



**United Nations Conference
on Trade and Development**

Distr.: General
18 March 2009

Original: English

Trade and Development Board
Investment, Enterprise and Development Commission
Multi-year Expert Meeting on Investment for Development
Geneva, 10–11 February 2009

**Report of the Multi-year Expert Meeting on
Investment for Development on its first session**

Held at the Palais des Nations, Geneva, from 10 to 11 February 2009

Contents

	<i>Page</i>
I. Chair's summary	2
II. Organizational matters	12
<i>Annex</i>	
Attendance	13

I. Chair's summary

1. The 2008 Accra Accord mandates that multi-year sessions of expert meetings shall be held under the auspices of the commissions. Accordingly, the Trade and Development Board, in its fifty-fifth session, decided that the Investment, Enterprise and Development Commission should convoke a multi-year expert meeting on investment for development. The first session of this multi-year expert meeting, which was held on 10 and 11 February 2008, addressed the development dimension of IIAs. In line with the Trade and Development Board's mandate, it aimed at facilitating an exchange of experiences on investment and development and at drawing lessons from such experiences, with a view to helping developing countries secure greater benefits from investment (TD/B/55/9, para. 30).

2. The meeting brought together 223 IIA negotiators, practitioners and experts from over 100 countries and international organizations. It provided opportunities for actors and experts from the public and private sectors to explore different development-related facets of IIAs in an open debate at the international level. Experts commended the UNCTAD secretariat for the excellent background document (TD/B/C.II/MEM.3/2) and for the comprehensive, development-oriented and highly interactive approach of the meeting. Through its novel format, the meeting allowed experts to directly exchange experiences and views on key and emerging issues and best practices, guided by questions in three topic areas. Using this approach, the meeting achieved a new type of interaction that can be labelled "collective advisory services".

3. The frequent references to the financial and economic crisis and the attendant changes in this context for FDI policies and flows rendered the meeting's debates timely and pertinent for the challenges that policymakers currently faced. This chapter summarizes the fruitful discussions that took place during the two days.

A. Key points of the expert meeting

4. The following key points were agreed upon by experts at the closing session, at 6 p.m. on 11 February 2009:

(a) Over the years, the international investment agreement (IIA) regime has evolved into a highly atomized, multilayered and multifaceted network of treaties, with a considerable variety of approaches.

(b) While this allows Governments to design rules that best fit their particular economic and development interests, it also leads to incoherence, overlaps and gaps, especially on the question of investment promotion and the adequate reflection of development in these agreements.

(c) This poses considerable technical, substantive and financial challenges, particularly for developing countries.

(d) The challenges arising out of this situation also manifest themselves prominently in the current system of investor-State dispute settlement, including through the continuing divergence in arbitral interpretations of core treaty provisions. Governments and firms alike need to find better solutions for dealing with this aspect of international investment relations. Preventive measures, including better treaty language and effective means of dispute avoidance, are important in this regard.

(e) There is a need to better understand the impact of IIAs on foreign direct investment (FDI) and development, including on domestic institutional, judicial and administrative capacities. As countries are using IIAs as a tool to attract FDI and to

promote development, there is a need to strengthen the development dimension, and to share experiences and best practices in this regard.

(f) In light of the current economic and financial crisis, the changing dynamics of international investment relations and the emerging trend towards a review of liberal FDI policies, the role of IIAs as becoming more and more important for ensuring stability and predictability was discussed. Among other matters, questions related to prudential measures, balance of payments exceptions and safeguards are being discussed. In the midst of the global food, fuel and financial crises, it is pertinent to underline the need to adequately reflect a proper balance between predictability and stability on the one hand, and flexibility to regulate investment on the other hand.

(g) This also calls for consideration of how to strengthen coordination and cooperation in international policymaking, with the ultimate goals of ensuring consistency with international agreements and of increasing investment that promotes growth and development both in home countries and host countries, in line with the recent Doha Declaration on Financing for Development (para. 25).

(h) The current forum of collective learning and collective advisory services among IIA stakeholders is useful in this regard. It should continue on an annual basis and should reach out to all IIA stakeholders in developing countries.

(i) UNCTAD should continue to monitor trends in IIAs and international investment law, and provide research and policy analysis on key and emerging issues and development implications as well as information on IIAs through its existing online newsletter and databases on bilateral investment treaties, double taxation treaties, other IIAs, and investor-State disputes. It should also continue its valuable technical assistance and capacity-building work in this area, including through its distance learning course and advisory services.

(j) UNCTAD's existing online IIA network can be the platform on which to continue sharing experiences and views on key and emerging issues. It can also help to pursue the Accra Accord's mandate for multi-year expert meetings, in the interests of facilitating and backstopping an ongoing discussion and an exchange of experiences and views on key and emerging issues among experts.

B. Opening statements

5. Opening statements were made by the Acting Deputy Secretary-General of UNCTAD, Ms. Lakshmi Puri; and the Acting Director of UNCTAD's Division on Investment and Enterprise, Mr. James Zhan.

6. Ms. Puri noted that developing countries were those most seriously affected by the global financial crisis. The crisis had led to a sharp decline in global flows of FDI. Mr. Zhan observed that the increasing lack of coherence in the IIA universe and the growing substantive complexities of the system had tended to move treaty-making practice away from bilateral investment treaties (BITs) towards more comprehensive agreements, and that negotiations were increasingly responding to arbitral awards by including important clarifications into treaty provisions. He further noted that the role of developing countries in negotiating IIAs had evolved: as host countries, they had gained strength in terms of pursuing a balance between the rights and obligations of home and host countries and investors.

7. The Secretary-General of UNCTAD, Dr. Supachai Panitchpakdi, also addressed the meeting, reiterating the need to engage collectively to find solutions to address the system-inherent challenges posed by the current international

investment regime. He called for annual meetings of experts, possibly in connection with other stakeholders such as the next World Investment Forum.

C. Informal discussions

8. The expert meeting then, in an informal setting, addressed the questions for discussion from each of the three thematic sessions.

D. Sessions 1 to 3

Session 1: Trends and salient features of the current IIA system

9. Experts concurred with the secretariat's assessment that the IIA regime was atomized, multilayered and multifaceted in nature. There were important differences between IIAs; some agreements only provided protection (mostly BITs), and others also included commitments to liberalization (mostly free trade agreements (FTAs) with investment chapters). Although experts contrasted the IIAs' fragmented system with the World Trade Organization's multilateral system for international trade, they also suggested caution so as not to overestimate the differences. In fact, a certain convergence on core issues and on key models/types of IIAs was emerging (e.g. the United States model, the European Union model, the Asian model and the developing countries' model).

10. Countries also reported on the numbers and types of IIAs that they were parties to, and that they were negotiating or planning to negotiate – with some countries aiming to double their current number of agreements. A number of governments identified how their agreements had evolved in order to meet some of the challenges posed by the current IIA regime. This rapidly continuing increase in the number of IIAs was exacerbating the challenges related to achieving coherence (not only within the IIA system, but also between the IIA system and other bodies of international law including international trade law under the World Trade Organization (WTO)). As the international community remained reluctant to move towards a unified system, efforts to bring about increased multilateral consensus-building, sharing of best practices, and transparency – as facilitated by this UNCTAD meeting – were considered to be useful.

11. Experts suggested that countries should conduct comprehensive legal reviews to evaluate their IIA networks, in order to determine commonalities as well as points of divergence and incoherence. (Incoherence could potentially occur at different levels, including within a country's network of IIAs, within a country's international and national investment laws, and between a country's investment policies and development objectives on the one hand and its overall development policies on the other.)

12. The meeting stressed the novel context in which FDI policies and IIA negotiation were currently developing. Most importantly, the financial and economic crisis had induced a re-evaluation of the costs and benefits of FDI. About 20 per cent of recent changes in domestic FDI policies were towards a less welcoming framework: screening mechanisms – particularly for essential security reasons – were re-emerging, and some specific policies put in place as a response to the financial crisis had protectionist characteristics (e.g. industry-specific bailouts).

13. The point was made that – given the limited financial capacities – it would be harder for developing countries to respond to the crisis. In that context, poorer and weaker countries needed investments focusing on those economic sectors that were best suited to generating jobs – an issue of particular importance for least developed countries (LDCs). The point was made that FDI in the extractive industries, such as oil and other mineral resources, did not create large-scale employment – an issue

possibly to be addressed in IIAs. The use of quick-acting economic stimulus packages could also be important in this context.

14. Experts noted the volatility of investment flows, which could quickly spread crises from one country to another. They stressed the need to reassess the IIA system, with a view to ensuring that it contained sufficient flexibilities and safeguards to respond to the financial crisis. Issues mentioned in this context included the prudential carve-out – going beyond balance-of-payments exceptions and traditional WTO-like general exceptions, and the essential security exception. Experts noted that essential security exceptions lacked a unified definition, with their scope covering military or economic aspects, or a combination thereof. Moreover, such exceptions were increasingly considered to be “self-judging”, and therefore not subject to full review by arbitration.

15. These developments were seen as an effort to strike a balance between the goals of predictability and stability in terms of FDI protection on the one hand, and flexibility to regulate investment on the other. In the midst of the global food, fuel and financial crises, some stressed the need for rebalancing, while others cautioned that this would make the FDI framework less predictable and weaken the rule of law. The Association of Southeast Asian Nations (ASEAN) Investment Area was suggested as an example of ensuring that response measures to the crisis were in coherence with other international obligations. Reference was also made to the Group of Twenty (G-20) moratorium on protectionist measures, adopted in November 2008. In this context, the role of IIAs had become more and more important. Accordingly, UNCTAD’s expert meeting was considered particularly timely, as countries aim to navigate between making an extra effort to attract FDI on the one hand, and resorting to protectionist measures in the fields of FDI and trade on the other. A number of experts identified how agreements had evolved to meet some of these challenges.

16. A second, contextual change affecting the IIA regime originated from the increasing role of emerging economies as outward investors. While some suggested that this might change those countries’ perspective with regard to negotiating IIAs, others stressed that even as outward investors, they needed to strike a balance between protecting investment and preserving policy space. A related trend was the rise of sovereign wealth funds. As more and more developing countries had been using such funds to invest abroad, this trend could help stabilize and bring balance to the system. However, many countries also showed caution towards FDI from sovereign wealth funds and State-owned enterprises. The suggestion was made that future IIAs could address sovereign wealth funds, and that further research was needed in this context.

17. Experts shared their views and experiences on further substantive IIA-related issues. For example, they reported on how to address problems related to the unintended legal protection that BITs would offer to citizens with dual nationality. This had given rise to a tendency to avoid these types of abuses by providing protection based on the “effective” nationality of investors. Experts also shared their experiences on how BITs covered investments that had no real economic impact on host States. There was a new trend towards a more closed list of assets that constituted an investment, and towards increased use of “characteristics” of investments (e.g. the commitment of capital and risk) when defining investment.

Session 1 continued: focus on international investment law and investor-State dispute settlement

18. Experts reviewed the latest trends in investor-State disputes, in particular the continued growth in the number of treaty-based ISDS cases brought to international

arbitration. At least 32 new claims were identified in 2008, with investors (now) also using FTA investment chapters to file claims against host States. Experts made reference to the umbrella clause, under which a breach of State contracts could constitute a breach of IIA obligations, potentially further increasing the ISDS caseload. The increasing frequency of disputes gave rise to numerous challenges, including cost-related challenges (the cost of litigation, costs for awards), challenges regarding a country's reputation as an attractive FDI destination and capacity-related challenges, particularly for developing countries.

19. A second trend related to the significant innovations regarding ISDS procedures, including those set out in the 2006 amendments to the World Bank's International Centre for Settlement of Investment Disputes (ICSID). Greater and substantial transparency in arbitral proceedings (e.g. open hearings, third-party rights, the publication of related legal documents, or the possibility for representatives of civil society to present submissions) as well as other due-process enhancing aspects (e.g. the possibility for summary dismissals of non-meritorious claims; challenges to arbitrators and counsels) and various post-award remedies were now foreseen. These, as well as further, detailed provisions on ISDS were increasingly included in IIAs, with a view to ensuring a more legally oriented, predictable and orderly conduct of the proceedings.

20. In that context, some concerns were raised about arbitrators accepting to serve on numerous tribunals, a practice that could potentially lead to conflicts of interests. At the same time, current research suggested that arbitration outcomes were not generally affected by the presiding arbitrators. Overall, there was only a small pool of arbitrators from developing countries, and some pointed to the need for reducing this imbalance.

21. A third trend related to the divergent interpretations of treaty obligations made by international tribunals. While some suggested that these divergences of interpretation were sometimes more related to differences in the assessment of facts, and less to differences in interpretation, a great number of examples of divergent interpretations were discussed by experts. These included, amongst others, divergences regarding: the nationality of an investor, with some tribunals focusing on the ultimate/effective nationality of the owner, and others less so; the scope of covered investments, with some tribunals considering the "Salini" criteria as specific requirements and others considering them to be merely possible aspects for determining whether an investment was covered by the IIA or not; the fair and equitable treatment clause, which had been interpreted either as a free-standing autonomous standard or as a standard related to customary international law; and the standard of full protection and security, where tribunals diverged on whether the standard covered only physical or physical and non-physical protection. Divergent tribunal findings were also recorded in terms of the most favoured nation standard, which had been interpreted both narrowly and broadly, the latter expanding its application to dispute procedures and hence allowing for certain elements of "treaty shopping"; the national treatment standard, where tribunals diverged on the meaning of "like circumstances"; the protection of essential security interests, which was sometimes interpreted broadly (including serious economic problems) and sometimes more restrictively (with tribunals stating that economic difficulties did not amount to essential security threats); and the umbrella clause, where tribunals diverged on whether or not such a general obligation would allow claimants to bring cases based on ordinary breaches of contracts.

22. The potential for divergent interpretations was seen as a source of great concern and lack of predictability. As a response to these developments, some IIAs included specific interpretations of key provisions, with a view to fostering a more consistent and rigorous application of international law in arbitral awards and in

order to prevent divergent interpretations. Some speakers noted the absence of general principles of law in the area of investment.

23. A key theme of the discussion was how to effectively minimize the risks arising from ISDS, and how to ease the burden that developing countries face in this context. Several suggestions were made, including suggestions to be considered during the negotiation of an IIA; suggestions to be considered at the national level, including when developing domestic laws and regulations; and suggestions for improving the ISDS system as such. Regarding the first suggestion, countries reported that they had denounced IIAs; that they had put a stop on signing IIAs or had withdrawn their consent to arbitration in disputes involving certain strategic industries (e.g. those related to the exploitation of natural resources, such as oil, gas or other minerals) in the context of ICSID procedures. The future would possibly bring questions about the effectiveness of these approaches, and their technical implementation and the preventive measures – including clearer and more precise treaty language and effective means of dispute avoidance – were considered important in this regard.

24. In that context, experts also highlighted the importance of dispute avoidance in the context of national law-making. Possible techniques included the use of internal dialogue among the administrative and government departments involved; the benefits of scrutinizing domestic laws with a view to ensuring their compatibility with international commitments before enacting them; and administrative review procedures. In this context, the possibility of settlement through conciliation and mediation was mentioned, and experts stressed the importance of amicable settlement before the dispute was formally sent to international court. Also, investors – especially small and medium-sized enterprises – would like to avoid investment disputes. At the same time, there were limits to dispute avoidance, including because of administrative requirements. To sum up, experts agreed that more attention should be paid to avoiding disputes, including because of the financial implication of ISDS.

25. Thirdly, experts discussed how to improve the ISDS system as such. There was a call for greater involvement by States at the initial stages of a dispute, and for more regular updates of countries' panels of arbitrators. Finally, reference was made to creating an "Advisory Facility for International Investment Law and Investor-State Dispute Settlement" – a process that was supported by the UNCTAD secretariat.

26. Experts noted the continued discontent of sovereign States with how the system was operating. They admitted that the prevailing system of ISDS was not perfect and that it could be improved, especially in light of the divergent and sometimes contradictory decisions rendered and the financial costs of international arbitration. At the same time, it was pointed out that this was the only system available at the time and hence there was much value in preserving it.

Session 2: Benefits and challenges, including the impact of IIAs on development

27. Experts engaged in a debate about the possible role that IIAs could play in enhancing economic and social development. Some mentioned the contribution of IIAs to enhancing FDI inflows and furthering economic development. Country experts reported on specific experiences with harnessing FDI for development (e.g. GDP increases subsequent to active investment promotion, and attendant FDI inflows). Ultimately, FDI inflows (and the resulting benefits in terms of economic development) had also helped domestic companies to become successful foreign investors abroad.

28. Experts then explored the role of FDI in economic development (e.g. by creating employment, transferring technology or increasing tax receipts). The importance of harnessing FDI for poverty reduction was stressed – an issue of particular concern for LDCs. It was central to ensure that FDI did not only lead to select enclave development, but instead, translated into broader social and developmental benefits across the country. This could be achieved, inter alia, by focusing FDI on those sectors that were the most relevant for poverty reduction and that were the best at generating jobs and rural development (e.g. agriculture or agriculture-related services). The point was debated whether investment would be an end in itself, or rather a means to achieving sustainable development. Many suggested that in addition to focusing on the protection of investors, IIAs should be focusing more on delivering pro-development benefits to signatory countries and their citizens. This implied that a strategic and flexible approach was necessary and that IIAs would adequately balance private and public interests.

29. Experts also discussed the impact of IIAs on FDI flows. Views concurred regarding the difficulty of establishing tangible proofs that the conclusion of IIAs would increase FDI inflows to developing countries. Factors other than BITs (e.g. the market size, the availability of a skilled and low-cost labour force, the abundance of natural resources) played a more crucial role in a country's ability to attract FDI. While some countries concluded IIAs more for political, diplomatic or historical reasons, or in order not to fall behind in the international rule-making process, participants also stressed the importance of IIAs for providing a stable and predictable investment framework. The value of BITs for reinforcing an existing policy framework and guiding transitions was pointed out. Moreover, the existence of an IIA could also be a key factor in a country's decision on whether or not to offer guarantees for a potential investment. However, for some countries that had concluded IIAs in the hope of attracting FDI, the particular experience was that IIAs turned into a source of litigation, instead. Some countries felt that such agreements had not achieved their initial aim of increasing FDI inflows.

30. In that context, there was a debate about the objectives of IIAs and the extent to which they should reflect development aspects. In discussing IIA objectives, experts distinguished between the protection of foreign investors; the enhancement of FDI flows and the furtherance of economic development. With countries reporting on their particular experiences and expectations, different nuances about the importance of the different objectives emerged.

31. Although some participants noted that IIAs, at their core, were intended to support economic development, others believed that they needed to do more to reflect development objectives and incorporate investment promotion. Suggestions included a closed definition for investment that provided certainty and clarity; more detailed clarifications of treaty terminology (e.g. regarding minimum standards of treatment or indirect expropriation); the inclusion of health, safety and environmental aspects; the use of various reservations and exceptions; and clear references to development objectives in the preamble of the agreements. Some spoke in favour of a more integrated approach to IIAs, noting that agreements that not only include investment, but embed it in broader issues – including trade in goods and services – might be more conducive to development.

32. Particular attention was given to provisions for investment promotion, but questions were raised on how to operationalize this concept, whether it could be linked to government authority, what practical elements could be added to IIAs, and whether investment promotion could be turned into a legally enforceable provision. To date, most IIAs were only indirectly promotional. While some meeting participants called for creativity and novel approaches, others suggested that the purpose of IIAs should simply remain investment protection, and that development

implications would best be addressed through legal frameworks at the national/domestic level. In that context, some experts noted the frequent absence of specific and operational investment promotion measures in IIAs, a trend that was similar for clauses addressing social issues (e.g. corporate social responsibility and protection of labour rights).

33. Other experts, in turn, suggested that the discussion should focus on how IIAs could “do good” in terms of promoting sustainable development. (There was a need for innovation and creativity in this field.) In this context, experts also raised novel issues, such as the unique property rights issues related to indigenous peoples, which were not commonly taken into consideration during the negotiation of IIAs. Experts pointed to the need to consider cross-cutting questions regarding the application of international human rights and the need to mitigate the IIA system’s lack of coordination with other fields of international law, such as international social and environmental law. (Sometimes, such other bodies of law established binding obligations and demanded respective policies, potentially clashing with investment rules.) Certain sustainable development standards, which could include good governance issues, could help in the interpretation of investment rules, ultimately leading to coherent interpretation. Reference was made to the experience with trade law interpretation in the WTO, where sustainable development was anchored in the preamble of the WTO Agreement.

34. It was noted that some developing countries might sign IIAs without having the necessary capacity to analyse the implications of each specific clause in the agreement, thereby reducing their potential to use IIAs for development objectives. A good understanding of one’s interests and objectives at the beginning of the negotiations – together with a solid grasp of the system’s technicalities – was seen as important for enhancing the development role of IIAs. Ex ante sustainability impact assessments could be considered, too.

35. Challenges when strengthening the development dimension of IIAs, increased uncertainty and a certain impression that the system was unjust also resulted from the increasing lack of coherence characterizing the IIA framework. Incoherence within a country’s IIA framework emerged from the acceptance of clauses as set out in the negotiating partner’s model BIT. Experts noted that developing countries were particularly vulnerable in this context and offered concrete suggestions for avoiding such incoherence. Mention was made of developing key issues and core elements that a country wishes to include in its agreements and that are largely non-negotiable, and of using regional negotiations as a basis for addressing more distant countries. The highly atomized, multilayered and multifaceted nature of the IIA network may also prompt consideration of how to strengthen coordination and cooperation in international policymaking and how to seek greater convergence with respect to international rules, with the ultimate goal of increasing investment that promotes growth and development both in home countries and host countries, in line with the Monterrey Consensus and also the recent Doha Declaration on Financing for Development (para. 25). Experts also suggested multilateral guidelines that would determine common principles of law application and law interpretation for international investment law, making reference to the Vienna Convention on the Law of Treaties and the work of the International Law Commission. In this context, experts invited countries to take stock of and rationalize their existing investment obligations.

Session 3: The way forward

36. Experts greatly appreciated UNCTAD’s role across its three pillars of work (research and analysis, technical assistance and capacity-building, and intergovernmental consensus-building). Numerous countries acknowledged the

useful assistance they had received from UNCTAD or the value they had drawn from UNCTAD publications. (In that context, there was a strong call upon UNCTAD to continue supporting the developmental dimension of IIAs, including in terms of strengthening the contribution of IIAs to poverty reduction.)

37. Experts also seized the opportunity to flag specific topics where UNCTAD's research would be particularly useful. This included monitoring trends in IIAs and international investment law, and providing research and policy analysis on key and emerging issues and development implications, including, more specifically: by developing approaches to better balance the preservation of national policy space on the one hand and to ensure predictability and FDI protection on the other; by designing effective and operational investment promotion measures and furthering their implementation through IIAs; by enhancing common understanding of the linkages between IIAs, FDI flows and development (with a view to enhancing the development implications of the system); by looking into the impact of IIAs and institutional consequences on local judiciary; by shedding light on national security exceptions and their particular role in the context of the current financial crisis; by analysing the relationship between IIAs and other international treaties (including with respect to the transfer of funds); and by identifying the main issues involved in ISDS and creating a checklist of cases and the main substantive provisions addressed in each case. Experts' suggestions also included developing a jurisprudential guide for negotiators, to help them to better understand the full significance of BITs and the 40 years of jurisprudence that have developed; researching the implications of the absence of general principles of law for investment; and analysing effective means of conflict resolution and dispute avoidance, and alternative dispute-resolution mechanisms, and how these can be better reflected in IIAs.

38. Experts emphasized that UNCTAD should continue undertaking high-quality, cutting-edge, balanced and development-oriented research, and disseminating its work on bilateral investment treaties, double taxation treaties, other IIAs, and investor-State disputes, by means of its existing online newsletter, publications and databases. UNCTAD should also continue its valuable technical assistance and capacity-building work in this area, including through its distance learning course and advisory services.

39. While some experts suggested that UNCTAD should develop a model BIT aimed at reducing the complexity of the system and supporting technical assistance and negotiating efforts, others were less in favour of model treaties. Different countries would require flexibility to negotiate different agreements that best suited their particular economic, social and developmental priorities. Moreover, longer observation times (maturing times) were needed in order to judge the usefulness and development-friendliness of particular provisions.

40. In addition to furthering understanding on the above issues, UNCTAD should continue the form of collective learning and collective advisory services among IIA stakeholders that was experienced during this expert meeting. UNCTAD's existing online IIA network could be the platform on which to continue sharing experiences and views on key and emerging issues. Suggestions were made to develop focus groups dedicated to the discussion of particular issues, whose online deliberations could be moderated by a focal point who would also summarize the discussions for annual review.

41. Participants greatly appreciated the interactive nature of this expert meeting. There were calls to create a forum for free debate and discourse on topics related to investment, including for governmental and intergovernmental experts, civil society, lawyers, and other stakeholders. In the absence of a global forum on investment, the

current UNCTAD expert meeting could be the basis for such a forum for debates, and it was suggested to continue it on a regular, annual basis, while incorporating a broader set of stakeholders – particularly from academia and from the local judiciaries of developing countries. This could also help to pursue the Accra Accord’s mandate for multi-year expert meetings, in the interests of facilitating and backstopping an ongoing discussion and an exchange of best practices and experiences and views on key and emerging issues among experts.

42. Based on the wealth of suggestions made and the activities already underway, some experts called for a more systematic approach and for a “roadmap” that would set out a framework for future activities, some of which are already enumerated in the key points that were adopted at the end of the meeting (see section A).

II. Organizational matters

A. Election of officers

43. At its opening plenary meeting, the multi-year expert meeting elected the following officers:

Chair: Mr. Gregorio Canales Ramírez (Mexico)

Vice-Chair-cum-Rapporteur: Mr. Joannes Tandjung (Indonesia)

B. Adoption of the agenda and organization of work

44. At its opening plenary, the multi-year expert meeting adopted the provisional agenda for the session (contained in TD/B/C.II/MEM.3/1/Rev.1). The agenda was thus as follows:

1. Election of officers
2. Adoption of the agenda
3. The development dimension of international investment agreements
4. Adoption of the outcome of the meeting

C. Outcome of the session

45. At its closing plenary meeting, on Wednesday, 11 February 2009, the multi-year expert meeting agreed that the Chair should summarize the discussions (see chapter I).

D. Adoption of the report

46. Also at its closing plenary meeting, the multi-year expert meeting authorized the Vice-Chair-cum-Rapporteur, under the authority of the Chair, to finalize the report after the conclusion of the meeting.

Annex

Attendance*

1. Representatives of the following States members of UNCTAD attended the expert meeting:

Afghanistan	Iran (Islamic Republic of)
Algeria	Italy
Angola	Jamaica
Argentina	Japan
Austria	Kuwait
Azerbaijan	Lao People's Democratic Republic
Bangladesh	Madagascar
Belgium	Malaysia
Benin	Mali
Bolivia	Mexico
Brazil	Morocco
Bulgaria	Myanmar
Cambodia	Netherlands
Cameroon	Nicaragua
Canada	Nigeria
Chad	Pakistan
Chile	Panama
China	Peru
Colombia	Philippines
Congo	Qatar
Costa Rica	Romania
Côte d'Ivoire	Russian Federation
Cuba	Saudi Arabia
Croatia	Senegal
Czech Republic	South Africa
Dominican Republic	Spain
Ecuador	Sri Lanka
Egypt	Sudan
El Salvador	Switzerland
Ethiopia	Syrian Arab Republic
Finland	Thailand
France	Turkey
Germany	Uganda
Ghana	United Arab Emirates
Greece	United States of America
Guinea	Uzbekistan
Haiti	Venezuela (Bolivarian Republic of)
Holy See	Viet Nam
Hungary	Yemen
Indonesia	Zimbabwe

2. The following observer was represented at the session:

Palestine

* For the list of participants, see TD/B/C.II/MEM.3/Inf.1.

3. The following intergovernmental organizations were represented at the session:

African Union
Agency for International Trade Information and Cooperation
European Community
Organisation internationale de la Francophonie
Organization for Economic Cooperation and Development
Organization of American States
South Centre

4. The following United Nations organization was represented at the session:

United Nations Development Programme

5. The following specialized agencies or related organizations were represented at the session:

United Nations Industrial Development Organization
World Bank

6. The following non-governmental organizations were represented at the session:

General Category

Centre for International Environmental Law
Geneva Social Observatory
Ingénieurs du monde
International Institute for Sustainable Development
Village Suisse ONG
