

**UNCTAD**  
**Trade and Development Board, Sixty-second session**  
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**ITEM 7: INVESTMENT FOR DEVELOPMENT – REFORMING THE  
INTERNATIONAL INVESTMENT REGIME**

*Speech*  
*By*  
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The views expressed are those of the author and do not necessarily reflect the views of UNCTAD.

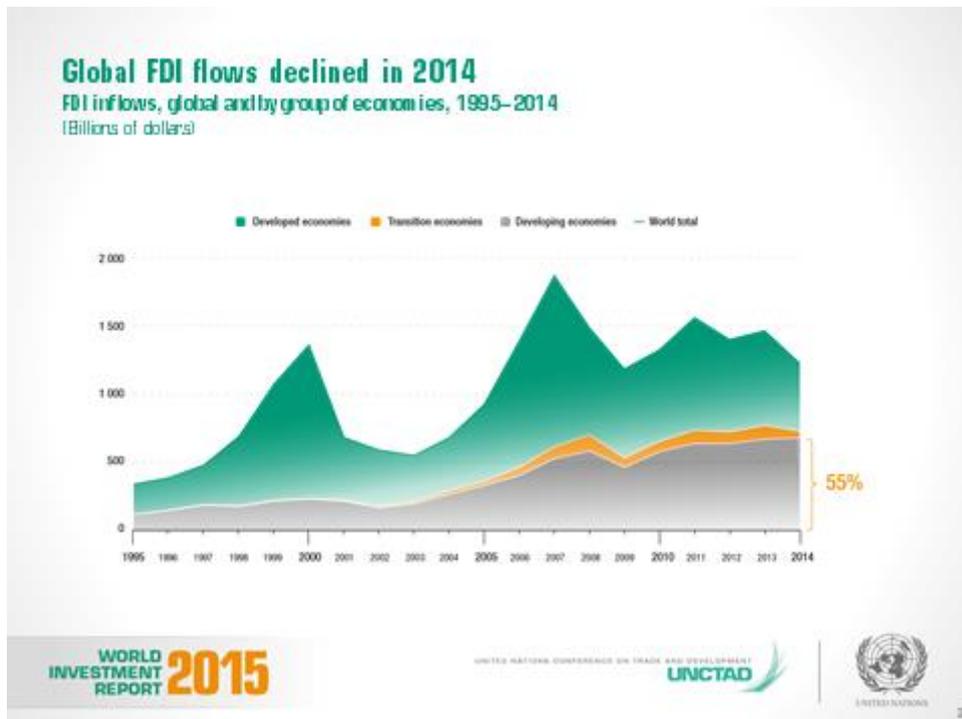


Madam Chair, Distinguished Delegates,

Sustained investment is needed for global economic growth and development, especially in light of financing needs for the Sustainable Development Goals (SDGs). Therefore strengthening the global investment policy environment, including both the IIA and the international tax regimes, must be a priority. In my presentation, I will focus on the Action Menu for Reform of the International Investment Regime, which is one of the two themes for the World Investment Report 2015.

#### **A. Trends in global and regional FDI**

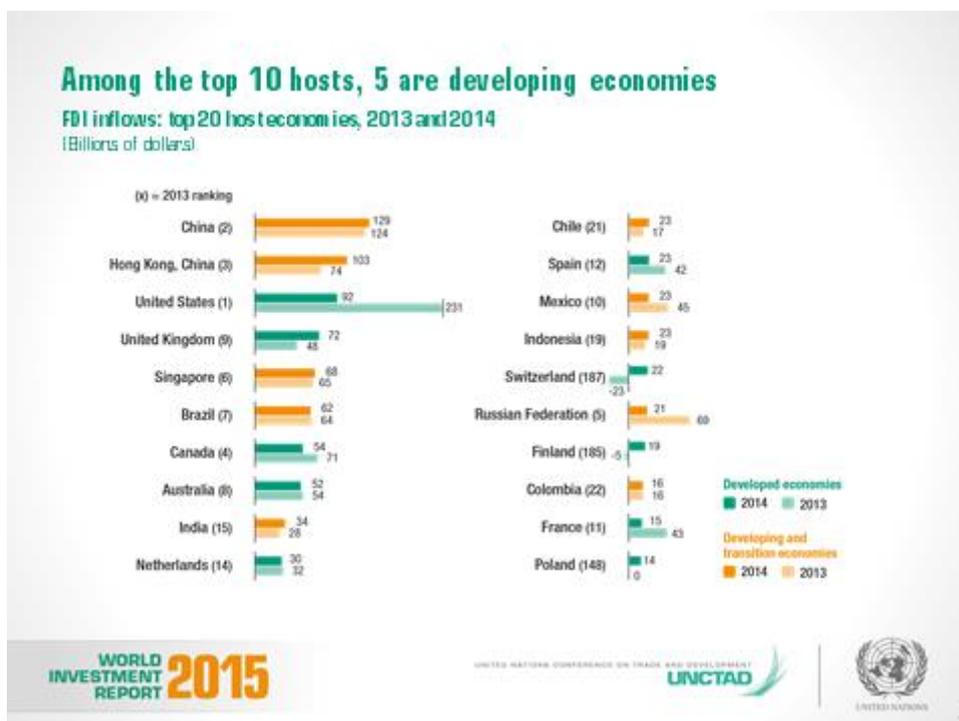
But first, I would like to present some salient features of global FDI trends and prospects.



1. *Global FDI flows declined in 2014.* They fell by 16 per cent to \$1.2 trillion, mostly because of the fragility of the global economy, policy uncertainty for investors and elevated geopolitical risks. New investments were also offset by some large divestments.

2. *Inward FDI flows to developing economies reached their highest level ever,* at \$681 billion with a 2 per cent rise. Developing economies thus extended their lead in global FDI flows. They now account for 55% of global FDI flows.

*The low level of flows to developed countries persisted in 2014* declining by 28 per cent to \$499 billion.

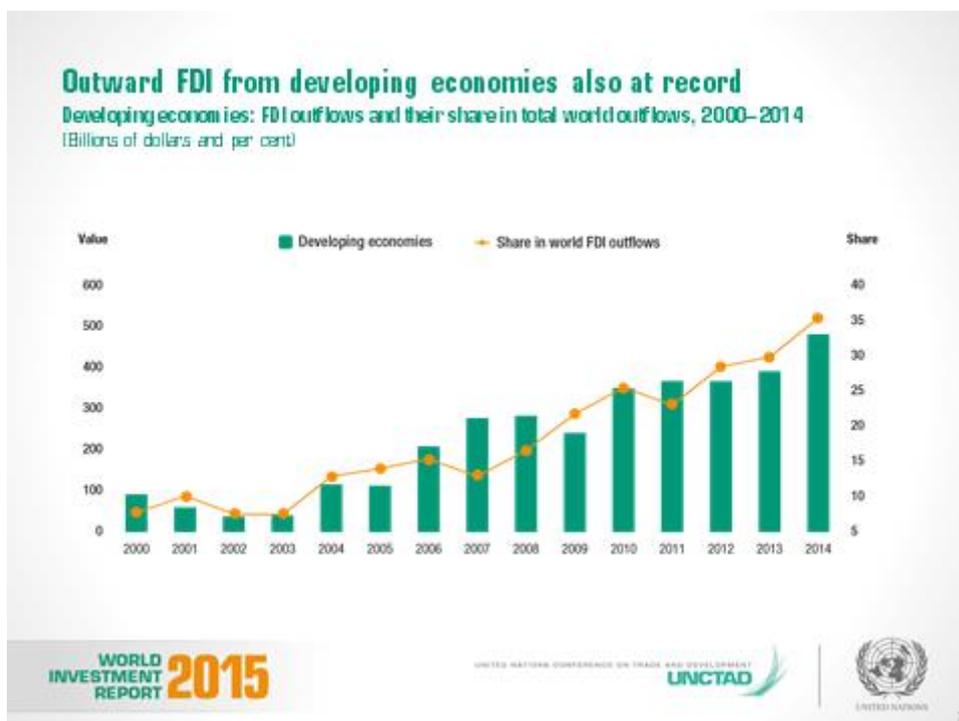


Among the top 10 FDI recipients in the world, 5 are now developing economies, namely China and Hong Kong (China), Singapore, Brazil and India. The United States lost the top spot, but as mentioned, their flows were depressed by a single large divestment (of Verizon by Vodafone), without which their inflows would have remained stable.

3. At the regional level, Developing Asia saw FDI inflows grow to historically high levels. They reached nearly half a trillion dollars in 2014, further consolidating the region's position as the largest recipient in the world.

FDI inflows to Africa remained flat at \$54 billion. The services sector now accounts for about half of the total FDI stock in the region, more than twice the share of manufacturing. FDI stock in the primary sector is about 30 per cent of the total. FDI flows to Latin America and the Caribbean decreased by 14% to \$159 billion, after four years of consecutive increases, mainly due to a decline in cross-border M&As in Central America and the Caribbean and to lower commodity prices, which dampened FDI to South America.

FDI in transition economies fell by 52 per cent to \$48 billion in 2014. Regional conflict coupled with falling oil prices and international sanctions has damaged economic growth prospects and shrunk investor interest in the region.



4. Investments by developing-country multinational enterprises (MNEs) also reached a record level at \$468 billion, a 23 per cent increase. Developing economies now account for more than one third of global FDI outflows, up from 13 per cent in 2007. Developing Asia now invests abroad more than any other region. Developing and transition economies represent 9 of the 20 largest investor economies globally.

Outward FDI stock from developing economies to other developing economies (so-called South-South FDI) grew by two-thirds from \$1.7 trillion in 2009 to \$2.9 trillion in 2013.

Developed- and developing-economy FDI outflows differ in their composition: a far greater share of developing-country outflows (more than half) is in equity investment, which is more likely to result in new productive investment. Developing country MNEs continue to acquire developed-country foreign affiliates in the developing world, a trend observed over the last few years.

## FDI recovery is in sight, but the risks are growing

Developed countries should see a large increase in flows in 2015.  
Flows to developing economies will remain high.

Projections of FDI flows, by group of economies (Billions of dollars and per cent)

	Averages		2013	2014	Projections		
	2005-2007	2009-2011			2015	2016	2017
<b>Global FDI flows</b>	<b>1 397</b>	<b>1 359</b>	<b>1 467</b>	<b>1 228</b>	<b>1 368</b>	<b>1 484</b>	<b>1 724</b>
Developed economies	917	718	697	499	634	722	843
Developing economies	421	561	671	681	707	734	850
Transition economies	60	81	100	48	45	47	53

Memorandum	Average growth rates		Growth rates		Growth rate projections		
	2005-2007	2009-2011	2013	2014	2015	2016	2017
<b>Global FDI flows</b>	<b>40.1</b>	<b>3.1</b>	<b>4.6</b>	<b>-16.3</b>	<b>11.4</b>	<b>8.4</b>	<b>16.2</b>
Developed economies	48.2	3.0	2.7	-28.4	23.8	13.9	16.7
Developing economies	26.1	4.8	5.0	1.6	3.3	3.9	15.8
Transition economies	48.0	-1.1	17.0	-51.7	-2.3	5.3	12.3

Source: UNCTAD.  
Note: Excludes Caribbean offshore financial centres.

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5. Prospects: FDI recovery is in sight, although the risks are growing.

UNCTAD's business survey signals a rise of FDI flows in the coming years. The share of MNEs intending to increase FDI expenditures over the next three years rose from 24 to 32 per cent.

According to UNCTAD's forecasting model, global FDI inflows are projected to grow by 11 per cent to \$1.4 trillion in 2015. Expectations are for further rises to \$1.5 trillion in 2016 and to \$1.7 trillion in 2017. Developed countries should see a large increase in flows in 2015 (up by more than 20 per cent), reflecting stronger economic activity. FDI inflows to developing countries will continue to be high.

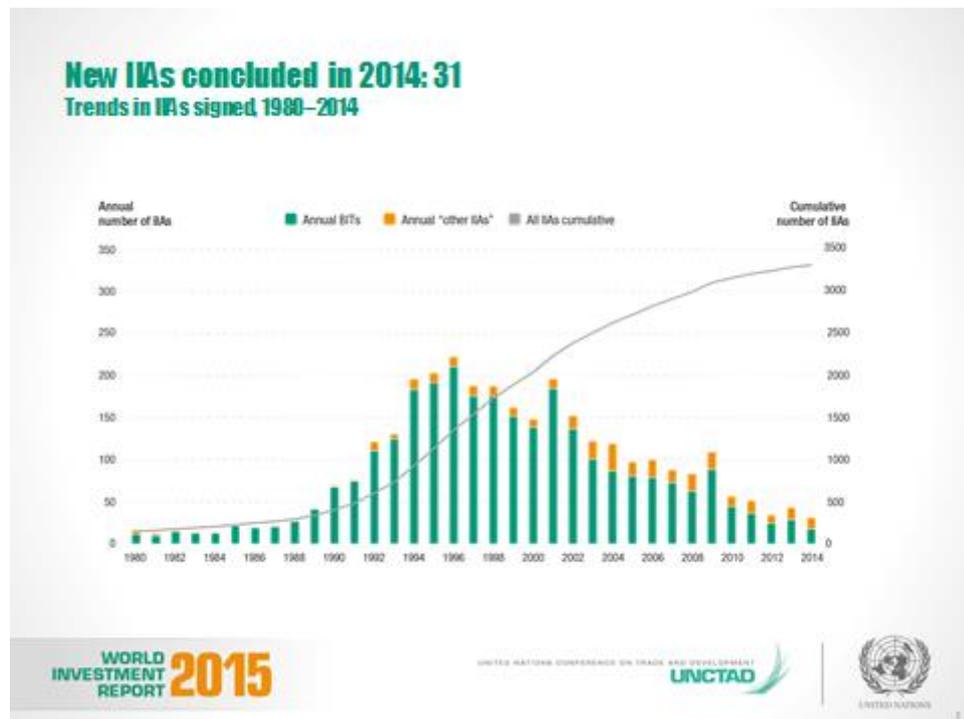
Trends in cross-border M&As for the first part of this year also point to a return to growth in 2015.

However, a number of economic and political risks are growing. Persistent vulnerabilities in emerging economies, ongoing uncertainties in the Eurozone and potential spillovers from geopolitical tensions may yet disrupt the projected recovery.

## B. Reforming the international investment regime

Now let us move to the special theme of this World Investment Report (WIR) and to the topic of this afternoon's debate: the reform of the international investment regime.

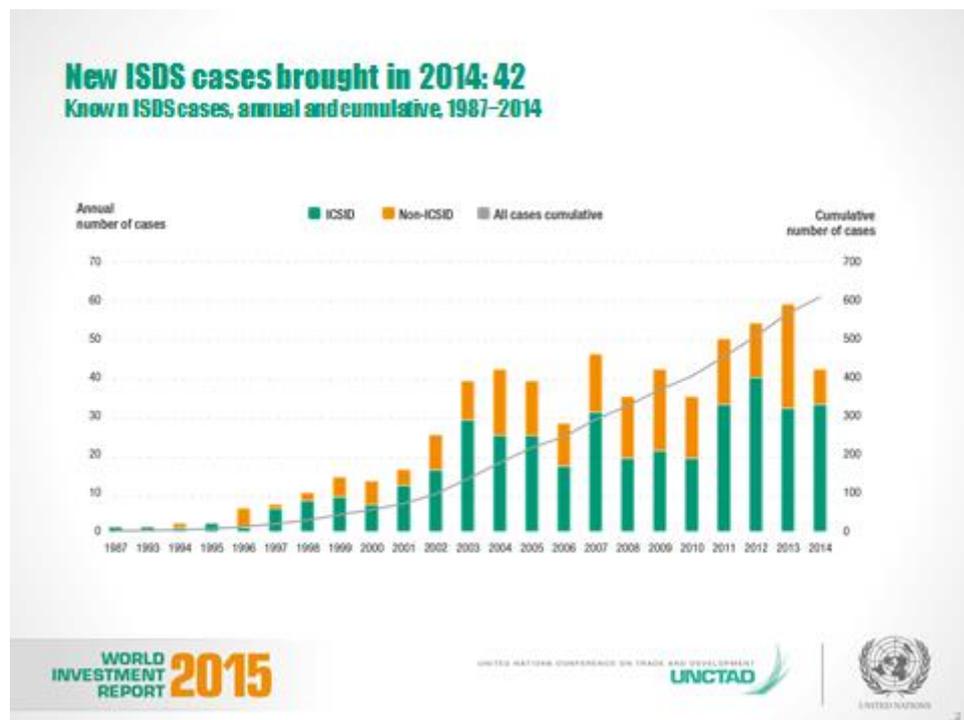
### 1. Recent developments in international investment rule making



The current international investment regime is multilayered, multi-faceted and highly fragmented. It now consists of close to 3,300 treaties, at the bilateral, regional, sub-regional and plurilateral level.

In recent years, the trend has shifted from bilateral to regional investment policymaking. Over 100 countries are involved in the negotiation of at least 53 IIAs, including megaregional ones. The five ongoing efforts in the TPP, TTIP, RCEP, Tripartite and PACER Plus negotiations involve close to 90 countries.

Generally speaking, almost all countries are party to one or more investment treaties, but hardly anyone is satisfied with the current investment regime.



Over time, these IIAs have given rise to more than 600 investor-State dispute settlement cases. They involve both developed and developing countries as defendants. A number of ISDS claims concerned sustainable development sectors such as infrastructure and climate-change mitigation, including, in particular, the supply of electricity, gas and water, port modernization, and the regulation of renewable energy.

## 2. There is a pressing need for systematic reform of the international investment regime.

**IIA Reform: a Roadmap**

- **There is a pressing need for systematic reform of the global IIA regime**
- **...evident from the heated public debate and parliamentary hearing processes in many countries and regions...**
- **The question is not whether or not to reform, but about the what, how and extent of such reform**
- **WIR15 offers an action menu for such reform**

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There are heated debates in many countries, taking place in the media, among stakeholders or in parliamentary hearing processes. A shared view is emerging on the need for reform of the IIA regime to ensure that it works for all stakeholders.

### Three major imperatives driving the reform

- i. growing unease with the functioning of the current international investment regime
- ii. today's sustainable development imperative and the greater role of governments' in the economy, and
- iii. the evolution of the investment landscape (which I have elaborated upon in the first part of my presentation on FDI trends).

## Five major reform areas and options



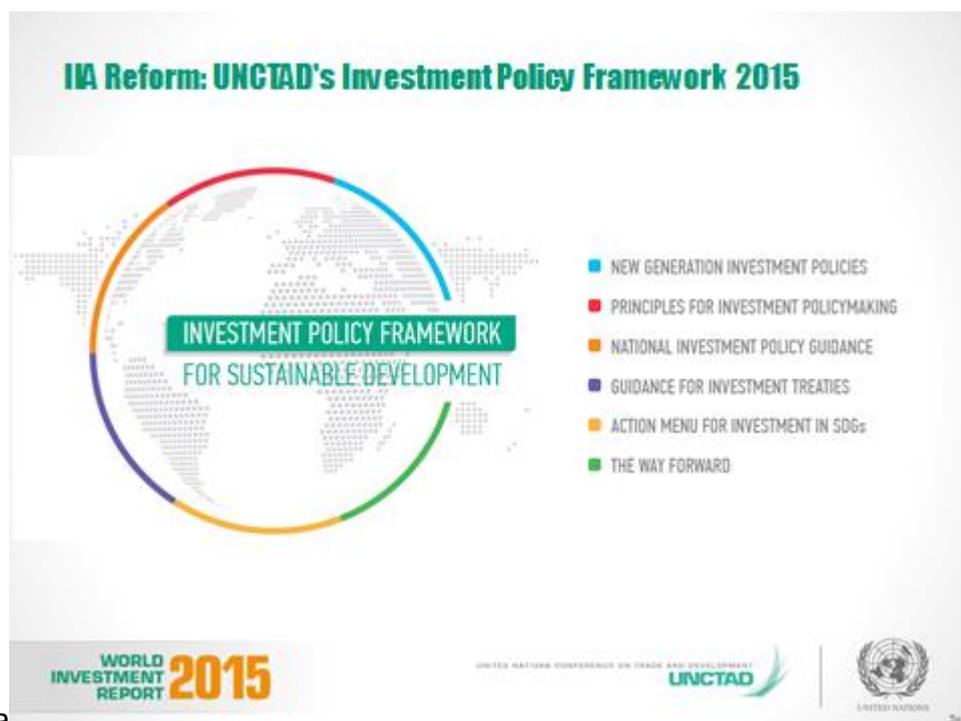
In our World Investment Report, we present policy options for meeting the challenges related to IIA reform.

- i. Safeguarding the right to regulate in the public interest to ensure that IIAs' limits on the sovereignty of States do not unduly constrain public policymaking. Options include clarifying or circumscribing provisions and/or inserting exclusions
- ii. Reforming investment dispute settlement to address the legitimacy crisis of the current system. Options include (i) reforming the existing mechanism of ad hoc arbitration for ISDS while keeping its basic structure, or (ii) replacing existing ISDS arbitration systems, which could include either: (1) the creation of a standing international investment court; (2) State-State dispute settlement; and/or (3) reliance on domestic judicial systems of the host State.
- iii. Promoting and facilitating investment by effectively expanding this dimension in IIAs. Options include adding inward and outward investment promotion provisions (i.e. host- and home-country measures), and joint and regional investment promotion provisions, including an ombudsperson for investment facilitation.

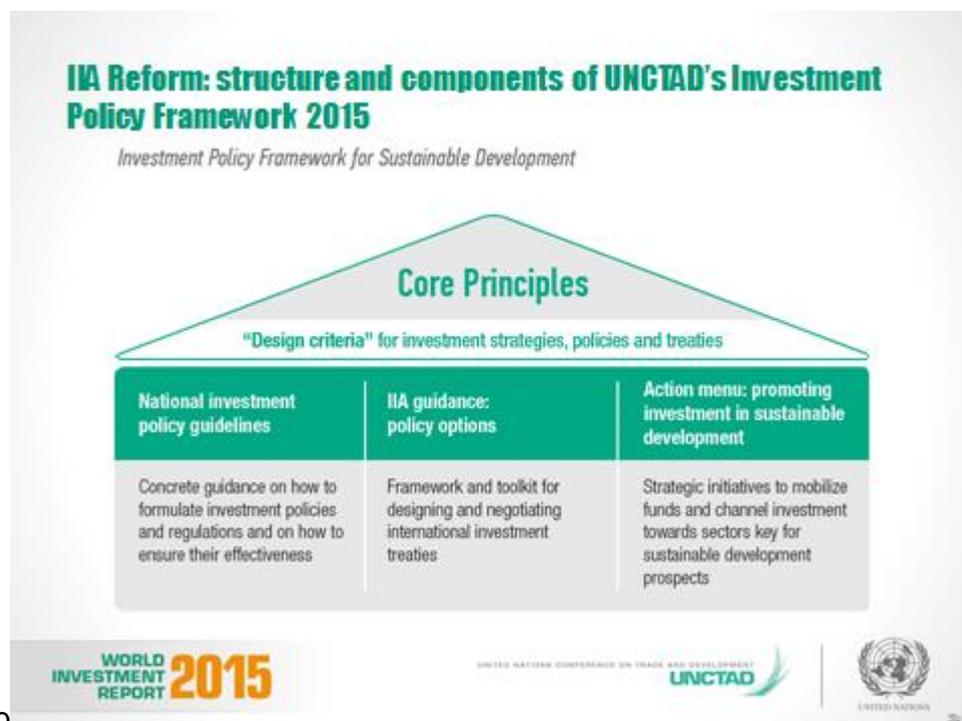
- iv. Ensuring responsible investment to maximize the positive impact of foreign investment and minimize its potential negative effects. Options include establishing provisions on investor responsibilities, such as clauses on compliance with domestic laws and on corporate social responsibility.
- v. Enhancing the systemic consistency of the IIA regime to overcome the gaps, overlaps and inconsistencies of the current system and to establish coherence in investment relationships.

Our World Investment Report details these and many more policy options, offering pros and cons for each of them, together with treaty examples. In so doing, it allows policy makers to pick and choose those reform options and tools that are best suited to their particular policy objectives.

When developing these policy options, we built on **UNCTAD's Investment Policy Framework for Sustainable Development**.



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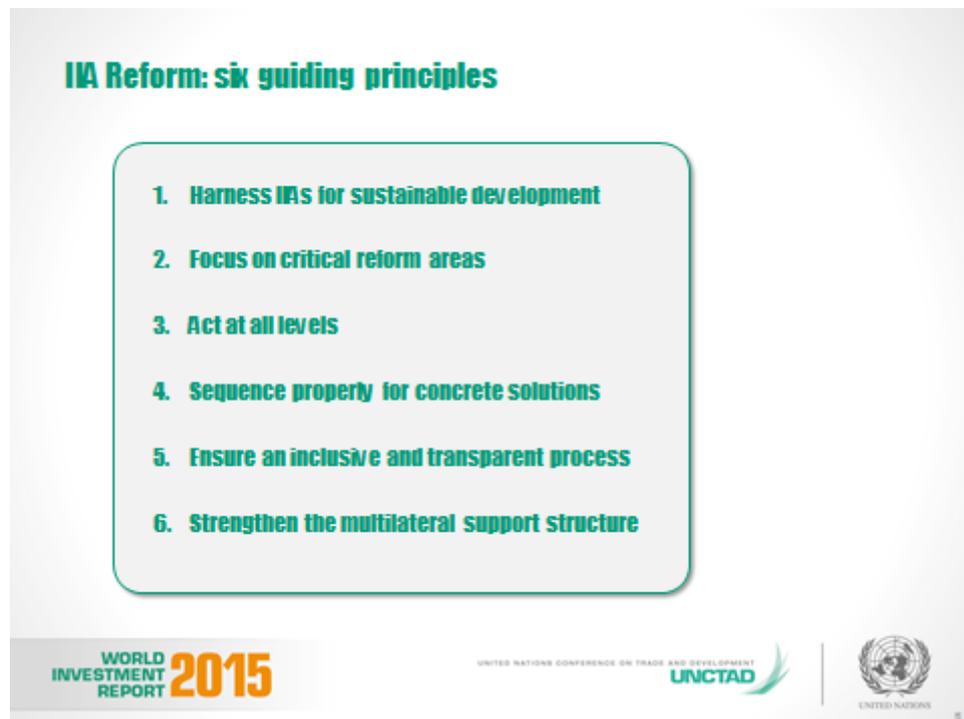
Since its launch in 2012, the UNCTAD Policy Framework has been used by a large number of countries and regional groupings to review and revise their IIA models or positions for IIA negotiations. Regular reviews of the investment treaties concluded over the past three years show that most of them include provisions such as those identified in the Policy Framework. In other words, the UNCTAD Policy Framework has firmly established itself as a major instrument for governments worldwide, guiding them in formulating a new generation of investment policies.

The UNCTAD Roadmap for IIA Reform builds on this experience. And, we used this opportunity to update the Policy Framework, launching a "**2015 Version**" brings the Framework up to date, integrating the feedback, comments and experiences that were generated through two years of field-testing. The 2015 Update was launched at the Third International Conference on Financing for Development, in Addis Ababa, in July, earlier this year.

When using the UNCTAD Policy Framework and the UNCTAD Roadmap, to define their own roadmap for IIA reform, policymakers need to find the right balance, meeting reform needs, while maintaining the investment protection rationale of IIAs. Some combinations of policy options may result in a treaty that is largely deprived of its basic investment protection *raison d'être*: **the cumulative compound effect of all modifications might render the treaty's commitments meaningless**. Ultimately, it is the mix of policy options that determines where on a spectrum a particular IIA is

located. Accordingly, the pursuit of comprehensive reform requires a careful choice of options, bearing in mind the interactions between them.

## **Six principles should guide the IIA Reform**



The need for balance is also reflected in the Guiding Principles for IIA Reform. The UNCTAD Roadmap sets out six guiding principles for IIA reform, which are inspired by the lessons learnt from 60 years of IIA rule making and today's specific reform challenges. The six Guiding Principles are:

- i. Harnessing IIAs for sustainable development
- ii. Focussing on critical reform areas
- iii. Acting at all levels
- iv. Sequencing properly for concrete solutions
- v. Ensuring an inclusive and transparent process
- vi. Strengthening the multilateral support structure

Let us now look at the levels of policy actions, where IIA regime reform should happen.

### Four levels of Reform

**IIA Reform: four levels of policy action**

**IIA reform needs to be undertaken at four levels:**

- 1. National**
- 2. Bilateral**
- 3. Regional**
- 4. Multilateral**

**Still the best way forward for sustainable development is collective reform**

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## IIA Reform: four levels of policy action

- **IIA Reform needs to be undertaken at four levels of policy action:**
  - **National**
  - **Bilateral**
  - **Regional**
  - **Multilateral**
- **The best way to make the regime work for sustainable development is through COLLECTIVE action**

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12b

In terms of process, IIA reform actions need to be undertaken at four levels of policy action: the national, bilateral, regional and multilateral levels. Reform steps at the national level (for example, new model IIAs) or bilateral level (for example, renegotiation of "old" IIAs) can play an important role in countries' reform strategies. This WIR aims to support countries in these efforts. At the same time, national and bilateral level reform actions risk perpetuating, if not exacerbating, the fragmentation and incoherence of the global IIA regime.

Reform initiatives at the multilateral or regional level, although more challenging and time-consuming, offer a means to consolidate IIA reform by finding common solutions to widely shared concerns. This is particularly important in the absence of a multilateral system and given the huge number of existing investment treaties (close to 3300 treaties). **In fact, the best way to make the regime work for sustainable development is to collectively reform it.** Countries can adopt their own roadmap for reform, but ultimately, collective action, in a holistic manner, is required to ensure that IIA reform is for the benefit of all, and in line with today's sustainable development imperative.

By presenting reform approaches, guidelines, tools, solutions, and a road map for the reform process, UNCTAD's 2015 World Investment Report offers an action menu for IIA reform. UNCTAD's function as a forum for international consensus building can support international initiatives to reform investment governance. With our global

support structure, we can foster more coordinated approaches, which can ultimately feed into future international investment rule making.

**Through all of this, UNCTAD responds to the Addis Ababa Action Agenda**, the outcome document of the Third International Conference on Financing for Development, which mandates UNCTAD to continue its existing programme of meetings and consultations with Member States on investment agreements.

However, IIA Reform is not the only area where global investment governance requires reform. **International Tax and Investment Policy Coherence** is another one, and UNCTAD's World Investment Report 2015 addresses this in its second thematic chapter. For further reference, please see Chapter 5 of the World Investment Report 15.

\* \* \*

In conclusion, reforming international investment governance is fundamental to building and maintaining an enabling environment for investment, maximizing the chances of reaching financing for development targets, and supporting the integration of developing countries into the global economy.

I look forward to our discussion here today, which allows us to benefit from the experience of our eminent speakers, and all of you in the room, to see how we can work together, on this very important issue. The international investment and development community should, and can, eventually build a common framework for global investment cooperation for the benefit of all.

Thank you for your attention.

# THANK YOU!

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<http://investmentpolicyhub.org>

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