

**Remarks at UNCTAD High Level IIA Conference
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“Opening plenary”

Excellencies, ladies and gentlemen, friends and colleagues,

The International Institute for Sustainable Development would like to thank UNCTAD for inviting us to share our views with you today.

In 2015, UNCTAD identified 5 areas of investment treaty reform. These were as follows:

- Safeguarding the right to regulate
- Reforming investment dispute settlement
- Promoting and facilitating investment
- Ensuring responsible investment
- Enhancing systemic consistency

Each reform area is important in its own right and implementing one doesn't automatically render the others less urgent and important.

Today, there are international processes ongoing in three of the five areas:

- Reforming investment disputes settlement is taking place at UNCITRAL and to a lesser extent at ICSID;
- Ensuring responsible investment is taking place at the UN Human Rights Council; and
- Some WTO members are engaging to adopt new disciplines on investment facilitation.

All of these processes are important, but they will not, ultimately, deal with reform in a holistic way. Not only do none of these processes address the right to regulate issue, which is one of the 5 reform areas, but scattering these processes across institutions will also lead to increased fragmentation challenges and less coherence, running counter to the fifth area of reform on enhancing systemic consistency.

In addition to these global processes, countries and regions are taking stock of their own treaties and reassessing, renegotiating, and terminating some of them.

I can't stress enough the importance of these bilateral and regional initiatives. These are what allows countries to be creative and develop models and approaches that reflect their priorities and development prerogatives.

For some countries, the solution might be to rely only on domestic law and regional agreements, as we have seen in South Africa. Other countries might rely only on State-State



dispute settlement, like Brazil. Indeed, each country needs to find its own path, and this is where the most comprehensive solutions will be found.

Because let's be clear: none of the global initiatives will be able to fix the wide range of problems raised under the current investment treaty system.

The structured discussions of some WTO members on investment facilitation will not contribute to the modernization of investment treaties or replace them. They aim at developing new disciplines and rules for countries to adopt and implement.

The UN process on business and human rights could help address the imbalances created by investment treaties. However, this process will not contribute to the modernization of the investment treaties as such. Investment treaties will only be rebalanced if they themselves start incorporating proper investor obligations to ensure investor accountability.

Finally, some see the process in UNCITRAL as a solution for many, if not all, of the problems identified in investment treaties. However, several governments, especially from developing countries, are concerned with the narrow approach taken in this process, given that it leaves substantive issues entirely unaddressed. Also, the reforms coming out of the process are likely to be timid. On the positive side, the UNCITRAL working group is contemplating incorporating reforms in a multilateral agreement that could apply retro-actively to amend some of the existing agreements. While the idea is encouraging, this negotiating process will likely take years and ultimate buy-in to such an instrument by certain countries seems unlikely. It is therefore important for countries to continue their reforms at the bilateral and regional levels. This is particularly important where countries have treaties in which termination windows and opportunities to renegotiate are short.

This brings me to my last point and the fifth area of reform identified by UNCTAD - the need to enhance coherence. It is important to assess how these new global processes are affecting international investment governance. UNCTAD has long been the platform for the international community to come to grips with the international investment regime and propose solutions for reform. Some of these reforms are now being implemented, but in different places. It is crucial that these efforts be somehow coordinated. This will be even more important if new institutions are formed, such as a multilateral investment court.

It is time to rethink global investment governance. Institutionalizing the coordination of various processes and institutions working on investment, including in the human rights arena, could be an important step towards coherence -- not only for the sake of coherence but rather with the objective of ensuring that investment advances sustainable development. In 2015, the international community adopted the 2030 Agenda for Sustainable Development, and in the same year UNCTAD launched its map for investment treaty reform. I hope that today will be able to think about how to pull all this together.