REGIONAL TRAINING SESSION
ON INTERNATIONAL INVESTMENT AGREEMENTS
AND INVESTMENT DISPUTES
For countries from Eastern and Southern Europe
and Central Asia

Introduced by a high-level segment on
FDI, TNCs and development:
implications for economies in transition

Organized by
the Secretariat of the United Nations Conference on Trade and Development (UNCTAD)

with the support of the Ministry of Foreign Affairs, Belarus,
the United Nations Office in Belarus,
the United Nations Development Programme, Belarus and
the Belarusian Chamber of Commerce and Industry

Financed by the UNCTAD multi-donor trust fund on IIAs
with the special contribution of the State Secretariat for Economic Affairs, Switzerland

PROGRAMME

Minsk, Belarus
16-25 July 2007
High-level segment:
FDI, TNCs and development: implications for economies in transition

Venue: Belarusian Chamber of Commerce and Industry

09:00 Opening session
H.E. Mr. Sergei Martynov, Minister of Foreign Affairs, Belarus
Dr. Supachai Panitchpakdi, Secretary-General of the United Nations Conference on Trade and Development (UNCTAD)
Ms. Cihan Sultanoglu, UN Resident Coordinator, UNDP Resident Representative, Belarus
Mr. Uladimir Bobrov, Chairman, Belarusian Chamber of Commerce and Industry

10:00 Coffee break

10:30 FDI and development: major outstanding issues
Mr. James Zhan, Head, Policies and Capacity-building Branch, Division on Investment, Technology and Enterprise Development, UNCTAD

11:00 Discussion

11:15 Recent developments in foreign direct investment (FDI)
Mr. Jörg Weber, Officer-in-charge, International Arrangements Section, DITE, UNCTAD

12:00 Discussion

12:15 Recent developments in FDI policies
Mr. Jörg Weber, Officer-in-charge, International Arrangements Section, DITE, UNCTAD

12:45 Discussion

13:00 Lunch

14:30 Recent trends and developments in international investment rulemaking
Ms. Anna Joubin-Bret, Senior Legal Advisor, & Marie-Estelle Rey, Legal Expert, International Arrangements Section, DITE, UNCTAD

15:15 Discussion

15:30 Workshop on the determinants of FDI
Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

16:15 Coffee break

16:30 Round table: Implications of FDI trends, TNC strategies and investment policies and rulemaking for economies in transition – the experience of Belarus
Mr. Popkov Andrei, Deputy Chief of Legal Department, Ministry of Foreign Affairs
Ms. Oksana Krupa, Consultant, Ministry of Economy
Mr. Vladimir Sobolev, Counsellor, Belarusian Chamber of Commerce and Industry
Ms. Alena Petrushkevich, Associate Professor, Sub-Faculty for World Economy, Belarus State Economic University
Ms. Inna Pashkevich, consultant, Foreign Investor Advisory Council

18:00 End of the segment
Training session
on international investment agreements and investment disputes

Venue: Hotel Belarus

09:00  Introduction to the training session
       Presentation of participants

09:30  Module I: Overview of key substantive issues relevant to the analysis and the negotiation of IIAs and the impact of recent dispute settlement cases

         Moderator: Mr. Jörg Weber, Officer-in-charge, IAS, DITE, UNCTAD

         Definition of investment and investor
         Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

10:15  Discussion

10:30  Practical session:
       Analysis and drafting of provisions on definition

11:00  Coffee break

11:15  Admission and establishment of investment
       Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

12:00  Discussion

12:15  Practical session:
       Analysis and drafting of provisions on admission
       Negotiating positive and negative lists

13:00  Lunch

14:30  Treatment of investment
       Moderator: Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

       National treatment
       Mr. David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland

15:15  Most-favoured-nation treatment
       Mr. Stanimir A. Alexandrov, Sidley Austin LLP, Washington, United States

16:00  Coffee break

16:15  Practical session:
       Analysis and drafting of provisions on national treatment
       Analysis of jurisprudence: Methanex v. US case, SD Myers v. Canada, Maffeziini v. Spain, Metalclad v. Mexico
       Impact of wording of the MFN clause on the interpretation given by arbitral tribunals

18:00  End of working day
Wednesday 18 July 2007

09:00 Protection of investments
Moderator: Mr. Thomas Westcott, Legal Advisor, Australia

Minimum standard of treatment, fair and equitable treatment, full protection and security
Mr. David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland
Mr. Stanimir A. Alexandrov, Sidley Austin LLP, Washington, United States

11:00 Discussion

11:15 Coffee break

11:30 Practical session:
Analysis and drafting of provisions on FET and FPS
Discussion on recent jurisprudence

12:30 Lunch

14:00 Expropriation
Moderator: Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

Mr. Stanimir A. Alexandrov, Sidley Austin LLP, Washington, United States
Dr. Rudolf Ostrihansky, Assistant Professor, Institute of International Law, Faculty of Law and Administration, University of Warsaw, Partner, Soltysinski Kawecki & Szlezak, Poland

15:30 Discussion

15:45 Coffee break

16:00 Practical session:
Analysis and drafting of provisions on expropriation
Evolution of jurisprudence regarding indirect expropriation and its impact on the right to regulate in the public interest

17:00 Consistency and interactions among IIAs
Ms. Anna Joubin-Bret, Senior Legal Adviser, DITE, UNCTAD

17:45 Discussion

18:00 End of working day
<table>
<thead>
<tr>
<th>Time</th>
<th>Event</th>
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<tbody>
<tr>
<td>09:00</td>
<td>The &quot;umbrella effect&quot; of treaties and the link between contract claims and treaty claims</td>
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<td>Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD</td>
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<tr>
<td>09:45</td>
<td>Discussion</td>
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<td>10:00</td>
<td>Practical session:</td>
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<td>Formulation of umbrella clauses in investment treaties</td>
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<td>Review of the recent jurisprudence: SGS v. Pakistan and SGS v. Philippines</td>
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<td>10:30</td>
<td>Coffee break</td>
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<td>10:45</td>
<td>Performance requirements</td>
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<tr>
<td></td>
<td>Mr. Stanimir A. Alexandrov, Sidley Austin LLP, Washington, United States</td>
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<tr>
<td>11:30</td>
<td>Discussion</td>
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<td>11:45</td>
<td>Transfer of funds</td>
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<td>Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD</td>
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<td>12:30</td>
<td>Discussion</td>
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<td>13:00</td>
<td>Lunch</td>
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<td>14:30</td>
<td>Transparency</td>
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<td>Mr. David Pawlak, Consultant - International Arbitration, Washington D.C. &amp; Warsaw, Poland</td>
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<td>15:00</td>
<td>New issues in IIAs (environment, labour), home country measures</td>
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<td>Ms. Marie-Estelle Rey, Legal Expert, IAS, DITE, UNCTAD</td>
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<td>15:30</td>
<td>Discussion</td>
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<td>15:45</td>
<td>Coffee break</td>
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<td>16:00</td>
<td>The Energy Charter Treaty</td>
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<td>Mr. Alexandre de Gramont, Crowell &amp; Moring LLP, Washington, D.C., United States</td>
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<td>16:30</td>
<td>Discussion</td>
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<td>16:45</td>
<td>Cases under the Energy Charter Treaty</td>
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<td>Mr. Alexandre de Gramont, Crowell &amp; Moring LLP, Washington, D.C., United States</td>
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<td>18:00</td>
<td>End of working day</td>
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09:00  **Module II: Dispute settlement mechanisms**

**Introduction:**

*Approaches to dispute settlement in investment agreements and trends in the region*
Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

09:30  **State-to-State vs. Investor-State Dispute Settlement**
Mr. Thomas Westcott, Legal Advisor, Australia

10:00  **Alternative dispute resolution**
Ms. Marie-Estelle Rey, Legal Expert, IAS, DITE, UNCTAD

10:30  Discussion

10:45  Coffee break

11:00  **Recent innovations in dispute settlement: innovations in State practice and in ISDS procedures**
Ms. Anna Joubin-Bret, Senior Legal Advisor, IAS, DITE, UNCTAD

11:45  Discussion

12:00  **Investor-State dispute settlement mechanisms:**

*Settling disputes under the ICSID Convention*
Ms. Aurelia Antonietti, Former Counsel, ICSID, Associate, Schellenberg Wittmer, Switzerland

13:00  Lunch

14:30  **Settling disputes under the ICSID Convention (cont'd)**
Ms. Aurelia Antonietti, Former Counsel, ICSID, Associate, Schellenberg Wittmer, Switzerland

16:00  Discussion

16:30  Coffee break

16:45  **Other arbitration institutions, including the International Court of Arbitration of the International Chamber of Commerce**
Ms. Maria Gritsenko, International Consultant, Crowell & Moring LLP, United Kingdom and United States

17:15  **Ad hoc arbitration: the United Nations Commission on International Trade Law (UNCITRAL) and other arbitration rules**
Mr. David Pawlak, Consultant - International Arbitration, Washington D.C. & Warsaw, Poland

17:45  Discussion

18:00  End of Working Day
09:00  **The arbitral award under the ICSID and under the New York Convention**
- Formal and substantive requirements of an award
- The publication of awards
- Recognition and enforcement of the award
- Towards an appeal mechanism for ICSID award: pros and cons
Ms. Aurelia Antonietti, Former Counsel, ICSID, Associate, Schellenberg Wittmer, Switzerland
Mr. Barton Legum, Counsel, Debevoise & Plimpton, LLP, France

10:00  Coffee break

10:30  **Practical Exercise**
Study of an award

11:30  **Module III: Conducting an arbitration**

**The Art and Science of Managing Investment Treaty Disputes**
Mr. Barton Legum, Counsel, Debevoise & Plimpton, LLP, France

13:00  End of working day
Monday 23 July 2007

09:00  **Module III: Conducting an arbitration (cont'd)**

Mr. Barton Legum, Counsel, Debevoise & Plimpton, LLP, France
Ms. Aurelia Antonietti, Former Counsel, ICSID, Associate, Schellenberg Wittmer, Switzerland

**Initiation of a claim**
Procedure for the initiation of a claim
Amicable settlement: the "cooling-off" period
Mediation/conciliation
Screening of requests before registration

10:30  Coffee break

10:45  **Preparing to defend a case**
Institutional arrangements to defend a case: setting up an in-house team
Internal or inter-agency cooperation for fact-finding
Selecting counsel and arbitrator
Settlement during the arbitration proceedings: discontinuance of proceedings
Dealing with procedural issues: language, schedule of proceedings, hearings, venue, experts, submissions, briefs,…
Working with a counsel
Costs of proceedings: budgeting for fees, expenses, charges of arbitration centres…
Seeking costs: quantification of in-house costs

12:30  Discussion

13:00  Lunch

14:30  **The arbitration procedure**
The arbitral tribunal:
- Establishment and composition of the arbitral tribunal
- Default procedures
- Disclosure on possible conflicts of interest
- Replacement and disqualification of arbitrators

The arbitration procedure:
- The place of proceedings
- The rules of procedure
- The first session
- The written and oral procedure
- Evidence, fact-finding, experts reports
- Interim measures of protection
- Amicus curiae submissions
- Opening to the public
- Consolidation

16:30  Coffee Break

16:45  **Introducing objections**
- Objections on competence
- Objection against frivolous claims
- Ancillary claims
- Introducing a counter-claim

Governing law
Role of national courts in interim injunctive relief and other phases of the procedure

18:00  End of Working Day
**Tuesday 24 July 2007**

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<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>9:00</td>
<td><strong>Module IV: Negotiation of a comprehensive investment arrangement</strong></td>
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<td></td>
<td>Procedural issues relevant to the negotiation of international investment agreements: the experience of negotiations</td>
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<td>Mr. Jukka Nystén, Director, Department for External Economic Relations, Ministry of Foreign Affairs, Finland</td>
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<tr>
<td>09:45</td>
<td>Discussion</td>
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<td>10:00</td>
<td>Coffee break</td>
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<tr>
<td>10:15</td>
<td><strong>Simulation exercise in groups</strong></td>
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<td>Timetable for the simulation exercise: each group will develop its own timetable depending on own dynamics</td>
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<td>Coaches:</td>
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<tr>
<td></td>
<td>Mr. Jukka Nystén, Director, Department for External Economic Relations, Ministry of Foreign Affairs, Finland</td>
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<tr>
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<td>Ms. Marie-Estelle Rey, Legal Expert, IAS, DITE, UNCTAD</td>
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<td>Mr. Thomas Westcott, Legal Advisor, Australia</td>
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<tr>
<td>13:00</td>
<td>Lunch break as part of the practical exercise</td>
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<tr>
<td>14:30</td>
<td>Module IV (cont'd)</td>
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<td>18:00</td>
<td>End of Working Day</td>
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**Wednesday 25 July 2007**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
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<tbody>
<tr>
<td>9:00</td>
<td>Module IV (cont'd)</td>
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<tr>
<td>11:00</td>
<td><strong>Debriefing on the simulation exercise</strong></td>
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<td>Presentations by the groups</td>
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<td>Discussion on the negotiated texts and outcomes</td>
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<td>12:00</td>
<td>Wrap-Session</td>
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<td>12:30</td>
<td>Closing ceremony and distribution of diplomas</td>
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<td>13:30</td>
<td>End of the course</td>
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