

**Statement at the 2017 High-Level International
Investment Agreements (IIA) Conference**

by Ambassador Hye Min LEE of Korea

Oct.9, 2017

Geneva

Mr. Chairman,

Distinguished delegates,

Ladies and gentlemen,

Thank you very much for having me here today. I am pleased to speak at this important event on International Investment Agreements. I would like to begin by commending the UNCTAD and its investment team for their excellent work on the subject of IIA reform.

(Progress of Phase)

The focus of this year's conference, Phase-2 of IIA reform, is significant. Phase-1 was about setting the right substantive direction of reform, and Phase-2 explores the modalities for how to apply the right principles to the existing set of investment agreements.

This change of focus represents the substantial progress made in Phase-1, with many countries and players agreeing to orient IIA reform toward sustainable development. A good example is the G20 Guiding Principles for Global Investment Policymaking, endorsed at the G20 summit in Hangzhou in September 2016. UNCTAD's contributions to this success have been highly appreciated.

But, much work remains, and we are far from celebrating a final success at this halfway stage. Phase-1 and Phase-2 are not discrete steps, but interwoven layers of light that illuminate the sphere of IIA reform from different dimensions. It is rather obvious that the reform agenda should be pursued in totality of both substance and procedure, and also through the greatest possible coordination among participants to prevent further fragmentation of the IIA network.

(Direction of Reform)

So, to revisit the direction of reform, we should be mindful that the current international environment is still not so favorable to cross-border trade and investment. The criticism from civil society on investment agreements in general, and the ISD system in particular, is that the balance tilts too much toward investors. So, discussions on the reform of investment agreements in many countries are directed not to further enhance protections for investors, but to guarantee the government's right to regulate and to ensure that investors are not granted too many advantages in international arbitration over the domestic courts.

But, in order to garner support from investors, reforms should work both ways. Investment facilitation is a useful policy that helps maintain the overall balance between states and investors. Another

way the reform agenda can help investors reduce their risks is to address the fragmented rulings of arbitration panels. It is a poor dispute resolution system that grants the lucky winners of a case everything and the unlucky losers nothing. More coordination in dispute resolution, and more predictability in judgments and awards would definitely help spread out risk.

In this sense, I find the recent efforts of the European Union to establish a multilateral investment court system merit further and sincere examination by other partners.

(Multilateral Option)

Such a multilateral avenue is one of 10 options presented in the UNCTAD's paper on Phase-2 reform. Although the multilateral option is considered the most difficult because it requires the consensus of all participants, I would like to actively advocate for a multilateral efforts as our top priority. It is not only because a multilateral agreement would, if successful, bring about the largest and widest benefit. But also because bilateral options are not as easy as they sound, and because an uncoordinated patch work of bilateral agreements may risk further fragmentation of the contents, scope, and application terms of old and new IIAs.

A typical example is the denial of benefits clause that intends to prevent paper companies from enjoying the protections of investment agreements. It is one of the core provisions of currently reformed investment agreements, but one that was not included in the agreements of the 70s and 80s. Countries like Korea desire to amend these first generation agreements, but sometimes face resistance from other countries, especially those with few or light regulations on investment and business activities. These countries may fear that amending this clause could diminish their status as preferred investment destinations.

The different offensive and defensive interests of the two parties of an investment agreement can prevent progress in bilateral contexts, and sometimes require negotiations on other items to balance them out. This may unintentionally lead to the further complication of investment agreements.

Therefore, despite the failures of the OECD MAI and WTO DDA negotiations regarding multilateral investment agreement, I think that regional and global negotiations provide the best playing field for a productive give and take in the area of investment, and can thereby help fix the defects of past agreements in a manner that is acceptable to all.

(G20 Guiding Principles)

With regard to the prospects of the multilateral approach, I would like to further elaborate on the G20 Guiding Principles for Global Investment Policymaking endorsed at the G20 summit in Hangzhou in September 2016. Although the current version lacks full details about investment policy due to the sensitivity of the topic, its value is not small in two respects. First, the guidelines call for international coherence in investment policymaking that provides greater predictability and certainty for investors and, at the same time, a better chance of economic and social development for host countries. Second, investment is a sensitive topic on which developed and developing countries have very different positions. As you know, the G20 is a mixed group of such countries. Moreover, through careful negotiations, the Guiding Principles aim to strike a balance between protecting investments and maintaining the government's right to regulate, and also a balance between promoting a favorable investment environment and observing responsible business conduct and corporate governance. I have high hopes that the G20 will continue to make progress with respect to investment in the coming years so that it can help the efforts of UNCTAD to reform the international investment agreement.

Ladies and gentlemen,

It is very encouraging that various discussions and proposals regarding multilateral investment agreements have begun to appear in recent months. And it is even more encouraging that these discussions range from a proposal for an investment facilitation agreement to the idea of establishing a multilateral court for the settlement of investment disputes. The proposal for an investment facilitation agreement can be a good start for an eventual multilateral investment agreement, but it would have limited value if it fails to address key elements, such as issue of investment dispute settlement in the next stage. On the other hand, the idea of establishing a multilateral investment court would raise the question of how we can develop such a dispute settlement system without an agreement in the first place.

I hope that the UNCTAD will bring coordination and coherence to these ideas and efforts to create a more balanced, stable and predictable international investment regime, thereby contributing to stronger, more sustainable and more inclusive growth of the world economy in the years to come. In carrying out the IIA reform projects, we must carefully consider that investment is a highly sensitive topic in domestic and international economic policy, one that has a far-reaching impact, probably even deeper than trade.

I would like to conclude my remarks by renewing my sincere appreciation for the efforts of the UNCTAD for this very important international economic agenda. Thank you for your attention.
/END/