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ISDS Reform and Climate Change

Ideas for the Future from the Stockholm Treaty Lab

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SUMMARY

What if international investment law reform could be used as a vehicle for change and climate change action? Is it possible? The participants in the Stockholm Treaty Lab competition certainly thinks so. The Stockholm Treaty Lab rests on the idea that investment law can be used to enhance foreign investment in green and sustainable technologies and services.

- **Climate change calls for international investments**

Most experts agree that large scale foreign direct investment constitutes a key component for climate change efforts. But the clock is ticking. Large investments are needed ahead in areas like green aviation, renewable energy, and carbon capture and storage, but investors hesitate because of the high risks involved.

This was the background to the Stockholm Treaty Lab - probably the first crowdsourcing initiative ever launched to design international law. Members of the 22 teams that submitted model treaties represented a very diverse expertise; e.g. ministerial responsibilities for investment negotiations, international law, design of wind turbines, life-cycle assessment of energy systems, hydrogen and carbon capture and storage, algorithmic trading and block chain applications.

- **Procedure vs. Substance**

The agenda of Working Group III of the United Nations Commission of International Trade Law (UNCITRAL) on Investor-State Dispute Settlement Reform

has an emphasis on procedure. In the work leading up to the 38th session recently concluded in Vienna some delegations also underscored the importance of sustainability.

The Government of South Africa: “Any reform about the international investment regime needs to begin with the very purpose of the regime” and “IIAs need to recognize [...] the need to promote sustainable development and FDI flows that support this objective.”¹

The Government of Morocco: “Morocco believes that ISDS reform is likely to lead to responsible international investment that will promote achievement of the Sustainable Development Goals.”²

- **Innovations**

Stockholm Treaty Lab teams have ideas which are all relevant for ISDS Reform from a sustainability and climate change perspective.

One of the commended teams, The Creative Disrupters, underscores that international investment agreements should not be blind to characteristics of the investments they seek to promote and protect

The second commended team, Team Innovate, uses the Mauritius Convention model as an inspiration for the greatest possible impact for their proposed Green Investment Protocol for Climate Change Mitigation and Adaptation.

Find out more at <http://stockholmtreatylab.org/>

“Aligning the international investment regime with the need for climate action is paramount in making the shift to a low carbon economy.”³

- Lars Ronnås, Swedish Ambassador for Climate Change

¹ A/CN.9/WG.III/WP.176, par. 14.

² A/CN.9/WG.III/WP.161, par. 4.

³ Speech in Stockholm, 16 May 2019. <https://sccinstitute.com/about-the-scc/news/2019/innovating-international-law-for-the-benefits-of-climate/>