

UNCTAD Expert Meeting on Taking Stock of IIA Reform

Geneva, 16 March 2016

Norway

Thank you for giving me this opportunity to share the Norwegian perspective even though I couldn't be present in Geneva today.

Norway has not entered into BITs since the mid 90s, so we did not take part in much of what UNCTAD describes as the "Era of Proliferation". Now, however, we have a government that has stated in its political platform that it will increase the use of bilateral investment treaties where this is appropriate, and we need to establish a mandate.

Sustainable development is at the core of Norwegian policy in general, and we are looking for a model investment agreement that safeguards the states right to regulate. Future investment agreements should not curb the authorities' inherent right to safeguard legitimate concerns, such as the environment, health, labour and human rights etc.

On the other hand, we want to come up with a model that gives the investors predictability and protection, and as all of you know, this balancing act can be quite challenging. This balance - between the investors' need for protection and the states right to regulate - is in many ways the crux of the investment treaties.

When Norway held public consultations on a draft model agreement in 2008 both the investors and the NGOs seemed to think we missed the mark on finding that balance. To be very general, the investors were not happy with the level of protection and the NGOs were not happy that new investment treaties should be negotiated at all, and they found the draft too investor friendly.

Last summer, we presented a new draft model for public consultation, based on the 2008 draft but somewhat amended. However, what has changed the most is

probably the public discourse. Ideas that seemed almost radical in 2008 are now accepted by most as the way forward. Many of these are included in UNCTAD's tools on IIA reform.

In the Norwegian draft model we include the key elements of protection, but they are constructed carefully to safeguard the states' right to take legitimate measures in the public interest. We set out a number of key policy concerns in the preamble, we have a number of important exceptions, and we aim at an open, legitimate and predictable ISDS mechanism. I invite you all to look at our draft in the Ministries' webpage where you will also find a document in English, describing each draft provision.

We do not yet know what will happen to our draft model. We received almost 900 inputs in the public consultations, which we are in the process of considering in light of recent international development. We will put forward some recommendations for the government as soon as possible. Hopefully, it will - in some form - be used as a basis for future negotiations.

I would like to close by saying that even though I don't think we can achieve sustainable development simply by creating the perfect investment treaty, I am quite sure that foreign investments, and investment agreements, have an important role in contributing in this regard.

I am very sorry I couldn't be there and participate in the discussions, which I am sure is very interesting. I wish you all a very good day.