



Shifting International Investment Law Toward Sustainable Development: Strategies for renegotiation, reform and defence

Draft Agenda – January 22, 2019

DAY 0	TUESDAY, FEBRUARY 26, 2019
19:30	Welcome Reception – all participants are invited

DAY 1	WEDNESDAY, FEBRUARY 27, 2019
9:00	Registration
9:30	Opening Ceremony and Welcoming Remarks
10:00	<p>Session 1: Recent developments concerning international investment law and policy-making</p> <p>This session will set out some of the most recent developments concerning international investment policy-making, reform and dispute settlement. This annual update on recent developments will provide an overview of the following topics, to be discussed in further detail in later sessions of the Forum:</p> <ul style="list-style-type: none"> • Progressive national and regional models, treaties and approaches around the world • Trends in termination and renegotiation • The backlash against investor–state arbitration continues: USMCA, <i>Achmea</i> and more • EU, UNCITRAL and ICSID discussions on ISDS reform • Regional initiatives: AfCFTA, RCEP, among others • Processes outside the realm of investment law: UN “legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises,” and other initiatives on business and human rights.
11:30	Break
12:00	<p>Break-out Session 1: Sharing experiences on countries’ priorities and objectives for reform</p> <p>What are countries’ views on reform of international investment law and dispute settlement? Are countries engaging in the UNCITRAL, ICSID and other processes and what are their objectives? What challenges are countries facing as a result of the proliferation of fora addressing reform of investment law and dispute settlement? How are countries approaching new negotiations, renegotiation and termination?</p> <p><i>[A survey will be circulated to participants in advance of the Forum to help them prepare for this session. Main points will be captured in writing and shared electronically, feeding into later sessions.]</i></p>
13:00	Lunch



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14:00	<p>Session 2: Understanding ongoing multilateral and regional processes in investment treaty law and policy</p> <p>In this session, participants will discuss the problems countries are trying to fix through ongoing processes. What are the problems they are facing as respondents? What would countries' preferred outcomes be? What can be achieved through tweaking and what through more systemic change? What impacts do developments in the context of business and human rights have on investment law making and dispute settlement, including with respect to corruption and investor behaviour more generally? This session will take a deep dive into ongoing processes and developments:</p> <ul style="list-style-type: none"> • UNCITRAL • ICSID • Regional negotiations (RCEP, AfCFTA, among others) • Responsible investment, including business and human rights, and corruption issues.
15:30	Break
16:00	<p>Session 3: Leveraging developments in investment treaty law and policy to achieve developing country objectives and improve defence strategies</p> <p>This session will take a closer look at critical developments in recent negotiations and arbitrations in order to identify new opportunities to leverage ongoing processes and developments to achieve developing country objectives. It will look at how the ongoing developments relate to objectives and priorities set by developing country governments. Discussions will include developments around:</p> <ul style="list-style-type: none"> • USMCA (the new NAFTA) • EU proposals on the creation of a multilateral investment court (MIC) and the <i>Achmea</i> decision of the European Court of Justice; CJEU decision on the compatibility of the Investment Court System in CETA with EU law • Review of the Energy Charter Treaty (ECT) <p>How can developing countries leverage these developments to support their own goals and maximize impacts in negotiations and defence?</p>
18:00	End of Plenary

DAY 2	THURSDAY, FEBRUARY 28, 2019
9:00	<p>Session 4: Recent developments in treaty-based investment arbitration and negotiations and their impact on reform: a practitioner's perspective</p> <p>In this session, based on a presentation by an investment arbitration practitioner, participants will discuss their experience with developments in investment arbitration and negotiations and analyze how such developments have impacted international negotiations, processes and debates, including at UNCITRAL and ICSID. How can countries achieve better outcomes in their negotiations based on their arbitration experience? How can and should developments in jurisprudence be leveraged for the development of standards? How can the experience of countries on corruption and investor behaviour more generally be translated into treaty practice?</p>
11:00	Break



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11:30	<p>Session 5: Engaging bilaterally and multilaterally on renegotiation and termination: sharing experiences</p> <p>How do the discussions in the previous sessions of the Forum relate to developing countries' strategy at the bilateral level? What steps are countries taking with respect to the stock of old-style treaties? How can developing countries use developments in their investment negotiations, terminations and renegotiations? Have countries been considering exhaustion of local remedies and unilateral declarations withdrawing the implicit or explicit offer in BITs to accept the jurisdiction of an arbitration tribunal as options? Are there multilateral solutions for termination, renegotiation and withdrawal of consent?</p>
13:00	Lunch
14:00	<p>Break-out Session 2: Designing strategies to deal with outdated treaties</p> <p>What options do countries have to deal with their stock of outdated treaties? What steps can be taken? How can countries best prepare and organize themselves?</p> <p><i>[A survey will be circulated to participants in advance of the Forum to help them prepare for this session. The outcomes will be presented to the plenary by designated leaders.]</i></p>
15:30	Break
16:00	<p>Session 6: Relationship between issues of process and issues of substance</p> <p>This session will allow participants to debate how ongoing processes and developments—including at UNCITRAL and ICSID and regional negotiations—can help orient outcomes towards objectives and priorities set by developing country governments. It will take a closer look at how procedural outcomes could affect substantive issues in international economic governance. How can undesired consequences be anticipated and avoided? How can procedural outcomes advance the progressive development of international investment law and policy? The session will also consider how changes in substantive law being considered today can be factored into the procedural discussions that are ongoing; the procedural and substantive aspects of the discussion on counterclaims within the process of reforming ISDS; and investor obligations and the related procedural discussion pertaining to access of investors to ISDS.</p>
18:00	End of Plenary



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DAY 3	FRIDAY, MARCH 1, 2019
9:00	<p>Session 7: Engaging multilaterally to redesign investment-related dispute settlement</p> <p>This session will focus on ongoing multilateral processes to reform investment related dispute settlement. It will take an in-depth look at different potential models and outcomes in UNCITRAL Working Group III. This session will also include a discussion on non-traditional dispute settlement approaches. How can dispute settlement mechanisms be designed to address investment-related issues more comprehensively? How can stakeholders, other than investors and states, be included? How can investors be held accountable? Topics will include:</p> <ul style="list-style-type: none"> • More permanent investment related dispute settlement structures, including at the international and the domestic level • Dispute prevention and accountability mechanisms • Alternative dispute resolution (conciliation, mediation) • State–state dispute settlement • Investor as a respondent • Procedural improvements in investor–state arbitration (costs, third-party funding, corruption, etc.) • Termination of treaties and withdrawal of consent to ISDS
11:00	Break
11:30	<p>Break-out Session 3: Designing optimal outcomes in the UNCITRAL process for developing countries</p> <p>What are optimal outcomes at UNCITRAL? Building from the previous session, groups will discuss the potential design and elements of dispute settlement in more detail. <i>[The break-out groups will rotate to address various questions. The outcomes will be presented to the plenary by designated leaders.]</i></p>
13:00	Lunch
14:00	<p>Open Discussion: Building groups and coalitions and strategies to advance developing country priorities in international and regional processes.</p> <p>Moderator:</p>
15:30	Closing Ceremony
16:00	End of Plenary and Closing Reception

DAY 4	SATURDAY, MARCH 2, 2019
8:00 – 13:00	Networking and Cultural Activity