UNCTAD 2017 HIGH LEVEL IIA CONFERENCE: PHASE TWO OF IIA REFORM: MODERNISING THE EXISTING STOCK OF "OLD GENRATION" TREATIES

STATEMENT BY H.E. SABINE BöHLKE-MöLLER, PERMANENT REPRESENTATIVE OF NAMIBIA

Mr Chair,

Director-General,

Excellencies,

Distinguished delegates,

thank you for according me this opportunity to address this important Conference that will discuss Phase two of the IIA Reform in modernising the existing stock of "old generation treaties".

Mr. Chair,

Since initial reforms have commenced, there has been a general trend globally in recent years which ensures that investment policymaking considers sustainable development objectives when attracting investment. We now see a clear movement away from attracting FDI through investor or investment protection and liberalisation only towards including measures that ensure FDI's contribution towards a country's development concerns. Though it is our understanding that investors are seeking those investment destinations that provide the most protective, hospitable and profitable climate for their investments, it is important to create a legal framework for investment that achieves a sensible balance between investor rights and obligations on the one hand and the Governments responsibility to operate and regulate in the public interest on the other.

We are all aware that over the years the imbalance between investor rights and the Government's ability to regulate under the IIA regime did result in a growing number of investor claims against Governments with regard to the dispute settlement process. Not only are legal and arbitration costs significant but the resulting awards can pose serious budgetary threat and challenges specifically to developing countries. It is therefore that we as Namibia embrace the advancement of adopting new approaches and reforming investment policies and treaties and encourage other developing countries that have similar concerns addressing sustainable development efforts to do the same.

From a national approach, Namibia took note of the reforms processes already a few years ago. Though, we do have only a few treaties in force, Government nevertheless decided to re-look and assess the relevance and effectiveness of its existing BIT regime. This assessment resulted in the identification of several shortcomings in the treaties with respect to certain provisions. Consequently, we realised that our BITs do not serve our interests anymore due to fundamental reasons such as changes in our domestic laws and regulations. Furthermore, analysis showed that it was by no means self-evident that the BITs increased real levels of FDI into Namibia.

Weighing the size of the county’s economy against the ongoing reforms regarding the IIA regime, the Namibian Government submitted that perhaps a single investment policy should rather be considered against investment treaties as a possible option for Namibia to improve its attractiveness to draw investors. It remains our current opinion that entering into treaty negotiations is not obviously likely to be more effective than more targeted strategy measures. However, Namibia continues to observe the IIA reform process and does appreciates the efforts already made by a number of countries that did initiate model BIT templates that focuses on the real considerations of investors in making investment decisions, such as investment facilitation and promotion, as well as achieving the development objectives of a country.

Furthermore, Namibia is also actively involved at regional level, within the SADC group, that initiated developing new policy guidelines for investment. This includes the SADC Investment Policy Framework, as well as the Bilateral Investment Treaty (BIT) template, which is a set of guidelines for BIT negotiations, that member states review every two years (latest review completed in May 2017). Both frameworks have been developed at a time when sustainable development oriented reforms did enter the mainstream of investment policy making.

Mr Chair,

At this juncture, I would like to commend UNCTAD for their endeavour to keep the IIA reform process alive with discussions and information exchange such as this Conference. As a country we also value UNCTAD's efforts for developing the UNCTAD Roadmap, as well as the UNCTAD Policy Framework. Within the African context and besides SADC, other regional organisations have picked up on the reform trend and developed various guiding principles based on the UNCTAD example for their member countries. Most notably there is the COMESA Investment Agreement and the draft Pan-African Investment Code. In addition, the ACP Group of States recently adopted the non-binding Guiding Principles for Investment Policymaking, which was jointly developed by the UNCTAD and the ACP.

In conclusion, I would just like to state that it is my sincere hope that expert engagement at this conference will result in continuing the reform process and further result in the improvement of a novel IIA regime.

I thank you