Ad Hoc Committee - Meeting 10

2 May 2024

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[01:19:09] Good afternoon, Distinguished Delegate, dear colleagues. We now resume our discussion on the same topic. The session is opened. Uh, now to the Distinguished Delegate of Italy, the floor is yours.

[01:19:29] Sorry, Chair. Again, sorry, it was my, uh, cell phone which hit the button. So, sorry, I did not ask for the floor. Thank you. Okay,

[01:19:46] maybe the cell phone is asking for the floor. I have something to say. Okay, no worries at all. Thank you. So, the floor is opened.[01:20:00] [01:21:00]

[01:21:24] So, as you see, no one is asking for the floor.

[01:21:34] Okay, so, uh, I'm going to take the floor just to give a brief about, uh, the morning discussion, uh, which goes around the, we have like almost two points of view. Uh, the first point of view is that the protocols should go simultaneously with the convention. [01:22:00] So, it need be to develop together the convention and the protocols and they go together.

[01:22:06] uh, together all the way. The other, uh, point of view is saying, no, we need to complete the convention. And after the convention, uh, the protocols, uh, start. And I think like everyone has his, like his defense about his, his opinion in this area and, uh, how it should work. Maybe some countries say, see, like there is no direct dependency.

[01:22:34] between the protocols and the convention. So the convention can work and they have some examples from the ozone layer convention, which protocols were simultaneous and also for the weapons, uh, convention in which also protocols were developed simultaneously. Uh, so, and they have their evidence that this is doable and it can't be, and just, uh, [01:23:00] And just we need to, to work because this would be more efficient way and differentiate, differentiate between, uh, the concept of adopting the policy itself and looking at its administrative side, which is from a technical side and getting the technical expertise who can work out the protocols.

[01:23:19] So this is like more administrative that still we, it can be worked out later. The other side believes that In order not to have any conflict between the convention and have, uh, and the protocols. So it's better to finish the convention and then after that to start working on the protocols. Uh, and this is a more efficient way.

[01:23:41] While the other side sees this as like taking a long time and we need to be more efficient in order to be able to, uh, to grab the fruits of, of our work as soon as possible. Countries can't keep waiting for, for a long time in a lengthy process. So this is the, the two points of [01:24:00] view. Uh, while I think UK came with a compromise for these two points of view, like a middle ground.

[01:24:10] Just, I think now we're going to present the compromise that came from the UK on the screen.

[01:24:21] So I think we have just a few minutes to present it on the screen. Let's see.

[01:24:48] So they're going to present it right now, just till it's there. Maybe I'm going to just brief you about it. So UK's proposal [01:25:00] that we can start with the convention with some protocols to be there, some protocols, not all the protocols, then this to be agreed with protocols and it goes. Yes. Here we have it.

[01:25:13] So then it, it goes together with the convention, and at the time the convention is concluded and finished, at that time, either maybe some protocols are ready, if they are ready they will go together with the convention, if not, then they have extended limit up to additional six months. The dates that we have still, still not agreed yet, whether 18 or 24, still we are talking about, a little bit about it.

[01:25:42] So, uh, we, we can talk about it, but again, this is about the approach that, uh, UK proposed that we can go together, but not for everything as one side is, is requesting. So for some of, of the protocols and we have extended limit for the [01:26:00] protocols after the conclusion of the, uh, convention. So I think the compromise that came from the UK, uh, it can be like a way forward to be considered.

[01:26:09] Good. So. This is, uh, the compromise that we have, uh, right now.

[01:26:25] So, uh, okay, I was moving to another topic, but I think you, United Kingdom, uh, asking for the floor, so distinguished delegate of United Kingdom, please. Thank you very much. Um, so it's probably worth me me coming in since, um, we've been, um, I was speaking about this suggestion. So the clarity, the our position is not 18 months, not 24 months, it [01:27:00] where we're not making a pitch on timelines.

[01:27:04] We're not making a pitch on how many protocols, we're not making a pitch on which protocols. What we're suggesting is a hypothesis for the terms of reference for us to work with that we have an approach where we start discussions on some protocols at the same time as starting the negotiation at the convention, but we don't insist on Completing the protocols at the same time as completing the convention so that we can do the work that goes into, uh, preparing the protocols, but we can finalize the convention before we, anyone needs to agree to a finalized protocol.

[01:27:53] That way you potentially get the benefits of being, uh, simultaneous. [01:28:00] While also getting the benefits of being sequential. Of course, I don't think that any member can say that this is definitively what we want to have in the terms of reference at this stage. I think we need to view the whole terms of reference together, uh, but the, the, um, Suggestion would be that the, the Bureau consider When they're drafting, doing the zero draft of the terms of reference, including this as an option for how we resolve this, uh, difference between the two ends of the spectrum between simultaneity, uh, and, um, sequentiality.

[01:28:47] Thank you. I'm also open to questions.[01:29:00]

[01:29:03] Thanks, UK. Also, you're trying to summarize what I said, because yes, I think I mentioned that the dates here just for illustration and means that the duration is still to be agreed. And actually, this is the next topic that maybe you are going to open the floor for it now to hear how everyone is saying is a date.

[01:29:22] So and also there is no names for the protocols because but here we are talking about more the yeah. approach to, to be, uh, adopted and to be considered as a way forward. Uh, so I think, uh, we can now having this, we can start talking about, uh, how everyone sees that maybe it's a theory, the duration of timelines, uh, for, for the convention and estimates from, from a technical points of view for how long is the convention.

[01:29:58] That so we can [01:30:00] get this also points of view it will be useful for the peer while they are drafting that you are. So the floor is open now.

[01:30:21] The floor to the distinguished delegate of France. Merci. Merci Monsieur le Président. Concernant cette proposition de compromis qui a été mise sur la table par le Royaume Uni. Effectivement, si l'idée peut être attractive et peut proposer des pistes de The evolution.[01:31:00]

[01:31:29] Uh, for, uh, the delegates taking the floor. I think now we're talking more about, because we just put this as a way forward. Uh, so again, we're talking more about what's do you believe, what's the reasonable timelines for the convention? So. This is now what we opened for discussion. Now to the Distinguished Delegate of United States.

[01:31:54] My apologies, Mr. Chair. I was just going to echo the comments of France. If [01:32:00] the discussion has moved on, perhaps I will just stop there. Thank you.[01:33:00]

[01:33:11] So the floor now to the Distinguished Delegate of India. Thank you, Chair. We view this proposal favorably and we feel that this is, this takes care of concerns of all around the table. It takes care of the issue of simultaneously developing these protocols and also the other concerns that were expressed.

[01:33:37] So we are generally in agreement with this proposal. Say we just have one, uh, proposal. One question or I mean it's just a thought. It's not that we have any fixed view about this that while we understand that the 18 months and 24 months is something that that may change given the future, but do we want to the fix the difference between that that it [01:34:00] that the completion of protocol date will not be beyond X months from the completion of the convention that that is something that I mean we can think about.

[01:34:12] That's just a thought, but otherwise we are in generally in, in agreement with this, uh, plan of action. Thank you. Thanks India. Again, 18 and 24, it's just examples just to show the timelines. Uh, but maybe we would like to, to hear your estimates for the, for the convention. So it's just, I think even if it's, uh, Yanni can change it to red and the between brackets, because it's just like put an example beside it.

[01:34:39] So everyone understands it's just example. Because if we remove it, no one will understand what this time line about. So, but, uh, yes, it's not agreed yet. I think it's good to hear your point of view on this.

[01:34:58] I guess my question is, [01:35:00] what's your point of view about the reasonable timelines for the convention to be completed? My point is that do we want, do we, do we, would we like to say that the protocol should not be, should be completed? within six months. I mean, or any, uh, this again, six, six months is an example within six months of the, of the completion of the convention so that it is not that the completion of protocols, though they have been, uh, we have begun their negotiations simultaneously, but, but the completion of protocol is not extended beyond a certain time after the completion of the, of the convention.

[01:35:35] That, that's, that's the point I was trying to make. Thanks. Now to the distinguished delegate of Singapore. Thank you, Chair. Uh, we think that the UK's proposal is a reasonable one. Uh, and I think we have to find some middle ground if we are to move forward on this, [01:36:00] uh, item. I, I do see it as a practical way forward.

[01:36:05] Uh, I effectively, as I understand it, uh, it reflects the intent and opens the floor to the negotiating committee to develop the protocols as soon as feasible and practical. So, as, as I understand it, uh, the number of months indicated here are, are just, uh, illustrative. Uh, but the instruction to the negotiating committee would be to develop the work, uh, as soon as feasible and practical.

[01:36:33] Thank you. Thanks, Singapore. Now to, uh, the distinguished delegate of Jamaica. Thank you very much, Chair. Um, uh, we are aligned with, um, India and Singapore on this. We think that this is, um, a workable, um, compromise, uh, or only, um, concern. Um, is in relation to the early [01:37:00] protocols to be named in the 3rd of May session.

[01:37:02] That's which is tomorrow. Uh, are we taking named to all, um, to be interchangeable with agreed? Um, that that's, um, that's just my question. Um, because in my view, they mean they mean two different things, right? Um, so we would like some clarity on that. And, um, and we also support India in that, um, there should be a cutoff time for the, um, the protocols after, um, the 24 months.

[01:37:40] Thanks Jamaica. Now to, uh, that off Russian Federation.[01:38:00]

[01:38:06] There is one circumstance that I would like to draw your attention to. If I understood my colleague from India correctly, if it happens that the work on the Convention or the Protocols continues, the deadline for such an additional period will be set. And I think this is true for all of us. We will always keep in mind this little plus.

[01:38:43] That is why we would like the deadlines for the work on the Convention and the Protocols to be clearly defined. And then, as it [01:39:00] will turn out, the work itself will be carried out.

[01:39:18] Thanks, Russia. Now to the delegate of Portugal. Thank you Chair. I, I, I will try to do both things in one intervention to, to answer to the questions that are now at the table and also to, to, to preliminary react to, uh, the, the proposal there are that is on the screens. In respect of timings, I would say that, for instance, something along 18 months to negotiate and complete the Framework Convention is somehow an ambitious time frame, for sure.

[01:39:57] And at the present moment, uh, not [01:40:00] knowing what will be the, the, the, the extension of items that we have to deal with, I cannot say more than, than this. In relation to protocols, uh, uh, uh, Something like, for instance, 24 months, uh, is, is, is a general idea of a timeframe that we believe that could not deal with the necessary time to negotiate a specific protocol.

[01:40:28] Meaning the protocols will, will have different issues. They have to deal with different problems and they will have to ask for us to achieve the solutions that may be more or less creative and complex. Or at least we will have to have time to make that complexity more simple. And therefore, I don't know if we can reach a timeframe that fits all the protocols that we will have to do.

[01:40:53] And therefore I believe that we it's, it's not easy to compromise ourselves with one single [01:41:00] date and the precise date.

[01:41:08] There's another complexity problem with protocols. For instance, if we decide to advance with an early protocol, in respect of an issue that, uh, would or will have to evolve some sort of consequence over our network of bilateral tax treaties. For instance, I believe that we'll, we'll ask for us experience tell us that it will ask for us a substantive This is a significant time to, to, to analyze our network of, of treaties and to decide which treaties are to be affected by the protocol if they are to be affected by the protocol.

[01:41:44] I mean, there are, there are so many options still in, still open that for us it's, it's, it's, it's difficult to, to, to react to, to, to what the share has asked for us. in respect of saying that when, when, when, when specific date it's good or it's [01:42:00] indicated or it's not in respect of the, the, the, the time that we should have to negotiate and conclude also the, the, the protocols.

[01:42:09] And this part, this section of the discussion is, is also, uh, uh, uh, uh, uh, uh, uh, uh, Raising one question, at least for me, it's if we have a date that will work as a cut off date, what will be the consequences when we reach that date without, uh, an agreement over one protocol or even over the framework convention?

[01:42:33] Is there any consequence to extract from it? If someone could could could clarify, it would be great for us. Thank you.

[01:42:50] Maybe to Portugal question. I think maybe, uh, after we finish the floor, we can ask to comment on it because I think it's the same deadline for like the two hours committee. Now that we have, [01:43:00] what if we exceed August? So what would be the consequences? So as this also be with the resolution. So I think we need to meet the deadline consequences.

[01:43:11] I think so. Maybe we can hear from the secretariat now to the distinguished delegate of Brazil. Chair. Um, I think, um, Brazil is in line with the manifestation of other countries that, that is a compromise. Um, and, um, I'm not sure that I should suggest a timeframe, a number of months, but the 18 months, uh, for the convention seemed feasible.

[01:43:44] Thank you. Uh, what is to, and I'm, and I apologize if I missed too much of the discussions, but, uh, it is not clear for me what is there to be named in third of May session. I mean, if, if we have to have a list of fixed [01:44:00] topics or whether the, the list of topics will still be open for discussion in the next session, um, in the upcoming months.

[01:44:10] And, um, I'm sorry if I missed the part of the explanation. And, um, echoing what, what Portugal said, I'm not sure that we have to feel obliged to find protocols or to finalize the text of all protocols at the same time. I'm not sure that we should state that in the TOR. Maybe some of the protocols that we can have a time frame, a limited time frame to finalize, but I think we are not obliged.

[01:44:39] I'm not sure that we have to feel obliged. I'm not sure that there should be consequences if we are not enabled to draft some of the protocols. Definitely the complexities will vary and some of them might be ready by the end of the estimated time and some of them maybe we cannot finalize but [01:45:00] that's just part of the international negotiations.

[01:45:04] Thanks Brazil. Now to the distinguished delegate of Mauritius. Thank you, Chair.

[01:45:16] So, uh, so, Mauritius, uh, so we would like to, uh, we, uh, we find, uh, the proposal of the UK quite acceptable to us, trying to find some, uh, mid ground solution. And as regard to what would be a reasonable time frame, it is quite difficult for us at this stage to, to determine this because we don't know how discussions will evolve.

[01:45:41] And what would be the, uh, different, uh, position of members and, uh, what, what, uh, subject would, would need to be deal under different protocols. So, uh, we, we think that maybe when we, when we start, [01:46:00] uh, substantive discussions, we, we will maybe enlighten about, uh, what would be a feasible timeframe. Thank you.

[01:46:11] Thanks, Marcius. Now to the, uh, distinguished delegate of Jamaica. Yes. Thank you, Chair, um, for giving me the floor a second time. Uh, something, um, the intervention by Brazil just, uh, triggered, um, uh, my need to clarify my initial comments on the 3rd of May. So, uh, not expecting that the details of the protocols will be, um, agreed on tomorrow.

[01:46:36] What, what we're trying to establish is whether or not it is expected that by tomorrow we would have all agreed on what the protocols should be. Tomorrow we will start the discussions about the protocols, about what is the protocols. Then we can decide what should go as early as it goes. The convention.

[01:46:59] Or what [01:47:00] can be like normal protocol not going within the convention. So, I mean here that the discussion about this will start tomorrow in the session. More than anything else. Not, okay. Remove the word named, make it, please, make it discussed tomorrow. So what will be named as early protocols, this will be under discussion for tomorrow.

[01:47:21] In general, not even for this proposal. Tomorrow we're going to discuss early protocols. If we go for this approach, then we will have what is the minimum that go here.

[01:47:37] Thanks, Jomica. Now to the distinguished delegate of Nigeria.

[01:47:44] Chair, I think first let me record my appreciation to the United Kingdom um, for um, providing this proposal. [01:48:00] Um, I speak on behalf of Nigeria and also the, uh, 54 member of, uh, African group. Um, having appreciated, um, this, uh, gesture from, from the UK, uh, with a view to, um, finding, um, a possible compromise. Um, I'm sure, um, the, the discussions, uh, on this issue and the suggestion as to, um, uh, uh, amounts, um, and I can see, uh, and I get your, your point here that, um, um, we have changed even now to X and X and Y, um, uh, but yet, um, we still have to take away those, uh, alphabets and put [01:49:00] numerals there.

[01:49:00] Um, but I can see the difficulty in that because, um, how members, uh, prefer, um, to get this done as quickly as possible, as now, and, um, part of what, um, um, the, uh, some part of the African group had, um, stated on this floor, uh, is looking at a 12 month period to complete the convention. But then we understand, um, uh, the challenges that, that, that, that may be there.

[01:49:36] I think in terms of a general framework, um, I think reluctantly we, we can look at this, um, in principle to say, um, that, um, the completion of the protocols, uh, may happen well after, um, the completion of the convention. Um, how be it. [01:50:00] um, putting numbers to X and Y. Um, I don't know whether we're able to do that immediately.

[01:50:06] Um, but talking about the distance between, um, the completion of the convention and the protocols, um, again, um, we must be careful, um, to be sure that the, the, the don't happen too wide apart. Uh, and, and, and actually one will have, um, Um, be looking at a much shorter period than, than, than, um, uh, a six months.

[01:50:33] But like I said, um, we probably may have to fix these numbers. Um, probably not in this session, um, because we, as African group, we, we need to, uh, look at this, but I think, yeah, as a principal, we So it may be, I mean, hopefully we are able to convince ourselves to, uh, to accept, uh, and then we can come back with the [01:51:00] numbers for X and Y.

[01:51:01] Thank you.

[01:51:11] Thanks, Nigeria. Now to the distinguished delegate of Belgium. Thank you, Chair. Um, I'm a bit surprised with seeing this compromise on the screen now, um, to me it's a bit of a strange way that we have to reflect upon it like here live in the session. It looks like a bit of a comparison with too many unknown factors, especially since as it states, we will discuss the content of the protocols tomorrow.

[01:51:44] And I really appreciate that a solution is being sought and I have great sympathy for that. But Is it better to, that we have a chance to reflect upon it and that we can come back on it later? Um, just from a [01:52:00] logical point of view, it's just a question. Thank you. I think I mentioned clearly that this is a way forward based on the two points of view.

[01:52:10] Okay. Uh, and that's why we presented as a sort of illustration about how this approach and this can be a way forward to move on. So thanks Belgium. So now to, uh, the Distinguished Delegate of Spain.

[01:52:52] I think it can be interesting to analyze it, but it is true that if we have to make a decision today, I [01:53:00] see myself, I see myself a little, I see myself unable to make a decision about the march, about whether this is the proposal that I want to see reflected in the terms of reference. Uh, that was a bit of my question too, if, uh, we simply have to say or we have to, to manifest our support, our, our opposition, which logically is not so, But I think that the reasons why we were talking about the need or maybe the analysis of some protocols with posteriority to the agreement are still being maintained here.

[01:53:32] On the one hand, I understand that it is the same committee that is going to negotiate the protocols and who is going to negotiate the framework agreement. Therefore, depending on how many protocols are going to be negotiated, I don't know what technical and political difficulties those protocols have, because logically, or maybe the deadlines can be played, but in any case, I think we need a little more reflection [01:54:00] on this proposal, taking into account that if tomorrow we practically have to decide What questions are going to be raised in the protocols?

[01:54:11] Well, I think they are important decisions, without prejudice that we are going to analyze them and we are going to study them with more attention and with a lot of affection. very much, Mr. President.

[01:54:35] Uh, second, while you're seeing this, I think I expressed at the beginning that we have two extreme points of views for one topic and we get received a proposal as a middle ground. So I think it was that we presented and express our views or see the views about it as now it's being done. So I hopefully I answered the questions that came from your [01:55:00] site.

[01:55:03] And I think it's common practice. I think we did the same on the organizational session when there was a different point of views and we presented a proposal that came as a middle ground and everyone go around it and it was a solution. Now, again, here, we're not taking decisions, but I think when we see different point of views, it was to go for this otherwise.

[01:55:24] How we can manage it just to give the different point of views going in the way we just have that you are as the minutes of meeting, listing the different point of views. Of course, don't talk work like this. So because like this is the second time now I hear the same question. Uh, so that's why I need to be clear about it and all the way down while we're working when there's a different point of views.

[01:55:46] I think our work to, to work together to reach a compromise in the middle ground that can. Meet the expectation of both sides. Thank you. Now to the distinguished delegate of China.[01:56:00]

[01:56:03] Thank you, Mr. Chair. I think the architecture of this compromise proposal is workable and I would like to thank the distinguished representative of UK for providing this thought for further consideration. As for the timeframe, it depends on how many items for early protocols being identified. If one or two, I think 24 months will do.

[01:56:32] If more items being identified, uh, then I think from a pragmatic perspective, a longer period may be needed. Thank you.[01:57:00]

[01:57:07] Thanks China. Now to the Distinguished Director of Canada. Thank you, Mr. Chair. I'd like to, uh, align myself with the comments from, from Belgium and Spain. Um, I, I think we share, um, uh, some of the confusion in terms of exactly what is, is being requested of us. We had understood this as a brainstorming session.

[01:57:29] Um, for which there is no draft that we were working off, and I do appreciate the clarification from the chair that we are not being asked for any decisions. However, I have heard the words decide and agree several times, um, uh, uh, during, um, uh, this afternoon's session. And, and Canada, uh, at least is not in a position to make any decisions.

[01:57:55] Um, but, but is open to, um, considering, uh, [01:58:00] different proposals, um, while we still think, uh, a sequential approach, um, is, is the more sensible way forward. Um, I think in terms of, uh, discussing any kind of, of, uh, time periods, any kind of approach, we just have far too many unknowns, um, that are on the screen.

[01:58:20] We don't know what the early protocols are, we don't know how many of them that there are, um, and I think a protocol On, uh, something administrative like exchange of information versus a protocol on something that provides for a different allocation of taxing rights and potentially, um, would conflict with international obligations that we already have in place, um, that the time difference and the complexity and the study needed.

[01:58:48] Um, behind those two different things, um, are significantly different and I think it's impossible at this stage, um, to give any indication of timing with respect [01:59:00] to, to protocols. I think, um, it's very difficult to make decisions when there's too many things, um, that are outstanding. Also, looking at, um, this slide, uh, some concern, uh, That it is also contemplated, um, that there may be protocols that are also completed at the same time as the convention, which suggests that active negotiation would be ongoing at the same time as the framework convention itself.

[01:59:28] And I think, um, a number of comments were made in the morning session about the concern of, uh, trying to, uh, Uh, actually negotiate protocols without understanding the framework, uh, under which, uh, those protocols, um, would sit. And so, um, at this stage, we are certainly open to exploring options where there can be compromise, but just don't feel in a position with so many unknowns at this stage, um, to express, um, any particular views.

[01:59:59] Thank you.[02:00:00]

[02:00:02] Thanks, Canada, uh, about this side incision making. I think the same reply to it's informal session and I think at the beginning of this, uh, of our meetings, we differentiate between what is the informal and what is the formal and informal. It's not decision making. So I hope this answer you acquired for now to the distinguished delegate of Korea.

[02:00:32] Thank you. Thank you, chair. Um, thank you, uh, UK for proposing this idea. Um, As we, uh, listen, uh, to, uh, the discussion in the morning, uh, as you, uh, chair summarized, uh, there are, uh, conflicts between the sequence approach and simultaneous approach. Uh, as, uh, I, uh, made a [02:01:00] statement in my first intervention, uh, the time frame, uh, um, And also how to approach really depends on the number of topics and also characteristics of the topics.

[02:01:14] In order to have a specific and clear time frame, we needed to select the topic first. For example, if we select the discipline resolution as a protocol, then I think that discussion could start together with the convention and may complete the discussion ahead of the completion of the convention.

[02:01:36] convention. However, if we select, uh, this service text of M& E as a protocol, then it might be difficult to start again, uh, before we having institutional one, like a convention, framework convention, and then we need to start based on the convention, framework convention uh, negotiation [02:02:00] about the TST of the M& E.

[02:02:02] So, the sequence method is necessary. So my, I would like to propose, uh, to select the topic first today or tomorrow before the completion of this session. And then we can gauge how much time is necessary for the certain topics for protocol or for convention. Thank you.

[02:02:47] Thanks Korea. Now to the distinguished delegate of Italy. Thank you very much, Mr Chair. Italy alliance with the comment made by Canada, Belgium and Spain. [02:03:00] Uh, we believe that there are too many unknown that, uh, put us not any condition today to agree on on what has been proposed by the U. K. Even if we appreciate the, uh, put something forward, but there are too many unknown and, uh, uh, Again, I would like to, to, to, to raise again, uh, what I said in my, uh, intervention this morning from a logical point of view, uh, it would be better to have a clearer idea of, of what the framework convention would look like before starting.

[02:03:43] I see a difficulty in, even in, in starting, uh, the first pages, uh, regardless of the X mat, but Working together at the same time on the Framework Convention, plus a number of protocols, a few, I don't know how many, [02:04:00] but a way that would not solve the logical problem that I see. If we do not understand ahead of time what the convention would look like, what obligations are comprised in the Framework Convention, It would be hard to, to move forward on, uh, on, uh, on protocols.

[02:04:24] And, uh, even, uh, the, the intervention of Korea as great America, it depends on the topics, uh, which we will discuss. Uh, if, uh, one thing is a select topic on which there is a white convergence. And another matter is, uh, if we starting, uh, with the. items difficult with, uh, which, uh, um, uh, many numbers and so in high number of states consider controversial.

[02:04:56] Other, uh, do not see as controversial as [02:05:00] preventing the, uh, the starting discussion on this. But however, uh, There is a need to, to first understand what will be the, uh, the obligation contained in the framework convention in order to move ahead. Thank you.

[02:05:33] Thanks, Italy. Now to the distinguished delegate of Argentina over the WebEx. Thank you, Mr. Chair. Hello, everyone. It's sad that my permanent representative is not there, but I will try to make my intervention remotely. I agree with other speakers that it's a little bit premature to start talking about timeframes [02:06:00] where we still don't know what's going on.

[02:06:01] How the framework convention will look like, nor what the additional protocols will be about. So I would suggest that we come back on this issue later in time. But before that, I would like also to mention that working simultaneously Would, uh, deviate resources, uh, would, uh, slow down the process in finalizing the framework convention.

[02:06:25] So unless we secure resources to undertake different work streams, I would suggest to focus on the framework convention first. And then start talking about how to develop those additional protocols. But I don't say no to the idea. But at this stage, it's a little bit premature to take a decision or to anticipate how that time frame will be.

[02:06:49] Thank you.

[02:06:55] Thanks, Argentina. Now to the distinguished delegate of Chile. [02:07:00] Thank you, Chair and colleagues for comments highlighting the different viewpoints on the issue of early protocols. Thank you in particular to our college from the UK for presenting this idea on the, um, a skeleton of, of, of, um, timeframe and, uh, uh, simultaneously looking at the protocols and the framework convention, we are, of course, now just reflecting, but I would like to align myself with comments recently heard from the delegate from China, but also from other delegates.

[02:07:35] It's. We do not see any problem at all on starting with negotiation with protocols at the same time as the framework convention. It may even have benefits to do that. We do, however, think that we need to choose the topics. And I completely agree with colleagues who have mentioned the importance of deciding on protocols.

[02:07:59] And again, [02:08:00] we should only choose one or two subjects for the early protocols. Coming back to a question from our general panel. Colleague from Jamaica, I, uh, I think the way I understand the way we should do a framework convention is that that has to enter into force first and then the protocols to the framework convention enters after it.

[02:08:21] That's what it's mean to have a protocol to the convention. So the way I see it is that we will have protocols, we will have some identified early, one or two, We can have number two protocols, three or four protocols that can come later. Those could be, uh, of course, discussed later on. And of course, we will have a, hopefully a framework convention, which will allow us to, uh, discuss other protocols in the future.

[02:08:51] But I think the point of naming them early protocols is that they will be negotiated early. And we don't see any problem on [02:09:00] negotiating at the same time as the Framework Convention. As I mentioned, it might even be beneficial. Thank you, Chair. Thank you, Shirley. And thanks for this additional clarification.

[02:09:11] Thank you. Now to the distinguished delegate of Germany. Mr. Chair. Oops. Sorry. First of all, Germany highly welcomes the apparent effort to explore middle ground. And we certainly are willing to compromise, um, as was said by others. However, given the unknowns, we, um, cannot comment meaningfully on the compromise on the table right now.

[02:09:55] Regarding the time frames in general, [02:10:00] as was said by others, this will highly depend on the topics we and the scope we want to deal with. And therefore, it's also according to us to premature to, um, establish anything in this regard. Of course, it's, it's good to have a target date at the same time. Um, I don't believe that.

[02:10:24] someone can really be compelled to stick to a deadline in particular, not in such, on such complex issues. Thank you.

[02:10:35] Thanks, Germany. Now to the Swedish Delegate Office, Sweden.

[02:10:42] Thank you, Chair. I'm not sure I have much to add to what was recently said by Germany. I, I mean, we are, I also feel myself in a position where I, I, I'm not sure that Any comments could be that meaningful since I think, as others have said, that the unknowns are [02:11:00] too many. It's not only the unknowns, the topics, I mean, how many protocols, potential, uh, content of those protocols, but it's also content of the framework convention.

[02:11:08] And I always thought that that was sort of, uh, as the delegate from Italy was saying, That was sort of setting the scenes for, for the protocol. So, uh, I mean, we as well are of course, um, willing to explore positions, compromised positions, but, um, but I, I feel that I, it's hard to contribute, uh, at this point in time, uh, is, is for me at least premature, but both on the, uh, sort of, um, timelines, uh, the months, but also the sequencing or not sequencing, uh, um, at this point in time.

[02:11:52] Thank you.[02:12:00]

[02:12:10] Thanks to Sweden. Now to distinguish delegate of Ghana.

[02:12:15] Thank you, Mr Chairman. And I wish to align with earlier statements by the Africa group and the recent statements made and the interventions by India and Chile. With the fact that there will be a need for some specificity in terms of time. And we have mentioned earlier that it is very possible to negotiate or develop protocols alongside the framework.

[02:12:47] They can run simultaneously. And we believe that once we start that way, We will be able to make the kind of progress we need to [02:13:00] make. It is good to know that we are discussing it because it is important that we continue to discuss. But then we want to stress that the timelines basically can run concurrently.

[02:13:13] Thank you.

[02:13:16] Thank you, Gana. Now to the distinguished delegate of Kenya.

[02:13:23] Thank you, Chair. At this point, we would just like to align with the comments that have been made by the representative from Nigeria. Thank you, Chair.

[02:13:39] Thanks, Kenya. Now to the distinguished delegate of Austria. Thank you, Chair. Um, not much to add, I think, from our perspective as well. Um, it depends on what is going to be in the, in the protocols and how many there will be. Um, and only after that we will know how, how much time we need. I think I just would like to [02:14:00] echo the question of Portugal and look forward to the explanations by the secretariat.

[02:14:04] What happens if we don't meet the dates that we set ourselves in the TOR? And then just also maybe just a pretty technical question. What does completion mean? Do we mean by completion at the end of negotiations or is it the signing ceremony? Because I think here, um, there is a time lag in between. Um, so just to make sure whatever months we will put there, um, can, can make a huge difference if we mean finishing negotiations and really signing something.

[02:14:36] Thank you.

[02:14:58] Okay. So, uh, [02:15:00] to Syria, uh, the completion is just a word we intend to mean like when the text is finalized. Then after that, three is to shifter assembly to approve. So. As I said, like, we, we used like very normal language here just to illustrate the proposal that came nothing more. Uh, for the question about what, uh, what, uh, your question about Portugal.

[02:15:22] Yes, I, I'm going to hand over to the Secretariat after we fetch the floor, uh, to just brief about, uh, about this area. And thanks to Syria. Now to the distinguished delegate of Tanzania.

[02:15:39] Thanks very much here. Uh, Tanzania support the, uh, argument advanced by Nigeria on behalf of the African group. And we also support, uh, the motion, uh, that has been made [02:16:00] concurrently to the motion by Nigeria on our behalf. With regard to time framework, I think 24 months would be appropriate or slightly additional month is like six months or so.

[02:16:15] Thank you, chair.

[02:16:38] Thanks, Tanzania. Now to distinguished delegate of, uh, Botswana. Uh, what do I Thank you Chair. Uh, we are taking the floor for the first time and we really like to appreciate the. opportunity granted to our, ourselves to [02:17:00] express our views as we engage in this discourse. Uh, Chairperson, uh, we would like to align with the compromise made by the distinguished delegate from the UK.

[02:17:19] And all the same, at the same time, we would like to Share the same sentiments, uh, as advanced by the distinguished delegates from the, uh, federal Republic of Nigeria and Ghana and some few other members, uh, chair, uh, butcherness of the view that we should be guided by resolution, uh, 78, two 30, as we make the proposal on how to proceed.

[02:17:52] Uh, Chairperson at paragraph six E. Uh, the Ad Hoc Committee, [02:18:00] uh, is to consider a simultaneous approach in developing early protocols, uh, while elaborating the Framework Convention. And we believe, uh, as our, uh, the AFRICAR group has been reiterating, and We believe in a simultaneous approach is, uh, and will be that will be efficient in, uh, addressing the issue at hand as a mid chair.

[02:18:35] Thank you Botswana. Now to the Senegalese delegate of Senegal.

[02:18:44] Mr. President. We will start by congratulating the Senegalese delegation.

[02:18:53] Any solution on the consensus manifest not to [02:19:00] volunteer,

[02:19:05] not to collect Judiciary Africa development.

[02:19:18] Thanks, Senegal. Now to the Senegal delegate of Israel. Thank you, Chair. Um, I'd like to echo, um, some thoughts similar to, to those expressed by Sweden to say that, um, I feel there are too many hypotheticals, um, on the table right now to express any informed opinion about, uh, uh, the proposal. Um, and especially to point to my lack of information about the relationship, um, between, uh, the, the, um, convention, the protocols, how [02:20:00] they're supposed to work together, and, um, what agreements we will have in that regard.

[02:20:07] Um, so, with respect to all of these unknown aspects, it's It's very difficult to, to, to, um, contemplate our, our opinion and we'd probably be in a better position once we know specifically what we're talking about and how everything is supposed to work together. Um, so thank you.

[02:20:32] Thanks. Thanks Israel. Now to the distinguished delegate of Algeria. Mr. President. First of all, we would like to thank the United Kingdom for its proposal, the compromise proposal. And on this note, we are signing the declaration made by Nigeria. Thank you, Mr. President.[02:21:00]

[02:21:08] Thanks, Algeria. Now to the distinguished delegate of Switzerland. Thank you, Chair. Uh, first of all, I'd like to thank our, uh, colleague from the U. K. for seeking and proposing a compromise solution. I think that's the way forward, um, to have progress in these discussions, uh, if you agree or not with the compromise solution.

[02:21:28] I'd like to echo the comments of, um, our Argentinian colleague, who is missed here, and who is back in Argentina, uh, on, uh, the, uh, From a purely pragmatic point of view, that the allocation of resources to, um, uh, to do early protocols at the same time as a framework convention seems not, uh, uh, very realistic.

[02:21:52] When you know the work it would be to complete a framework convention within two years, um, I think [02:22:00] that is already a very ambitious, uh, program. So, um, I would encourage to at least start with only frame a convention. And maybe a, a different compromise solution would be to, uh, have a, uh, time limit or, To say, well, let's work one year on a framework convention, and in the second year, then maybe, um, start on early protocols.

[02:22:28] So have like a different starting time, uh, for early protocols, but not wait to the completion of the framework convention to, uh, start on early protocols. And the last thing I would say is I don't understand the time limit of the Y months, uh, for protocols because as I understand it, protocols are add ons to the convention and they might be added on for the next 20 or 30 years, um, and probably will be done one at a time [02:23:00] and not all at the same time.

[02:23:01] And so to give a limit. Of to complete all protocols as if it was said and done after that, uh, limit doesn't seem to be, um, uh, exactly what, what the goal that, that, that's, uh, that's sought here.

[02:23:42] Okay. Thanks for the lens. Uh, yes, your understanding is right, but here we are talking about the early protocols. Once the convention come into force, then they can take later any protocols they want to do here. Our discussion is just on the. early [02:24:00] protocols, if you would like to name it priority, but this is like the early protocols.

[02:24:03] But after that, of course, the convention can adopt as much as protocols in different areas that, uh, did they see? Yes. So your understanding is correct, but here's a focus on discussion about, uh, why months is for the early protocols that will be agreed. Thank you. Uh, now to the United Arab Emirates, a distinguished delegate of your entire Arab Emirates.

[02:24:29] Thank you, Chair. Uh, we just want to echo the comments made by, uh, the distinguished delegate of Switzerland. We also had concerns of a resource constraints with starting the framework convention and the early protocols simultaneously, where additional compromise could be that it's shifted potentially 12 months.

[02:24:50] So you get the benefit of sequential and simultaneous at the same time. Thank you.[02:25:00]

[02:25:12] United Arab Emirates, can I, excuse me, can I ask you to come, what, what, about 12 months? I didn't get it? If I heard you right? No, that's a suggestion. Rather than having the framework and early protocols start at the same time, the early protocols start 12 months after the work of the framework convention.

[02:25:34] Thank you.

[02:25:59] Okay. [02:26:00] Uh,

[02:26:04] thank you Chair. Um, just to say that I would also be supportive of the suggestion from Switzerland and United Arab Emirates. Uh, that would be in line with the initial proposal that we put forward, that these processes would be. Overlapping but not necessarily starting at the same time, um, recognize that this will need to be iterated over time.

[02:26:34] Um, and, uh, the proposal on the screen, um, could be a way forward, as others have said, depending on what the actual protocols are, um, and the agreement on other matters. Um, so, to be clear, we would be. to keep both options open for consideration as [02:27:00] we go forward, both the overlapping and the proposal on the screen.

[02:27:06] Thank you. Thanks.

[02:27:17] As I don't have any other additional requests for the floor, I think we can go for something a little bit interesting. Uh, yeah, so, uh, I think they are together yet, uh, just, uh, decided to do a presentation on one of the selected topics, uh, from a technical perspective, uh, for everyone. It's about dispute resolution, uh, so I'm inviting, uh, our colleague, uh, Michael just to, uh, to start the presentation as there is nothing about this presentation, just technical presentation about one of the topics that is already raised.

[02:27:54] to see like different aspects of and benefits of this dispute resolution. [02:28:00] So I'm fighting, uh, our clean Michael to start.

[02:28:11] Okay. I, I think, uh, also, uh, my colleague, Michael would like to reply to, uh, I think Portugal and Austria, a question about what will happen if it's not completed on time. So you will get the answer. Thank you, Mr. Chair. Very brief answer. Um, we don't generally like to contemplate the idea of failure, and I'm sure it won't happen.

[02:28:37] But someone expressed it in the terms of what would happen if we didn't meet our timelines. And in actual fact, of course, they would be general assembly timelines if it agreed to, uh, to, to, uh, follow what you suggested in your report. And it wouldn't be you, as such. necessarily that was bound to those timelines.

[02:28:59] It would be the [02:29:00] negotiating group, the negotiating body that the, the General Assembly agreed on. So what that means, and we can only speak generally, that means is not meeting those timelines would be something that would have to be reported back to the, to the General Assembly. Um, and, and because there would be reporting provisions in, in the, uh, uh, one would anticipate in the, The resolution and, and there'd been explanation of why that had happened and presumably a proposal, uh, and then the General Assembly would decide what to do and I couldn't say that what that would be because that would be pre empting a Member State decision, but the important thing is it would be a General Assembly timeline and the General Assembly would, would decide what to do and no doubt it would look at the reasons that were given and the proposal for, for future work.

[02:29:54] So that's as much as we can say, but it reminds you that it would be General Assembly timelines, [02:30:00] and it would be the negotiating body which would be reporting back on those. Now to something completely different, as they say. This presentation is about, um, the possibility of a Protocol on Dispute Prevention and Resolution.

[02:30:18] Uh, it's, it's, it's just a, a catalyst for discussion in this group and it's not, uh, secretariat proposals, uh, just, just to help you with your discussions. Um, I know there's been a discussion about how to refer to this, this topic. Um, I've put, put dispute or we've put dispute prevention first ahead of resolution because of course you want to prevent the, the dispute, um, becoming a full blown dispute, uh, and then you don't have anything to resolve.

[02:30:50] So if we go to the next slide. This, of course, is the statement in the resolution which specifically mentioned the [02:31:00] importance of robust processes for preventing and resolving tax disputes. Again, putting preventing first in an effective manner, but also it recognises the The limited resources that a lot of countries might have to handle costly international dispute settlement processes.

[02:31:21] And I think many of us know that a part of the backdrop of that is the The expenses, which some countries have found in investment disputes, and that's not to say that the same issues would arise, but there's certainly a sensitivity in that area that the cost should be something that that makes anything that that is in a protocol, something which works for the less resource countries as well as the better resource companies.

[02:31:47] And I might say, I think this, this, uh, committee will have members on it who are tax officials, obviously, but also we'll have people from missions. And I particularly welcome the presence of [02:32:00] people from the missions in the committee, because they often have a lot of experience in trade disputes in investment disputes in public international law, which I think would be particularly important in resolving the issues in a dispute.

[02:32:17] Prevention and Resolution Protocol. So going to the next slide. Why is it a priority? And again, this is, uh, uh, harking back to the fact that it has been identified as a priority by, uh, a lot of the inputs that we've received, by some of the comments that are made in this meeting. But again, that ultimately is a decision that for you to decide at the appropriate time whether this is one of the ones you should list.

[02:32:46] But, uh, when I talk about it being a priority, I talk about it merely in terms of those that have said this is a priority. And one reason is that any conventional protocol addressing rights and obligations [02:33:00] will result in differences and those differences could become disputes. So the first best option is to prevent those differences becoming disputes, because, uh, disputes will be corrosive to the longer term relationships between the parties and to the operation of the convention.

[02:33:20] So the first thing, of course, you need is clear rules and guidance in and around the convention to achieve this. Probably, as, as with, uh, I think all conventions, there'll be some sort of commentaries or explanatory statements to assist in both the prevention of disputes arising by ensuring as far as possible common interpretations and also in resolving those that, that apply.

[02:33:46] Applying particularly the Vienna Convention rules of, uh, uh, of interpretation, of treaty interpretation, which are generally, of course, regarded as applying as customary international law, even if you're not a [02:34:00] Vienna convention party. But, uh, you also could have, uh, um, so called good officers where someone, maybe the secretary general, maybe someone, uh, else, uh, can assist to try and resolve amicably issues between countries.

[02:34:19] And you could have other conciliatory options to prevent the full blown disputes arising. You find that in a lot of conventions, an attempt to, uh, to settle things friendly before you have to rely on the strict dispute settlement, uh, provisions. But that won't always work, and you will need some structures and rules to deal with disputes as cannot be avoided.

[02:34:44] As I've mentioned, there's been broad support for some sort of dispute, uh, prevention and resolution provisions in the inputs we've received and in some of the discussions here. So what are the benefits? Going to the next slide, and these slides will all be available. [02:35:00] Um, a fair, accessible and effective system will first of all prevent disputes arising or help settle the dispute.

[02:35:08] Thank you. Will help stabilise the relationship of disputing parties. You generally have to deal with each other for a long time, so that's a positive. Build confidence that the Convention can be relied on in practice. That it will work in practice as had been contemplated. That rights can be enforced and obligations should be complied with.

[02:35:31] If the outcomes are public, and this is an issue that would come up in the negotiations, not so much in this forum, it would help clarify the operation of the Convention and otherwise point to areas where clarification is needed. And even if the outcomes are not public, it will help to indicate some areas where maybe some further work is needed.

[02:35:54] It could lead to updated and improved guidance, or if necessary, amendments. So it's an important [02:36:00] part of the life of the Convention over time. And it may also be a template for, for example, bilateral tax agreements. You might, uh, uh, choose to follow some of the same rules and approaches as in your bilaterals or in your regional agreements as in this.

[02:36:19] Turning to the next slide. So what are the same, uh, uh, what are some of the main issues that arise? Well, first of all, um, again, bearing in mind, both the prevention and the, the resolution issue, Thank you. How do you ensure that, that, that the protocol is fair and impartial to stakeholders generally?

[02:36:44] Bearing in mind they're not always in the same position in terms of, uh, familiarity with, with these sorts of disputes. A lot of countries still haven't had, uh, many mutual agreement procedures and resourcing. [02:37:00] Very importantly, that it reflects what has been agreed and is not a re engineering of the agreement.

[02:37:06] Sometimes you hear, rightly or wrongly, that discussed about tribunal decisions on investment treaties. Are they really interpreting the treaty as we agreed it between countries or are they going further? Uh, so that, that is an issue and again the Vienna Convention on the Law of Treaties is helpful in that respect.

[02:37:25] Uh, the main issue, uh, also that it needs to be clear, principled, consistent and predictable. avoiding blockages or time and cost blowouts. Any system has to, uh, has to bear those in mind. Should be streamlined and it should be prompt. Uh, it should be prompt but not to the disadvantage of the less well resourced and less experienced countries.

[02:37:50] The same issue we have in negotiations. You want them to be prompt but not so prompt that, uh, the less well resourced can't fully engage. [02:38:00] Next, next slide. The, uh, the process should be inexpensive, especially for less resource countries. It should be designed to proactively identify and address inherent disadvantages, such as through unfamiliarity with processes, limited resources and capabilities.

[02:38:22] in terms of available persons, networks, skills, and finances, and should try to build some response into the system. For example, there might be differentiated obligations, as you find in some other agreements such as the WTO, differentiated costs, differentiated timelines for a period of time, or differentiated timelines more permanently.

[02:38:46] And ultimately, I've said it has to be trusted as to its design, as to the stewardship of the rules and the execution of the rules in practice. So next slide.[02:39:00]

[02:39:00] You may have provisions and practices specifically addressing assistance with advice, documentation and representation. I think the WTO system is very, very interesting in that they've built into the system assistance in some of those areas and they've worked on it as secretariat to improve that aspect of the work.

[02:39:26] And capacity building, which could include training, internships, et cetera. Uh, but this may be dealt with more globally in, in terms of your framework or, um, protocol approach. What I mean by that is you may be dealing with some of these aspects of capacity building as to the operation of the convention in the framework itself or in another protocol.

[02:39:51] So you may not have to do too much in the specifics of the dispute. settlement or prevention and settlement protocol, but it is something that's [02:40:00] relevant. Some of it we dealt with not in a legal instrument, but in the way the secretariat is, uh, is, um, is formed and in the duties of the secretariat. So going to the next slide, it has to be robust.

[02:40:16] This is a word which is in the resolution itself. It has to be seen as in a practical sense enforceable. Upholding the rights of even the weakest, and ensuring that even the strongest meet their obligations. And it has to adequately address in one way or other the situation of taxpayers affected by or involved in disputes.

[02:40:39] There will be issues in any, uh, in any, uh, protocol on dispute settlement about what sort of, um, issues might arise in terms of taxpayer, uh, Representation directly or, or, or their positions and in terms of things like taxpayer confidentiality. How do you deal with that in a way of that's relevant? [02:41:00] And again, these are not for negotiation now as we've heard before, but it might inform what you think should be in the terms of, of, of reference, uh, on a protocol of this sort if you think that this is one of the, the priority protocols for early, uh, protocol, early protocols.

[02:41:21] So going to the next slide. As I've just said, hopefully these ideas clarify the thinking and the discussion. Um, So what we have to then think about is, um, Um, How are you going to operationalize a commitment to prevent and resolve disputes in a framework protocol approach? And probably what that would mean is, is any, uh, um, uh, commitments in the framework would be very broadly expressed.

[02:41:56] And the details would be dealt with in, in a [02:42:00] protocol. Usually, uh, articles and protocols on dispute settlement are quite detailed. Uh, and that's why it might be too much to hope that you could deal with all the requirements of dispute resolution in the framework. You might have to deal with them in a protocol because of the detail to make sure you're covering every sort of situation.

[02:42:26] There might be different options and so forth. So going to the next slide.

[02:42:35] Experience in the UN, OECD, regional forum and other contexts will be relevant. I've mentioned experience in trade, in investment disputes. Uh, uh, But again, that sort of wider experience might be recognised more generally in the framework. Again, this is helpful in thinking not just about the protocols, but in the framework, because this is relevant not [02:43:00] just to dispute resolution.

[02:43:02] And as I've said, we shouldn't forget some highly relevant non tax experience, such as in this dispute prevention and resolution area. It can speed up the process of negotiation if you have precedents that have worked in other areas and it can avoid some, some pitfalls and some of the experience of the WTO can be helpful in, in, uh, probably on both sides of the, the analysis.

[02:43:26] Going to the next slide. The first step would be the framework convention level. You could, for example, have a general statement. Recognizing the importance of a robust, fair, and effective dispute prevention and resolution process to the implementation of the Convention, and to inclusive and effective tax cooperation more generally.

[02:43:48] And really, when you're thinking about the protocol, I don't think You should think so much about the protocol applying to disputes specifically under the framework agreement, which will be [02:44:00] very broad. It really reply, uh, applies more to disputes relating to, uh, other protocols, the operation of other more detailed protocols, which might mean that this should be, um, uh, uh, you know, one of the very early protocols.

[02:44:17] So that other protocols, you have a dispute mechanism in relation to them, but that's for, for later discussion. So some of the, uh, as I've mentioned, you can reckon, you could recognise in the framework agreement, the ability of such a system to stabilise the relationships between countries and to give clarity and confidence in the system for all stakeholders.

[02:44:39] Going to the next slide.

[02:44:47] One of the issues in this framework, remember I'm talking about the framework now, is how do you address the, the issue of the dispute settlement protocol. You would have to, um, [02:45:00] uh, if it wasn't going to be, uh, finalized at the same time, you would have to recognize that. So it might have to be recognised as something that's either completed or under development.

[02:45:13] But that, that's, again, ultimately that will depend on what happens in the negotiations. But you do have to bear in mind how the protocol will relate to the framework and how the protocol will relate to other protocols. You may address the relationship of the framework obligations to any additional procedures or instruments adopted by the conference of the parties.

[02:45:39] That's quite common that you recognize that, that this protocol will apply in respect of, um, for example, later protocols adopted unless, uh, something to the contrary is provided for in those protocols. Going to the next slide, you could also have framework commitments or [02:46:00] obligations. To make every reasonable effort to prevent, or if that is not possible, resolve disputes on the interpretation or application of this convention promptly, amicably, effectively, and fairly to effective stakeholders.

[02:46:14] These words have no magic, it's just indicating the sort of thing. This is quite common, often you find that there's an obligation, a broad obligation to try to settle disputes peacefully. I don't think that's necessary here, but amicably. Um, you could actually, and this is an interesting issue to consider, you could extend it to broader categories, such as disputes on tax matters or cross border tax disputes or international tax matters.

[02:46:45] Again, they would only be very broad obligations, but one of the issues would be whether to confine those broad obligations, which could include good faith, Whether to confine them to the, uh, disputes relating to the [02:47:00] operation of the Framework Convention and its protocols, or whether you wanted them to, to have some resonance more broadly.

[02:47:07] There's pros and cons on that. Turning to the next slide. I've mentioned the possibility of, of, of emphasising the good faith. I know people talk a lot about the importance of good faith in, in, uh, uh, mutual trust. Uh, agreement procedure. Good faith is inherent in, in, in the application or the, uh, uh, your meeting your treaty obligations, but sometimes it's useful to mention it.

[02:47:35] I think in the Framework Convention, one, uh, A strong possibility is to mention the need to give special attention in any such consideration or process to the particular needs, priorities and capacities of developing country parties. I believe there's provisions in the World Trade Organization that, that countries that are thinking of, of, of entering into dispute settlement process involving, [02:48:00] um, developing countries.

[02:48:02] Uh, are asked to consider, um, uh, you know, whether that's, that, whether that's, uh, the only way resolving the issue or whether, um, uh, it can be settled without going to, to full blown dispute. Uh, so there are, there's some possibilities in there. Uh, you could have an a a a, a commitment to actively seek to minimize costs and resources.

[02:48:26] And also you could have some sort of commitment. Again, very board level. To consider the situation of taxpayers affected by disputes. And again, that might, uh, uh, involve issues which could be dealt with in the protocol about, uh, uh, uh, the issue of, of confidentiality of taxpayer information and also taxpayer roles in the process.

[02:48:50] So if we go to the next slide, this is the specific protocol level. Um, uh, as [02:49:00] As I've mentioned, it's probably going to be necessary to have a protocol or similar instrument because only a very broad provision could be dealt with exclusively in the Framework Convention. And the WTO is perhaps a good example, um, where the WTO dispute settlement understanding is a separate understanding, but all WTO members, um, uh, apply the dispute settlement understanding.

[02:49:28] It's not an optional protocol. Um, I've got here preferably enters into force at the same time as the framework, but it's real practical operation would be in relation to more specifical, specific protocol rights and obligations. That is obligations in other protocols. That's where it would really have the greatest significance.

[02:49:49] I think something to think about anyway. Next slide. I think it would be necessarily detailed. You could have a protocol that said very [02:50:00] little, but I think the likelihood, looking at recent protocols and some of the recent work in this area, that whatever you came down on in terms of issues like mandatory or binding or not, there would be some complexity in the process.

[02:50:15] Even the mutual agreement process procedure provisions in the UN and OECD model were actually Um, you know, relatively long, particularly when you look at the, uh, the, uh, uh, commentaries and some of the options in the commentaries. Um, it could have options. The protocol could have options where two countries agreed to, to take an optional form of dispute, uh, resolution.

[02:50:41] And if they both agreed that, then that would apply. If only one had, they'd be, that would not apply. So again, the protocol could deal in more detail with issues of dispute prevention and avoidance, could go into more detail about, for example, uh, possible [02:51:00] conciliation or mediation, uh, procedures. Uh, and then if you had something that was a formal dispute resolution process, you would have a lot of issues to look about, or the negotiating committee would have a lot of issues to consider about.

[02:51:16] What are the process? What are the options? Should it be mandatory? Should it be binding? Not for this, not for determination now, but again it's something to think about in thinking about the terms of reference. Um, mandatory means as to whether you have to participate. Binding means whether you have to abide by the outcomes.

[02:51:37] Um, how much would it draw upon the mutual agreement procedure? Um, uh, the, you know, the strict, the plain vanilla mutual agreement procedure without the add on in some cases of, of arbitration. Um, uh, what sort of panels would you have? Would you have governmental or non governmental experts? Would you have a reasoned decision approach?[02:52:00]

[02:52:00] Um, uh, where you've got an independent opinion given? Or would you have a strict choice of one side's proposal or the other? So again, these are not for, for decision in this group, but again is to show that there are many issues which might have to be dealt with depending on, uh, the options which were provided.

[02:52:20] So going to the next slide, you would have to deal with, if you had panels, you would have to deal with formation of the panel, you'd have to deal with procedures for reaching decisions. Do you only operate on the paper or do you have hearings? Thank you very much. There are cost issues and other issues either way.

[02:52:40] What should be the venue? What should be the language? What should be the rules? What should be the secretarial responsibilities? What should be the time frames, uh, for decisions? And what are the consequences if they're not met? What is the situation with awards of cost? [02:53:00] And do awards need to be adopted or reviewed before they become final?

[02:53:04] And if so, how do you do it? Going to the next slide, there's the issue of compliance. What are the obligations in terms of compliance? Um, is there monitoring of implementation, for example? And what means of enforcement might be provided or might not be provided? Should there be special and differentiated provisions, as I've mentioned before?

[02:53:28] Uh, and as to which countries and in which respect. Uh, how is the system financed? There is a cost to dispute settlement. How does it relate to other protocols? Um, uh, again, there, you might find that other protocols have some special rules which only apply. How does, is that addressed? And what are the amendment procedures for the protocol?

[02:53:50] Usually, actually, this would be dealt with in the framework of, uh, agreement. As we've said, there will be a procedure in the convention [02:54:00] for, um, for, um, uh, how pro protocols are proposed. Then for, for, for example, how many countries have to agree to a text before it is adopted. And then you will have the, uh, the processes in relation to, uh, to, uh, countries.

[02:54:18] ratifying those protocols. But you do have a procedure within the framework convention, actually, which will deal with that. And you have the final provisions about signature ratification and entry into force, which again might be fully dealt with in the framework convention. Remembering that these protocols are treaties of their own.

[02:54:40] but they also are under the wing of the Framework Convention. And some of them may be optional conventions, which you need not join. You would always, I think, have to be a member of the Framework, a party to the Framework Convention before you could be a party to a protocol. [02:55:00] That would be the usual provision.

[02:55:01] Next slide. So based on the current, almost finished, I should say, Based on the current, uh, TOR skeleton structure, how could a commitment relating to prevention and resolution of disputes be specifically addressed in the terms of reference? Um, in the introductory elements, including the preamble and purpose, using the categories from the TOR skeleton, you could recognise, as I've said, some of these things which I've mentioned.

[02:55:29] First of all, the importance of preventing and resolution of disputes. And some of these things that I've mentioned about the, the characteristics that, that should, uh, be summed apart. That would be very high level. Going to the next slide.

[02:55:47] Then you would look at the operative provisions. And maybe in the operative provisions you would have to address, um, The circumstances when specific obligations arise to engage in [02:56:00] dispute prevention and resolution under the Convention and to comply with the outcomes. And the relationship of the Protocol and the Framework Convention.

[02:56:12] Then finally, you have the institutional provisions on the next slide. And those are the detailed provisions. which would need to be provided as to how the dispute resolution process would apply in practice and how the Secretary would facilitate that. Um,

[02:56:36] so the, as I say, it's up to the, the, the group at the right session, to this group at the, it, it, it, the correct session to determine the, uh, um, the priorities that it would recommend in the terms of reference, but, um, uh, one possibility, as I [02:57:00] said, is that it, it, it should, uh, it would commence, uh, early negotiation and then you would have simultaneously entry into force if possible.

[02:57:10] Um, uh, but you could have, you could have an option of, of stand alone basic dispute. Avoidance and resolution provisions in the Framework Convention if you felt that they really needed them. Again, I think the, the obligations would be so broadly expressed that the real operation of this protocol would probably be in relation to other protocols and specific obligations in other protocols.

[02:57:36] But that's something that you can think about in terms of the sequencing that you're thinking about and in terms of the relationship of the protocol and the framework. So next slide is Just the thank you slide. Thank you very much, Mr. Chair.[02:58:00]

[02:58:11] Thanks to Michael for his presentation and Secretariat for preparing this. Uh, so is any specific questions in Secretariat?

[02:58:25] Canada, please.

[02:58:29] Thank you, Chair. I think it's more a question of process and just asking about this presentation. It wasn't on the agenda and I guess we had not received documents in advance. Is it expected that we will get a presentation on every suggestion for an early protocol? And, and just a little surprised by the presentation and the fact that there seemed to be a fair bit of information about how to expect the Framework Convention [02:59:00] to interact with protocols and I don't think we've had any discussions on that yet.

[02:59:06] Um, so I guess just from a process point of view, um, uh, what can we expect going forward and, and I guess, Um, uh, would encourage that that any presentations, um, that will be made to the extent that we could know these, um, in advance and have the circulation of the materials. It just seems a little bit awkward given it wasn't on our agenda.

[02:59:31] Thank you.

[02:59:36] Thank you. Yes, I mean, the purpose of this was we were requested because this is an area where there's, um, complexities, we were requested to look at some of the issues just to help that very discussion that's mentioned, not to preempt any particular outcomes, but to help that discussion and recognizing, as I think has been [03:00:00] recognizing several times, that the, the um, the terms of reference is work that you're doing, will be informed by thinking about what.

[03:00:10] what a potential protocol might look, look to. As to the procedural issues about, um, uh, what, uh, what presentations are made and when that's, that's really one for the, for the chair in consultation with the Bureau. As I say, we were requested to do this, but it's just to inform your discussion. Thank you, Michael, for the clarification.

[03:00:38] And I think also this is didn't step into any of the topics that we have in the agenda. As we finished early, we saw that it's good to have some technical discussion about one of the topics and give example as we are moving in the protocols while our agenda still the same and we didn't just skip any of the items or consumed any of the time [03:01:00] dedicated to any of the items.

[03:01:01] It's just time when we already Michael. Done with our agenda, and this is additional time to do a technical presentation about one of the topics. Now to the distinguished delegate of Jamaica. Yes. Sorry. Thank you, Chair. And, um, and thank you, Michael. Uh, I do recall that yesterday we had some discussion, um, on, um, dispute resolution and, um, the fact that it should be included in the, in the TOR.

[03:01:32] Uh, I, I take this presentation as, um, just a sample or a template basically of what, um, the details of, uh, uh, the protocols could look like, um, and, and not literally. Um, the only comment I have on the presentation, um, is, uh, I think there should be, uh, a reference to the [03:02:00] compatibility of the. Um, particular dispute resolution, um, process that we adopt in the framework with the judicial system of, of, um, of, um, of jurisdictions and their constitutional provisions as well.

[03:02:22] Not, not the details of them, but just the fact that there should be compatibility.

[03:02:34] Thank you. I mean that will be built into any process of, of negotiation where countries will be looking at the, the compatibility of, of, of what they can, can agree to. So, I, I, I think that's sort of an inbuilt part of the process, but certainly I think it can be recognised that the, the, um, uh, the constitutional situations and the legal, [03:03:00] of countries will be a relevant consideration in terms of, uh, of the way in which the, the protocol would be expressed.

[03:03:10] Is that, does that sort of meet what you're saying?

[03:03:18] Um, I'm not sure how to do this. Chip, oh, thank you very much. Just, maybe, it might be helpful if I say, I mean, one of the issues with, with, with, uh, uh, a dispute settlement internationally is that, uh, At international law, it would take precedence over domestic decisions. And at domestic law, you know, it depends on what your domestic law says about, um, about, uh, in, in, in, uh, about, uh, um, uh, the relationship of domestic law and international law.

[03:03:57] But at international law, the [03:04:00] The constitutional aspect would impact on negotiating positions of countries. It might ultimately affect what they can agree to, of course. Um, and that might mean, for example, looking at other dispute settlement understandings where certain things have been agreed. But it certainly is relevant.

[03:04:21] It's a relevant part of the discount, uh, discourse, but in international law, international law would treat the the international law obligation is, is having to be met once the country is ratified.

[03:04:44] Now to uh, distinguished director of Parazin. Thank you, Chair. I, I would like to welcome the initiative, the proactive, um, [03:05:00] proactive action or, of the, of the, of the Chair and, uh, and also thank Michael for the detailed, comprehensive and balanced presentation. I have to admit that I was wondering why we wouldn't actually need a specific protocol to deal with a dispute resolution and so on.

[03:05:22] And because we already have the map and the map forum and I can foresee that there are more complementarities and usefulness and possible approaches how to design it. So I would like just to express my, uh, gratitude for the presentation, illuminating me, and, uh, and recognize that I was fairly ignorant on the, all of these, uh, options.

[03:05:47] And, um, I would like to support that having present, I would like to emphasize that having presentations with specific elements also contribute a lot for our debate. Thank you. [03:06:00] If we can have more presentations like that in the foregoing sessions, I will definitely support him. Thank you. And thank you, Michael, again, for the, for all the effort in preparing the presentation.

[03:06:11] Thank you.

[03:06:14] Thank you, Brazil. And, uh, yeah, we're going to try to do our best to use any time which is remaining from any sessions. to do this. Of course, we have a lot of things to do, but the secretariat team with experts and tax are working in some similar presentation as relevant as we have time. Of course, we will never hesitate to provide more things that can provide clarification and understanding for all the members.

[03:06:42] Uh, thank you. Okay, now to the distinguished director of China.

[03:06:52] Mr. Chair. I think the presentation is a surprise, but I think it is very useful. And I am now [03:07:00] have, um, I now have a better understanding of the possible relationship between the Framework Convention and the protocols. Um, would like to thank Michael and the Secretary for this. As for the showcase protocol of dispute prevention and resolution, I think.

[03:07:17] It is a good direction, a good showcase, and it captured the essence and beauty of less controversial. I am trying to avoid using this kind of wording, but it captured the beauty of less controversial. I think it's, it will be inclusive to take more on board. Thanks China. I'm happy to know that the presentation give added value in understanding the relation.

[03:07:44] Uh, now we are remaining with five minutes. We have intervention from Columbia. Uh, maximum we can take another one given how long the intervention of Columbia will be because we will lose interpretation exactly at [03:08:00] six. So, uh, So now the floor to the distinguished delegate of Colombia. Thank you, Chair.

[03:08:06] Just a short intervention to thank the Secretary, I think, and Michael for this presentation. I just want to echo other delegates that this has been very useful. It gives a better understanding and framework of what we are, uh, targeting. And, uh, I would appreciate if, uh, if you can share the slides. My mail and if other presentations and other issues can be depicted like this.

[03:08:36] Thank you. Thanks Columbia. So now with the last intervention from the distinguished delegate of United States. Thank you very much. Thank you, Michael. And we appreciate clearly a lot of effort went into this presentation. Um, we did have the same concerns as Canada about prejudging member state conversations.[03:09:00]

[03:09:00] Um, and especially given the request for more presentations, we would just like to ask for transparency on how those topics are decided and agreed upon, um, as to what we will spend, uh, the most time on discussing in this room, um, but it was very informative. Uh, thank you.

[03:09:18] Thank you. Uh, and knowing it's a surprise, uh, because again, we cannot judge how long this discussion would take if today discussions was to last till now. Of course, there is no presentation, nothing, and the same for the other days. We can, maybe in the lunch break or before, by the end of one of the sessions, we can estimate that the discussion will not go further.

[03:09:41] We will let you know, but we can't block the agenda for presentations from now. We are giving the priority all the time for the discussions, unless we have some free time that can be used for clarifications and presentations that just make the vision better for everyone. So that's how [03:10:00] we decide, uh, about it.

[03:10:01] Uh, I'm not sure we have one intervention. I'm not sure about time because we are gonna lose, uh, interpreters just in less than few minutes, maybe less than three minutes. So this is like we are closing the floor after Australia intervention. Yes, thank you very much. And thank you and thank you for that explanation as to the reason that the presentation was, was delivered.

[03:10:30] I have to admit I was in the GA um, following a vote um, on a, on a resolution. So I missed the beginning of it. I will go back on UN Web TV and watch the, the entire presentation. Um, but just to echo, I mean, no issues with, with the idea of presenting. I think that is quite helpful, but just given that a lot of us have to cover a number of different elements at the UN, um, transparency, and as much as much advance notice, if we're going to deviate from the program of work, which would just be really helpful just to enable that we can be where we need to be so that we can get the [03:11:00] information as we all move forward to try and build a compromise, a consensus approach on this, on this process.

[03:11:05] Thank you so much. We promise with this, as long as we can have like, Uh, more visibility for how discussion is going and what will be the free time. Of course, we're gonna do this. No doubt. Okay. Thank you all. And thanks for your interventions and participation. And we close the session. See you tomorrow at 10 a.

[03:11:24] m. Please try to be on [03:12:00] [03:13:00] [03:14:00] [03:15:00] [03:16:00] [03:17:00] [03:18:00] [03:19:00] [03:20:00] [03:21:00] [03:22:00] [03:23:00] [03:24:00] [03:25:00] [03:26:00] [03:27:00] [03:28:00] [03:29:00] [03:30:00] [03:31:00] [03:32:00] [03:33:00] [03:34:00] [03:35:00] [03:36:00] [03:37:00] [03:38:00] [03:39:00] [03:40:00] [03:41:00] [03:42:00] [03:43:00] [03:44:00] [03:45:00] [03:46:00] [03:47:00] [03:48:00] [03:49:00] [03:50:00] [03:51:00] [03:52:00] [03:53:00] [03:54:00] [03:55:00] [03:56:00] [03:57:00] [03:58:00] [03:59:00] [04:00:00] [04:01:00] [04:02:00] [04:03:00] [04:04:00] [04:05:00] time.