

2023 reports of the UN Special Rapporteur on the right to development:

Submission to call for inputs

May, 2023

Please find below information on selected UNCTAD publications on international investment agreements (IIAs) that the Special Rapporteur on the right to development may wish to consider in relation to the two thematic 2023 reports.

1. UNCTAD (2015). *Investment Policy Framework for Sustainable Development*. New York and Geneva: United Nations. United Nations Publication. <https://unctad.org/publication/investment-policy-framework-sustainable-development-2015-edition>

The 2015 Investment Policy Framework for Sustainable Development provides guidance for policymakers in the evolution towards a New Generation of investment policies. The guidance on international investment policies offers options for the design of provisions in investment agreements, with an analysis of sustainable development implications. This principally implies four areas of evolution in treaty-making practice: (i) incorporating proactive commitments to promote and facilitate investment for sustainable development; (ii) balancing State commitments with investor obligations and promoting responsible investment; (iii) ensuring an appropriate balance between protection commitments and regulatory space for development; (iv) shielding host countries from unjustified liabilities and high procedural costs.

2. UNCTAD (2020). *International Investment Agreements Reform Accelerator*. New York and Geneva: United Nations. United Nations Publication. <https://unctad.org/publication/international-investment-agreements-reform-accelerator>

The International Investment Agreements (IIA) Reform Accelerator aims to expedite the modernization of the existing stock of old-generation IIAs. It operationalizes the idea of gradual innovation by focusing on the reform of the substantive provisions of IIAs in selected key areas. The Accelerator focuses on eight IIA provisions that are most in need of reform, and that have seen a clear reform trend in line with the sustainable development goals (SDGs) and towards safeguarding the State's right to regulate in IIAs. For each provision, the IIA Reform Accelerator identifies sustainable development-oriented policy options (building on UNCTAD's Investment Policy Framework for Sustainable Development 2015) and proposes ready-to-use model language that implements these options that countries can adopt and adapt.

3. UNCTAD (2022). "The International Investment Treaty Regime and Climate Action". *IIA Issues Note*, No. 3, September. United Nations Publication. <https://investmentpolicy.unctad.org/publications/1269/the-international-investment-treaty-regime-and-climate-action>

This IIA Issues Note analyses the interaction between international investment agreements (IIAs) and climate action. It takes stock of IIA provisions relevant to climate action and presents policy options for climate-responsive IIA reform.

4. UNCTAD (2022). “Treaty-based Investor–State Dispute Settlement Cases and Climate Action”. *IIA Issues Note*, No. 4, September. United Nations Publication. <https://investmentpolicy.unctad.org/publications/1270/treaty-based-investor-state-dispute-settlement-cases-and-climate-action>

This IIA Issues Note looks at the many past investor–State dispute settlement (ISDS) cases related to measures or sectors of direct relevance to climate action. The urgency of climate action has added attention to the need to reform the IIA regime. The risk of ISDS being used to challenge climate policies is a major concern.

5. UNCTAD (2022). *World Investment Report 2022: International Tax Reforms and Sustainable Investment*. New York and Geneva: United Nations. United Nations Publication. Chapter II., Section C. https://unctad.org/system/files/official-document/wir2022_ch02_en.pdf

IIAs impose obligations on States that can create friction with taxation measures undertaken at national level. The actions of tax authorities, as organs of the State, and tax policymaking more generally can potentially engage the international responsibility of a State under an IIA when they adversely affect foreign investors and investments.