

HIGH-LEVEL INTERNATIONAL INVESTMENT AGREEMENTS CONFERENCE 2024

THE PATH TO MAINSTREAMING SUSTAINABLE DEVELOPMENT IN IIAs

12 December 2024, 13:00 to 16:00 (Geneva time, CET, UTC+1)
Venue: virtual

KEY ISSUES

Over the past decades, new and emerging issues such as environmental protection, climate change, labour rights, public health, and the encouragement of responsible and inclusive investment have started to be addressed in international investment agreements (IIAs). Sustainable development is taking centre stage in reform discussions. Yet, much more is needed to mainstream sustainable development in the international investment regime. Doing so is essential to ensure that international investment governance aligns more widely with contemporary global priorities, providing the international framework to support sustainable and inclusive growth and development.

The path towards mainstreaming sustainable development is difficult to chart. New-generation IIAs are still vastly outnumbered by their unreformed counterparts. Almost nine out of ten IIAs in force were signed before 2012 – the year of the publication of UNCTAD's first edition of the Investment Policy Framework for Sustainable Development. The piecemeal approach to IIA reform, relying on bilateral renegotiations and amendments, is relatively slow. Against this backdrop, regionalism and mega-regional initiatives have emerged as important drivers for reform. New-generation (mega-)regional IIAs are starting to form building blocks towards widespread consensus on addressing the economic, social and environmental dimensions of investment governance.

Issues to be addressed:

- Exploring Sustainable Development: How can issue areas such as public health, labour standards, environmental protection and climate change best be integrated into IIA reform?
- Operationalizing Sustainable Development: Which methods and best practices can help firmly embed sustainable development in future IIAs?
- Mainstreaming Sustainable Development: What are the most promising practical approaches to updating old-generation IIAs in light of existing obstacles?

PROGRAMME

Master of ceremonies: Hamed El Kady, Senior Coordinator, International Investment Agreements Section

Opening statement: Nan Li Collins, Director, Division on Investment and Enterprise, UN Trade and Development (UNCTAD)

Session 1: Country perspectives on best practices and challenges in mainstreaming sustainable development in the IIA regime

Moderator: Makane M. Mbengue, Professor of International Law, Director of the Department of International Law and International Organization, University of Geneva.

1. Ms. Narda Garcia, Chief Executive Officer, Office of the Prime Minister, Investment & Civil Aviation, Belize.
2. Ms. Samira Sulejmanovic, Head of Department for Bilateral Trade Relations, Ministry of Foreign Trade and Economic Relations, Bosnia and Herzegovina.
3. Dr. Zhao Sining, Deputy Director, Department of Treaty and Law, Ministry of Commerce, People's Republic of China.
4. Ms. Radwa I. Kamouna, Undersecretary of State, Head of International Relations Department Promotion Sector, General Authority for Investment and Free Zones (GAFI), Arab Republic of Egypt.
5. Mr. Mark Jacobs, Director, International Trade Policy and Market Regulation, Ministry of Foreign Affairs, Kingdom of the Netherlands.
6. Mr. Felix Imhof, Deputy Head, International Investment and Multinational Enterprises Division, State Secretariat for Economic Affairs, Swiss Confederation.
7. Mr. Hasan Aslan Akpınar, Head, Department of International Relations, DG of Incentives and Foreign Investment, Ministry of Industry and Technology, Republic of Türkiye.

Break

Session 2: Regional and international perspectives on best practices and challenges in mainstreaming sustainable development in the IIA regime

Moderator: Lisa Sachs, Director, Columbia Centre on Sustainable Investment (CCSI), Columbia University in the City of New York

1. H.E. Dr. Mohamed Kadah, Assistant Secretary General (Programmes), Common Market for Eastern and Southern Africa (COMESA).
2. Mr. Jorge Vitorino, Head, Investment and Intellectual Property Unit, European Commission.
3. Ms. Githa Roelans, Head, Multinational Enterprises and Responsible Business Conduct, Enterprises Department, International Labour Organization (ILO).
4. Ms. Ana Novik, Head, Investment Division, Organisation for Economic Co-operation and Development (OECD).
5. Ms. Anna Joubin-Bret, Secretary, United Nations Commission on International Trade Law (UNCITRAL).
6. Mr. Surya Deva, UN Special Rapporteur on the Right to Development.

Closing statement: Hamed El Kady

SUMMARY OF THE CONFERENCE¹

The conference brought together high-level participants, with opening remarks from Nan Li Collins, Director of the Division of Investment and Enterprise, UN Trade and Development (UNCTAD). Given emerging global challenges and priorities, Nan Li Collins underscored the need for reforming the IIA regime. More recent treaties fare better in reflecting the regulatory challenges of the 21st century but they continue to be vastly outnumbered by their old-generation counterparts. Reform efforts need to mainstream sustainable development by moving it from the IIA regime's periphery to its core. She highlighted the challenge of accelerating the ongoing transformation, to find ways to more effectively translate lessons learned into actionable strategies at the bilateral, regional and multilateral levels.

Panel 1: Country Perspectives

The first panel focused on countries' experiences in mainstreaming sustainable development in their IIA networks. A recurring theme was the modernization of old-generation IIAs and the need to align them with sustainable development goals. Panellists pointed out that many older treaties lack adequate provisions for sustainability and often prioritize investment protection over States' regulatory space to pursue public policy objectives, including in the form of sustainable development-oriented measures.

Participants shared their experiences in reforming old-generation IIAs to align them with sustainability goals. Participants noted the importance of modernizing existing treaties to, for instance, incorporate climate-responsive provisions, regulate for the achievement of the sustainable development goals, and include provisions that foster investor obligations and responsible investment. The discussions also suggested that a modernized approach to IIA reform can set limits on the scope of investor-state dispute settlement (ISDS) and limits on granting treaty benefits to investors and their investments that do not contribute to sustainable development. Several panellists described the importance of adopting new-generation model treaties to facilitate the pursuit of sustainable investment-oriented reform of a country's IIA network. Panellists also underscored that collaborative support from international organizations plays a critical role in moving treaty reform forward.

While the panel outlined actions taken at the country level for modernized IIA approaches, challenges in reforming the stock of old-generation agreements emerged as a central concern. Factors such as staff shortages in negotiation teams, limited technical capacity, negotiation power imbalances, and the complexity of overlapping commitments at national, bilateral and regional levels were identified as barriers to effective reform. Ensuring consistency between IIAs, internal policy approaches and domestic frameworks was mentioned as a crucial consideration for treaty reforms and negotiations. Participants emphasized the necessity of thoroughly preparing for negotiations to navigate these challenges successfully. Some panellists also mentioned that stakeholder engagement can help inform countries' IIA approaches.

Discussions further underlined the interconnectedness of IIAs with broader international commitments such as climate agreements and labour standards. There was consensus that IIAs should complement existing frameworks, be aligned with them and not operate in isolation. Multilateral forums and international organizations were recognized as essential platforms for fostering collaboration, harmonizing policies, and providing technical support for treaty reforms.

The panellists called for collective reform efforts, and several participants highlighted the need for global guidance in the form of non-binding principles for IIA reform that could be consulted for national, bilateral, regional and multilateral efforts. UNCTAD's support in building capacity and providing technical assistance was also emphasized, as these resources can help countries identify necessary treaty reforms and align their investment policies with sustainable development objectives.

¹ Unedited, informal summary prepared by UNCTAD's IIA Section.

Panel 2: Regional and International Perspectives

The second panel shifted the focus to regional and international perspectives on mainstreaming sustainable development in the IIA regime. Discussions emphasized the interconnectedness of investment treaties with other international commitments, particularly regarding environmental protection, labour rights and public health. Panellists argued that investment agreements should not exist in isolation but should be harmonized with broader international frameworks to address sustainability challenges effectively. A holistic approach was suggested where IIAs are designed to complement and reinforce commitments made in other international agreements in the area of sustainable development. In this context, several panellists highlighted the challenges posed by old-generation investment treaties, which prioritize investment protection without adequate safeguards for regulatory action in pursuit of public policies and sustainable development. It was highlighted that treaty reform at the multilateral level could be modelled after existing approaches as found in the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration or as currently negotiated with respect to procedural reform in Working Group III of UNCITRAL.

The panel further identified systemic problems in old-generation agreements and the need for transformative reforms. Proposed solutions included prioritizing sustainability outcomes, adding investor obligations, and encouraging inclusive stakeholder participation in treaty negotiations and reforms. The panel discussion advocated for an overall shift in emphasis in this policy area, whereby investment serves as a tool for achieving broader development goals, including equity and inclusivity.

Regional approaches to mainstreaming sustainability were also explored, with particular attention given to harmonizing national and regional investment policies. Examples of collaborative efforts in reforming investment agreements were highlighted, which helped align treaties with today's sustainability priorities. The panel discussion recognized that technical assistance and capacity-building initiatives were vital for enabling countries to navigate the complexities of reforming older agreements. Several panellists further emphasized the importance of preserving government policy space while integrating provisions that support sustainable development. They discussed emerging practices such as limiting access to investor-state arbitration, adopting state-to-state mechanisms for dispute settlement, and incorporating provisions that promote responsible business conduct. International collaboration was seen as key for accelerating reforms and aligning treaties with global environmental and social goals.

The panel also underscored the critical role of UNCTAD in guiding countries towards effective IIA reforms in the past and the future. Several panellists discussed the possibility for UNCTAD to develop guiding principles that countries and regional bodies can consult to ensure their investment treaties are aligned with sustainable development goals. It was stated during the panel discussion that practical policy tools and overall guidance for reforms are vital for fostering coherence and consistency across investment agreements and policies, embedding sustainability into the core of investment governance.

The panel concluded with statements of support for ongoing institutional dialogue and collaboration among international organizations, highlighting that collective efforts are essential for meaningful reform in the IIA landscape. Panellists recognized that addressing the IIA reform challenges requires a concerted and cooperative approach, leveraging shared knowledge and experiences to advance sustainable investment practices across borders.

Closing Remarks

In closing, Hamed El Kady, Senior Coordinator of UNCTAD's IIA Section, reaffirmed the organization's commitment to supporting countries and regional organizations in their IIA reform efforts and serving as an inclusive forum for deliberation to advance the global IIA reform agenda. He underlined that UNCTAD would respond to the call for the development of guiding principles for IIA reform, as raised by multiple panellists throughout the conference. This commitment, he emphasized, reflects UNCTAD's readiness to support countries and regional institutions in aligning their investment treaties and policies with sustainable development imperatives.