

Monday, 9 October 2017, 16:00 - 18:00, Room XXVI (26)

Break-out session 1

Harnessing investment for the SDGs – the IIA dimension

Phase 2

10 IIA reform options

Moderators

Ms. Soo Hyun Kim, Associate Economic Affairs Officer, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP)

Mr. Bostjan Skalar, Chief Executive Officer, World Association of Investment Promotion Agencies (WAIPA)

Kick-off speakers

Mr. Junkyu Lee, Principal Economist, Asian Development Bank (ADB)

Ms. Samira Sulejmanovic, Head of Unit for Bilateral Trade Relations, Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina

Ms. Chantal Ononaiwu, Trade Policy and Legal Specialist and **Mr. Joel Richards**, Technical Advisor, Investment and Private Sector, Office of Trade Negotiations, Caribbean Community (CARICOM) (via WebEx)

Mr. Arvind Mayaram, Former Finance Secretary of India, Chairman and **Mr. Prasanna Srinivasan**, Senior Adviser, CUTS Institute for Regulation and Competition (CIRC) (via WebEx)

Ms. Oshani Perera, Director, Public Procurement and Infrastructure Finance Programme, International Institute for Sustainable Development (IISD)

Mr. Chanchal Sarkar, Director of International Investment Agreements, Department of Economic Affairs, Ministry of Finance, India

Ms. Lantonirina Erika Ramanarivo, Director of Public Private Partnership Department, Ministry of Finance and Budget, Madagascar

Mr. Marten van den Berg, Deputy Director General for Foreign Economic Relations, Ministry of Foreign Affairs, The Netherlands

Rapporteurs

Ms. Hyeon Yang, Senior Researcher, Korean Institute for International Economic Policy

Mr. Markus Wagner, Associate Professor of Law, School of Law, University of Warwick

UNCTAD Annual High-level IIA Conference: Phase 2 of IIA Reform

9 – 11 October 2017

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Break-out session 1 – Report back
Harnessing investment for the SDGs – the IIA dimension

This report represents the views of the rapporteurs on the discussions among the participants of the respective break-out session. It does not represent the views of the UNCTAD Secretariat or its member States.

Rapporteurs

Mr. Markus Wagner, Associate Professor of Law, School of Law, University of Warwick

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Break-out Session 1 addressed a broad and difficult theme. It was a highly important session, as it underpinned all of the subsequent discussions: harnessing international investment agreements (IIAs) for the sustainable development goals (SDGs).

The session explored the following questions:

- What are lessons learned in harnessing IIAs for mobilizing investment into the SDGs?
- What are the roles of national policies, including with respect to PPPs in this regard?
- What are key policy challenges and options from an IIA perspective?

Of the seven break-out sessions, this particular session was the broadest. It covered not only IIAs and their impact, but also national experiences, in addition to very specific issues, such as PPPs.

Developing the best possible “IIA framework for sustainable development” is a complex task. At the same time, this issue should be the starting point for the various discussions on how to formulate specific IIA rules.

An additional difficulty raised by delegates in the session was the need to bring together both economists and lawyers, who may not always share the same concepts and language, to arrive at meaningful outcomes. This can pose a particular challenge in subsequent investment arbitration proceedings where concepts that were thought to be narrowly tailored may receive more expansive interpretation, or vice versa.

Based on the main questions given for this session, there were three streams of discussions:

A first stream of discussion focused on the role of IIAs in attracting investment.



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Experts engaged in an active discussion regarding the findings of empirical research on the role of IIAs in spurring investment and related policy implications. Experts expressed divergent views on whether IIAs played a role as an instrument to attract and retain FDI, with some stating that IIAs were an important tool in this regard, and others emphasizing the role of domestic institutions in creating a favourable investment climate. The debate was controversial as attracting investment is one of the most important justifications for having an IIA regime in the first place.

Participants reacted differently to the results of econometric analysis presented – some academics cited alternative studies that showed different outcomes and a few delegates shared their experiences contrary to the study results, but there was no single view in the end.

There appeared broad agreement to look at more than just the quantity of investment, but also the types and quality of investment to add more values to sustainable development goals.

A second stream of discussion focused on how to harness PPPs for achieving the SDGs.

Many participants emphasized real risks and challenges associated with carrying out PPPs based on their governments' experiences. Despite its shortcomings, many noted that PPP has particular importance in harnessing investments as a mechanism that should be mobilized to spur investment and also channel it toward achieving the SDGs.

As a positive note, delegates noted that the private sector plays a key role in developing the physical and administrative infrastructure for achieving SDGs through PPPs, as PPPs are able to absorb the high risks associated with large-scale and complex infrastructure projects.

At the same time, many concerns were raised regarding the challenges with the traditional practice of and approaches toward PPPs. Many participants pointed out the need to balance the rights and obligations of private investors in PPPs, to safeguard States' right to regulate, take into account social and environmental, social, and health standards, and establish an adequate oversight structure for PPPs.

Additionally, participants acknowledged the need to maintain governments' ability to intervene in the public interest by providing adequate oversight mechanisms for infrastructure projects in some cases.

A third stream of discussion was about possible criteria of investment for SDGs, and related IIA clauses.

Participants discussed different elements of what can make IIAs more SDG-friendly at different conceptual levels. During the discussion, translating sustainability elements into concrete and actionable treaty language was highlighted as a difficult challenge.

In this regard, the topic of corporate governance was raised as a possible sustainable development element in treaty. Some participants also emphasized that including investor responsibilities obligations in treaty provisions could be helpful in translating sustainable development objectives into actionable language in an IIA.



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The results of the discussion were as follows:

There is a need to gain a better understanding of what the existing IIAs – as well as the processes leading to their development – can, and importantly, cannot achieve. Participants emphasized that IIAs need to satisfy a variety of stakeholders: States want to retain or regain, as the case may be, the right to regulate for the public good, while others stressed that investment protection was important not only for attracting FDI, but also for retaining it. Finding a way to accommodate these demands will be key in moving forward.

A second important lesson was that in the process of reforming the existing IIA regime, an interdisciplinary and / or multi-disciplinary approach would be best-suited to achieve meaningful reform. In this context, delegates emphasized the need to bring together policymakers with diverse backgrounds in national and international law, as well as experts in PPP and IIA negotiators to create a more inclusive future IIA regime.

Finally, delegates emphasized the value of UNCTAD to continue – through WIRs – doing research on what concrete steps can be undertaken within the IIA regime to support the achievement of the SDGs and to continue as a convener for the debate.

