Helpdesk Research Report: The influence of international commercial and investment law and procedure on foreign investment and economic development/ growth

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Query: Summarise the evidence on the influence of international commercial and investment law and procedure (with a particular focus on dispute resolution) on foreign investment and economic development/ growth.

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Contents

1. Overview

This helpdesk research report looks at the evidence on the influence of international commercial and investment law and procedure on foreign investment and economic growth/development. It does not explore the relationship between foreign investment and economic growth and/or development. Neither does it provide comprehensive details of the relevant international commercial and investment law and procedure; rather it aims to summarise the evidence available on the influence of the various components of the law and procedure on a country's foreign investment and economic growth/development. It tends to concentrate on international investment law and procedure over commercial aspects, because a larger body of evidence and analytical work was found for investment law.

The report highlights the following key findings.

On international investment treaties:

- There is a large emerging empirical literature looking at the impact of international bilateral investment treaties (BITs) on foreign direct investment (FDI), but findings are mixed on the relationship between BITs and FDI. The evidence points to investment treaties being part of a wider set of forces fostering FDI.
- Concerns on the influence of international investment treaties on sustainable development include:
    - Whether investment treaties are largely a vehicle for the protection of investors without due consideration to the development concerns of developing countries.
    - The lack of an interconnection between international investment policies and human rights, and other policy areas such as trade, finance, competition or environmental.

On international investment and commercial arbitration:

- The limited available empirical and anecdotal evidence on the effect of investment arbitration on FDI is mixed; no systematic evidence was found on the effect of commercial arbitration.
- It has not been possible to find much analysis of the impact on FDI and economic growth of the various dispute resolution regimes (e.g. the International Centre for Settlement of Investor Disputes), domestic legislation (e.g. the United Nations Commission on International Trade Law – UNCITRAL) or enforcement (e.g. the New York Convention).
- There are a range of international dispute resolution models, but there is no agreed standard of good practice.
- There is an active and inconclusive debate on the effect the rise in investor-state arbitration on domestic legal institutions and rule of law.
- States may face disputes when their international commitments on investment protection come into tension with their international (and national) obligations to protect human rights.
- There are concerns that the investor-state arbitration system has some serious shortcomings, including unpredictable and sometimes staggeringly large compensatory damage claims awarded against states (often developing countries).There have been calls for increased transparency.

On overall capacity issues and capacity-building initiatives:

- Contracts and investment treaties are complex. Evidence suggests governments do not carry out cost-benefit analyses ex ante and do not appreciate fully the risks of arbitration. In particular there are concerns over large-scale private-public partnership contracts for the development and exploitation of natural resources.
- A number of international organisations are involved in initiatives to build developing countries' capacity on international investment and commercial legal capacity, including the International Finance Corporation, the United Nations Commission on International Trade Law (UNCITRAL), the African Development Bank, the Pan-African Lawyers Union and the International Institute for Sustainable Development.

The report looks first at international investment treaties (their influence on FDI, relationship with sustainable development); then at international arbitration (influence on FDI, relationship with sustainable development, influence on domestic institutions, other relevant concerns); and finishes by considering the evidence on overarching capacity issues and capacity building initiatives.[1]

2. International investment treaties

2.1 Influence on foreign investment

There is a large emerging empirical literature looking at the impact of international bilateral investment treaties (BITs) on foreign direct investment (FDI), with a number of quantitative studies using various econometric methods.[2] Findings are mixed. Recent reviewers of the evidence have concluded that the relationship between BITs and FDI is unclear (Bonnitcha 2011) or a stalemate (Bernasconi-Osterwalder et al 2012). Some others are more positive, finding that generally BITs do stimulate the inflow of FDI (Colen and Guariso 2012). High-level officials operating in this field are left with a high-level of disagreement and uncertainty as to whether investment treaties are serving development needs (OECDa 2012).

Some of the evidence finds differential effects depending on various factors. For example, the **level of development of the countries** (and the quality of their legal and institutional investment framework) matters. Peinhardt and Allee (2012) find that countries already unattractive to foreign investors are unlikely to become more so as a result of a typical investment treaty. The **scope and content of the agreements may also matter**. Until recently, quantitative assessments of international investment agreements have tended to treat them as interchangeable (Peinhardt and Allee 2012) or 'a black box' (Berger et al 2012, 1), when in practice they can be very different. Studies on the effect of the scope and the content of the agreement on FDI have raised mixed findings. Berger et al (2012) find strong evidence (for 28 home and 83 developing host countries during 1978-2004) that liberal admission rules promote FDI. However, they find little effect from market access provisions. There are also studies on the effect on FDI of treaties' dispute settlement provisions (covered in the next section).

Colen and Guariso (2012) look at **what type of FDI is attracted by BITs** and find from a sample of 12 countries in central and eastern Europe and the former Soviet Union that BITs have a larger impact on FDI in the mining sector, where investments often have limited linkages to the local economy, and are likely to repatriate the majority of profits.

However, while there is some anecdotal evidence of investors valuing BITs (but with most of this evidence from the 1990s) (Franck 2007), **recent survey evidence suggests that businesses place little if any weight on the presence of an investment treaty** (much less what specific protections it

[1] This report has attempted to look for the influence on FDI of the location of arbitral centres and off-shore financial centres, but has not been able to cover this adequately in the time allowed. A brief search did not reveal much relevant material. Some reports note (for example, Fry (2011) that arbitral institutions play a role in improving the business climate of their location country; Sperry (2010) finds several reasons why it is desirable to host international arbitrations from economic incentives to employees and legal profession (indirectly to hospitality industry; and the potential to build prestige in the arbitration and transnational business community); and some articles present case studies (e.g. on Dubai http://tinyurl.com/avh5c9n), but apparently there is no systematic evidence or detailed case studies.

[2] The research has not been able to find a similar body of work on the impact of international commercial contracts on FDI.

provides) when making their investment decisions (Economic Intelligence Unit 2007 survey cited in Berlasconi et al 2012; Yackee 2011; Skovgaard Poulsen 2010).

Most analysts conclude that the **evidence points to investment treaties being part of a wider set of forces fostering FDI** (Franck 2007). Bernasconi-Osterwalder et al (2012) sum up the diverse set of factors that affect the amount, direction and nature of foreign investment as including decisions on access to broader markets, more skilled and/or less expensive labour, or new or different technology; availability of reliable infrastructure, access to services to help facilitate business activities, stability of the economic and political situation, and offers of financial or fiscal incentives.

This multiplicity of drivers for FDI creates **methodological difficulties in examining the relationship between investment treaties and FDI**. While most studies show some degree of correlation between FDI and BITs it is hard to distinguish the causal effect of investment treaties from other factors (Bernasconi-Osterwalder et al 2012) and to control for reverse causality effects (Bonnitcha 2011). Other methodological issues include finding data on financial flows and determining which counts as FDI, whether to cover all BITs or only those with certain characteristics.

2.2 Influence on sustainable development

There is a **body of work that examines the relationship between treaties and sustainable development**, which influences the effect that the treaties have on FDI and economic growth/development. There are also a number of initiatives and recommendations for improving the influence of investment treaties on sustainable development.

Issues

A number of international research and advocacy organisations are concerned that investment treaties, as they have been drafted and interpreted, **focus on a one-sided set of issues – helping investors** minimise the risk of loss caused by 'wrongful' government conduct (Bernasconi-Osterwalder et al 2012) through a series of rights for inward capital (protection against expropriation, guarantees of non-discrimination and freedom to transfer funds out of a host state), but lacking any counter-balancing investor responsibilities (Amnesty International 2006). Mann et al (2006) explain this focus stems from the political context of the 1950s and 1960s (when the first investment agreements were developed) when there were fears of the spread of communism and the impacts of decolonisation on business interests in newly independent developing countries. UNCTAD (2012a, 37) warns that investment treaties risk being 'largely a vehicle for the protection of interests of investors and home countries without giving due consideration to the development concerns of developing countries'.

Bonnitcha and Aisbett (2012) undertake an **economic analysis of the common substantive protections** contained in existing IITs (guarantees of fair and equitable treatment (FET), national treatment and compensation for expropriation) and find that 'the economic case for conferring substantive protection is weaker than is generally assumed; broader substantive protections are not necessarily preferable from an efficiency perspective and, in certain circumstances, broader protections may be profoundly inefficient' (ibid. 703). They conclude that:

- There are plausible justifications for the direct expropriation provisions of investment treaties, at least in treaties between some countries where the risk of state enrichment at the expense of the investor is not subject to other constraints.

- Indirect expropriation provisions may also be justified, provided that they are drafted in a way that clarifies that indirect expropriation is subject to a ‘police powers’ exception and that this exception tracks the distinction between efficient and inefficient government conduct.
- There are sound economic justifications for post-establishment national treatment provisions as these ensure competitive equality between investors, which is efficiency-improving; and,
- The FET provisions of investment treaties raise problems of over-protection of foreign investors relative to other investors and are likely to induce moral hazard on the part of foreign investors.

While noting that the obligations of investment treaties vary from agreement to agreement, the International Institute for Sustainable Development (IISD) has been able to identify in recent treaties the **common obligations by host governments to investors most relevant for sustainable development.** IISD analyses these obligations in detail, their relationship to sustainable development and makes recommendations on how to improve them. **Examples of recent practice** that they mention include the following.

- States are increasingly taking **precautionary measures on FET**: one way is to avoid including the standard in their investment treaties e.g. the investment chapter of the 2005 trade agreement between Singapore and India.
- An increasing number of states are incorporating additional languages in their investment treaties **clarifying the scope of indirect expropriation**: the approach that began in Canada and the United States has now spread over Asia (2009 ASEAN Comprehensive Investment Agreement), Africa (the 2007 Investment Agreement for the COMESA Common Investment Area) and even some European countries, such as Austria (2008 Austrian Model Investment Treaty and recent treaties based thereon).
- Some countries have decided to entirely **exclude the MFN obligations** from their treaties: e.g. investment chapters in the India–Korea Comprehensive Economic Partnership Agreement (CEPA) and India–Singapore CEPA.
  (Bernasconi-Osterwalder et al 2012)

Another issue is the **lack of interconnection between international investment policies and other policy areas such as trade, finance, competition or environmental** (e.g. climate change) policies (UNCTAD 2012a, 8). UNCTAD (2012b, 86) suggests that the current shift from bilateral to broader regional treaty making (which in most cases are at the same time Free Trade Agreements) will respond better to the needs of today’s economic realities, where international trade and investment are increasingly interconnected. However, if new treaties do not entail the phase-out of old ones, regionalisation may make the investment regime even more complex and prone to overlaps and inconsistencies (Ibid.) The UN Human Rights Commission also calls for **including the promotion and protection of human rights** among the objectives of investment agreements, and promoting human rights in the context of privatisation investment agreements (UNHCR 2003).

Recommendations

In October 2012, UNCTAD published an **investment policy framework for sustainable development** in response to the changing investment policy environment (UNCTAD 2012a). This expert guidance, which national policymakers are free to adapt and adopt as appropriate, covers all aspects of national and international investment policymaking and advocates a balanced approach between the pursuit of purely economic growth objectives by means of investment liberalisation and promotion, on the one hand, and the need to protect people and the environment, on the other hand.

Three specific recommendations by UNCTAD for negotiators are to:

- consider including obligations for **investors to comply with national laws of the host country** (UNCTAD 2012, 7);
- add **special and differential treatment (SDT) elements** to address the special needs and concerns of developing countries and/or least developed countries (as found in over 145 provisions of WTO agreements but largely absent to date for investment treaties, with the exception of the COMESA Investment Agreement) (Ibid. 42); and
- **incorporate responsibility initiatives, standards and guidelines** for the behaviour of international investors, which increasingly shape the investment policy landscape (Ibid., 7).

While these could add a sustainable development dimension to the international investment policy landscape, there are concerns among developing countries that they may also act as barriers to investment and trade.

IISD have also developed a new model agreement that aims to refocus the purpose and values for international investment agreements, taking the linkages between investment and the imperative of sustainable development as its starting point.[3]

3. International arbitration

3.1 Influence on foreign investment

General

Investor-state dispute settlement (ISDS) through international arbitration has become a common feature of international investment treaties, included in over 90 per cent of treaties covered by an OECD survey of 1,600 treaties (OECD 2012a).[4] A 2006 study on corporate attitudes towards such topics as international arbitration and cross-border litigation revealed an overwhelming preference for international arbitration over litigation in national courts (Stromberg 2007). A number of studies set out the perceived advantages to arbitration: it has been seen as a neutral, flexible, speedy and economic, confidential, specialised, predictable alternative that gives commercial parties and foreign investors considerable autonomy to tailor the system to their dispute. It also has been seen as enabling them to avoid the uncertainty of dealing with unfamiliar domestic courts which risk being slow, ineffective, potentially biased in principle or practice against foreign investors (Stromberg 2007; Fry 2011).

Fry (2011, 395) concludes that **'the significant growth and success of international arbitration as a means of resolving commercial international arbitration practices demonstrates that international arbitration promotes economic growth as much as it is a product of economic growth and globalisation'**. However, there are a lack of studies that systematically explore the relationship between investment and commercial arbitration and FDI and economic growth.

[3] http://www.iisd.org/investment/dispute/arbitration_rules.aspx

[4] Again this section mainly focuses on investment issues as most evidence found has been on this topic. However ISDS is modelled on commercial arbitration, and findings on and relevant to commercial arbitration law and procedure have been included where it has been possible to obtain evidence.

There are **studies that look at the impact on FDI of 1) dispute settlement provisions in investment treaties and 2) the reputational effects of investment treaty disputes.** Berger et al (2012) find little effect of the strength of dispute settlement or market access provisions. They posit that this may be explained by the low profile and rather technical nature of BIT negotiations. In contrast Peinhardt and Allee (2012) find that investment agreements appear to have differing effects on FDI according to their varying levels of investor protection. Specifically they find that treaties that omit any reference to local dispute resolution options appear more likely to increase FDI between the signatories. Allee and Peinhardt (2008) look at the effect of arbitration disputes on a country's FDI and find that, while BITs can increase FDI into countries that sign them, these effects only persists if those countries are not subsequently challenged before ICSID. However, governments suffer notable losses of FDI when they are taken before ICSID, and suffer even greater losses when they lose an ICSID dispute.

Franck (2007, 373) points out that 'as there is mixed empirical and anecdotal evidence about the impact investment treaties have on FDI, it is not surprising that the evidence with regard to the specific effect of investment treaty arbitration is also unclear'. As with investment treaties, **it is difficult to isolate the causation effect of the individual developments in arbitration** conventions, rules, procedure and practice from each other and from the other drivers of FDI and economic growth. In addition the lack of transparency means that most arbitration clauses are included in private contracts that are not publicly disclosed, and therefore, are not available for academic scrutiny.

Influence of regimes, domestic legislation and enforcement

It has not been possible to find much analysis of the **impact the various dispute resolution regimes** (e.g. the International Center for the Settlement of Investor Disputes - ICSID), domestic legislation (e.g. UNCITRAL) or enforcement (e.g. the 1958 New York Convention) **have on FDI and economic growth**. Most studies do not disaggregate their focus down to the impact of the individual component of the law and procedure.

- Some surveys look at whether the stability and predictability of the legal framework is an important factor in investors' decisions (e.g. surveys by UNCTAD, World Bank and OECD), but do not disaggregate between the quality of the domestic legal framework and access to international arbitration as an alternative legal framework, nor do they look at the impact of particular components of the arbitration system.
- Some studies analyse the key issues in international arbitration, and in the course of this analysis investigate the difference between arbitration regimes and rules. However, they do not directly investigate the impact of these on FDI. For example, the OECD survey found that while slightly over 56 per cent of the bilateral investment treaties in the OECD statistical survey and rising give investors a choice of arbitral fora, the benefits and costs of allowing investor forum shopping appear to be rarely addressed (Ibid. 53).
- Other studies investigate the benefits of, for example, the UNCITRAL model law (e.g. finding that it provides a single comprehensive law which reflects international consensus, which makes it more transparent and accessible for foreign investors, thus promoting investment (Fry 2011, 393) but do not provide systematic investigations into the relationship between UNCITRAL model law and FDI. It was not possible to find a study comparing the FDI of countries that have used the UNCITRAL model law compared with those that have not.

One exception is the study by Berkowitz et al (2005) that looks at the impact of the New York Convention (on reciprocal enforcement and recognition of arbitral awards on a country's trading patterns). They find that ratifying the Convention has a measurable impact on country's trading patterns and affects the perception of a country's institutional quality independent of tangible legal reforms.

- Countries that ratified now export more complex goods even in the absence of high marks on domestic institutional quality.
- Ratification triggers a process of institutionalisation.
- Ratifying is a more credible signal than ratifying a unilateral declaration (as reported in Fry 2011).

However, Fry (2011) underlines that credibility requires more than ratification; tangible domestic reforms and changes in attitude are also required.

The OECD 2012 survey of ISDS provisions finds that there are a range of **international dispute resolution institutional models and no agreed standard of good practice** (OECD 2012a). Various institutional designs have emerged, reflecting the specificities of the related subject matters, political considerations and historical circumstances. The report concludes that while 'experience gained with existing dispute resolution mechanisms may inform the design of other mechanisms, the direct transfer of components may not lead to optimal outcomes' (Ibid.10). It advises that in the absence of a dominant model for international dispute resolution, systems of international adjudication need to be evaluated according to how well they meet the needs of the societies, parties and investors on behalf of which they were created, taking into consideration principles of efficiency and effectiveness, fairness and accountability. (Ibid. 9-10)

3.2 Influence on domestic institutions

The OECD (2012a) public consultation on investor-state dispute notes that there is **an active debate on the role of external actors and incentives – including those created by ISDS – in improving domestic legal institutions and on the relationship between domestic legal systems and economic and social development**. It sums up the legal literature on this topic as saying that while 'there appears to be an increasingly firm empirically grounded consensus that [legal] institutions are an important determinant of economic development…there is…less understanding of what roles, if any, that external forces can play in improving these systems' (Ibid. 13).

Some studies agree that the availability of ISDS may change the political dynamic of reform of domestic dispute resolution and policymaking institutions. This in turn can potentially lower incentives for both host countries and international investors (who are often important political actors in host countries) to work to improve domestic dispute resolution and regulatory institutions (Ibid. 12). For example Ginsburg (2005) undertakes a series of bivariate regressions and finds that, under certain circumstances, the presence of international alternatives might undermine the quality of the local legal system. He explains that this is because powerful players can exit local jurisdictions with poor situations, leaving developing countries in a trap of low quality institutions, wherein no political coalition can form to support institutional improvement.

Others surveying the literature find that while these concerns should be considered and evaluated empirically, it is not clear that investment treaty arbitration adversely affects the rule of law and/or adversely affects the incentive to invest (Franck 2007). The OECD (2012a) points out that **ISDS may**

provide strong incentives to improve domestic institutions if the threat of having to pay compensation for denial of justice creates incentives for host States to align domestic judicial practices with international norms. Kee (2013) argues that international commercial arbitration can play a leadership role in developing best practice domestic arbitration. The IFC Investing Across Borders team notes that a good arbitration framework (laws and institutions) is thought, in addition to impacting directly on economic growth, to contribute indirectly to domestic rule of law through: the accessibility of laws and institutions; the training provided; the importance of ethics; the necessity of a judicial support to the arbitration process, both during arbitration proceedings and when it comes to the recognition and enforcement of arbitral awards (Pouget 2012). Franck (Ibid.) also highlights the symbiotic relationship between treaty arbitration and court litigation in promoting the rule of law.

3.3 Influence on sustainable development

Amnesty International (2006, 21-22) highlights that states may **face disputes when their international commitments on investment protection come into tension with their international (and national) obligations to protect human rights**, such as over the privatisation of drinking water concessions in developing countries. Amnesty International (Ibid.) is concerned that while the law governing investment treaty arbitrations will include ‘applicable rules of international law’, opening the way for tribunals to consider a host state’s international human rights obligations, it is not clear that tribunals will fairly weigh these competing international legal obligations of states, or that they are equipped to undertake the sensitive balancing of investor protections and human rights (Ibid. 22). Amnesty International calls for increased transparency of the arbitration claims and for human rights professionals to familiarise themselves with the features of the emerging international regime on foreign investment.

Kee (2013) highlights that **international commercial arbitration law does not consider poverty**, even though this private legal system manages financial transactions that often exceed state budgets and that have indirect, but often severe, impacts on individuals. He finds the main problem is the lack of an obvious champion of the poverty cause within the system. The parties, often corporations, are guided by financial considerations; the arbitrators are guided by the parties’ arbitration agreement. Notwithstanding this barrier, he floats the possibility of using two channels for incorporating consideration of poverty alleviation into the international commercial arbitration system: 1) the arbitrators’ use of a broad notion of ‘trade usages’ when interpreting the parties’ agreement; and 2) local courts’ use of the ‘public policy’ exception in determining whether an award may be enforced.

3.4 Other concerns

There are also concerns that while some of the original advantages of arbitration remain valid, the **ISDS system has more recently displayed serious shortcomings**. While the impact of these trends on FDI and economic growth has not been systematically studied, intuitively there may be a relationship.

UNCTAD lists these concerns as including: inconsistent and unintended interpretations of clauses; unanticipated uses of the system by investors; challenges against policy measures taken in the public interest; costly and lengthy procedures; unpredictability of arbitration award; and limited or no transparency undermining its legitimacy (UNCTAD 2012b). IISD (Berlonsconi et al 2012) also highlights the problems with 1) investment treaties that typically do not require the exhaustion of local remedies, and allow investors to proceed directly with international arbitration; 2) the (sometimes staggeringly) large compensatory damage awards and the arguably more intrusive injunctive relief (that appears to be on the rise as investors seek new ways to use investment treaties to their advantage); and 3) concerns as to the independence and impartiality of the system, and whether the current approach leads to a systemic bias in favour of investor rights over competing public interests. They note that while there are a number of dimensions to this last critique, the most obvious one is that professional arbitrators are offered perverse incentives to encourage investor claims.

UNCTAD (2012a) advises that while some of these ISDS concerns can be addressed effectively only through a broader approach requiring international collaboration, **negotiators can go some way to improving the institutional and procedural aspects of ISDS** and to limiting liability and the risk of becoming embroiled in costly procedures. They can do so by qualifying the scope of consent given to ISDS, promoting the use of alternative dispute resolution (ADR) methods, increasing transparency of procedures, encouraging arbitral tribunals to take into account standards of investor behaviour when settling investor-state disputes, limiting resort to ISDS and increasing the role of domestic judicial systems, providing for the possibility of counterclaims by States, or even refraining from offering ISDS.

There are calls for **increased public involvement in and transparency of** this largely confidential and private dispute resolution mechanism. In particular UNCISD lack of transparency is contrasted with ICSID, by far the most commonly used arbitration facility for investor-state arbitrations, which is the most visible (Bernasconi-Osterwalder et al 2012, 40). IISD reports that states have begun to take more direct control over the matter by inserting provisions on transparency directly in their treaties, using various approaches to incorporate transparency into the various stages of the dispute settlement process (e.g. in individual agreements by Canada, the United States, Chile, Singapore, Australia and New Zealand; and regional arrangements such as the North American Free Trade Agreement and the COMESA investment agreement) (Bernasconi-Osterwalder and Johnson 2011, 2-3).

4. Capacity issues and capacity building

4.1 Capacity issues

Arbitration of overseas investment disputes is one of the fastest growing areas of international dispute resolution and the legal principles that have developed in this area are subject to intense debate, and are still in a state of flux (McLachlan et al 2008). Investment provisions in new agreements tend to be increasingly sophisticated and complex in content. At the same time evidence suggests that governments do not tend to test carefully the anticipated benefits of the treaties, do not appreciate fully the risks of investor-state arbitration and do not carry out sophisticated cost-benefit analyses prior to committing themselves to the investment treaty system (Van Harten 2010).

Rey (no date) highlights that the **negotiation of international investment agreements includes interrelated and complicated policy issues that touch upon a whole range of domestic concerns**; this may render economic policies of host countries more complicated and challenges the formulation of coherent investment policy. She also notes that there are concerns of the technical capability of countries to handle investment disputes that they face, the high costs involved in conducting procedures and the arbitration awards can involve huge sums.

In particular there are **concerns over the large-scale public-private partnership contracts for the development and exploitation of natural resources**, such as minerals, oil and gas, and infrastructure projects (Kagame 2011). The African Development Bank's 2007 flagship report focused on natural resources and highlighted the need for sound principles to guide the design of efficient contracts in Africa's natural resource sector.

4.2 Capacity building

A number of international organisations are involved in capacity building around international investment and commercial law and procedure. Here are some examples:

- The IFC tracks a set of indictors to measure the investment climate of a country, thereby encouraging reform and building capacity; arbitrating and mediating commercial disputes is one of the five topics.[5]
- IISD works to build capacity and knowledge amongst policymakers, negotiators, civil society groups and parliamentarians through advisory services, training courses for developing countries, best practice advisory bulletins, and providing its own model agreement on investment for sustainable development and negotiators' handbook.
- UNCITRAL provides a forum for delegations from various legal systems to interact and exchange ideas, thereby promoting better understanding of how to interact in international trade (UNCITRAL 2012, 50). It reports playing a unique role in assisting post-conflict societies with early technical assistance and providing a neutral, apolitical forum for the discussion of technical legal issues, enabling parties in cross-border conflicts to restart dialogue and facilitate regional economic integration (UNCITRAL 2011).
- The UNCITRAL Commission is considering various suggestions to strengthen the rule of law in international commercial relations including a) increased research by academic institutions on issues of commercial law and the impact of commercial law reforms on economic development and the rule of law; b) the creation of international tribunals with competence to give advisory opinions on international conventions regulating commercial law issues; c) improving the capacity of local judiciary to handle commercial law disputes; d) creating or strengthening commercial law reform units and relevant expertise in ministries of justice, legislatures or legislative reform commissions, as appropriate.
- The African Development Bank and the Pan-African Lawyers Union launched the African Legal Support Facility in 2011 a capacity building project in international commercial law, to address the importance of leveraging the rule of law to serve economic development, better governance and improved business climate on the continent. A series of regional capacity-building seminars have been planned.[6]

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6. Additional Information

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