POLICY BRIEF

UNITED NATIONS
UNCTAD

iied

INTERNATIONAL INVESTMENT AGREEMENTS AND CLIMATE ACTION

Policy brief based on a UNCTAD-IIED joint webinar held on 4 February 2022[1]

Climate change is among the most pressing global challenges of our time. The Intergovernmental Panel on Climate Change (IPCC) found that human-induced global warming has already caused changes in the climate system, and that global warming of 1.5°C and even 2°C will be exceeded unless "deep reductions" in greenhouse gas emissions occur.[2] The achievement of the SDGs is directly at stake, as are human rights including the rights to life, health, water and a clean and healthy environment.

Rising to this challenge will require transformations in economies and societies. As regards the energy sector, the International Energy Agency noted that a global transition to net-zero emissions energy involves "nothing less than a complete transformation of how we produce, transport and consume energy"[3]. This includes phasing out unabated coal power plants and reorienting energy sources from fossil fuels to renewables, with energy scenarios consistent with 1.5°C requiring more investments in renewable and clean energies.

Supporting these transformations requires states to reform International Investment Agreements (IIAs) in order to advance climate goals, and to ensure that IIAs do not hinder states from implementing climate measures and accelerating the transition to low-carbon economies. While IIA reform talks are not new, the narrow time window available to keep warming within 1.5°C, and the unprecedented aggregate scale of potential investor-state claims that may be associated with climate measures such as fossil fuel phaseouts, call for states to both deepen and accelerate reform processes.

On 4 February 2022, UNCTAD and the International Institute for Environment and Development (IIED) held an international webinar on IIAs and Climate Action. The event built on UNCTAD's Reform Package for the International Investment Regime (2018), UNCTAD's Investment Policy Framework for Sustainable Development (IPFSD, 2015) as well as UNCTAD's most recent IIA reform tool, the IIA Reform Accelerator (2020). It also built on IIED's policy research, including specifically on IIAs and climate action.[4] The event brought together experts and stakeholders from government, international organisations, civil society

1 https://investmentpolicy.unctad.org/news/hub/1684/20220124-register-now-webinar-on-iias-climate-action-on-4-february

2 https://www.ipcc.ch/sr15/chapter/spm/

3 https://www.iea.org/reports/net-zero-by-2050 (page 13)

4 Kyla Tienhaara and Lorenzo Cotula, Raising the Cost of Climate Action? Investor-State Dispute Settlement and Compensation for Stranded Fossil Fuel Assets (IIED, 2020), https://pubs.iied.org/17660IIED/.

and academia, who generously contributed experiences and ideas. While states may have different policy preferences as regards IIA reform, overarching recommendations from experts and stakeholders during this webinar called on policymakers to:

1. Ensure that investment policy is consistent with, and proactively advances, national, regional and global climate commitments. Strengthening coherence and synergy between IIA and climate policies requires deepening national-level cooperation between investment and environment policymakers, and promoting awareness and debate on IIAs in international processes related to climate change – particularly the United Nations Framework Convention on Climate Change and the Paris Agreement.
2. Distinguish between high- and low-emission investments in IIA policy (e.g. by excluding or limiting legal protection for harmful investments in carbon-intensive industries such as fossil fuel sectors) while promoting and facilitating low-emission investments as well as investments that have a positive contribution on the achievement of the SDGs. At the same time, IIAs should not hinder developing countries energy transition policies being implemented in accordance with their national development objectives.
3. Ensure that any investment protection standards safeguard the right and duty of states to regulate in the public interest. This includes clarifying and limiting the scope of any IIA provisions that could put climate goals at risk, such as expropriation, fair and equitable treatment or full protection and security clauses. Refining protection standards offers a more systemic approach than issue-by-issue carve-outs for climate or other measures. Non-discriminatory measures to address climate change should not entail payment of compensation.
4. Enhance the effectiveness and enforceability of environmental clauses in IIAs, such as investor obligations or non-lowering of standards provisions, including by clarifying the implications of non-compliance in a dispute settlement context. IIAs should also facilitate, or at least not constrain, the transfer of 'green' technologies needed for the low-carbon transition. Further, IIAs should discourage states from providing unsustainable incentives such as fossil fuel subsidies.
5. Realign with climate goals the existing stock of IIAs, by considering policy options including jointly interpreting treaty provisions; amending treaty provisions; replacing "outdated" treaties; consolidating the IIA network; managing relationships between coexisting treaties; referencing global standards; engaging multilaterally; abandoning unratified old treaties; terminating existing old treaties; developing new sustainable-development-oriented model IIAs, and withdrawing from multilateral treaties.[5]
6. Strengthen regional and global fora for continued dialogue and coordination on comprehensive IIA reform, and technical assistance programming on IIAs and climate action. ■

5 https://unctad.org/system/files/official-document/diaepcb2017d3_en.pdf