

**UNCTAD's Experts' meeting "The Transformation of the International
Investment Agreement Regime"
ANNUAL HIGH-LEVEL IIA CONFERENCE
(Geneva, October 11th, 2017)**

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Mr. Chairman, dear colleagues,

In my address today I would like to give short overview on the lessons learned from previous two days.

First of all, I would like to thank UNCTAD for their dedicated work on introducing to all of us, especially small countries with the challenges we are facing with in BIT negotiation process.

As is usually stated in the title, the general purpose of BITs was the „promotion and protection“of investments from one contracting party in the territory of the other contracting party. It was really belived in history that BIT itself will attract more foreign investments and that was the main reason for huge number of BITs concluded in 1990s and even earlier. But, the growing number of investment disputes, the practice of international arbitration in interpretation the core provisions of BITs create the urgent need for adjusting the treaty provisions and practice.

In that first phase oh IIA reform, thank to UNCTAD and its dedicated work we understood clearly all the legal risks from the broad definitions and scope of the Treaties. The Government of the Republic of Serbia, in October 2014 adopted a new BIT model, as a legal basis and framework for bilateral negotiations. In accordance with the recommendations from the Investment Policy Framework for Sustainable Development, we tried to combine national investment policy guidelines and core BIT elements. In drafting that text we used the instructions and handbooks delivered by UNCTAD. As well as the experience from the similar events. The new model is the framework for the future negotiation and by that the minority of the problem was solved. Government will decide wheter and with whom shall negotiate and conclude BIT.

But there is another problem remaining, and that is the existing stock of BITs in force. In my kick-off speech two days ago I mentioned that the Republic of Serbia is facing with about 40 BITs inherited from the former countries that we succeseed (FRY, SFRY and SMN). We entered into these treaties with little prior analysis and awareness of their legal implications and potential economic costs. That treaties were negotiated twenty or thirty years ago, in different circumstances, different position of the former countries and different prospective then today. That is the second thing I would like to highlate and once again to thank UNCTAD for the comprehensive analisis of that problem and a few options identified as a potential exit for the states. UNCTAD in its research identified possibilities for modernizing the first-generation treaties and has prepared ten different options available for countries that wish to change existing treaties to bring them into conformity with new policy

objectives and priorities. That options are not mutually exclusive and can be used in a complementary manner.

We took into consideration some of them. First, the joint interpretative statement and we found out that it can be a practical, temporary and low cost solution, until entering into force the new negotiated Treaty or amends to existing Treaty, but the legal binding of that statement is under consideration.

Termination of the Agreement is legally binding and more clear situation, but it should be on the mutual consent of the contracting parties. Unilaterally termination is an option only in some, rare situations, due to diplomatic and some other implications.

Replacing the existing BIT by a new one is good option, but it is also necessary the existence of mutual consent by both contracting parties. If the other party, does not agree to negotiate what are other options, especially if the other party is big, developed country with the important investments. Similar situation is with the amending the existing agreements.

In trying to find some solution and way out, we prepared Information to be adopted by the Government followed by so called Action plan of further activities We divided the existing Agreements into three categories: law-risk, medium-risk and high-risk depending on the counter party. Then we contacted some of high-risk countries asking for negotiation on new Treaty or on amending the existing one, but results were poor.

Now we are considering further steps, fully aware that a lot of things need to be done in future.

So, once again, I am very glad to be here and have the opportunity to share views and learn from other countries and their experiences as well as from different organisations, non-governmental organisations, university professors, arbitrators, and business society representatives.

Finally, I would like to thank UNCTAD for their hard and dedicated work on taking a systemic approach that examines the universe of national and international policies through the lens of key investment policy changes, mainly presented in national BITs.

Thank you for your attention.