



14<sup>th</sup> Annual Forum  
of Developing Country  
Investment Negotiators  
ABUJA, NIGERIA



NIGERIAN  
INVESTMENT  
PROMOTION  
COMMISSION

# The Road to Abuja Newsletter

## Coherence in International Investment Governance: Crafting a holistic approach to investments that work for sustainable development

### United Nations Processes

#### UNCITRAL Working Group III on Investor–State Dispute Settlement Reform (ISDS)

Read our [first “Road to Abuja” newsletter](#) for information about the work of the United Nations Commission on International Trade Law (UNCITRAL) Working Group III (WGIII) and what’s at stake.

#### What’s New?

UNCITRAL WGIII resumed its work in 2022 with an informal session on January 20, 2022, jointly organized with ICSID. It focused on Article 4 of the [third draft code of conduct](#) for investment adjudicators, one of the more sensitive provisions that addresses arbitrators’ double-hatting (see IISD’s analysis on this topic [here](#)). The draft code was then reviewed at the 42nd formal session from February 14 to 28, but consensus was not reached on all provisions. It was therefore requested that a revised version of the draft be resubmitted for consideration at the 43rd session in September 2022, with a view to submitting a draft to the Commission at the 56th session in 2023.

A first review of the draft [standing multilateral mechanism](#) also began at the 42nd session, but only Articles 1 to 7 were considered. It was requested that the Secretariat prepare a revised version of the draft provisions reviewed and agreed to proceed with the review of the remaining provisions at a future session.

The Secretariat has also published two new documents: a draft [pertinent elements of selected permanent international courts and tribunals](#) (for comments by delegations no later than June 30, 2022) and a draft [appellate mechanism](#) (for comments by delegations no later than May 15, 2022). UNCITRAL WGIII will reconvene from September 5 to 16, 2022, at its 43rd formal session.

### The UN Binding Treaty on Business and Human Rights

Read our [first “Road to Abuja” newsletter](#) for information about the UN Binding Treaty on Business and Human Rights and what’s at stake.

### The UN Convention on the Right to Development

Read our [first “Road to Abuja” newsletter](#) for information about the UN Convention on the Right to Development and what’s at stake.

#### What’s New?

From May 16 to 20, 2022, the Intergovernmental Working Group on the Right to Development will have their [23rd session](#), which aims to continue reviewing progress made in the implementation of the text on the right to development. This session will include an interactive dialogue with the Chair of the Expert Mechanism on the right to development as well as the Special Rapporteur to consider the [revised draft convention](#) that was released on April 6, 2022.

## Multilateral Processes

### The Joint Statement Initiative on Investment Facilitation

Read our [first “Road to Abuja” newsletter](#) for information about the Joint Statement Initiative (JSI) on investment facilitation and what’s at stake.

#### What’s New?

On December 10, 2021, WTO members who are signatories to the JSI on investment facilitation adopted a [statement](#) welcoming the progress made in negotiations, “aiming to conclude the text negotiations by the end of 2022.”

In the first two months of 2022, negotiating meetings were held on January 26 and 27 and February 14 and 15. A meeting of the Discussion Group on “scope” took place on February 1. Negotiators have continued discussions on issues such as the agreement’s scope and possible exclusions, definitions of “authorization” and “investor of another Member,” most-favoured nation treatment/non-discrimination, transfers and payments, supplier–development programs, home state obligations, special and differential treatment, and investment facilitation needs assessments.

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Participants held a dedicated session on needs assessment on February 14. The sixth revision of the main negotiating document (the “Easter” Text) was circulated to members, as well a list of “Priority Work Areas” set to be addressed from February to April this year. The next negotiating sessions are scheduled to be held on: May 4–5; June 2–3; June 29–30; and July 20–21.

## The Energy Charter Treaty Modernization and Expansion

Read our [first “Road to Abuja” newsletter](#) for information about the Energy Charter Treaty (ECT) and what’s at stake.

### What’s New?

The contracting parties of the ECT met for their 11th round of negotiations for a possible reform of the treaty in March. The meeting was overshadowed by rising energy prices and the Russian invasion of Ukraine. The Energy Charter Secretariat [reported](#) that several contracting parties, “condemned in the strongest possible terms the unprecedented military aggression of the Russian Federation against the ECT’s Contracting Party Ukraine.” The Ukrainian delegate specifically warned about the consequences of Russia’s invasion for civilian energy infrastructure in Ukraine and energy security throughout Europe in general.

Focusing on the “modernization” itself, the negotiating contracting parties discussed the definition of investment, as well as absolute and relative standards such as direct and indirect expropriation and most-favoured nation treatment. They also considered more controversial issues related to investor–state dispute settlement such as security for costs and valuation techniques applied by arbitral tribunals when calculating damages. Moreover, the definition of “economic activity in the energy sector,” which determines the type of energy investments—including in the fossil fuel sector—that will remain protected under a modernized treaty, appears to remain particularly controversial. With an *ad hoc* Energy Charter Conference [scheduled for June](#), the contracting parties are aiming to conclude negotiations and reach an agreement in principle by then.

## OECD/G20 Inclusive Framework on Global Minimum Tax Reform

Read our [first “Road to Abuja” newsletter](#) for information about the OECD/G20 Inclusive Framework on Global Minimum Tax Reform and why it is important.

### What’s New?

In December, the OECD released [model Global Anti-Base Erosion Rules \(GloBE\) rules](#) for countries to implement a global minimum tax and for companies to adhere to. It subsequently published detailed technical guidance on these model rules, in the form of a [Commentary](#) and [Examples](#). Together, they provide countries of the inclusive framework the necessary guidance to implement the first elements of the global minimum tax, the income inclusion rule, and the

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undertaxed payment rule. They will be followed with multilateral instruments to implement the other elements that require amendments of existing tax treaties.

The [United Kingdom](#), [Switzerland](#), and the [EU](#) are aiming to implement global minimum tax rules as early as 2023 and have begun internal consultations. Other major economies are expected to follow. [Developing countries have less to gain](#) from the direct implementation of global minimum tax rules, but could benefit indirectly from a reduction in tax competition and by gaining space to curtail tax incentives given to foreign investors.

IISD has joined forces with the International Senior Lawyers Project to publish a toolkit in the coming months to guide policy-makers in developing countries as they consider revising domestic tax incentives that could be affected by a global minimum tax. As the new global tax deal is implemented worldwide, we should ensure that multinational firms pay tax first and foremost in the developing countries where they operate, extract, and generate profits.

## The OECD Work Programme on the Future of Investment Treaties

### What Is It?

Following discussions at the Freedom of Investment Roundtable in 2021, the OECD has launched a new Work Programme on the [Future of Investment Treaties](#) to explore how to reshape investment treaties so they better reflect the realities, priorities, and challenges we face today. The Work Programme, which was first [sketched out](#) in a working paper in March 2021, is scheduled to last 2 years and will complement existing international reform efforts at UNCTAD, UNCITRAL, and the WTO.

### What's at Stake?

Investment law and policy can play a significant role in either addressing—or exacerbating—some of the world's greatest challenges, including climate change. The Work Programme consists of two tracks, both aimed at redesigning the investment treaty regime, so they facilitate rather than impede progress toward tackling climate change.

The first track is open for civil society organizations to participate in and will focus on the overarching role of investment treaties in addressing climate change. The second track—which is restricted to participation from national governments—will discuss specific substantive provisions of outdated treaties and possible avenues for reform.

### What's New?

As part of the first track, the OECD launched a [public consultation](#) in early 2022 with a view to “helping government policy-makers respond to the climate crisis in their investment treaty policies.” Government representatives will discuss the submissions received at the 7th annual [OECD Investment Treaty Conference](#) on May 10, 2022. Together with Client Earth and the Centre for International Environmental Law, IISD has made a [submission](#) to the consultation.

### World Investment for Development Alliance

#### What Is It?

The World Investment for Development Alliance (WIDA) is a global platform that aims to bring together stakeholders to identify and address investment challenges and opportunities to foster sustainable development. It was launched in October 2021 at the [seventh World Investment Forum](#) and seeks to facilitate coordination and cooperation between existing actors and initiatives working on investment for development.

#### What's at Stake?

There is currently no well-established mechanism for coordinating global reform efforts on investment policy. WIDA aims to build on existing efforts by providing a global platform for more effective coordination, as well as by identifying and filling in the gaps that are not currently being addressed. It aims to facilitate mutually beneficial partnerships that leverage the expertise, networks, capabilities, experience, and resources of participating organizations to achieve greater impact. IISD is one of the founding members of WIDA.

#### What's New?

Since the official launch in October, the founding members of WIDA have held one meeting and worked together to organize and implement the Alliance's work. Progress will be discussed at the next World Economic Forum in Davos later this year.

## Regional Processes

### The African Continental Free Trade Area Investment Protocol

Read our [first "Road to Abuja" newsletter](#) for information about the African Continental Free Trade Area (AfCFTA) and why it is important.

#### What's New?

Following December 2021, when state parties to the AfCFTA had begun discussion rounds on the zero-draft text, they have since had an additional discussion round on the same topic (to raise any preliminary concerns) and one formal negotiation round. The discussion round held in February enabled countries to better understand the text of the zero draft while the first formal round of negotiations held in March enabled countries to begin formulating their position on the issues. The next formal negotiation is likely to be held in early May, with the aim of finalizing the negotiations by September 2022.