

**UNCTAD Virtual IIA Conference 2020 “IIA Reform in Times of COVID-19”
26 November 2020**

**Dr Mavluda Sattorova
Reader in International Economic Law
University of Liverpool**

Covid 19 has served us a reminder of the need to ensure investment treaties contain effective safeguards for the states’ right to regulate. The right to regulate has, of course, been the at the heart of the recent transformations of the investment treaty regime, with governments in both developed and developing countries gradually transitioning to international investment agreements that contain clear and effective guarantees for the host state to regulate and legislate in pursuit of various public policy objectives. What the pandemic has made particularly clear is that the importance of such safeguards is not hypothetical but very real. Difficult decisions governments had to take to counter the effects of the pandemic have inevitably hit everyone, including foreign investors. In such circumstances treaty safeguards act as a mechanism enabling governments to act without a fear of possible challenges mounted by disaffected investors.

The Covid-19 crisis has also made it clear that investment governance goes well beyond investment treaties. It has been the period of rapid decisions governments had to take in relation to their national FDI screening mechanisms. Although FDI screening was traditionally driven by concerns relating to national security, it is now evident that public health is yet another vital policy concern that needs to be taken into account when governments make their decisions on which foreign investments should be admitted into their territories. While a growing trend towards the tightening of investment screening frameworks across the globe can be seen as a shift towards more cautious policy stance on investment, for those involved in investment treaty reform it yet again signals about the importance of express treaty provisions to allow governments to exercise such powers when needed. This, in turn, calls for a careful drafting of not only public policy exceptions clauses but also of other substantive standards typically contained in investment treaties.

Unsurprisingly Covid-19 has also brought to the fore a need to address issues of investment promotion and investment facilitation. This agenda is more prominent now than before, amplified by the need to recharge and revitalise national economies following a period of extreme distress. Governments across the globe have been taking measures to promote inward foreign investment, with particular focus on regional economic development, building resilient supply chains and advancing climate objectives. There is a growing acknowledgment that foreign investments should be harnessed to deliver tangible benefits to the host societies. The salience of social inclusion, climate change and resilience in times of Covid-19 yet again reminds us of the need to ensure that investment treaties are meaningfully allied with SDG objectives. The UNCTAD has been instrumental in building the capacities of developing countries to assist them in the reform process, and some of the recently emerged treaty templates demonstrate a significant shift in the understanding of the relationship between states and investors.

What brings these ostensibly discrete strands of investment policy together, in the context of Covid-19 and beyond, is the necessity of a holistic approach whereby international investment agreements, investment screening frameworks and investment promotion and facilitation mechanisms are seen together, as part of a single overarching agenda.