Ad Hoc Committee - Meeting 11

3 May 2024

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[00:00:00] Good morning, everyone. Excellencies, distinguished delegates, dear colleagues. I welcome you to the 11th meeting of the Ad Hoc Committee to draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation. Today, the Committee will continue its informal discussion of Agenda Item 3, Consideration of Simultaneously Developing Early Protocols.

[00:00:26] All these weeks, the Committee has been scoping out the possible substance of draft Terms of Reference. Let us recall our three guiding points for discussion. First, I trust that all participants are clear now that our work in this committee is not negotiating the Framework Convention. Yet our having some vision of what could possibly be included in the Framework Convention is necessary in developing draft terms of reference for the convention.

[00:00:54] Second, the draft terms of reference will be new. We will not necessarily group elements or [00:01:00] use language in the same way as in resolution 78 2 30 the you R will build on and move forward from resolution 78 2 30 third. We are learning throughout our discussions about the relationships of re of Resolution 78 2 30 to the draft terms of reference, the framework convention, and its protocols.

[00:01:23] Overall, our discussions are serving to clarify the committee thinking on our work ahead in developing the draft TOR. Yesterday, we discussed possible approaches to developing early protocols. Today, we will have a discussion of possible topics for early protocols. These possible topics for early protocols have been mentioned as specific priority issues in resolution 78 30.

[00:01:50] In many of the written inputs received and often throughout our decision so far post resolution and the organization of work of this committee. [00:02:00] decision make clear that the decision of early protocols is not limited to these two topics in the agenda, which is illicit financial flow and the taxation of multi taxation of income drift from the provision of cross border services in increasingly digitalized and globalized economy.

[00:02:21] So our discussion is not limited to these two topics. These two topics were mentioned in the agenda as examples, and they were just leveraged from the resolution 78 230. So we are not limited just to these two items. Delegations are invited to unpack these topics and as well as suggest additional topics they perceive as a specific priority.

[00:02:47] Finally, Also, the usual reminders. Virtual participants, please mute your microphone except when you have been given the floor. For virtual participants requesting the floor, please use the raised hand [00:03:00] facility, or if you cannot do that, type H in the messaging facility accessed by the toolbar. I invite delegations in the conference room wishing to intervene to press the button on their microphone console and press the button.

[00:03:16] All speakers are kindly requested to limit their interventions to three minutes. The floor can be taken more than once during our informal discussion. I look forward for our discussion, keeping in mind our two focus questions for the week. Why is this a matter that should be addressed through the framework protocol approach?

[00:03:37] The second question, how could agreement to address this matter be proposed? practically operationalized in a framework convention as and it's protocols.

[00:03:49] So the floor now is opened. So member states first, then enter governmental organizations and other observers. If time permitting, [00:04:00] the floor is opened.

[00:04:01] Maybe additional note also I will need to put as now we are discussing the early protocols. I may also ask Member states through their intervention, if they can just differentiate what they believe it can come as early protocols and what can come as like a protocols, ordinary protocols that can come later any time, and what can be focused as early protocols as per the agenda.

[00:04:26] Thank you for this.

[00:04:28] Looks like we will go home early today or what?

[00:04:32] Distinguished delegate of Nigeria, the floor is yours.

[00:04:35] Good morning chair and good morning colleagues. And thank you for giving me the opportunity. I speak on behalf of Nigeria and the 54 member African group. This topic we see as the core of the old discussion and taking a mandate from the resolution 78 to to 30. We [00:05:00] know that it's important that we start to work on what we call early protocols, and that those are protocols that we quickly address the pressing needs of members.

[00:05:10] When we talk about this, I think we can take bearing from the illustration in the, in, in the resolution 78 30. And so we, he protocol will be looking at those issues around the tax aspect of in IFF illicit financial flow looking at taxation of cross border services looking at issues around of the transition of the Gita economy.

[00:05:41] Which are very issues that are with us. Now. We could also include issues protocols that addresses issues of uh, dispute resolution in a way that works for every country. And a way that also ensures that [00:06:00] taxpayers are not overhang with disputes that, that are lingering.

[00:06:05] And also issues that helps to prevent dispute in the first instance. Taking a cue from the presentation yesterday by a member of the Secretariat. Emphasizing more on prevention of dispute than actually having disputes and also having to go to dispute resolution regimes.

[00:06:26] So in a nutshell chair, um, this we believe very important and very urgent protocols. That we should start working on immediately as we develop the convention. Chair this is our submission. Thank you.

[00:06:44] Thanks, Nigeria. Now to the distinguished delegate of Swaziland. Thank you, Mr. Chair. I just had a question and I wanted to make sure if I understood the exact distinction between an early protocol and a. [00:07:00] So is the only difference between the two, the fact that our early protocol is negotiated, is the starting point of the negotiations.

[00:07:10] So our early protocol would be a protocol that we discuss before the framework convention, or we start discussing. before the framework convention is finished and a protocol or all the protocols that we start negotiating after the framework convention is finished.

[00:07:33] To clarify this, I think yesterday we went through this. So now we have yesterday it was different opinions. We have like alternatives that came up yesterday. But again, as bare 78 to 30, there is a topic which is early protocols, which is a protocols that should come as early as possible with, of course, no protocols can be discussed before the convention.

[00:07:58] So protocols that can [00:08:00] be discussed in parallel with the convention and come early as possible with a, with the convention. or a little bit after the convention, but it is like priority protocols if we're going to name it. So it's priority areas that need to be covered as soon as possible and to go out with the convention or immediately after it.

[00:08:17] But it's, it will not, let's say briefly, it is a priority areas that need to be covered as soon as possible. This is the most important areas to be covered. I hope this clarify. Now to the distinguished delegate of Columbia.

[00:08:32] Thank you, chair. Columbia wants to propose. The following topics for other protocols considering the importance and their urgent need of addressing these issues globally. Taxation of high net worth and ultra high net worth individuals, non pecuvian tax measures to finance climate action, such as a global corporate income tax measures to curb illicit [00:09:00] financial flows related to tax and trade taxation of services and tax incentives.

[00:09:05] Anyway, as per your question of what should be early protocol and what may be considered afterwards, for early protocols, we would emphasize the first two. This is taxation of high net worth and ultra high net worth individuals and non perjuvian measures, tax measures to finance climate action.

[00:09:27] Further, we believe that it is important that in the TOR and in it's explicit and to have. Broad scope, scope on what other substantial matters need and will be addressed by the convention and to allow a CEO a conference of the parties to discuss other substantial matters under the convention.

[00:09:52] Thank you.

[00:09:54] Thanks Columbia. But just maybe I missed, you almost list like four. I get the net worth, [00:10:00] the climate action, tax incentives. There was another one you mentioned, right? Yeah.

[00:10:04] Taxation of high net worth individuals, non peruvian tax measures to finance climate action, measures to curb illicit financial flows related to tax and trade, taxation of services, and tax incentives.

[00:10:22] Thanks, Colombian. Now to the distinguished delegate of Japan.

[00:10:26] Thank you, Mr. Chair. I have a clarification question on the protocol Protocol is by definition, legally binding instruments but depending on the topics we discuss or later stage, perhaps depending on the topics, more kind of the software approach or some other instruments, maybe.

[00:10:51] Suitable. The, are we talking about the now is only legally binding [00:11:00] instruments on this topic? So this is my question. Thank you, Mr. Chair. Thank you. Yes, the protocols is a legal, legally binding instruments that will be attached to the convention. So it's legally binding. Now to the distinguished delegate of Jamaica.

[00:11:22] Thank you, Chair. Chair Jamaica wishes to propose to the committee that we consider as an early protocol the tax treatment of official development aid or government aid. As as it is also referred to, whether by on a bilateral basis or through multilaterals. Many developing countries have identified that because of the tax exemptions which have to be granted when this aid is offered for development, it poses a significant expenditure.

[00:11:57] And at times The [00:12:00] exemptions are even granted to subcontractors within the country. And what the importance of this chair is that in financing the SDGs, and I think financing the SDGs has emerged as one of the biggest roadblocks in achieving the 2030 agenda. And the countries will have to rely on their domestic resources, but they will also have to rely on aid.

[00:12:31] And we're encouraging the committee to, to consider whether the tax treatment of government to government aid could be put as one of the early protocols.

[00:12:44] Thank you, Jamaica.

[00:12:46] To the distinguished delegate of Mauritius. Thank you, Chair. Chair, one, one of the Area in which we could have an early protocol is the [00:13:00] exchange of information and this also would be a possibility to exchange information on on, on high net worth. And the second area is to have a, an early protocol on dispute prevention and dispute resolution.

[00:13:19] Thank you, Chair.

[00:13:21] Thanks, Moises. Moises. Now to the distinguished delegate of Spain. Thank you. Thank you. very much, Chair. very much, Mr. President. I basically had a couple of questions at the time of taking or proposing some questions. First taking into account that the protocols are going to be binding instruments the Jamaican representative, You have mentioned the fiscal treatment of aid to governments, state aid.

[00:13:52] I would like to ask you exactly, that is, how in an instrument that is going to be multilateral, we are going [00:14:00] to deal with, how are we going to resolve the fiscal treatment of these aids, that is, I have not just visualized exactly how in a protocol, but how are we going to resolve the fiscal treatment of these aids.

[00:14:14] We are going to face or respond to this question. It is simply a question to understand it. And then, in the same way that yesterday we had a very illustrative presentation on how a protocol could work in relation to the issues, the disputes, the resolution and the prevention of disputes, I don't know if it would also be relevant to understand when we talk, for example, of the protocols in relation to

[00:14:43] Thank you, Spain. Now to the distinguished delegate of Canada.

[00:14:47] Thank you, Mr. Chair. And before commenting on specific topics for proposals, I think following on the questions that were posed by the delegate from [00:15:00] Spain, we'd like to reiterate a number of comments that were made during the session, and that in our view are of relevance to the identification of issues that would be suitable topics for potential protocols.

[00:15:12] Establishing principles and understanding the scope of the topics being proposed is critical. We would find it very helpful that members proposing topics such as illicit financial flows to provide some understanding of the scope of what they see that issue to be and how a protocol would address that issue.

[00:15:34] It is not immediately apparent to us. We have some ideas which we will share later in the session but it certainly isn't clear what is proposed under that topic. Going back to some of the principles. First, a binding multilateral coordination agreement, such as a protocol, should be used exclusively where widespread international coordination is necessary, [00:16:00] and where achieving such coordination requires legally binding standards.

[00:16:05] This means that softer forms of standards relating to the question I think raised by Japan, such as best practices or dealing with capacity building could be better dealt with in other ways. Second a protocol would only be an effective solution where an issue has some level of commonality among a sufficiently large number of states.

[00:16:30] Where local circumstances differ too much, or when not all states experience a problem to the same extent, imposing a common solution on all states is unlikely to be the most efficient approach. The question then becomes whether a more flexible approach could be developed that can accommodate each country's particular situation and needs and trade offs might then need to be made between the simplicity that a universal approach [00:17:00] provides and the efficiency and effectiveness of gains that would come from greater flexibility.

[00:17:06] On the question of which topics suitable for protocols should be given priority, and notwithstanding our preference expressed yesterday for protocols not to be negotiated before the convention itself is finalized, we think it would be sensible to give priority to the less complex issues that may not require significant further study And on which there are more aligned policy views among member states so that work could be completed sooner.

[00:17:34] Work on the two pillar solution at the Inclusive Framework started years ago and is still ongoing. It would seem prudent in the context of a new institution that aims to be inclusive in its approach. To undertake more manageable projects in a first phase so that we can build on this initial experience to undertake more ambitious work.

[00:17:54] It would also be advisable in a first phase to focus on gaps in the current [00:18:00] international tax system and ensuring complementary, complementarity with existing standards. Thank you, Chair.

[00:18:08] Thanks, Canada. Now to the distinguished delegate of Germany. Thank you.

[00:18:16] Now? Yeah. Okay. . Sorry. It's already some weeks ago that I was here. Thank you Chair. And also thank you for this topic and this in my mind brainstorming exercise this morning and afternoon. For me, as I understand this is an informal part where. I personally am very much interested in listening, as was already explained by others, or to what specific concerns there are.

[00:18:49] This is what or what we mean when we are talking about the necessary analysis, so that it is a clear, What [00:19:00] specific items, specific aspects might be dealt with the protocol and to really understand what we're talking about before, because before that no decision would be made. at all whether it is a way forward in, in our mind.

[00:19:22] As I said for me, it's really important this day to, to listen to this more specific concerns and as well to what Canada just said, what Then really be and all the aspects and also the legal impacts. So for us as well this puts the focus in, in, in my words on the analysis.

[00:19:47] And when this question was asked or is asked in respect of early protocols, I don't want to repeat our position because you it's already well known. But just very shortly on [00:20:00] that as well. It is important to have the procedural and the legal issues clarified before Any decisions can be made on the issues on what issues and protocol might be possible or not.

[00:20:15] And especially as well to evaluate, to analysis another analyze what benefit that can really bring and the best and most efficient and prudent way to go forward. For us, it's still an evaluation process. And generally speaking, in respect of protocols if, and it's really an if for us whether so a question mark we are going in favor of we might go or try to draft early protocols.

[00:20:49] I also think that less controversial. Issues at first might be very useful because this is a very new process and [00:21:00] we should have a good start and it's a new process that needs to be developed and it's a different world for a lot of people and either it's a different world or it's a different subject depending on whether you're more for the UN background or more with a tax background.

[00:21:18] So I think to be efficient and effective. We need to tread carefully at the beginning and and really address for early protocol, if any really less controversial issues or what kind of issues where everybody would be agree that this might be a way of a protocol to deal with it.

[00:21:43] But as I said as well, I'm still struggling, but I think it's the way of usual multilateral discussions that all those different aspects, the content, the issues, the procedural, the legal aspects have to be discussed [00:22:00] because they all depend on each other. And as I said, I'm here really today to listen and I'm very curious.

[00:22:06] And I'm also asking for more specific examples, specific suggestions of what is missing and what are the specific suggestions and requests. Thank you.

[00:22:18] Thanks Germany. Now to the distinguished delegate of Jamaica. Thank you, chair. I just wanted to respond to, to To the question from Spain, and I'm hoping perhaps I could shed some more light on my intervention. It's really based on the discussions in Addis in 2015, in which countries were asked to consider not requesting tax exemptions to provide aid to developing countries.

[00:22:51] That is a background and work has been done on this by the U. N. Tax Committee by the O. E. C. D. As [00:23:00] well. And some countries have, in fact, some developed countries have, in fact, followed through on, on that request. And so that is the background to it. Now, it remains a contentious issue, but it also remains a problem for developing countries being able to to carry out their development.

[00:23:25] These exemptions, for example, through tax income tax exemptions through value added tax, through custom duties in order to get aid, those exemptions amount to billions of dollars. And so that is the reason why the proposal was made.

[00:23:45] Thanks, Jamaica. Now to the distinguished delegate of France. Mr. President. I understand that this is a preliminary discussion, and an exchange of views on what the preliminary protocols could contain. As such, I would like [00:24:00] to share two questions, particularly regarding the themes that were proposed in the agenda, in particular regarding taxation on cross border transactions, and I would like to hear from you.

[00:24:12] I would like to understand how such a protocol could be articulated with the UN Convention model and in particular articles 12a and 12b, which also aim to introduce rules of distribution of the right to impose payments made on the basis of automated digital services. Speaking of illicit financial flows, I also share the questions of the Canadian Delegate.

[00:24:35] I would like to know if there is any insight from this Assembly on this notion of illicit financial flows and what a preliminary protocol on this notion could cover. So she's on the potential suject. He put it contributed to add a protocol preliminary. He's something people, he's having fun. It's sure.

[00:24:55] That he's going to be on mental. Session. Just read to the trick on them. [00:25:00] I believe I want to have a ration to tell protocol. He was on the sea. It's on Seattle. Clarify the modality. Procedural. He should read it. He have mercy. Book. Mr. President. Thanks, France. Now, to the

[00:25:12] distinguished delegate of Italy. Thank you very much, Mr. Chair Italy aligns with the observation and comments paid by Canada, Germany, and France, and allow me only to briefly repeat what I said yesterday on the fact that for us, it's key to first understand how the framework convention would look like.

[00:25:38] What will be the Obligation contained in the convention, what will be the bodies that will be regulated there? There'll be conference of sparkle. This is still a big part of the unknown. We do not understand how that would work. And by consequence, it seems to us that it is premature to discuss protocol [00:26:00] to be to be hooked on.

[00:26:02] when we do not understand first the the main legal context the framework. Thank you very much.

[00:26:08] Thanks, Italy. Now to the distinguished delegate of Austria.

[00:26:12] Thank you, Chair. Thinking about this topic we have on our agenda today for informal session, I think Of course, without preempting any final ideas here, but I think it is very much about the prioritization also of our work. And I think that's also how you introduced this and why we should think about early protocols and why we would like to talk about certain topics earlier than we would like to talk about other topics.

[00:26:37] And here, I think Also taking into account what we heard yesterday from many states that every one of us has limited resources. I think this priority and therefore I'd like to align myself with other commentators who said that we need to understand what exactly the pressing needs and I think I heard the delegate from Nigeria very well there that there are pressing needs of [00:27:00] certain countries.

[00:27:01] And I think we need to understand what that is and what exact measures that could entail to best tackle these very pressing needs in order to make really a targeted common effort to, to address these and to use our resources in the best way. And therefore I think maybe it would be worth also looking back at what we discussed on I forgot the days, I'm sorry, but it was some day earlier this week.

[00:27:32] The high level commitments that we were discussing already and here we did hear some very strong common voices on certain topics and here think about a little bit closer about what we heard there, and link it to the With with this agenda item, because I think, yeah, whatever has, could go into an early protocol would, of course, also be covered by the high level commitments.

[00:27:56] And here, I think also environmental taxation was something [00:28:00] that, that was pretty prominent on our, in our discussion. So probably that could be another thing that could go into an early protocol. But, of course needing to analyze if it makes sense. Also, I think Canada's intervention was very helpful to structure my thoughts in that area.

[00:28:16] What are the what could be used in the multilateral convention? Where, what makes more sense as really having a protocol and not some other instrument. I think this is all part of the exercise that also would have to be part of course of the negotiating committee to to think about.

[00:28:33] Yeah, so that's from my side so far. Thank you. Thanks. And don't worry. You are okay. A few days ago we were here in just discussing today's which day and we start to have also different opinions. So you are okay. Don't worry.

[00:28:49] Now to the Distinguished Delegate of India.

[00:28:52] Thank you, Chair. And I also thank the other Distinguished Delegates for their comments, because that has helped to [00:29:00] clarify and understand the issues that are at play over here. The way we see it the, what we are discussing today here has a couple of points. angles. One is that what is the choice of the topics that we choose for early protocols?

[00:29:15] And the second, as pointed out by some of the distinguished members, is the scope of the topic, which would mean the problem statement and the problem the possible problem solution. Now, on the issue of the choice of topics, we believe that it is not necessarily, It should not be necessary that we go for topics that are easy to handle.

[00:29:35] It's, I don't think we are exactly looking for a low hanging fruit over here. What we are looking for is for, is to handle issues which are of pressing need, pressing importance to countries who are members of this committee. And I think the two topics that have been mentioned as examples, they are.

[00:29:54] They are equal, they are the very important issues that need to be taken up for early [00:30:00] protocols. For example, the first topic of the tax related illicit financial flows, now, if we were to look at the scope of this problem, the way we see it, and we are open to suggestion and correction, is that it could be where the flow of funds itself is a violation of a law.

[00:30:18] It could also be where the flow of funds is. The funds need not be generated by a violation of law, but the flow of those funds constitute a piece of a tax avoidance scheme. Now, the solutions could be many, which of course we do not want to fetter the hands of the negotiating committee, but it could be in the form of ensuring legal and beneficial ownership.

[00:30:43] in all jurisdictions. It could also be ensuring that tax systems are fair and uniform in so much that we do not create unfair tax competition and we, and no incentives are allowed for transactions without substance. So we [00:31:00] believe that this is a topic that encompasses several issues and is therefore a very suitable topic to be taken up for a, for an early protocol because it will deal with several issues that jurisdictions face.

[00:31:16] Now this, similarly the second topic is the taxation of income derived from the provision of cross border services. The way we see it, this is a topic that, that covers several issues. It would cover probably a transfer pricing issue on the benchmarking of cross border services.

[00:31:32] It would, it could cover nexus rules. It could cover allocation of taxing rights on these cross border services. So that is why we believe that at least these two topics are very important to be taken up as early protocols. They may not necessarily be easy, but they are very important and very vital.

[00:31:50] And eventually we believe that is the that is what should govern our choice for the early protocols. Thank you, Chair.

[00:31:59] Thanks, India. [00:32:00] Now to the Distinguished Delegate of Kenya.

[00:32:03] Thank you, Chair. I'd like to align with the comments that have been made by the Distinguished Delegates from India and Nigeria. And I'd like to also restrict my comments to illicit financial flow since that is what was on the agenda today morning. Sure. We'll support the development of an early protocol on illicit financial flows because this is a matter that transcends national borders and action is therefore needed on a global level.

[00:32:30] I believe that this is also an issue that cuts across both developed and developing countries, and it would therefore be in the interest of all members to address it. It's critical to address it now. because a solution would enable countries to provide their citizens with basic social services like infrastructure, housing healthcare.

[00:32:51] It would enable countries to meet their domestic resource mobilization goals and to close the gap in achieving their sustainable development [00:33:00] goals. How we see this being implemented share even based on my previous comments on this is through effective and global exchange of information. This provisions in the protocol, for example, would ensure that exchange of information is is within reach of all countries.

[00:33:18] The infrastructure that would be required for the exchange of information should be within reach of both developed and developing countries. It should enhance transparency so that countries can be able to identify any assets or any money that has been moved from their country illicitly so that it can be brought back and taxed within the jurisdiction where value was created.

[00:33:38] Those provisions should also ensure that information is actually exchanged. In my previous comments, Chair, I had said that one of the issues that we face as a country is that there is an existing exchange of information system, but there are loopholes which are being taken advantage of, where even if you request for information from a certain country, there are ways that [00:34:00] information still doesn't have to be exchanged, meaning the objectivity is not being met.

[00:34:04] We also see this being implemented through effective assistance in collection provisions that would allow countries to recover funds and assets that have been acquired through illicit financial flows. Chair, we would urge that any such provisions would also restrict room for reservations because that is another challenge that we are facing as as one of the people who's implementing the existing system.

[00:34:29] The reservations that have been placed means that whatever is existing is not actually effective because countries are placing reservations against these provisions. Information is not being exchanged and there's no assistance in collection that is actually being implemented. As I've said previously we feel that this is the platform within which those provisions can be made effective and share.

[00:34:51] We would just like to continue emphasizing that the resolution 78 to 30 has not restricted us to only look at the gaps in the existing [00:35:00] framework, but that we should look holistically at international tax cooperation with the aim of making it more effective and inclusive. And this is the platform within which we can do that.

[00:35:11] Thank you, chair. Thanks, Kenya. Now to Distinguished Delegate of Russian Federation

[00:35:19] Solenium. I would agree with the opinion of the delegates from Kenya and would support the delegates from India in terms of the reasons that are important in order to include such a topic as taxation of transborder services in the early protocol. I asked for a speech a long time ago, when a colleague from Germany asked me [00:36:00] to give specific examples that could be used to justify the inclusion of the topic in one of the early protocols.

[00:36:10] I want to return to my example, which I spoke about. I want to return to my example. Two days ago, namely, an example of how in different organizations there are absolutely different criteria for choosing a country to be included in the so called blacklists. Accordingly, the consideration of the issue of preferential regimes from the point of view of the blacklist, The formation of such lists, I think, in one of the early protocols would be quite useful, because it would allow to form [00:37:00] a single criterion of the attitude of a particular country to such a category.

[00:37:07] And, accordingly, it would increase the inclusiveness, clarity and transparency of how such lists are formed. The second topic for one of the early protocols is the exchange of tax information. There are different approaches and principles by which one or another organization can exchange tax information.

[00:37:46] We believe that the principles that have been formed at the level of the United Nations, which would be [00:38:00] accepted by all members, would increase the inclusiveness and effectiveness of this kind of process. very much.

[00:38:12] Thanks, Rasha. Now to the distinguished delegate of Norway through the Webex.

[00:38:17] Thank you, Chad. Norway would like to align itself with the comments made by Canada and Germany and others at the outset. We have always held the view that to progress this work with both respect to the Framework Convention and the protocols we need a thorough analysis of the issues to be addressed.

[00:38:39] And so In that respect, I would like to thank the Secretariat for the presentation yesterday on Dispute Prevention and Dispute Resolution, which quite effectively showed the interaction between the Framework Convention itself. And the possible protocol on those issues. It would seem from that [00:39:00] presentation that it's quite difficult to develop a protocol without knowing what will be the structure of the framework convention.

[00:39:10] We would, in light of the compromise proposal presented by the chair yesterday. We would still encourage to more analysis to, to identify the issues that should be the subject of early discussion on protocols. I think we would agree with the delegate from Kenya that the topic of illicit financial flows is something that is a topic that all countries would be affected by.

[00:39:37] And therefore. A protocol would have broad application. However, it was also clear from that comment that there need to be analysis, for example, in relation to gaps in exchange of information, which is one way to address illicit financial flows in the tax area to be clear about how [00:40:00] this protocol could be used.

[00:40:03] improve on the existing structure so there is still a need for analysis before embarking on developing a protocol. Other like our colleague from Japan pointed to there are a number of ways in which to Issues can be addressed and I think that was also the point of our Indian colleague and all this all just leads to the need for more analysis so that we can drop protocols that target the needs of the areas identified.

[00:40:36] So we are, of course, open to discuss these issues and look forward to. Progressing this work in the future. Thank you.

[00:40:47] Thanks. No way. Now to the distinguished delegate of Estonia. Thank you, Chair. I will repeat myself and say it again that for a small country with resource [00:41:00] constraints, any sort of simultaneous work would be difficult. And this is also why we would support in a case. We do get into simultaneous works to have the work streams.

[00:41:12] In the protocols that would be a bit less controversial and where the agreement would be more likely to be reached. I would like to echo what my colleagues from Canada and Germany and the other countries who spoke after them and supported them have say, have been saying, and what I consider to be especially important is Canada's comment elaborating On the choice of the topics that we should really limit ourselves to the issues that cannot be solved domestically that need a multilateral solution via a legally binding instrument that would also help us to distribute our resources more effectively [00:42:00] and being fully in the brainstorming mode here.

[00:42:04] If we are to consider the early protocols, we would suggest, like Mauritius, the exchange of information and dispute prevention and resolution. And the reasons being that for any effective taxation that has a cross border element to take place, we need the exchange of information. It's the basics. And We do have existing legal instruments between countries.

[00:42:36] Mostly they are bilateral tax treaties and it is inevitable that disputes arise and a multilateral approach to the prevention and solution could be something that we would all benefit from. Thank you.

[00:42:54] Thank you, Estonia.

[00:42:56] Distinguished Delegate of Netherlands.

[00:42:58] Thank you, Chair. [00:43:00] We would like to Align ourselves with the comments made by, amongst others, the delegations of Germany, Canada and France. In considering protocols and early protocols, we feel that there is first a need for more information. We would very much welcome an open discussion on the significance of these protocols in the structure of the Convention.

[00:43:22] This would provide us with the basis to be able to properly reflect on the questions raised. As part of this open discussion, we would also very much welcome more details on the scope of the topics and the concerns raised. As to the question, which substantive elements we should consider first, we think we should prioritize issues which are the least controversial, as we said in our opening statement as well.

[00:43:49] This is especially crucial considering our commitments in other forums. As said, we very much welcome an open brainstorming on the functioning and the [00:44:00] substance of the convention.

[00:44:02] Thanks Netherlands. Now to the distinguished delegate of Senegal. Mr. President. Hello everyone. I will start by echoing the comments of Nigeria, Kenya and India. If we consider the protocol as a legal instrument, it must respond to the most urgent concerns of the members.

[00:44:26] We must not limit our field of action to polemic reasons or issues of concern. We must reflect on the aspects that have had significant impact in terms of resource mobilisation for all countries. And, in this regard, illicit financial flows constitute an important aspect. But how do we address this question?

[00:44:55] Because when we talk today about illicit financial flows, we have [00:45:00] several approaches, we have several sources. You have flows that are born from criminal activities that do not concern our field of activity, which are linked to corruption, which is not also our field of activity. But you have illicit financial flows that are linked to commercial, international transactions.

[00:45:19] And that's where we have the real problems in terms of taxation. Because commercial fraud. They, the transfer constitute the position in fiscal international

[00:45:37] protocol.

[00:45:38] Transparency,

[00:45:40] continue Benefici.

[00:45:42] Is it a matter of investment? It's on these questions that we need to reflect, and have an appropriate solution for everyone. Kenyan people, when we talk about research change on demand, often there is a refusal. What do they say to you? Because the principle [00:46:00] of your belonging has not been respected?

[00:46:02] Shouldn't this principle be the prerequisite of an additional study so that the provisions are binding on everyone? I think these are the real challenges that we have to think about together to bring solutions. Why not think about having a fiscal convention in the context of this protocol?

[00:46:22] Respect their reg of the confidentiality, respect, national

[00:46:28] administrative. Have left approach constitutive.

[00:46:33] Thank you, Zingal. Now, Distinguished Delegate of Belgium. Thank you, Chair. Thank you, Chair. Belgium likes to align itself with earlier statements by Italy, Canada, Germany, France, Austria, and Norway. We still think that we should focus on the framework convention, the terms of reference. We [00:47:00] also coming from a small country, we do not have unlimited human resources also.

[00:47:04] So it would, we would like to focus first on the framework convention itself. And we would like to reiterate that the early protocol should focus then on the least controversial topics. And the work should still be underpinned by substantive technical analysis and analysis, even like the illicit financial flows.

[00:47:27] I already hear different interpretations also it's a very broad concept and I fully agree that we can look further into it, but even on the concept level, there is need like what kind of a definition do you see? So an analysis is very important to us. Thank you.

[00:47:49] Thanks Belgium. Now, distinguished delegate of Chile. Thank you chair. And thank you for this possibility to have this brainstorming session. [00:48:00] First the comment on the procedural issue, which was first raised by our colleague from Japan. A protocol is a legal document as our chair has just confirmed, but my followup query is, could the protocol contain, for instance, a recommendation?

[00:48:15] Requesting members to act or not act in a certain way. For instance, this may be an ideal form to deal with a certain topic of interest to members, such as the topic mentioned by Jamaica. And that responds a little bit to Spain's comments as well. Perhaps that is the way forward on that type of topic.

[00:48:35] On other subjects of early protocols and from the discussions of yesterday we of course have to consider resources but we think we have to be open. We have to listen to colleagues from members countries, but also to participants from business and civil society. What are the urgent topics for all of us and perhaps limits ourselves to only [00:49:00] a couple of those topics, but we have to dedicate resources to that.

[00:49:06] I also come from a small resource group. Constrained country, but I do recognize that we do need to work on something in the multilateral way. I have to dedicate resources to that because they're urgent matters and we cannot limit ourselves to deal with less controversial issues. I see the attractiveness of options for starting with more easy options, but we have to try and come up with solutions for problems that need urgent attention, however difficult they may be.

[00:49:36] We therefore look forward to hear from all participants today. Thank you, chair. Thanks, Cherry.

[00:49:46] So I, we can announce now that we can have a 15 minutes coffee break. We will have the list still all the rents lands hands raised the same and we're gonna resume in 15 minutes. So we [00:50:00] are, we will be back at 11 45. to listen for the rest of the members interventions. Thank you.

[00:50:07] Dear excellencies, dear colleagues, distinguished delegates.

[00:50:12] So the floor now to the distinguished delegate.

[00:50:16] So the floor now is to the distinguished delegate of Ghana.

[00:50:21] Thank you, Chairman.

[00:50:23] And I want to again align myself with the statements made earlier by, on behalf of the Africa Group, and by my colleagues from Nigeria, Kenya, from the delegates from India. Chile and Russia and Senegal also. In doing so, Chairman, I wish to ask for permission to read an extract of Resolution 869 313, which is the resolution of the General Assembly in support of the Addis Ababa Agenda, Action [00:51:00] Agenda, of the Third International Conference on Financing for Development.

[00:51:05] End it. In Paragraph 23 indicates that we will redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption, through strengthening national regulation and increased international cooperation. We will also reduce opportunities for tax avoidance and consider inserting anti abuse clauses in all tax treaties.

[00:51:35] In hence, Disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between governments and companies to relevant tax authorities. We'll make sure that all companies, including multinationals, pay taxes to the governments of countries where economic activity occurs and value is created in accordance with [00:52:00] national and international laws and policies.

[00:52:04] Chairman, if we refer to this, Paragraph and look at resolution 78 to 30, which also emphasizes and mentions illicit financial flows. I believe then there is a reason that something that was mentioned in 2015 as a priority and a commitment is again repeated this year or last year, 2023. It means there is a need.

[00:52:45] It is an important issue that should be addressed. And for that matter, it is something that must be looked at now. There has been the issue of [00:53:00] small countries capacity, and other things. But then, we spend money on what we believe will bring the most results, or efficient use of money. If I'm going to spend my resources, or use my resources, on something which is, Should I say use the word, it's minuscule.

[00:53:25] It's not that, maybe because we all agree on it, but it's not what we bring as revenue. Then it is not efficient use of money or resources. So though we are a small country, we believe that it is important that we spend resources on these ones, which are maybe complex, but yet important. Those are the ones that will bring the resources that will help us achieve Agenda 2030.

[00:53:53] Thank you. Mr. Chairman we've talked about details and other things. I believe that all these things have [00:54:00] been thought through before it was done. Another thing I would like to mention is that while we're on it, as other protocols can be looked at, there is an issue, an interesting topic.

[00:54:14] of harmful tax practices. It has been limited if I should put it to preferential tax rates, but harmful tax practices go beyond preferential tax rates where a particular region of the world decides to come up with practices that puts another region of the world at a disadvantage. It is a harmful tax practice.

[00:54:38] And so it is another protocol which we should look at and maybe our only direction here as to whether it falls under equitable. tax equitable taxing rights. But then these are practices which we need to look at. So Chairman, I believe that the sensible thing that we should do concerning the fact that we want to be efficient with the use of resources is to take up those matters, no matter how complex [00:55:00] they are.

[00:55:00] That will bring the most revenue to all the countries involved. And this is multilateral in nature. Thank you.

[00:55:08] Thanks. Now to the distinguished delegate of Argentina. very much, Mr. President, and good morning to everyone, almost good afternoon. Regarding the topic and the question in particular, we mentioned yesterday that the protocols, although they are associated with a framework convention, are separate and independent legal instruments.

[00:55:38] So its negotiation is also a political and legal process that must be worked on carefully and in line with what is decided as a framework agreement, since the framework agreement will be the political and legal umbrella for the negotiations of these protocols. In this context, it seems to us that there should [00:56:00] be a very broad understanding of it or the issues that will be prioritized in protocols to be negotiated early.

[00:56:08] And for that, we consider that we will have to move forward on issues where there is a greater common understanding, or less complexity. And allow me to use perhaps this word, less complexity, so as not to use less controversial and try to give a positive tone to future negotiations. From our perspective, we consider that the automatic information exchange on real estate property,

[00:56:35] And the providing of cross border services are issues where we could move forward, jointly and positively, in an early stage of protocol negotiation. My delegation does not oppose to analyze other questions, perhaps more complex, such as the attribution of the powers of imposition, although we have to understand the challenging and time consuming that could [00:57:00] result, absorbing resources that could be used on.

[00:57:04] The money that I'm as if he's in the, the question is, but I like it. Like I'm a jury. I like who he is. It's dead. He's pushed over there. It's a sentido presidente, croquet, el tema que estamos analizando de los protocolos tempranos, eh, no de estar en un vacío.

[00:57:20] Eh, she said, I'm negotiating the money. They're a simultaneo. Oh, say, yeah, they tend to impact on, get it. See that most, me, what I'm going to ask of the team, but no, the other. I'm going to marco different protocol substance in 18, 24, 36, 48 meses. Y después también tenemos que tener presente y se mencionó hoy los recursos económicos y sobre todo los recursos humanos.

[00:57:48] Thank you, Argent Argentina, now to the Distinguished Delegate of Nigeria.

[00:57:53] Thank you very much chair. And I want to thank colleagues who have spoken ahead of me. Chair, [00:58:00] I speak on behalf of the official member African group and on behalf of Nigeria and in. Many some of the contributions, some questions have been raised and I think some questions may not require answering because they already answered by the instrument that set up this team.

[00:58:24] However, I think there are is important. We put the whole work into context. And one of the questions that was asked is what are the pressing needs of members of the UN? I think without any segregation, as to level of development, or as to north or south or east or west, we know the problems that are facing the world today.

[00:58:54] This morning, There were a report of floods [00:59:00] all across the world. And when natural phenomena like flooding happens, it doesn't respect North or South. We have problem of poverty across the world.

[00:59:19] We have problem of not meeting the SDGs.

[00:59:24] It's very clear. The mid year, the mid point review happened not long ago and there is an indication that it is, we're not meeting it. That gets everywhere. So that was the question. What's the problem? Then the problem of the world is a problem of revenue and that is a pressing need. That's why people can't eat.

[00:59:48] That's why people are engaging activities. That's where we see people risking their life to cross desert, to cross seas in, in donkeys. [01:00:00] That is the problem of the world and is a revenue problem. And what is the cost of this problem is because the extant tax rules are not catering for the needs of hard is tilted in favor of some to the detriment of the others.

[01:00:27] And that's why we have the larger percentage of the world in debt crisis, because people have to borrow to survive, but we can avoid that. We can prevent that. And so that is a pressing need that we face. And then as to the questions of what are the specific topics for IFF I defer to. contribution from my colleague from Ghana, because we already have all the answers with us.

[01:00:59] And [01:01:00] I think we should just pull our resources together and let's work on what matters. Our lives matter. We cannot, on the altar of convenience, slaughter and sacrifice our lives.

[01:01:18] If that is where we need to put all our resources, let's do it. It is what it, and therefore the SQs that we have limited resources, want to do things that are simple to the exclusion of those that are complex, even when those complex issues are, what can take what, what makes our life what we are, I think, I know it's easier to chase a rat than to chase a snake.

[01:01:51] But we also know that if you are not careful with the snake, you may have a taste of his poison. Colleagues, I think we need to talk and look at [01:02:00] the issues clearly in the face. What is facing us? What are the problems that we are facing as a people of the world? And our problem is that. All the issues around our generating not just adequate revenue, but appropriate revenue.

[01:02:23] Fair taxation. Fair taxing rights that enables every country to generate enough resources from his own land. And resort less to borrowing and be able to face the basic issues of life. Be able to provide feeding, shelter, educate the people. And that's what we are talking about, colleagues. And I think we can all achieve this if we bring our minds together.

[01:02:49] And let's not look and depend on the technical. Let's look at the real issue and see how we come together. Chair, I submit that [01:03:00] the issues of highly protocols are the issues that affect our nations. The foundations of our nation. And we need to work on them like yesterday. We need an answer like this morning.

[01:03:14] Thank you. Thanks, Nigeria. Now to the distinguished delegate of Sweden.

[01:03:22] Thank you, share. I'm not sure that I can talk so passionate in my intervention as the distinguished colleague from Nigeria. But I had actually a bit the same question as the one that Matt, she was the sorry, the distinguished delegate from Nigeria. Sorry, I'm a co coordinator together with the distinguished colleague from Nigeria in the area of transfer pricing in it.

[01:03:49] And there we also, we always use the first name. Sorry. Anyway Yeah um, sorry. Yeah, I think we are, As I think [01:04:00] Germany started to say, the distinguished colleague for Germany started to say that I'm here to listen, and I think that's, for me, the most important thing in this brainstorming meeting and I can also align myself with also comments as others have said, Canada, Germany, and others on also what I said yesterday on the brainstorming.

[01:04:20] relationship between the Framework Convention and protocols, but on the topics, and I really welcome this discussion because I think we have to really understand what we are talking about and I can understand that the needs for more revenues is there and, but the question still is, what how can that be met? And I struggle a lot with that, why I still welcome this session because it has to be more concrete for me. For example as has also been pointed out by others if we are, I think we also had some kind of thinking about judicial financial flows, for example.

[01:04:57] Text related issues to that but then when I hear the [01:05:00] intervention, I still struggle with what that means. And it seems that means different things to different persons. And that's why I must go back to what I repeatedly have been saying, that we need some kind of analysis. And when I say analysis, maybe that could be perceived as something we will do for years.

[01:05:18] That's not what I'm talking about, but to be able to really understand. That we will be doing the right things we need that. For example, as I was mentioning before, transfer pricing, I heard saying that illicit financial flows has to be about abuse of transfer pricing rules or transfer price in, in various transfer pricing.

[01:05:41] But do we mean that the rules are not good enough? Is the information lacking? Is the is it the capacity that isn't there? Or what are we talking about? And is it the only exchange of information? Is that the problem? And I think to hear this conversation is, [01:06:00] has today been helpful.

[01:06:01] But I still think that we need to prioritize the right issues. And to do that, once again I must come back to, to to the need to do that analysis to find out, are the needs. Of the issues that we have heard of today. For me, it hasn't been the same. So why should we choose one if we think differently about how if you perceive that differently?

[01:06:29] And what does it actually mean in practice? Again I think to do that analysis and then to really prioritize the information. Issues were that will bring revenues and issues that will bring revenues for me is more issues where we can agree and start by doing this like step by step.

[01:06:54] And I really hope that we can we can go home after another week here and [01:07:00] feel that we are comfortable with with the discussions here and I. I think this has been is so far is very helpful, but I still think there are a lot of questions, Mark, for me. Thanks.

[01:07:13] Thanks. Now to the distinguished delegate of Korea.

[01:07:17] Thank you, chair. Korea believes that exchange of information needs to be one of the topic for all the protocols. Exchange of information is one of the crucial ways to address the issues of the illicit financial frauds. As a distinguished delegate, Kenya and Senegal mentioned, many developing countries are complaining about the limitation in access to the information.

[01:07:52] The UN ADAR Committee, or next, the Negotiation Committee, may bring this topic [01:08:00] as protocol. to improve the exchange of information considering the benefit of developing countries. Having said that, we don't have to establish a new information exchange system under the UN because we have already well established the OECD system containing CRS report, beneficial ownership.

[01:08:27] information, as well as the CBCR, Country by Country Report. We can achieve our goal to improve the current existing OECD system, taking into account developing countries concerns. Turning to tax on cross border taxation, this area needs more information for Member States to know exactly what's the problem.

[01:08:57] What's the issue? What's the [01:09:00] reasoning for the sourcing country to have a tax right for these transactions? I would like to appreciate, distinguished Indian colleagues, the explanation about the elements of this transaction, such as TP, nexus rules, and allocation of a tax right. I didn't know that. Before I came to this place.

[01:09:30] So I would like to propose that I would add a committee task. The UN OECD World Bank and IMF to produce consolidated paper on this issue, including suggestions. It would be very helpful for us to decide whether this topic is suitable for the protocol. [01:10:00] Regarding the DST on M& E, Korea is afraid that selecting this top topic for the protocol would undermine the ongoing negotiation on Amount A, where over super majority of UN members are participating and is in the really final stage.

[01:10:27] The MLC of the Amount A clearly states that contracting party should abolish the existing DST and not introduce new ones. If we designate this topic for protocol, it would indicate that we are heading to the another window. I'm not sure whether it is appropriate, even in terms of a good face. Thus, [01:11:00] I would like to propose that this topic should keep away while we are negotiating.

[01:11:07] on this issue in another international forum. Thank you.

[01:11:12] Thanks, Korea. Now to the distinguished delegate of Jamaica. Thank you, Chair. Chair, I want to thank Chile in its earlier intervention in reminding us that this is a brainstorming session and that all ideas should contend. It may not fit with what is regarded as an early protocol. And I must admit my ignorance on that topic.

[01:11:45] But I do believe that this is a safe space that country should be able to voice their concerns. And issues that are important to them. I also want to thank Spain, Maria Jose's graciousness in we spoke [01:12:00] afterwards and I tried to explain why the issue of ODAs was important. And I just want to thank her for that.

[01:12:07] I now come to the issue. Chair of regional cooperation and why I think that it should be focused on in, in determining the early protocols. I believe that for many countries, and I think now of my own region where most of the, we are small island developing states and small island developing states have particular problems.

[01:12:32] And I wonder in this big tent. where small island developing states will find our identity. And I believe that it is important for region regional cooperation to help small island developing states to enhance their economic development as well as to strengthen their voices around the big, [01:13:00] where so many voices are contending.

[01:13:04] And so I hope that attention will be paid to the particular concerns of small island developing states, an issue that has been raised by my colleague from the Bahamas. But one in which I am growing increasingly concerned about whether or not We can find our voice and our space in, in, in this new iteration of the International Tax Corporation.

[01:13:29] Thanks, Jamaica. Now to the distinguished delegate of Bahamas.

[01:13:33] Thank you, Mr. Chair. The Bahamas takes this opportunity to add to this conversation or to this important topic of early protocols. We firmly believe that focusing on four to six priority areas is essential and can streamline our work for this important process. Within this context, we believe that the [01:14:00] early protocols should encompass environmental and carbon taxation, which is crucial for small island development states.

[01:14:09] It should include tax incentives, tax related aspects of illicit financial flows, Cross border taxation of digital economies, including blockchain technology on a I. Furthermore, the Bahamas advocates strongly for addressing tax disputes as a priority within early protocols. We emphasize the importance of exploring diverse dispute resolution, Megan mechanisms that ensure an equitable playing field.

[01:14:41] particularly for small island developing states and developing countries. I thank you, Mr. Joe.

[01:14:47] Thanks. Bahamas. Now those two is a distinguished delegate of South Africa.

[01:14:52] I align ourself with the interventions that have been made by India Nigeria and Senegal. [01:15:00] And And I think the key issue as well, I think one of the takeaways from, I think, from the Senegal, to the extent that we do eventually agree in what is illicit financial flows, but we've seen, I think, some interventions on different countries.

[01:15:14] Other countries are looking at this they're focusing on the trust element on the illicit financial flows. Others, they're focusing on the real estate. So I think the intervention by Senegal was quite good to highlight some of the issues and the issues that India actually raised on this part.

[01:15:32] Thank you.

[01:15:33] Thanks, South Africa. Now to the distinguished delegate of Algeria. Mr. President. First of all, we subscribe to the declaration of Nigeria, of Kenya, of Senegal, of India as well. At the risk of repeating myself, regarding the priorities that have been identified as priorities for our [01:16:00] countries, are the question of illicit financial flows and the imposition of trans frontal operations, i.

[01:16:07] e. services, transactions, trans frontal services. These questions are essential. Why? They are urgent. Why? Because these are these are questions, these are transactions that that make, that, that, that don't allow our countries to mobilize enough resources.

[01:16:26] Respective.

[01:16:28] The second issue is the imposition of transactions, i. e. transfrontal services. This is important because the pre established rules, we repeat it, but we will never say it enough, are unfair. They do not allow the countries of origin to harvest anything. This is a reality, and it deprives our states of resources enormously, hence the interest in putting back

[01:16:53] Thanks, Algeria, now to the of Israel. Thank you [01:17:00] chair. I'd like to echo the comments made by Canada, Italy, Germany, and others to say that we're wondering what the most efficient way to address the important issues that were raised here is, and the question whether it is efficient to work on protocols before we know exactly how the parts interact And understand how the protocols will work under the framework umbrella framework convention umbrella to, to address those problems.

[01:17:34] Otherwise the work will not be efficient because when we work on a protocol without having a clear full picture we'd have to address many contingencies. Those working on the protocol will have To think if the framework says that then the protocol could do that. And if the protocol does something else there would be many open ends.

[01:17:57] So maybe an open [01:18:00] discussion to better understand the problems, but if we keep in mind the issue of resource allocation, which we see is very important it would, in our opinion, make sense to first have the framework worked out. And then once we know where we're going to start working on the protocol, and if I take for example the protocol that was discussed yesterday about dispute resolution what comes to mind is that not necessarily one size fits all issues and working in a space where you don't know what this protocol, for instance, would cover and how it would interact with other parts would not be an efficient way to allocate our very valuable resources.

[01:18:52] To work and promote a possible solution to the problems that were raised. Thank you. [01:19:00] Thanks. Now to the distinguished delegate of Botswana.

[01:19:04] Thank you, Mr. Chairman. We'd like to align ourselves with the submissions from the Federal Republic of Nigeria. Representing 54 member members of the Africa group, as well as Kenya, Chile, the Russian Federation, Senegal, Ghana, South Africa, Algeria and India, as well as the Bahamas, as there are a number of overlaps, synergies and complementarities.

[01:19:36] With our perspective as Botswana is a small developing economy. Mr. Chairman, we do not subscribe to addressing less controversial matters first, because as a developing economy, we are confronted, has been echoed by a number of jurisdictions [01:20:00] in the developing south, we are confronted with matters of survival.

[01:20:05] to bolster our fiscal policies through revenue and resource mobilization to achieve our develop developmental priorities in terms of economic, infrastructural and social development. Therefore, Mr Chairperson prioritizations of areas where there's broad consensus at the expense of our fiscal priorities.

[01:20:30] will be tantamount to kicking the can down the road as some would like to call it. Regarding Mr. Chairman, our take on the early protocols, we would like to propose for development of an early protocol on, uh, equitable taxation of income of multinational enterprises. Because we cannot deny the existence of already or pre existing guidelines.

[01:20:58] For example guidelines or [01:21:00] instruments. For example, we have currently in place the OECD guidelines for multinational enterprises on responsible business conduct. Despite this, Mr. Chairman, there continues to be undesirable acts by enemies, ranging from human rights through abuse of labor rights to environmental externalities.

[01:21:25] Just to mention a few. And just to underscore that the guidelines are not laws, as we are all aware. Because they're not they're not firm. They're not sanctionable whether domestic, regional, or international. 'cause they're not legal, obviously. So in an attempt to address acts of m and e through already existing frameworks and as chairman developing economies face a number of constraints such as capacity challenges and even when their commitment to, to, [01:22:00] to.

[01:22:00] exchange of information and cooperation with other jurisdictions as underscored by the distinguished delegates from Kenya and Senegal. Such pathways are often administratively costly and time consuming to pursue, and therefore they become elusive in the final episode. Mr. Chairman, adopting this protocol would institutionalize mechanisms for addressing the aforementioned challenges, as well as assist in bringing inclusivity to the international tax system, to all countries in the United Nations multilateral system.

[01:22:47] The other protocols, the other protocol rather that I would like, we would like to submit of course it overlaps with the first one is the development of an early protocol on illicit financial flows. [01:23:00] Mr. Chairman, the illicit financial flows have been recognized by the UN General Assembly as a problem that requires international attention.

[01:23:11] as underscored by the distinguished delegate from the, from Ghana especially from the point of view of efficient use of resources. Commercial activities Mr. Chairman, such as a transfer pricing and other base erosion and profit shifting practices exploit gaps and mismatch in the tax rules and result in little or no tax in host countries which happen to be for the most part developing economies such as Botswana.

[01:23:45] Therefore Mr. Chairman, this matter needs to be addressed at multilateral level through this forum taking advantage of this platform. I submit, Mr. Chairman.

[01:23:58] Thanks. Now to [01:24:00] the distinguished delegate of Lesotho.

[01:24:03] Thank you, Chair, and good afternoon, everybody. Chair, I would want to start by addressing the issue of tax controversy. To us as Lesotho, tax controversy is a self inflicted injury. It's a self inflicted injury. It is a man made a tax disease. And when I talk about the men, I also talk about the woman. And is as a result of our failure to collaborate fully to provide solutions to the challenges that we face is as a result of the failure to change our mindsets.

[01:24:42] That's what causes. The controversy that we've been talking about up to now. So we come up with text procedures, text interpretations that are only suitable to ourselves without having regard to the other party. And that's [01:25:00] basically why we are in this situation today. The other issue relates to to, to.

[01:25:08] The resources that we have to deal with the protocols, and you want to indicate that as developing countries, we are the least resource to to, in terms of the human and financial capitals. We don't have those. But we are determined to address the issues that we face because the longer we delay some of these issues, the longer we delay providing the solutions, the worse it becomes to, for us and our nations.

[01:25:37] So we need to act very fast on this. So in short and in concluding, Chair, very much. to align ourselves to the proposals on early protocols that have already been made by our other counterparts, including on IFFS, attestation of high net worth [01:26:00] individuals. Yesterday we saw, we are enlightened about how a protocol on dispute prevention and resolution can wake.

[01:26:14] But today I'm surprised that we are still saying we don't know how these protocols can work. I would want to urge the distinguished delegates that let's take the opportunity, let's take what we are given yesterday and make that work for our countries and delegations that we are leading. I thank you, Chair.

[01:26:37] Thanks, Mr. Soto. Now to the distinguished delegates of Poland.

[01:26:42] Thank you, Jack. Good morning, all colleagues. Thank you very much for This brainstorming session, we support what Canada, Germany, Italy, Spain, and other countries have said before to enhance efficiency of the process. Firstly, we need to [01:27:00] understand how the entire legal process will be looks like and we need the analysis This session revolves around two main issues.

[01:27:11] Identifying potential topics for discussion in the early protocols and addressing the call for greater clarity of procedural legal matters, which I won't reiterate. I extend my gratitude to all colleagues who shared concepts or ideas for what might be covered in the early protocols. Protocols. However, as emphasize Germany by money and Sweden, this is a new process and we need a broader analysis, not only of which topics, but also whether they may be effectively covered by early protocols.

[01:27:51] So I will advocate for less controversial topics. Thank you.

[01:27:57] Thanks Poland. Now to the distinguished delegate [01:28:00] of Tanzania.

[01:28:01] Thanks very much, Chair, for giving me a chance. I would like first to align with Nigeria with regard to the first and the second statements made by them on behalf of the African group. Secondly, I would like also to align with other countries in support of our motion. Just to mention a few. Kenya, India, Ghana, Algeria, Senegal, Botswana, Bahamas, South Africa and Lesotho in the subject.

[01:28:52] In that regard, Chair, I would like also to call this meeting to appreciate that the [01:29:00] Issues of illicit financial flow. Issues of taxation of income from cross border services. And the access to information are global matters, and as such, they need global attention and joint efforts. Where can we address those issues?

[01:29:27] I think, in my view, is by way of LA protocol that we are advocating here. I would also wish to point to issues regarding illicit financial flow. It's not only about the so called manipulation or abuse of transfer pricing rules. But it constitutes a set of illegal conducts or illegal [01:30:00] activities that call for criminal action.

[01:30:04] And as such, we need to address them as well. Issues like corruption, issues like cross border mispricing,

[01:30:15] proceeds of illicit businesses and so on are all falling within the issues of illicit financial flow. So chair in that regard I call this meeting to support daily protocol is advocated by the African group. Thank you. Chair.

[01:30:36] Thanks. Tanzania. Now to the distinguished delegate of United States.

[01:30:41] Mr. Chair, thank you for the opportunity to take the floor today on possible topics for early protocols. First, as an opening point, we reiterate the concerns we identified in our intervention yesterday. On the simultaneous development of early protocols, however, given the [01:31:00] extensive discussion yesterday on this topic, we will not restate those points.

[01:31:03] Now, second, we agree with the comment made earlier by the distinguished delegate of Canada about how critical it is for delegates to understand the scope of topics being proposed in order to properly respond to these proposals. However, in the absence of this detail, I will note some general concerns we have with three proposals.

[01:31:26] Tax related illicit financial flows, exchange of information, and the taxation of cross border services. Regarding the proposal for an early protocol on measures against tax related illicit financial flows, we have serious concerns about developing a protocol on this topic. We find the term tax related illicit financial flows particularly problematic.

[01:31:53] We have significant concerns if this issue is scoped to include tax avoidance and commercial practices [01:32:00] that may not be illegal, depending on the jurisdiction, or if it places undue focus on tax related crimes at the expense of other offenses that generate criminal proceeds. We think it is critical to maintain a clear distinction between tax crimes and inappropriate but lawful behavior, while the latter is an important public policy issue.

[01:32:24] With international implications, it is not a matter of tax criminality that would implicate illicit financial flows per se. This is particularly problematic when discussing a legal instrument. Rather than creating new rules relating to illicit financial flows, we urge all member states to implement their existing obligations and commitments to prevent and combat corruption and money laundering under the U.

[01:32:52] N. Convention against corruption. And the U. N. Convention Against Transnational Organized Crime, as well as through participation in [01:33:00] bodies like the Financial Action Task Force.

[01:33:03] We have noted that some of the distinguished delegates today have called for an early protocol on exchange of information. We have great concerns with any work in this area that would duplicate conflict with, or erode the long standing international standards on an exchange of information.

[01:33:20] These long standing standards include important guardrails to protect tax information, such as the requirement that the information be foreseeably relevant to the administration and enforcement of taxes, Transcripts will be released in just a few minutes. purposes and standards on confidentiality and reciprocity.

[01:33:33] We would not be able to support an erosion of these important protections. We appreciate the points made by the distinguished delegates that some countries do not yet receive the full benefits of exchange of information. However, we believe that this can be addressed and is currently being addressed through the capacity building efforts undertaken by the Global Forum on Transparency and Exchange of [01:34:00] Information for Tax Purposes.

[01:34:02] Out of the 193 member states in the United Nations, 171 are members of the Global Forum. The majority of the members of the Global Forum are developing countries, and the Global Forum has expended substantial resources over the last 20 years to assist jurisdictions in implementing the standards on transparency and exchange of information.

[01:34:25] We do not see the benefit of the UN taking on the same or similar work or creating different standards that would risk fracturing the current international norms. Regarding the proposal for an early protocol on the taxation of income from the provision of cross border services in a digitalized and globalized economy, we wish to note that it would be difficult for us to agree to any rules that conflict with the principles we currently follow in our treaties.

[01:34:54] If the proposal is meant to lay the groundwork for broad [01:35:00] In the absence of the Pillar 1 negotiated agreement, we will not be able to agree to that protocol. If instead the proposal is for profit reallocation rules for income from automated digital services, we would like to reiterate our points from our prior interventions on the active negotiations and the G20 OECD inclusive framework here.

[01:35:24] We have engaged in the Pillar 1 negotiations to ensure stability and certainty. TFP and the international tax system. We are committed to those negotiations and we would like to avoid a scenario where early protocol negotiations undermine the ability of pillar one to deliver tangible benefits for member states across all levels of development.

[01:35:48] Mr. Chair, In conclusion. Thank you again for the opportunity to provide these comments. I hope they are taken into consideration, as the drafters engage in their work on the terms of reference.

[01:35:59] [01:36:00] Thanks, United States. Now to the distinguished delegate of Kenya.

[01:36:04] Thank you, Chair. I just wanted to provide a comment on the the issue that's being raised, that there's lack of clarity on exactly what is being discussed in this topic of illicit financial flows. I don't think that the members who have raised different aspects of illicit financial flows are conflicting themselves in any way.

[01:36:24] From our discussions this week, I think we've really identified the fact that tax matters are very interconnected. For example, when we were discussing domestic resource mobilization, we realized that a majority of the problem areas that were identified by countries in their input were all linked to domestic resource mobilization in one way or another.

[01:36:42] So we cannot restrict ourselves to only look at one way of addressing illicit financial flows because different countries experience illicit financial flows and are affected by them in different ways. The concept of illicit financial flows is a wide one and can cover tax [01:37:00] evasion, shifting of profits out of the market restriction and other tax avoidance schemes.

[01:37:05] It can be addressed through global and effective exchange of information, assistance in collection tackling the issue of low tax regimes that attract this illicit financial flows various other policies that would address base erosion and profit shifting. Chair, on the issue of exchange of information we reiterate the issue that yes, there are existing mechanisms, there are existing policies and standards, but they are not global and they are not effective in their implementation.

[01:37:34] Capacity building is not going to enable countries to get information from other countries that are not willing to exchange this information, even where foreseeable relevance is established. So chair, we do acknowledge that there are existing standards, but what we are calling for is the inclusivity and the effectiveness of implementing these standards, which is currently not happening.

[01:37:56] She also believe that at this point, what we are doing is that we are discussing the possible [01:38:00] topics. That can be addressed by these protocols and not really going so much into the drafting of them. Yes, we want to understand how these protocols would address the issues. But at this stage, we're addressing the possible topics that can be covered by the protocols.

[01:38:13] Thank you, Chair.

[01:38:15] Thanks, Kenya. We are left with two minutes. So now the list contains Pakistan, United States, United Kingdom, Brazil South Africa, followed by Senegal and AAF and academia. Six. Then now we close, man, and we have digital cooperation organization through the WebEx. So this is a list. Now we close the list because we will lose the interpretation in 10 minutes from now.

[01:38:44] And I'm asking delegates please. Make your intervention as short as possible. Thank you. Now to the distinguished delegate of Pakistan. Thank you Chair. And good morning to colleagues. I'll try to be short, but in my defense, it's my first [01:39:00] time taking the floor today. So we believe there should be three priority areas that should be addressed in, in early protocols.

[01:39:07] Taxation of digital economy tax related aspects of IFF and exchange of information. I think there's a problem of what we are saying is considered controversial topics for our delegation. There is no controversy on the above three mentioned topics. We all agree that a framework convention has to address these subjects.

[01:39:25] They are a part of international tax corporation. We all agree that these are urgent issues that require all of us to work together to address them. And for us, logically if we agree that these are commitments or objectives that a framework convention must address, that it is through protocols that we will elaborate the legally binding commitments, we will undertake them.

[01:39:43] these above mentioned challenges. And we concur with what our colleague from Kenya said. We find it difficult to believe that delegations don't understand the scope of the topics above, but maybe we need more presentations from the Secretariat. And regarding if there is still conflict [01:40:00] or dispute regarding not being clear on what the areas are specifying exactly, we would suggest that as a starting point, at least for topics for early protocols.

[01:40:12] We could utilize the resolution itself, which mandated this committee, and we could at least at the minimum utilize the two areas identified in that resolution, which is measures against tax related IFS and taxation of income derived from the provision of cross border services in an increasingly digitalized and globalized economy.

[01:40:31] We can concur with colleagues that lists. We agree to at this stage should perhaps be short and we think that our base should be the two areas identified in the resolution and coming to the topic of existing standards. The problem with existing standards is not only about capacity building that they are not necessarily universal and global countries who are asked to agree to these standards did not have an equal say or part in formulating them necessarily.

[01:40:58] Okay. And then often face [01:41:00] difficulties in if there are improvements they would like or amendments to these standards they do not feel that they have an equal say in setting the agenda of changing such standards. And that is why we believe that such a conversation has to be addressed in, in the UN where we would all have an equal say in, if we see for, see any improvements to be made we all have an equal say in, in how to improve such standards.

[01:41:23] Thank you. Thanks. Next time. Now to the distinguished delegate of the United Kingdom. Thank you, Chair. The UK welcomes this discussion so we can all understand better what is intended on issues such as illicit financial flows. And I'd like to particularly commend the distinguished delegate from Nigeria on his eloquent description of the global challenges we face.

[01:41:51] We'd also join with others in noting that in discussing topics of protocols, we must balance the size of the prize for different areas. with the [01:42:00] resources needed to work towards an agreement. The more complex the issues, and the greater the differences to be resolved on the details, the greater the resources that will be needed to make progress.

[01:42:13] It seems likely that this will only become more challenging as we get into negotiating the Framework Convention itself, where it will become all the more important for all members to have foreign affairs experts, tax experts, and legal experts feeding in especially for the most complex matters. And given the emphasis we have all placed on ensuring these processes are inclusive.

[01:42:39] So we simply ask that members continue to bear that in mind as we continue to discuss the long list of suggestions that have been put forward for protocols. Thank you.

[01:42:50] Thanks. Now to the distinguished delegate of Brazil.

[01:42:56] Thank you chair. I'm not sure that I can be as fast as expected. [01:43:00] I will, once again, emphasize what I have mentioned, I think, two times already, that countries will have to commit to accept that they have to increase resources, increase, to pay more attention to the allocation of resources that they have to be part of the discussion.

[01:43:22] This is unavoidable. We have mentioned in our initial input the three topics that have been raised here several times. The taxation of high net worth individuals, cross border taxation of services, and illicit financial flows. Some of these topics have a more have a broader scope and we still have to work more on them in order to identify which parts of it we want to discuss.

[01:43:47] And I have to say that I have some sympathy for the challenges I have of you because at this moment we are almost in [01:44:00] a free flow discussion and there are different approaches. Some delegates prefer to use a broader discussion of elements, more a principle approach, principle like approach. And why all this?

[01:44:15] claim that we need to know what are the underlying issues and to gather more information in order to proceed with the discussion. So we have people here in the same room using different methods to debate the same issue or how to proceed. And that is a really difficult challenge, how to organize the discussion.

[01:44:39] And on the other hand I think I placed myself on the side that I would like to see some more inputs in relation to what are the what the issues or the causes of some of the issues are. Someone suggested to invite the IMF and other organizations to explain that [01:45:00] positions on how they identify the flaws in the international tax system or regime.

[01:45:05] I have mentioned already that it, maybe it could be helpful also to invite some of academics that have also explored the implications of tax differentials or the effectiveness of tax treaties in mobilizing investment. And

[01:45:23] in making, in using my approach, which I think, I believe that tends to be more specific I believe that we have countries that are concerned with absolute gains and countries that are concerned with relative gains and with the competing countries. So some countries are concerned that they cannot be disadvantaged when compared to other countries that are looking for the same investments, while other countries are concerned with not disadvantaging their multinationals or their investors.

[01:45:57] source friendly policies, [01:46:00] that is also a difficult dilemma or how to balance those different views or different perspectives. In essence how I understand that the root causes of our problems, or where the root cause of our problems are I tend to have a picture in my mind that main problems that we have are located in, most of the time in In the standards that have been incorporated in tax treaties, be them the withholding rates or the amount of deductibility that some legislations would allow for payments like royalties or interest.

[01:46:36] Some of these issues have been partially addressed in the recent years, and some of them have not. I believe that this would be an opportunity for us to. allow some countries that complain that the standards in the treaties are not sufficient to mobilize resources. I believe that these [01:47:00] protocols, in the early protocols especially, would be an opportunity to allow a simultaneous revision of tax treaties for those countries that are not happy with the results that they have and that they feel that they are locked in this situation, that they cannot renegotiate those treaties.

[01:47:18] I believe that Some of the early protocols could allow those countries to set standards or change simultaneously some of the rules and clauses that they have accepted for their treaties and that they cannot find a way how to move or how to change them in order to allow more source taxation. I have to say that I believe that it's not a significant concern for Brazil because we have been In general, able to keep a specific design in our [01:48:00] DTC policy that guarantees to a large extent source taxation for us, but understand that it is a major concern for other countries.

[01:48:09] That's at least what I have heard. Maybe the review of some of the organizations that I mentioned, they could clarify if this is a correct assessment or not, whether they standards that have been widely adopted by source countries, whether they are too inefficient to allow an optimal design to mobilize resources for those countries.

[01:48:35] I also have, I would like also to emphasize that I see parts, the other part of the problem to mobilize resources for those countries coming from transfer pricing rules. And probably there are many reasons behind it, but I don't know how we should address it in protocols or early protocols because these standards and details of the rules, they are so [01:49:00] technical and spread throughout documents that are hundreds of pages long.

[01:49:06] I'm not sure how feasible it would be to have, of a protocol dealing with through suprizing issues. It seems to me that it would be more, we would need to keep an approach similar to what we have nowadays, just with best practices, and maybe reviewing what we have, but I cannot see how go, how we can go further, or be more specific than that, at least currently.

[01:49:33] But I do recognize that a significant, I have the feeling that a significant part of the issues that we have in mobilizing resources are rooted in the details or some details and some practices of the transfer, of our transfer pricing rules. For your face, it seems that I have to close and maybe I'll continue after lunch.

[01:49:53] Thank you.

[01:49:55] Of course, you can take the floor again after but because people are following us in the webcast, [01:50:00] we'll not be able to get any more interpretations as to why we need to close because it's. One and three minutes now. So now we oppose the list and then we're going to assume after the lunch break. Have a nice lunch break and the session is closed.

[01:50:15] Thank you.