



World Investment Forum 2014: Investing in Sustainable Development

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I. The growing pains of investment treaties and their reform: the October 2014 blog by OECD Secretary-General Angel Gurría

On 13 October 2014, OECD Secretary-General Angel Gurría wrote a blog entitled [The growing pains of investment treaties](#), calling for reform of investment treaties. The Secretary-General surveyed recent developments under investment treaties. He noted that governments can and do expropriate investors or discriminate against them, and that providing investors with recourse against governments is valuable. But he also noted the mounting criticism of investment treaties as they give rise to challenges to the actions of national parliaments and supreme courts, and the growing interest in reform.

The Secretary-General emphasised that international organisations such as the OECD can help governments and others to shape the future of investment treaties. He proposed an agenda for joint action to reform and strengthen the investment treaty system:

- **Resolve investor claims in public**
- **Boost public confidence in investment arbitration**
- **Do not distort competition**
- **Eliminate incentives to create multi-tiered corporate structures**

The Secretary-General emphasised the need for international capital flows to support long-term growth through a better international allocation of saving and investment. But he underlined that the investment treaty system needs to be reformed to ensure that the rights of citizens, governments, enterprises and investors are respected in a mutually beneficial way.

II. Government-led evaluation of investment treaties at the OECD

Since 2011, a broad range of governments interested in investment treaties have been identifying key treaty issues for analysis and evaluation at an OECD-hosted investment Roundtable. Participants include OECD governments, Argentina, Brazil, People's Republic of China, Colombia, Egypt, India, Indonesia, South Africa and many others.¹ At the regular sessions of the Roundtable (known as the Freedom of Investment (FOI) Roundtable), governments regularly select issues from among options proposed by the OECD Secretariat or other governments. Their choices shed light on key areas of government interest in investment treaties.

¹ The following economies are invited to participate in the Roundtable: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, People's Republic of China, Colombia, Costa Rica, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Jordan, Korea, Latvia, Lithuania, Luxembourg, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Romania, Russian Federation, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom, United States and the European Union. Participation typically varies somewhat depending on the issues being discussed.

The Roundtable has addressed both Investor-State dispute settlement (ISDS) and broader investment law issues. Work to date on ISDS has addressed many issues including the costs of ISDS cases and third party financing; remedies for foreign investors under investment treaties and their possible impact on a level playing field for domestic and foreign investors; the enforcement and execution of ISDS awards; the characteristics, selection and regulation of arbitrators in ISDS; and the question of the consistency of decision-making in ISDS. The Roundtable has also conducted a statistical survey of ISDS provisions in 1,660 bilateral investment treaties. The Roundtable has also considered the impact of investment treaties on domestic policy processes.

Other recent analysis of investment law for the Roundtable has focused on shareholder claims under investment treaties (in particular for reflective loss); treaty provisions relating to sustainable development and responsible business conduct; the temporal validity of investment treaties; government input into treaty interpretation; and state-to-state dispute settlement.

A key benefit of the Roundtable is the regular opportunity for governments to present, discuss and ask questions about investment treaty policies. For example, at the most recent Roundtable, a senior Indonesian official described his country's investment treaty policy and a senior EU official discussed EU investment policy, including the roles of the EU institutions and EU member states.

The Roundtable is continuing to deepen and expand its consideration of how well ISDS and investment law are meeting their goals for governments and the societies they represent.

Recent work on investment law at the OECD

Blog by OECD Secretary-General Angel Gurría

[The growing pains of investment treaties](#), OECD Insights (13 October 2014)

FOI Roundtable views on investor-state dispute settlement

OECD, [Government perspectives on investor-state dispute settlement: A progress report](#) (FOI Roundtable Dec. 2012)

Investor-state dispute settlement

David Gaukrodger and Kathryn Gordon, [Investor-state dispute settlement: A scoping paper for the investment policy community](#) (OECD Working Papers on International Investment 2012/3)

Joachim Pohl, Kekeletso Mashigo and Alexis Nohen, [Dispute settlement provisions in international investment agreements: A large sample survey](#) (OECD Working Papers on International Investment (2012/2)

[Summaries of expert reports to FOI Roundtable 16](#) (March 2012): The selection and regulation of arbitrators in investment arbitration (Professor Catherine A. Rogers); The interaction of remedies between national judicial systems and ICSID: an optimization problem (Professor Anne van Aaken); Remedies in Japan's treaties and Japanese law that may be relevant to the protection of investments or investors (Professor Shotaro Hamamoto)

OECD, [Public consultation on investor-state dispute settlement](#) (May-July 2012)

OECD, [Issues for discussion on investor-state dispute settlement](#) (May-July 2012)

Shareholder Claims and Claims for Reflective Loss under Investment Treaties

Professor Eilís Ferran, [Reflective Loss](#) (Presentation to FOI Roundtable, 16 October 2013)

David Gaukrodger, [Investment treaties and shareholder claims for reflective loss: Insights from advanced systems of corporate law](#) (OECD Working Papers on International Investment 2014/2)

David Gaukrodger, [Investment treaties as corporate law: Shareholder claims and issues of consistency](#) (OECD Working Papers on International Investment 2013/3)

Sustainable Development and Responsible Business Conduct

Kathryn Gordon and Joachim Pohl, [Investment Treaty Law, Sustainable Development and Responsible Business Conduct: A Fact Finding Survey](#) (OECD Working Papers on International Investment 2014/1)

Temporal validity of investment treaties

Joachim Pohl, [Temporal validity of international investment agreements: a large sample survey of treaty provisions](#) (OECD Working Papers on International Investment 2013/4)

For OECD work on investment policy more generally, see the [OECD investment website](#).