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Agenda item 10

**DRAFT REPORT OF THE COMMISSION ON INVESTMENT,  
TECHNOLOGY AND RELATED FINANCIAL ISSUES ON  
ITS ELEVENTH SESSION**

Held at the Palais des Nations  
from 8 to 14 March 2007

Rapporteur: Mr. Edward Brown (United Kingdom)

**REPORT OF THE INTERGOVERNMENTAL WORKING GROUP OF  
EXPERTS ON INTERNATIONAL STANDARDS OF ACCOUNTING  
AND REPORTING (ISAR)**

(Agenda item 6)

*Chairperson's summary*

1. For its consideration of this agenda item, the Commission had before it the following documentation:

"Report of the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting on its Twenty-third Session" (TD/B/COM.2/ISAR/35).

2. The Chairperson of the twenty-third session of ISAR presented his report to the Commission. He said that the session had attracted the largest number of participants in any ISAR session so far, with participation by over 280 experts from 80 member States. He provided an assessment of the session and elaborated on ISAR's deliberations on the two main agenda items that it had dealt with, namely the review of practical implementation issues relating to International Financial Reporting Standards (IFRS), and the comparability and relevance of existing indicators on corporate responsibility. The Chairperson also reported on activities that the UNCTAD secretariat had undertaken on behalf of ISAR.

3. In sharing his observations on ISAR, the Chairperson noted that it was the intergovernmental working group best placed to deal with corporate transparency issues at the international level as the competition for investment continued to grow and debates on implementing good corporate transparency became more important. Thus, it had been playing a strategic role in world economic policy. Furthermore, it attracted the best available expertise from around the world on the subjects it dealt with. The Chairperson also noted that ISAR provided a good example of an efficiently functioning intergovernmental working group.

4. A number of delegates commented on the work of UNCTAD and the Group of Experts. One delegate Belarus thanked UNCTAD for its contribution to a recent regional conference in Kyiv on the practical implementation of IFRS in countries of the Commonwealth of Independent States. Economies in transition were facing a number of challenges in the area of accounting and reporting, and were therefore grateful for UNCTAD's contribution to the organizing of the annual sessions of ISAR and to the dissemination of its work at regional events. ISAR served as a model working group for UNCTAD's intergovernmental process, linking together consensus-building, research and practical guidance for member States.

5. Another delegate stressed the strong bilateral cooperation between his country and UNCTAD, including in the area of accounting and reporting. Following up on ISAR's consensus-building and research work, his country was working with UNCTAD to coordinate a regional event in Cairo on corporate governance disclosure. Regarding a related area of cooperation, UNCTAD was working with the American University in Cairo on a research project under the guidance of ISAR. The delegate emphasized the importance of the subject for his country and the neighbouring region. The relative novelty of the subject of corporate governance in the region could be seen in the development of new language to describe the concept. In that context, ISAR's work in helping to contribute a greater awareness of corporate governance issues was greatly appreciated.

## ISSUES RELATED TO INVESTMENT ARRANGEMENTS

(Agenda item 4)

### *Chairperson's summary*

6. In his opening remarks, the Director of the Division on Investment, Technology and Enterprise Development (DITE) noted that the evolution of the international investment rules system was a dynamic process that posed new challenges for countries at the beginning of the 21st century. Among them were the issues of policy coherence, the balancing of private and public interests in matters relating to international investment agreements (IIAs), and the development dimension, all aimed at ensuring that developing countries retained sufficient regulatory autonomy to pursue their economic and social development goals. The main purpose of the meeting would be to arrange for a discussion of what could be done to strengthen the means for more multilateral consensus-building on those core IIA issues. Without such an effort, there was a risk that the system might degenerate into an increasingly non-transparent jumble of diverging rules that capacity-constrained developing countries would find more and more difficult to cope with.

7. The Chief of the International Arrangements Section of DITE explained those considerations in greater detail. He gave an overview of the recent trends in international investment rule-making, its main characteristics and the role of UNCTAD as a "backstopping agency". Referring to the continuing growth and complexity of IIAs, the increasing role of developing countries in treaty-making, and the increase in the number of investor-State disputes, he described the current IIA universe as highly atomized, multilayered, multifaceted and innovative, with uniformity at the core but increasing variation at the periphery. There was a need to strengthen developing countries' capacities to deal with the systemic issues resulting from an increasingly complex IIA universe. In addition to the existing main pillars of UNCTAD's IIA-related work (monitoring trends, analysing issues and development implications, and providing technical assistance and a platform for exchange of experiences and consensus-building), possibilities could be considered for a more coordinated and collective approach to those issues, namely the establishment of a standing expert group on IIA-related matters. Such a group could significantly enhance understanding of the relevant issues and improve further multilateral consensus-building on key IIA issues. Among the group's tasks could be to monitor and examine the rapidly growing IIA universe, including the evolving jurisprudence from investment disputes; to seek more consensus-building through identification of core commonalities based on similarities in IIAs, bearing in mind the diversity of the system; to analyse the implications of the system-immanent problems of the IIA patchwork, including its systemic inconsistencies; to advocate viable solutions to existing and emerging systemic problems; and to pay particular attention to the development dimension of those issues with a view to facilitating multilateral cooperation. In the view of the UNCTAD secretariat, such an effort could help considerably to ensure that the existing international investment rules system functioned more effectively and efficiently and promoted growth and development. That could gradually increase the clarity and stability of investment relations, improve the consistency of rules, serve as a primary reference for international investment rule-making at all levels, and ensure that all countries, irrespective of their level of development, could participate equally in the process.

8. Subsequently, three panellists shed further light on IIA trends and features, their implications for developing countries and the way forward.

9. The first panellist stated that African countries were active participants in the evolution of the IIA universe at the bilateral and regional levels. The proliferation of IIAs in Africa had been accompanied by an increase in the number of investor-State disputes, which placed a heavy financial burden on African developing countries. Moreover, those countries lacked the necessary knowledge to deal properly with the complicated matters related to IIA negotiations and implementation. That in turn might undermine the ability of developing countries to participate in the system and prevent their integration into the global economy. Expressing her appreciation of UNCTAD's work in the area of IIAs, the speaker stressed the need to explore what more could be done to streamline the existing IIA patchwork and to address issues of policy coherence. She welcomed the proposed establishment of a standing expert group on IIAs and development that would go beyond the current level of technical assistance. Such a group had two main merits: it provided a venue for collective learning, and it enabled an interactive debate amongst Governments and other stakeholders. In that connection, UNCTAD was the "natural" home for such an initiative. The proposed standing expert group was a major step towards achieving the development objectives of African countries with regard to the IIA network.

10. The second panellist presented an overview of the challenges faced by South Africa in negotiating IIAs. He explained the historical background of South African IIAs and the political rationale behind the Government's decision in 2001 to suspend bilateral investment treaty (BIT) negotiations with capital-exporting countries and the ratification process, namely a perceived imbalance between the rights of investors and those of the host country. As South Africa was becoming a capital-exporting country, it was in the process of revising its BIT model. The expert then explained some key features of the new model: definition of "investment" excluding portfolio investment and shell companies, and adaptation of the national treatment clause to black economic empowerment policies. The speaker also mentioned that South Africa was re-examining the meaning and implications of other key IIA provisions, such as fair and equitable treatment, measures tantamount to expropriation, the free transfer of funds and dispute settlement provisions (the issue of frivolous claims). He commended UNCTAD's approach to establishing a standing expert group so that developing countries had a forum in which their interests in investment rule-making were properly recognized.

11. The third panellist focused on the way forward, on how to improve capacity to deal with existing challenges and on how to advance further international consensus-building. He referred to the ad hoc Expert Meeting on Issues Related to the Existing International Investment Rulemaking: Stocktaking, Challenges and Way Forward, held on 12 March 2007, which had dealt with those issues. The following challenges had been identified: lack of cohesion in the IIA universe and the resulting difficulties in identifying a systematic structure; diverging jurisprudence emanating from a decentralized dispute settlement system and the need for dispute avoidance; policy space and countries' right to regulate; and the option of plurilateral IIAs. In the light of those challenges, maintaining the current system was not a viable option. With regard to the modalities for establishing a policy forum, given the difficulties encountered in other organizations, consensus-building was essential. Four issues were identified as being crucial for achieving consensus on the establishment of an expert group: adequate representation of all stakeholders (range of interest and expertise); a wide disciplinary dimension in terms of issues (in particular the social dimension); adequate institutional support; and the need for a transparent body (openness and interaction).

12. The ensuing discussion focused on the concerns and challenges facing developing countries in connection with the growing complexity of the IIA network. At the same time, the benefits of IIAs were recognized as important tools for investment protection, confidence-building and cooperation between countries.

13. Challenges resulting from the growing number and diversity of IIAs made it more difficult for countries to keep their IIA network cohesive. At the same time, different interpretations of the same principle within IIAs (such as fair and equitable treatment) added to the confusion. Delegates mentioned the need to strengthen the development dimension of IIAs and to balance private and public concerns. In that regard, many delegates raised the issue of the existing imbalances in the negotiations between capital-exporting and capital-importing countries. Developing country delegates reaffirmed their concerns about the lack of understanding of key concepts in IIAs. In that respect, it was pointed out that UNCTAD's training activities should extend to local governments. Some delegates requested UNCTAD to shed light on the impact of IIAs and the openness of the investment regime in attracting investment flows.

14. In order to meet those challenges, it was necessary to improve the capacity and understanding of developing countries and to consolidate the existing system by seeking multilateral consensus. In that respect, most delegations welcomed the suggested standing expert group as a possible forum to advance understanding, share experiences and help relaunch an international debate on investment issues.

15. Delegates expressed their appreciation of the secretariat's policy research and analysis and technical assistance efforts, mentioning specific activities in their respective countries. They emphasized that UNCTAD was an important source of information on IIAs and had the competence and expertise to provide assistance to developing countries.

16. One group of countries expressed the opinion that further reflection was needed with regard to the possible mandate and composition of a standing expert group. A final decision on the establishment of an expert group on IIA-related matters should be taken only within the framework of UNCTAD XII.

17. In conclusion, the Chief of the IA Section of DITE identified three main challenges facing countries, particularly developing countries. First, there were systemic challenges resulting from the growing number and diversity of IIAs that made it more difficult for countries to keep their IIA network cohesive. Likewise, there was a need to balance investor interests and public concerns and to give sufficient consideration to the development dimension of IIAs. A second challenge related to capacity constraints. The increasing complexity of IIAs could well undermine the capacity of developing countries to participate fully in international investment rule-making. The proliferation of investor-State disputes, their proper management and dispute-avoidance strategies were mentioned as a third challenge. There was therefore a need for UNCTAD to continue with its current technical assistance and policy analysis work. Against that background, the Chief of the IA Section asked for continuing financial support. In conclusion, he called for consideration of the establishment of a standing expert group on IIA-related issues as a common policy forum for collective learning to advance understanding of key IIA matters and for international consensus-building.

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