

## **D-8 SECRETARIAT'S REPORT**

### **VIRTUAL WORKSHOP ON THE INTERNATIONAL INVESTMENT REGIME AND CLIMATE CHANGE FOR MEMBER COUNTRIES OF THE D8 ORGANIZATION FOR ECONOMIC COOPERATION**

**CO-HOSTED VIRTUALLY BY THE D-8 SECRETARIAT AND THE UNCTAD**

**3 JULY 2023**

#### **I. INTRODUCTION**

1. The D-8 Secretariat and the United Nations Conference on Trade and Development (UNCTAD) co-hosted the virtual Workshop on the International Investment Regime and Climate Change for Member Countries of the D8 Organization for Economic Cooperation on 3 July 2023.
2. Experts on investment agreements and regulations from the D-8 Member States participated in the event. There were 26 participants from the D-8 Member States and the UNCTAD. H.E. Madame Wahida Ahmed, Director General of the International Organization of the Ministry of Foreign Affairs of the People's Republic of Bangladesh, graced the virtual Workshop with her presence.
3. The virtual Workshop was organized as a platform for the D-8 Member States and UNCTAD to discuss ways and means for the international investment agreements regime can be adapted through renegotiation and amendments to design climate-responsive instruments. The Workshop also served as a groundwork for the joint conference on "Guiding Principles for Investment" as a part of UNCTAD's 8<sup>th</sup> World Investment Forum in Abu Dhabi on 16-20 October 2023.

#### **II. OPENING SESSION**

4. Director II of the D-8 Secretariat delivered written opening remarks of H.E. Ambassador Isiaka Abdulqadir Imam, the D-8 Secretariat General, highlighting the timely nature of focusing on climate-resilient and climate-sensitive investment instruments. The D-8 Secretary-General also underscored that the D-8 Organization has aligned its activities with the United Nations Sustainable Development Goals (SDGs) and is mindful of the international collective climate actions. The text of the D-8 Secretary-General's remarks is enclosed.
5. Mr. Hamed El-Kady, Senior Coordinator, International Investment Agreements Section of UNCTAD, delivered his welcome remarks, highlighting the importance of the reform of the international investment regime. He underscored the need for next-generation instruments to support climate action and build a sustainable development-oriented investment agreement regime. The text of Mr. El-Kady's remarks is enclosed.

#### **III. PANEL SESSION**

6. Ms. Dafina Atanasova, Economic Affairs Officer, IIA Section, UNCTAD, delivered an overview of the current status of international investment agreements and global climate action. Her presentation focused on the urgency of creating a nexus between climate action with the investment agreement regime. She underlined the need to strengthen the state's capacity for investor-state dispute settlement (ISDS) that may occur from the reform. She presented three case studies on ISDS, particularly environmental measures, fossil fuel, and renewable energy sectors. Ms. Atanasova's presentation is enclosed.

7. Mr. Vincent Beyer, Associate Expert, IIA Section, UNCTAD, delivered a presentation on reconceptualizing the IIA regime for sustainable development. He highlighted core areas on investment promotion and facilitation, investor obligations and responsibilities, technology transfer, and the right to regulate. He also underscored the tool developed by UNCTAD to accelerate IIA reform and underlined its aim, scope, and approach. Mr. Beyer's presentation is enclosed.
8. Ms. Randi Ayman, Senior Research Fellow, Department of International Law and Dispute Resolution, Max Planck Institute Luxembourg, presented a topic on concrete steps for effective reform through international investment agreement renegotiations. She delineated the practical steps to renegotiate IIA, including identifying legal and political objectives. She further underlined the need to conduct public consultation with internal coordination to ensure an effective negotiation. Ms. Ayman's presentation is enclosed.
9. Mr. Hamed El-Kady then presented the highlight of the forthcoming 8<sup>th</sup> World Investment Forum, scheduled in Abu Dhabi on 16-20 October 2023, including the joint event between UNCTAD and D-8 on the Guiding Principles for Investment Policymaking. The specific event by UNCTAD and D-8 is scheduled for 16 October 2023, after the opening summit.

#### **IV. DISCUSSION**

10. Following the panel presentations, participants discussed specific experiences and expectations from their national perspective to ensure the balance between the need to strengthen investment and international climate action.
11. Other relevant materials can be obtained from the UNCTAD website at [Workshop on the international investment regime and climate change for member countries of D8 Organization for Economic Cooperation | UNCTAD](#).

#### **V. CONCLUSION AND RECOMMENDATIONS**

12. The virtual Workshop, jointly co-organized with UNCTAD, is a part of the ongoing measures of the D-8 Secretariat to expand external cooperation with other international organizations. The scheduled joint event at the 8<sup>th</sup> WIF, which will continue the Workshop, will further cement and strengthen the foundation for broader cooperation between the D-8 and UNCTAD. As a specialized agency of the United Nations responsible for developing trade, UNCTAD is an indispensable partner for the D-8 to operationalize its trade cooperation.
13. Background information on the D-8 and UNCTAD joint event at the 8<sup>th</sup> WIF can be obtained at the following link: [D-8 Organization for Economic Cooperation - UNCTAD Guiding Principles for Investment | World Investment Forum](#). The joint event will discuss the Guiding Principles for Investment Policymaking, which was previously developed by D-8 and UNCTAD in 2021 and can be obtained from the following link: [Joint D-8 Organization for Economic Cooperation - UNCTAD Guiding Principles for Investment Policymaking | Publications | UNCTAD Investment Policy Hub](#).
14. D-8 Secretariat wishes to enjoin the D-8 Member States to attend the scheduled Joint Event, which will be one of the various activities organized as part of the 8<sup>th</sup> WIF in Abu Dhabi on 16-20 October 2023.

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**The international investment regime and climate change: the road to the  
World Investment Forum**

**3 July 2023, Online (10h00-12h30 Geneva time)**

**Webinar for D8 Members**

Opening statement Hamed El Kady, IIA Section, UNCTAD

Your excellency Ambassador Isiaka Imam, Mr. Nagraha, Madam Ahmed, participants, partners and presenters, ladies and gentlemen, it is my pleasure to welcome you on behalf of UNCTAD to this capacity building workshop on the international investment regime and climate action.

This event is co-organized by UNCTAD and our partner, the D8 Secretariat.

First and foremost, I would like to thank our partner for their collaboration in preparing this workshop. Today is not the first time that UNCTAD and the D8 Secretariat successfully come together in organizing an event. And it shall not be the last time.

Second, I would like to thank you, the participants, who have joined us for this webinar. Focusing on the challenge of IIA reform can be difficult. Your participation today demonstrates that IIA reform is high on your agenda and that of your governments. For you, this workshop marks one of many steps in the process of building an investment environment that fosters sustainable development.

As you are aware, UNCTAD has been working on the reform of the international investment regime for many years. This reform process crucially depends on tools to create the new generation of international investment treaties as well as international consensus on the importance of reform.

One of UNCTAD's flagship activities in supporting this emerging consensus is the World Investment Forum. Today's event leads up to the eighth Forum that will take place from 16th to 20<sup>th</sup> of October this year in Abu Dhabi.

The Forum will focus on the theme "Investing in sustainable development". One of the key challenges in this respect relates to the energy transition, the difficulties created by climate change and the need to foster sustainable investment for climate change mitigation and adaptation.

The eighth Forum will feature over 150 high-profile events, including an event co-organized by the D8 Secretariat as well as other events that deal with international investment agreements reform. But also beyond, the World Investment Forum gathers stakeholders, including high-level participants, to discuss a wide range of investment-related issues.

Today's webinar will lead up to the World Investment Forum. In this lead up, we will shed light on the implications of the IIA regime for climate action. You will hear from our presenters how the current IIA regime can constrain States when implementing measures to combat climate change. Many past investor-State dispute settlement (ISDS) cases were related to measures or sectors of direct relevance to climate action.

Modern IIAs can also support climate action. Reconceptualizing IIAs in a way that they do not hinder and instead support the goals of climate change mitigation and adaptation will be today's focus. Our presenters will address the content of such reconceptualized IIAs and propose concrete strategies for renegotiation.

Today's workshop is one of many steps in building a sustainable development oriented IIA regime. This new investment regime is being built by all States, including the D8 members and their treaty partners. Importantly, you are not alone on this path. UNCTAD strives to equip treaty negotiators with the right tools that enable you to succeed in doing so.

Dear participants, we encourage you to raise questions and voice concerns. This is just as important as the presentations of our expert speakers. As you see from the agenda, You will have a dedicated session to do so.

Thank you!

**OPENING REMARKS BY H.E. AMBASSADOR ISIAKA ABDULQADIR  
IMAM, THE SECRETARY-GENERAL OF D-8, AT THE VIRTUAL  
WORKSHOP ON  
THE INTERNATIONAL INVESTMENT REGIME AND CLIMATE  
CHANGE FOR MEMBER COUNTRIES OF THE D8 ORGANIZATION FOR  
ECONOMIC COOPERATION**

**Co-organized by the D-8 and UNCTAD**

**3 July 2023**

**Your Excellency Madame Wahida Ahmed, Director General of the International Organization of the Ministry of Foreign Affairs of Bangladesh, as the Chair of the D-8 Commission,**

**Distinguished Delegates from the D-8 Member States,**

**Dear colleagues from the United Nations Conference on Trade and Development,**

**Distinguished Delegates,**

**Ladies and gentlemen,**

I am honored to welcome you to the virtual International Investment Regime and Climate Change workshop, jointly organized by the Developing-8 Organization for Economic Cooperation (D-8) and the United Nations Conference on Trade and Development (UNCTAD).

Thank you for attending this crucial virtual workshop to prepare aimed the ground for the forthcoming **UNCTAD World Investment Forum**, scheduled to be held in Abu-Dhabi on 16-20 October this year. Your participation in this workshop is a testament to our commitment to addressing the pressing challenges of climate change while pursuing sustainable economic development.

Climate change is a clear and present global issue that demands our immediate attention and collective action. It transcends borders and affects every aspect of our societies: From our environment and economy to our social fabric and well-being.

I welcome the theme of linking investment agreements with combating climate change. I commend UNCTAD for focusing more on climate perspective in improving investment.

The D-8, which fosters economic cooperation among its member countries, holds tremendous potential to drive sustainable development and promote climate-resilient economies. It is in line with the D-8 Decennial Roadmap for 2020-2030. The Roadmap aims to contribute to the D-8 Member States' collective effort to achieve the United Nations Sustainable Development Goals. Thus it works in tandem with our collective climate actions.

**Distinguished participants,**

The collective expertise and perspectives present here today will be instrumental in shaping the discussions and formulating concrete strategies to promote sustainable investment practices that align with our climate objectives.

We will delve into the critical topic of the challenges associated with the implications of the international investment agreements (IIA) regime for climate action.

We aim not only to identify the challenges and opportunities at the intersection of investment and climate change. We aim to devise innovative solutions to address the need for expediting IIA reform to better align it with climate action and other public policy demands.

Reforming IIAs to address climate change challenges is crucial. They play a significant role in ensuring climate becomes the central equation in investment. It is a mindset that the investors and host countries must mainstream.

By incorporating climate change considerations into IIAs, it becomes possible to promote sustainable investments that align with global climate arrangements, particularly the Paris Agreement and other collective efforts under the United Nations Framework Convention on Climate Change (UNFCCC).

Furthermore, given the unique risks and challenges associated with climate change, specific provisions might be required within IIAs. These may include measures to protect the environment, promote renewable energy investments, and ensure the just transition of affected communities. By reforming IIAs, it becomes possible to integrate these climate-related provisions. It will provide legal certainty and incentives for sustainable investment decisions.

Reforming IIAs can also help establish mechanisms for resolving climate-related disputes before Investor-State Dispute Settlement (ISDS) tribunals.

Moreover, the IIA reform can also promote policy coherence between investment and climate governance frameworks. It will also facilitate better integration and coordination between those two critical areas. It will ensure environmental protection, mitigate climate risks, and advance the global transition to a low-carbon and resilient economy.

**Ladies and gentlemen,**

In light of this, I urge you all to engage in constructive dialogues actively. Share your insights and experiences. And most importantly, collaborate.

Let us capitalize on this unique opportunity to forge stronger partnerships and establish a robust framework that encourages sustainable investment, technological innovation, and knowledge sharing among our nations.

The outcomes of this workshop will pave the way for a more effective discussion in the upcoming UNCTAD World Investment Forum in October this year.

To conclude, I want to express my profound gratitude to UNCTAD for jointly organizing this workshop with the D-8. I am confident that our collective commitment and dedication will pave the way for a greener, more prosperous future for our nations and future generations.

Thank you, and I wish you all fruitful deliberations.

# The International Investment Regime and Climate Change: The Road To The World Investment Forum

## IIA RENEGOTIATIONS: CONCRETE STEPS FOR EFFECTIVE REFORM

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DR. RANDI AYMAN

3 JULY 2023



# What is Renegotiation and Why Renegotiate IIAs?

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New negotiations of an existing treaty → overhaul reform

Difference with other review methods – substantial change of content & overall policy

Renegotiation of IIAs circumvents the operation of survival clauses

# How to Renegotiate – Practical Steps

## *Identification of legal and political objectives – What & Why*

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1. Prioritize State partners and treaties
2. Check possibility of multilateral renegotiations
3. Once IIA identified, check treaty wording and provisions
4. Internal coordination is key
5. A diplomatic/legal focal point
6. Consider launching a public consultation
7. Keep negotiation records
8. Avoid copy-pasting other treaties



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# Reconceptualizing the IIA regime for sustainable development

3 July 2023

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Vincent Beyer

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**Investment and Enterprise Division**  
**UNCTAD**

# OUTLINE

- Investment Promotion and Facilitation
- Investor Obligations and Responsibilities
- Technology Transfer
- Right to Regulate

# Investment Promotion and Facilitation

- Active promotion and facilitation provisions in IIAs
  - UNCTAD Global Action Menu
  - IIAs as platforms for cooperation
- Preferential treatment for investments in climate mitigation and adaptation
- Technical assistance for investment facilitation

# Investor Obligations and Responsibilities

- Treaty obligation to comply with domestic and international law for the entire duration of the investment
- Binding corporate social responsibility (CSR) obligations for investors
- Binding compliance with requirements for sustainable investment (e.g. impact assessments)

# Technology Transfer

- Encourage technology transfers of climate technology and related know-how
- Create enabling environment to receive technology
- Ensure performance requirements and IP rights do not impede transfer

# Right to Regulate

- Revise and refine investment protection standards
- Include general exceptions
- Clarify provisions on compensation and damages

# IIA Reform Accelerator

## Aim

1. Expedite the modernization of the existing stock of old-generation IIAs
2. A tool for coordination, focused discussion and consensus-building on joint reform actions
3. Focus on substantive treaty provisions

## Scope

Eight IIA provisions that are most in need of reform and have seen a clear reform trend

1. Definition of investment
2. Definition of investor
3. National treatment
4. Most-Favored-Nation Treatment
5. Fair and equitable treatment
6. Full protection and security
7. Indirect expropriation
8. General Exceptions

## Approach

For each provision, the Accelerator:

1. identifies sustainable development-oriented policy options (building on the IPFSD);
2. proposes ready-to-use model language;
3. illustrates how these options have been used in recent IIAs and model BITs;
4. provides explanatory comments for each option.

Thank you!

## Contacts

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The international investment regime and climate change: the road to the World Investment Forum

## IIAs and climate action: an overview

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UNCTAD

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# Overview of the presentation

- Climate action urgency and the IIA Regime
- ISDS cases related to sectors or measures relevant to climate action
  - Environmental measures
  - Fossil fuel sector
  - Renewable energy sector
- IIAs and climate action

# Climate Action Urgency and the IIA Regime



Climate change poses direct threat to the SDGs requiring urgent action

“Deep reductions” in greenhouse gas emissions required to stay within 2C limit (IPCC Report 2022)



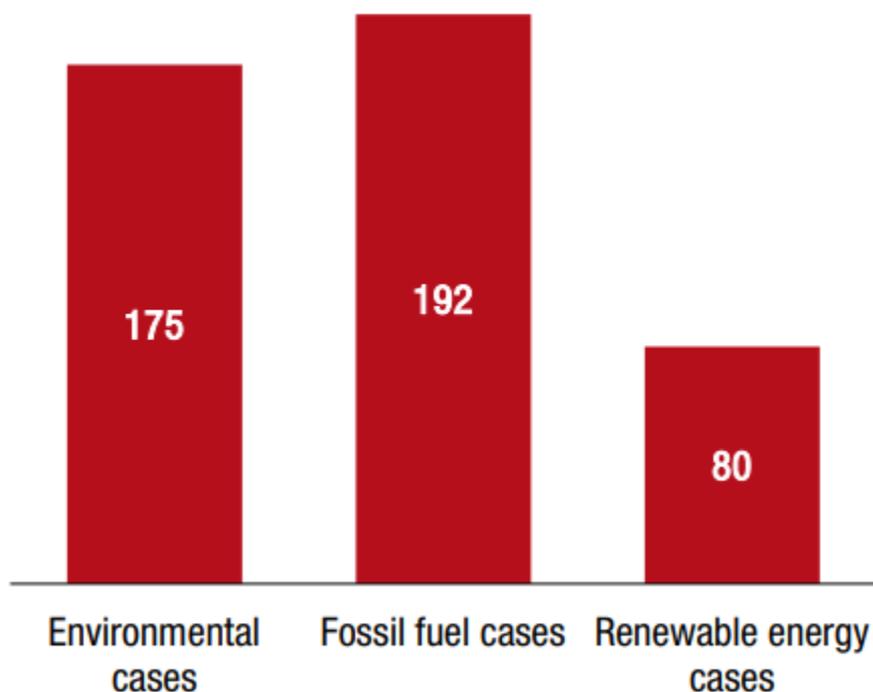
Net-zero energy requires “nothing less than the complete transformation of how we produce, transport and consume energy” (IEA, 2021)



**IPCC Report 2022 highlights the risks of ISDS being used to challenge climate policies**

# ISDS cases related to sectors or measures relevant to climate action

Figure 1. IIA-based ISDS cases related to sectors or measures relevant to climate action, 1987–2021  
(Cumulative number of cases)



Source: UNCTAD, ISDS Navigator.

Note: The categories are not mutually exclusive, e.g. some cases are counted as environmental ISDS cases and fossil fuel cases at the same time. UNCTAD's statistics do not cover investor–State cases that are based exclusively on investment contracts (State contracts) or national investment laws, or cases in which a party has signaled its intention to submit a claim to ISDS but has not commenced the arbitration.

# ISDS cases in the fossil fuel sector

- Climate action relevance: fossil fuels assets are likely to become **stranded assets** in energy transition
- Prevalence: At least **192 of all known ISDS cases** (as of 2021)
- Respondent countries: **developing countries (74 per cent)** and developed countries
- Example: ***RWE v. Netherlands*** (coal phase out in order to meet Paris Agreement country coals challenged)
  
- Lessons:
  - Fossil fuel investors frequently resort to ISDS
  - **Fossil fuel investors are likely to use ISDS to challenge climate action measures**
  - Tienhaara et al.: potential future claims of over USD 300 billion

# ISDS cases in the renewable energy sector

- Climate action relevance: renewable energy production is a highly dynamic field, requiring frequent adaptations in regulatory framework
- Prevalence: At least **80 of all known ISDS cases** (as of 2021)
- Respondent countries: **vast majority against developed countries**
- Outcomes: **Over 50 per cent in favour of investor** (of concluded cases)
- Types of measures challenged (Spain): **evolving incentives** to promote investment in renewable energy, due to unsustainable State expenditures and advances in technology
- Lessons:
  - Evolving incentive frameworks in the renewable energy sector may be challenged and have been deemed in breach of IIAs
  - Renewable energy investors resort to ISDS and have been **more successful than global average**

# ISDS cases related to environmental measures

- Climate action relevance: Important regulatory changes are required to meet countries' climate goals, past environmental cases give insights
- Prevalence: **About 15 per cent of known ISDS cases** (as of 2021)
- Respondent countries: developed countries (67 per cent) and developing countries
- Outcomes: 38 per cent decided in favour of investor
- Example: ***Eco Oro v. Colombia*** (mining ban challenged, general exception restrictive interpretation)
  
- Lessons:
  - Environmental measures **can be challenged and deemed violations under IIAs**
  - Recent cases raise **doubts on the effectiveness of explicit safeguards** in IIAs

# IIA Universe is old: urgent need of reform

## Old treaties abound

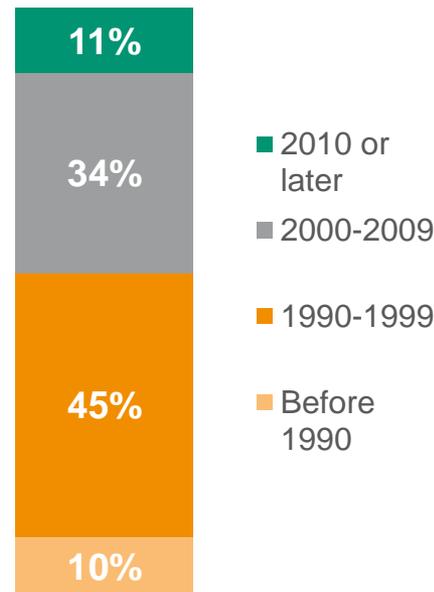
- 2260 IIAs overall IIAs in force today were concluded before 2010

## Old treaties bite

- **1227 out of 1257 known treaty-based ISDS cases, including climate change related** have been filed pursuant to treaties signed before 2010

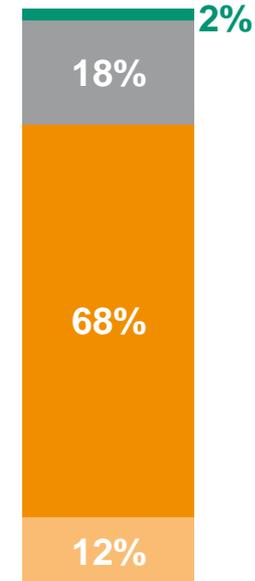
**Old treaties have a wide scope and protect any investment**, independently of their carbon footprint

Age of IIAs: share of IIAs in force, by year of signature (global)



Source: ©UNCTAD, IIA Navigator.

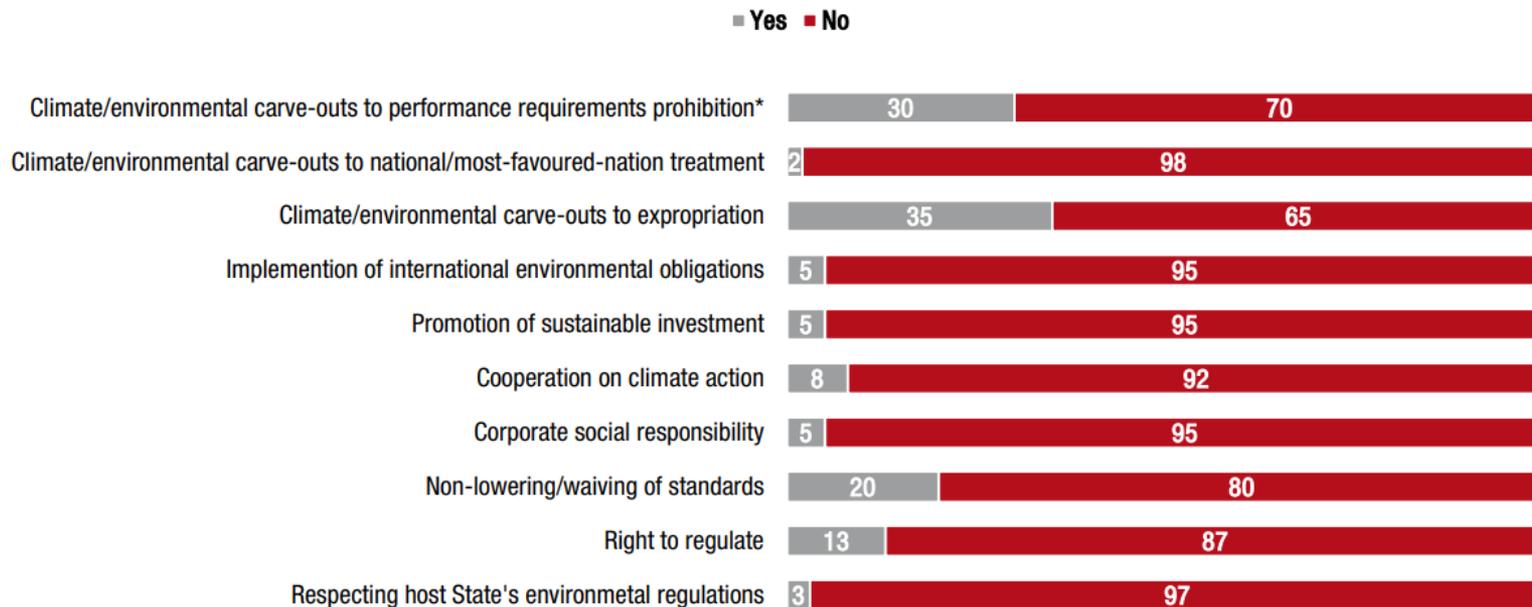
IIAs invoked in treaty-based ISDS cases, by year of signature (global)



Source: ©UNCTAD, ISDS Navigator.

# Recent IIAs: limited reference to climate

**Figure 1. Selected provisions relevant to climate action in IIAs concluded between 2010–2021**  
(Per cent)



*Source:* UNCTAD, based on IHEID International Economic Law Clinic Report “IIAs and Climate Action”, May 2022.

*Note:* The survey analysed 347 IIAs signed between 2010 and 2021, with available texts.

\* The percentage concerns only the IIAs that include performance requirements provisions, i.e. 103 out of the 347 analysed IIAs.

# Thank you!

## For further information on the IIA Regime and Climate Action

- [UNCTAD, World Investment Report 2023: Investing in Sustainable Energy for All, Chapter 2](#)
- [UNCTAD, The International Investment Treaty Regime and Climate Action, IIA Issues Note 2022/3](#)
- [UNCTAD, Treaty-based ISDS Cases and Climate Action, IIA Issues Note 2022/4](#)
- [Sharm-El-Sheikh Guidebook for Just Financing, Section 2.7, pp 107-111](#)



# The international investment regime and climate change: the road to the World Investment Forum

3 July 2023, Online (10h00-12h30 Geneva time)

## Agenda

**Introduction.** Leading up to the World Investment Forum 2023, this webinar will shed light on the implications of the international investment agreements (IIA) regime for climate action. Climate change is among the most pressing global challenges of our time. The achievement of the SDGs is directly at stake. The current IIA regime can constrain States when implementing measures to combat climate change. Many past investor–State dispute settlement (ISDS) cases were related to measures or sectors of direct relevance to climate action. To rise to this challenge, States may need to fast-track IIA reform to make it more aligned with climate action as well as other public policy imperatives. The reconceptualisation of the IIA regime through treaty renegotiation is essential to design climate responsive IIAs aimed at encouraging sustainable investment. Reforming the IIA regime in line with global climate goals also calls for creating the necessary policy space for states to take urgent climate action and minimizing the risk of facing ISDS claims related to climate change policies.

## Programme

10:00-10:10      **Opening remarks**

- **H.E. Ambassador Isiaka Abdulqadir Imam**, *Secretary General, D-8 Organisation for Economic Cooperation*
- **Hamed El-Kady**, *Senior Coordinator, International Investment Agreements Section, UNCTAD*

**Moderator:** **Hamed El-Kady**, *Senior Coordinator, International Investment Agreements Section, UNCTAD*

10:10-10:30      **IIAs and climate action: an overview**, *Dafina Atanasova, Economic Affairs Officer, IIA Section, UNCTAD*



- 10:30-10:50      **Reconceptualizing the IIA regime for sustainable development**, Vincent Beyer, *Associate Expert, IIA Section, UNCTAD*
- 10:50-11:10      **IIA renegotiations: concrete steps for effective reform**, Randi Ayman, *Senior Research Fellow, Department of International Law and Dispute Resolution, Max Planck Institute Luxembourg*
- 11:10-11:30      **The road to the World Investment Forum: The D-8-UNCTAD Conference on the Joint Guiding Principles for Investment Policymaking**, Hamed El-Kady, *Senior Coordinator, International Investment Agreements Section, UNCTAD*
- 11:30-12:30      **Interactive dialogue among D-8 country representatives and Q & A Session**