – and its development implications – provided by the academic community.) I would like to invite you all to attend the launch of this network at the end of today's conference.

This brief overview of the agenda for our IIA Conference shows that this meeting is an impressive undertaking. Impressive – already because of the sheer number and diversity of topics and speakers, noting the high profile nature of our speakers, all of which are greatly respected and well known in their respective fields. The impressiveness of our meeting, has, however also to do with the substance of the issues that will be addressed.

As I mentioned before, the IIA regime is entering a new phase. A phase that brings both opportunities and challenges: you might be aware of the increasing concerns with regard to the IIA regime – or certain aspects of it. Hence, the system has to respond: the system needs to show that international investment law, and the protections it offers to foreign investors, is not an end in itself, but instead, is an instrument in the hand of stakeholders to pursue sustainable growth and development.

Devising ways and means forward in this crucial challenge cannot be an exclusive process. Instead, devising the way forward needs to be transparent and inclusive, involving all stakeholders. Experts must come from different backgrounds: State representatives from different ministries and areas of responsibility, private sector and civil society representatives, lawyers and economists, policy advisors and researchers. What is required is a joint effort, bringing together the best of our expertise and ideas, harnessing knowledge and creativity in an open exchange of views. I am confident that today's IIA Conference is a first step in this direction.

In this spirit, I wish this meeting every success!

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