UN Framework Convention on International Tax Cooperation (UNFCITC)

Report of the Fifth Session of negotiations

August 2026

TAX JUSTICE NETWORK

Contents

Introduction

Between 3 August and 13 August, the Fifth Session of the negotiations for the United Nations Framework Convention on International Tax Cooperation (UNFCITC) took place in New York.

This report summarizes the negotiations of the Fifth Session as they took place in line with the programme of work. The report covers the negotiations under the three workstreams, namely the framework convention (workstream 1), the protocol on cross-border services (workstream 2) and the protocol on the prevention and resolution of cross-border tax disputes (workstream 3).

The summaries are the result of contributions by Tax Justice Network staff, including Alex Cobham, Bob Michel, Carolina Finette, Florencia Lorenzo and Liz Nelson.

Fifth Session negotiations

Framework Convention (Workstream I)

Introduction

On the first day of the Fifth Session of negotiations, delegates started discussing the Zero-draft of the Framework Convention, developed under Workstream 1. The Co-Lead explained that the workstream had now moved from scoping the various issues and items of work into the phase of drafting, with the Zero-draft being the first step and the starting point of this week's discussions. The draft was the result of a member state-led effort during the intersessional meetings. The draft itself and the work on it in the intersessional meetings had been structured around five parts: 1) introduction (articles 1-3 on objectives, principles and definitions); 2) general provisions (articles 4-11 on commitments); 3) technical assistance (article 12 on technical assistance and capacity building); 3) institutional arrangements (articles 13-18 on Conference of Parties, subsidiary bodies, data collection, Secretariat and financial resources); and 5) final provisions (articles 19 to 28 on amendment, relationship with existing instruments, domestic law and protocols, settlement of disputes, entry into force, reservations and withdrawals).

PART I INTRODUCTION

Articles 1-2 – Objectives and principles

Zero-draft

The text of the draft articles on 'objectives' and 'principles' in the draft convention text read as follows:

- *Article 1 - Objectives*

The objectives of this Convention are to:

(a) Establish fully inclusive and effective international tax cooperation in terms of substance and process;

(b) Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis;

(c) Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing challenges to strengthening domestic resource mobilization.

- *Article 2 – Principles*

The present Framework Convention shall be guided by the following general principles:

(a) Universality in approach and scope, fully considering the different needs, priorities, and capacities of all countries, including developing countries, in particular countries in special situations;

(b) Recognition that every Member State has the sovereign right to decide its tax policies and practices, while also respecting the sovereignty of other Member States in such matters;

(c) Alignment, in the pursuit of international tax cooperation, with States' obligations under international human rights law;

(d) A holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects;

(e) Sufficiently flexible, resilient and agile approaches to ensure equitable and effective results as societies, technology and business models and the international tax cooperation landscapes evolve;

(f) Contributing to achieving sustainable development by ensuring fairness in allocation of taxing rights under the international tax system;

(g) Providing for rules that are as simple and easy to administer as the subject matter allows;

(h) Ensuring certainty for taxpayers and governments;

(i) Requiring transparency and accountability of all taxpayers.

<u>Floor discussion</u>

- *Complementing v changing existing rules*

Ireland broke the ice (and with it, any idle hopes of a smooth first day of negotiations) by claiming, on behalf of the 27 EU countries, that the Zero-draft did not sufficiently reflect those countries' view that the convention should complement the current international tax structure, rather than replacing it. Complementarity to existing international standards and the avoiding of work overlapping or conflicting with those standards has repeatedly been highlighted as a key element for those countries. Ireland urged the Convention to take a more 'high level' approach, and to provide more legal certainty in its relationship with existing international tax instruments. Clarifications on these elements were seen as necessary to foster confidence in the convention and ultimately gain the necessary support and effective implementation. The EU countries believed consensus-based decision making was key to achieving these goals.

France underscored the EU countries' position by noting that the objectives of the framework convention should be to frame in function of the goal to improve the existing international tax framework, rather than to replace it. Austria added that it would be good to revisit the objectives of the UNGA Resolutions to ensure the framework convention remains focused on its intended purpose of broad participation and also to maximize synergies with existing internationally agreed standards. Germany believed that the lack of clarity of the relationship between principles and objectives in articles 1 and 2 with the commitments expressed in article 4 to 11, and the inclusion of binding obligations in those provisions without detail on the exact legal content, made the current draft proposal unacceptable.

Other countries did not agree with the EU view. Russia and Zambia pointed out that the draft convention has dedicated articles, yet to be discussed, on the relationships of the convention with existing international instruments and domestic law. Brazil, too, did not see a need to add more emphasis on complementarity with existing frameworks in the convention's objectives.

Kenya strongly challenged the EU view by noting that the objectives and principles of the convention, as stated in the draft, are clear: existing rules and frameworks should be taken into consideration, but the purpose of the convention is not to complement or adopt them. Countries are gathering because the existing frameworks have proven not to be inclusive or fair, especially when it comes to developing countries. The objectives and principles expressed in the ToR, and now also in the draft convention, make this very clear and should be retained.

- *Downgrading objectives and principles to the preamble*

The draft convention's provisions on 'objectives' and on 'principles' have been taken integrally from the previously agreed Terms of Reference (ToR) for the convention negotiations. To the Co-Lead's surprise, certain countries went as far as challenging the actual need of self-standing articles on objectives and principles.

Norway, for example, suggested that the role to be played by the objectives and principles is to set out the overall vision of the framework convention and provide overarching guidance. The current concepts used in the principles and objectives are broad and it is difficult to ascertain their legal meaning. For these reasons, Norway insisted, the objectives and principles should be included in the preamble of the convention where they can have the greatest practical and legal value, rather than as self-standing convention articles. Others recognised economic principles, like efficiency, administrability and the minimising of unintended economic distortions should be added. Mexico and Italy supported the Norwegian view.

India, on the other hand, strongly opposed downgrading objectives and principles to preambular status. For India, the preamble served a markedly different purpose than provisions on the objectives and principles, which are the interpretative anchors for the articles that follow. There is an operational logic in having objectives and principles in the convention, as they connect to actual deliverables related to tax. As such, these provisions go beyond any preambular text which only serves to give context and to explain the motivation of creation this convention. Currently, the preamble refers to four UNGA resolutions, and this means that anything in these resolutions must be reflected in the framework convention as part of its context.

Zambia, on behalf of the Africa Group, agreed with the Indian view: the draft text reflects the objectives and principles as provided in the ToR, as it should be. The preamble has its own role to play, but so do the principles and objectives. Côte d'Ivoire added that similar type of framework conventions adopted at the United Nations come with dedicated articles on the objectives and the principles to be applied under the framework.

Mexico reminded countries that the provisions on objectives and principles in the ToR were the result of careful negotiations. Countries were well advised not to return to the preamble discussion and insist on their inclusion in the framework convention.

Sweden and Czech Republic urged the Co-Lead to also reserve time to discuss the content of the preamble, even if article 1 and 2 would be accepted as is.

- *Changing objectives and principles*

Colombia reiterated the EU concern for the lack of certainty and noted that, for the sake of legal certainty, the principle of sovereignty – also enshrined in the UN Charter – should be emphasised expressly in the preamble. Belgium reinforced this suggestion by claiming that the principle of sovereignty, which is currently reflected in the 'principles', should be emphasised in a dedicated article in the Convention on 'the protection of sovereignty'. Australia was in support of this suggestion.

Côte d'Ivoire pointed out that, in its view, the current objectives put sufficient emphasis on sovereignty and on the connection with existing tax frameworks.

The Chair of the INC interjected that the objectives and principles of the draft had been extracted from the ToR, which, in turn, had been approved in an UNGA Resolution. Countries were therefore advised not to diverge too much from the relevant provisions in the ToR, a view that was seconded by the Co-Lead of the workstream.

Italy noted that the reason for the disagreement on articles 1 and 2 is that the corresponding ToR articles on objectives and principles have not been approved by consensus.

Estonia wondered what the point of the ongoing discussion on article 1 and 2 was if there was no scope to make changes. The Czech Republic noted that it was clear from the suggestive language in the ToR that its articles were merely a recommendation to the International Negotiation Committee and that countries could alter the suggestions if justifiable.

The Co-Lead closed the meeting by inviting countries to submit written comments with specific text changes, to avoid spending more time going around in circles on the same issues.

Articles 3 – Definitions

The Co-Lead indicated that the relevant terms to be defined would be discussed per article where they figure and the agreed definition would then afterwards be inserted into article 3.

PART II GENERAL PROVISIONS

Article 4 – Sustainable Development

Zero-draft text

The text of the commitment on sustainable development in the draft convention read as follows:

"*Taking into account their different capacities, the States Parties agree to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner.*"

Floor discussion

During the negotiations, Jamaica took the floor to suggest expanding the provision as follows:

"*Taking into account State's common but differentiated responsibilities and respective capabilities, the States Party to the Convention agree to pursue international tax cooperation approaches that are aligned and informed by the principle of sustainable development, in a manner that promotes the alignment of fiscal policies with the international commitments assumed under environmental treaties*."

Jamaica explained that the aim of the new provision is to highlight that environmental issues are linked to economic development. The newly proposed text was therefore an attempt to bring together two principles of international environmental law, namely the principle of sustainable development, and the principle of common but differentiated responsibilities and respective capabilities which recognises that countries have different current capabilities and that national circumstances might guide the level of action and commitment that they are able to undertake in dealing with the climate emergency.

Brazil added that its preference for the text of the commitment was to also reflect that international tax cooperation must respect, protect and promote all human rights and contribute to addressing historical and structural inequalities, including those related to gender and race. In Brazil's view, tax policies and international tax instruments should be designed in a manner to promote fairness, social inclusion through progressive taxation that aligns with taxpayer's ability to pay and strengthen domestic resource mobilisation.

Mexico supported Jamaica's and Brazil's effort to expand the commitment. So did the United Kingdom, suggesting for the new text to make a link, where relevant, to the FFD4 Sevilla Commitment. Norway, too, was interested in working on an improved text along the suggested lines.

A few countries were less keen to expand the current version of the commitment text. India, for example, did not oppose adding language with the caveat that the language used in the commitment was not of a prescriptive nature. India was happy to support language on strengthening domestic resource mobilisation but urged for any upgraded provision to safeguard every state's policy space to design its own tax system. Saudi Arabia wished to keep the existing text, noting that an expansion may fail to preserve the careful balance previously achieved that resulted in the current text. Also, expansion of the topic may require expertise that is beyond those of tax experts. The Africa Group, too, preferred the text of the commitment to remain unchanged.

Article 5 – Fair Allocation of Taxing Rights

Zero-draft text

The text of the commitment on fair allocation of taxing rights in the draft convention read as follows:

"*1. A fair allocation of taxing rights among jurisdictions shall reflect the real economic contribution of each relevant jurisdiction, including jurisdictions where value is created, markets are located, revenues are generated and users or data are located, and taking into account such other factors that may become relevant as business models evolve, whether or not such activities involve physical presence in a jurisdiction.*

2. The States Parties shall explore and pursue cooperative approaches to support the fair allocation of taxing rights with a view to reducing the risks of double taxation and non-taxation."

Floor discussion

In the afternoon of the first day of negotiations of the Fifth Session, countries discussed the commitment on fair allocation of taxing rights, aptly described by one delegate as the heart of the convention.

This did not prevent the discussion causing some heartburn with onlookers as opinions among countries on the direction of travel for this commitment were very divided.

- *Nature of the commitments*

One of the changes made to the article as compared to the previous draft was the removal of the wording according to which countries "*shall take such actions, including renegotiation of existing tax agreements that are inconsistent with this article.*" Some countries, Germany for example, applauded the omission as an improvement but was still concerned about the lack of precision of the legal nature of the commitment and its nexus rules. Similarly, the United Kingdom believed that if the convention was to impose legal obligations on parties, it was essential that those parties have a clear understanding of what those obligations mean in practice, which is currently not the case for article 5.

Zambia and the African group concluded that with the omission of the previous text on renegotiation action, the provision was no longer providing for a commitment. The African Group therefore planned to resubmit its previous suggested text on this point. Kenya, too, wanted to revert to the previously suggested text, adding that the current text of paragraph two is too vague and almost certainly will not promote effective implementation of the commitment, as it stands today.

- *Cumulative nature of nexus rules*

Another point of criticism with the draft was unclear nature of the list of nexus rules mentioned. For Belgium, Czechia and Luxembourg it was important that the list was open-ended so the commitment would be flexible and resilient to be responsive to future business models and new economic realities.

India noted that the current drafting of the first paragraph appears to establish a cumulative condition for the nexus rules to apply. India therefore suggested to replace the use of 'and' with 'or'. Peru, too, believed the nexus rules should operate as alternatives, rather than as a cumulative condition for being granted taxing rights.

Azerbaijan and the United Kingdom came to the opposite conclusion, noting both that the application of the commitment should not result in overlapping taxing rights and multiple taxation.

Similarly, Denmark, Norway, Singapore and China also expressed concern that the text could be understood as creating multiple nexus on the same income to various countries, thereby creating all kinds of scenarios of double taxation.

Brazil expressed yet a different view by noting that the nexus rules and factors should not all have equal weight, and that it would be for the future protocol or workstreams under the convention to deal with questions of balancing and weighting all possible nexus rules. For this reason, the list of nexus rules and factors in the commitment should in any case be open-ended.

- *Rebalancing the fair allocation*

A number of countries were recalling previous draft text elements which they deemed to be removed prematurely. India, for example, pleaded to reinstate a nexus rule referring to "*where economic activity occurs*".

Several countries urged the number of nexus rules and factors mentioned in the text to be reduced.. Switzerland and Sweden, for example, noted that the commitment should merely replicated the relevant text of the Sevilla Commitment which provides, similar to India's suggestion, that taxpayers should pay tax: "*where economic activity occurs and value is created, in accordance with national and international laws and policies*". Sweden emphasised that the factor of physical presence should get more recognition on the text.

Whereas India and Sweden seemed to emphasise the importance of physical presence as the main nexus rule, Peru believed that the opposite was true and that taxing right allocation to countries that satisfy certain nexus rules without there being physical presence equally mattered. In the same vein, Kenya was also not averse to adding more factors in this regard, such as user location and location where data is generated.

The United Kingdom was willing to accept that there was a case for allocating more taxing rights to market countries over profits of the largest and most profitable MNEs but remained concerned about the convention recognising a market-based taxing right in generalised and unqualified terms. Germany was generally in support of the principle that taxing rights should reflect genuine economic activities but lamented the fact that many of the concepts introduced in the text have a legal meaning which is unclear, which makes it difficult for a country to support the text.

South Korea noted that the current draft text continued to over-emphasise source based taxing rights, and that a better balance should be struck in the text with the rights of the residence jurisdictions.

Kenya challenged the OECD countries' view noting that the many broad factors in the current text of the first paragraph apply both to resident and source states. The factors do not primarily focus on source states. Also, the text does not mention the concept of source state, and therefore it should also not reference the concept of residence state. Reflecting on the proposal by Sweden and others to focus only on economic activity and value creation, Kenya believed this approach to be very restrictive, and exactly the type of approach that had led to the situation of unfair allocation of taxing rights which countries were now trying to resolve in this commitment.

As noted by France, it seems that each country has a different concept of what fair allocation of taxing rights effectively entails. Countries also seem to struggle to identify what the best terms and factors are on which the allocation rules should be considered fair.

- *Objective of avoiding double taxation*

Switzerland emphasized the importance to explicitly mentioning avoiding double taxation and non-taxation as the objective of fair allocation of taxing rights. According to Switzerland, if there is no double taxation, there is no need for the allocation of taxing rights.

Russia disagreed with this view. The avoidance of double taxation or non-taxation is not, they claimed, the purpose of the fair allocation of taxing rights between countries but a goal in itself.

- *Scope of taxes covered*

Several countries also criticised the fact that the text of the commitment seems to focus mostly on corporate income tax while not clearly expressing whether it also applies to the taxation of individuals or to other taxes than income taxes. Estonia suggested to make explicit that the commitment applies to taxes of every kind and description.

Early in the second day, countries agreed that they would try and hold a closed-door session to streamline the various proposals for changes to the draft text of the commitment.

Article 6 – High-net Worth Individuals

Zero-draft text

The text of the commitment on high-net worth individuals in the draft convention read as follows:

"*1. States Parties shall cooperate to enhance measures to detect, deter and prevent tax avoidance and evasion by high-net-worth individuals.*

2. The States Parties shall share general information regarding structures and techniques used by high net worth individuals to avoid and evade taxes.

3. The States Parties shall explore coordinated approaches to ensuring effective taxation of high-net worth individuals while respecting each State Party's sovereign right to determine the design, structure and level of taxation within its national tax system."

Floor discussion

The discussion focused on 4 key points:

The co-lead opened for discussion guiding with a note on whether the right balance had been struck in the draft between cooperation and the sovereignty of states.

India supported the need for this article as did all other delegates speaking. India began by guiding delegates to think about the balance needed between specificity and high level, and to be clear about what the article wants to do and how it will do it.

- *Defining HNWIs*

India also kicked off a theme of the debate in this session concerning an agreed definition for HNWI , and whether such a definition needed to be in this article or Art.3. Switzerland picked up this theme and introduced suggesting some qualifying language would be helpful around 'avoidance' and 'evasion'

This definitional point was also raised by Belgium, Czechia, UAE, Philippines, Poland believing the definition should be provided in the framework convention text, or "ideally" in a separate protocol addressing at the same time domestic law [sovereignty]. Norway also supported this proposal. France went further and proposed an analytical note was needed to define who these HNWI were – and to provide options to guide approaches to our collective work. Although Singapore queried whether a definition was necessary and used this moment to emphasize the need to 'preserve domestic flexibility' to define who was or was not a HNWI.

Poland called for some discussion on the definition or meaning of 'effective taxation of HNWI' as referenced in para 3.

Later Indonesia challenged the notion of 'domestic' environment being sufficient and in doing so welcomed Article 6 but also used the moment to support work on definition because absence of such risked inconsistency of treatment. Honduras underlined this point later and asserted that an agreed definition and consistent approach would provide legal certainty. Jamaica and PNG agreed some agreed definition was needed.

- *Strengthening/ weakening language – proactive language lost*

On substance of the text the first 'alarm' raised by India was that the text had lost its, previously incorporated, *proactive nature,* a point echoed by Brazil, Pakistan, Kenya, Mexico, and therefore questioned whether anything new was being added through the convention to curb avoidance and evasion by NNWI. For Brazil, they described as the now the weakened nature of Article 6. They explained that while the article described the need to detect and prevent evasion and avoidance by HNWI, it had lost specific substantive commitments for states to do so. Stronger language was needed, explained Brazil, to ensure 'i*mplementation of measures to detect'.*

Moreover, some concern raised about a loss of specificity from the earlier draft, by way of introduction in para 2 on the provision between jurisdictions of "general" information. In particular India noted that previous delegate discussions had highlighted a concern that exchange of information was a key concern in tackling evasion and avoidance by HNWI. The addition of 'general' to the text had the effect of losing specificity and with it that previously highlighted key concern.

These points and India's intervention more broadly, for Zambia and on behalf of the AG, and Nigeria, Kenya, Morocco, S Africa, Ghana, B Faso aligned with their positions. Moreover, Zambia spoke of the 'watering down 'of the article giving rise to serious concern and that stronger, committed language should be introduced such as "state parties should develop and implement" rather than the weaker formulation "cooperate to enhance". Mexico agreed that there was a need to strengthen language in the article – in para 3 to adopt rather than explore for instance.

Spain agreed with the Article as a whole and additionally proposed that paragraph 3 should refer to "progressive" and effective taxation of HNWI.

- *Exchange of Information reference (para 2)*

India's concern on language and inclusion in the text of 'general' exchange of information was supported. Estonia added that they believed the exchange of information requirement specified in para 2 was already adequately addressed in Article 11. EOI. Zambia on behalf of the AG proposed "general" should be deleted in the sentence in Para2, as did PNG and Ghana, and highlighted their collective understanding that there was a need to make a specific commitment to EOI on HNWI notwithstanding the separate Art 11 on EOI.

Norway on the subject of EOI reminded delegates of their [Norway's] earlier proposed language for Art 6: "measures may include, as appropriate, exchange of information, experiences, and best practices regarding structures and techniques used by net worth individuals to avoid and evade taxes". At the same time, they felt para 2 was too 'standalone' and delved into too much operational detail. Austria appeared to share this view but alternatively proposed deleting the paragraph and offered that a protocol would be favoured on the issue. Norway also expressed need for the language to have 'necessary safeguards' for countries – another likely nod to the issue of sovereignty ! Meanwhile Singapore felt that synergies should be found with existing measures for EOI, as did Switzerland and Israel, and Luxembourg. China, however, recognised the norms and regulations imposed by domestic and international laws should be taken into account. Japan, too, agreed that the article should focus on sharing knowledge and best practices.

This concern was echoed by Belgium who also saw the placing of 'general' in paragraph 2 as strange and for Brazil they stated it added little to the text and suggested deleting. Indonesia supported Brazil's suggestion.

Finally, India raised a point, later echoed by Zambia/AG, Brazil…., concerning text changes in paragraph 3 that seem to want to provide an absolute quantification of wealth for the basis of taxation while also calling for 'effective' taxation. India underlined a preference that the text should call for *effective taxation* [reiterated later by Brazil through *"coordinated approaches"]* rather than a '*level of taxation'* and therebynoted the creation of a contradiction in the purpose of para 3. India felt the previous text version had been clear, notwithstanding some evident concerns from some countries that, indeed emerged later in the morning, regarding sovereignty. Zambia on behalf of the AG urged changing weaker language from 'explore' to 'adopt' coordinated approaches. Kenya supported this approach.

Germany made the point that cooperation is important under article but that the general exchange of information mechanisms remain the prime instruments to achieve this.

- *Sovereignty*

Belgium – pressing the point that sovereignty was an overarching principle and merited its own article, a proposal supported by Czechia, Germany, Estonia, Austria, France, UAE, Israel, Korea, Luxembourg, Ireland, Sweden (noting that the article should not be seen as a mandate to coordinate national policy), and Switzerland (in calling for "fairness" aligned with national systems). Brazil stoked the fire, and in contrast, disagreed saying that the creation of a standalone article on sovereignty would inevitably, albeit unintentionally, weaken operational commitments on other substantial issues.

References to sovereignty in Brazil's view should be deleted in Art 6. Likewise, Zambia on behalf of the AG, & Pakistan felt the provision in Article 6 on sovereignty was sufficient. Nigeria however, wanted to bring to delegates' attention that "where there are inconsistencies between this treaty the provision of domestic law then the sovereignty that we are clamouring for, we have indirectly surrendered it". Nigeria proposed deleting the 'sovereignty' clause altogether in Art 6 as did B Faso. For Kenya, aligned with the Africa Group's position, stated that Article 2B sufficiently addresses the issue on sovereignty.

- *Capacity*

Azerbaijan in support of the article also wanted to recognise the need through either the Convention or an alternative mechanism (for the exchange and analysis of relevant financial information or support effective participation of developing countries in existing mechanisms i.e CRS) provision for technical assistance, technology transfer, and capacity building to help developing countries.

- *Central purpose of Article 6*

Honduras spoke plainly and directly reminding delegates and observers at large the importance of this article and the unsustainable impact of offshore arrangements and aggressive tax planning "undermining equity, public confidence, and the ability of developing countries to mobilise domestic resources" and supported the text edits proposed by Zambia/AG.

On a point of structure, Switzerland added that they thought the Article should begin with paragraph 3 providing a primary emphasis on coordinated approaches to taxing HNWI.

Article 7 – Tax-Related Illicit Financial Flows, Tax Avoidance and Tax Evasion

Zero-draft text

The text of the commitment on tax-related illicit financial flows, tax avoidance and tax evasion in the draft convention read as follows:

"*The States Parties shall cooperate to combat tax-related illicit financial flows, including tax avoidance and tax evasion. Such cooperation shall include developing effective tools for the detection and prevention of such tax-related illicit financial flows, to be enforced through mutual administrative assistance and exchange of information and any other agreed forms of international co-operation, to ensure the effective taxation of income and profits from tax-related illicit financial flows by, and in accordance with the national laws of, the jurisdiction whose tax base has been reduced as a result of the tax-related illicit financial flow.*"

The proposed definition from draft article 3 read as follows:

"the term "tax-related illicit financial flow" means a financial flow that is illicit in origin, transfer or use, that reflects an exchange of value and that crosses country borders (an "illicit financial flow") where the principal purpose, or one of the principal purposes of such flow, is the avoidance or evasion of a legitimate government revenue claim. It does not include illicit financial flows that consist primarily of non-tax crimes (e.g., trafficking or smuggling) even if the crime would also give rise to a revenue claim".

Floor discussion

In the afternoon of the second day of the session, delegates discussed the article on illicit financial flows. A major priority dating back to the terms of reference negotiations, when it was a contender for one of the early protocols, the issue has been a source of apparent confusion for many OECD member delegates. This was the dominant theme of most interventions from this group, along with a push to limit the text and in particular to remove reference to the jurisdiction whose tax base has been reduced by a given illicit flow. Rather than simply reiterating the agreed UN definition however, in this session G77 countries raised a number of substantive points on the drafting, aiming to broaden the scope and ensure meaningful operational implications.

- *Definitional questions*

Czechia began by proposing to eliminate the term 'tax avoidance and tax evasion' from the article's title, arguing that their relationship to illicit flows is complicated and their inclusion therefore confusing. Czechia also argued that illicit should be interpreted to mean unlawful, with the scope correspondingly narrowed. Portugal raised similar questions over the inclusion of avoidance, based on a view of illicit as meaning illegal. Israel echoed these views, as did Belgium, Denmark, Estonia, Ireland, Italy, Japan, Republic of Korea and Switzerland.

Germany supported Czechia's position and argued that the question of legality should be key, and went as far as to argue that tax avoidance 'is completely legal'. Austria echoed Germany, and also questioned the origin of the definition of tax-related illicit financial flows in article 3. The UK echoed Portugal, Germany and Austria, and said that they could not support a definition of IFF that obscured the legal distinction between evasion and avoidance.

Singapore echoed others but also made the first reference in this session to the UN's formal statistical definition of illicit financial flows, backed by all members and the basis of the definition in the draft article 3. Singapore argued, however, that a definition developed for statistical purposes was not necessarily the appropriate basis for a legal instrument.

Poland saw progress in the article, and appreciated its emphasis on the tax-related purpose of (some) illicit flows, but also questioned the issue of including avoidance on the basis of potential legality. Poland also saw confusion in referring to avoidance and evasion separately in the title. France noted that with many delegates indicated confusion, and therefore an explanatory note on the purpose of the article would be useful. Netherlands echoed the confusion. Azerbaijan suggested distinguishing between "tax evasion, abusive tax avoidance, and legitimate tax planning."

Norway, a longstanding champion of the fight against IFFs, expressed caution about it as a central legal concept in the Convention, and proposed instead to focus on tax avoidance and tax evasion, and existing mechanisms to address these.

- *Range of responses*

Several countries responded to these definitional questions, with the African Group and others emphasising the inclusion of tax avoidance. Nigeria referred to the dictionary to clarify the difference between illicit and illegal, where the former includes not only the illegal but also that which breaks social rules or is seen as morally wrong – and hence the agreed inclusion of avoidance. Nigeria also added that countries opposing work on tax avoidance were easily ignoring the fact that in other fora and including in the work on BEPS, issues of anti-avoidance were front and centre of countries' focus. Senegal called for caution over deleting tax evasion and avoidance, noting the important feature and common outcome of the taking of deliberate steps to avoid paying tax in a given jurisdiction, and highlighting links in the behaviours. Tanzania noted the explicit, agreed commitment in the Committee's terms of reference.

India proposed a purpose-led definition as follows: "Tax-related illicit financial flows means cross-border movements of funds or assets that are generated, transferred, or used through illegal or abusive practices for the purposes of tax evasion or tax avoidance." Russia supported this, and also raised the question of changing the title, possibly to echo the text with illicit flows *including* avoidance and evasion. Mexico agreed with Russia's questions. China also noted the "ambiguous relationship" between the different elements, as did Philippines.

While reflecting the familiarity of the definitional discussion and the issue of illegality vs illicitness from the UNGA's Second Committee, Mexico raised a concern over whether different national legal responses to illicit flows might not create risks – suggesting the possibility to remove tax avoidance and tax evasion from the paragraph and rethink the article's purpose entirely. Honduras agreed that it might be best to define tax-related IFFs in the Convention, leaving avoidance and evasion to national law.

Brazil proposed to list separately each of tax avoidance, tax evasion and tax-related illicit financial flows. Denmark expressed interest in seeing this as a written proposal. UAE proposed separate articles on each of IFFs, tax avoidance and tax evasion.

- *Breadth of scope*

Zambia on behalf of the African Group requested the deletion of the final clause in the definition, which would exclude any illicit financial flows "that consist primarily of non-tax crimes (e.g., trafficking or smuggling) even if the crime would also give rise to a revenue claim". Tanzania echoed this.

Algeria also argued against excluding non-tax-related IFFs, since this would reduce the scope and effectiveness of the resulting cooperation.

Jamaica also noted that excluding IFFs that give rise to revenue claims would fetter the hands of the tax authority, and could see no reason to do so. Japan echoed Jamaica and Nigeria concurred, asking why a smuggler should be spared for their tax offense – even if their primary motivation were not tax-related. Kenya agreed that restricting IFF scope according to motivation was inappropriate, highlighting the challenges in applying the principal purpose test and the related burden of proof.

- *Inclusion of countries suffering losses*

Estonia raised a question over the inclusion of "the national laws of the jurisdiction whose tax base has been reduced" – including if this were understood to be wider than a tax claim. Tanzania emphasised the importance "that income connected to illicit financial flows is adequately taxed in the country where the economic activity or crime is originated or connected or where tax base is eroded." Algeria specifically welcomed the enshrining of the idea that the country whose tax base has been reduced should receive the taxing rights. Philippines, Kenya agreed. Zambia and the AG noted that the revenue claim was key to dealing with illicit financial flows.

Azerbaijan speculated that this aspect could contribute to disputes; while Brazil's proposed redrafting suggested to remove it as part of a compromise. India suggested that there could be language which would leave this more open, with the possibility of a developing a protocol ("maybe an STTR-style article") to address it fully.

- *Operational implications*

There was something near consensus on the need to develop the article to ensure meaningful implementation. Zambia and the AG called for the article to begin "States Parties shall develop and implement…", rather than "shall cooperate". This was echoed by India, Algeria, Kenya, Senegal and Tanzania. China recommended strengthening the manner in which the article would be implemented Norway indicated they would provide detailed comments focused on "practical tools that enable countries to address the underlying drivers of tax-related illicit financial flows, such as effective exchange of information, mutual administrative assistance, transparency, and other forms of international cooperations.” Mexico favoured a general discussion on views on this point.

Korea meanwhile welcomed the use of ‘cooperate’ rather than ‘develop and implement’.

Article 8 – Harmful Tax Practices

Zero-draft text

The text of the commitment on harmful tax practices in the draft convention text read as follows:

“*1. The States Parties shall cooperate, at international and regional levels, to develop and apply common principles and standards to identify harmful tax practices and measures to deter them, enabling all countries to tax income in accordance with their domestic laws and policies.*

2. The States Parties shall explore appropriate measures and tools to address harmful tax practices including those that provide for:

(a) enhanced transparency;

(b) monitoring and identifying emerging harmful tax practices; and

(c) the effective taxation of economic activities that benefit from harmful tax practices”

Floor discussion

- *UN norm setting or confirmation of OECD standards*

A large number of European countries, joined by Thailand, UAE, South Korea and Peru, pushed to connect article 8 with the work done by the OECD Forum on Harmful Tax Practices (FHTP). These countries warned against duplicating standards and peer assessment efforts. Peru and Sweden both asked countries to identify the gap that article 8 was intending to fill in relation to the FHTP. Norway and UAE urged the language of the article to be made more high-level, rather than containing any operational detail which should be reserved for protocols.

The African Group rejected any presumption of complementarity or conformity with existing frameworks as a matter of principle. As Zambia explained, the negotiations have come to be precisely because of the ineffectiveness of the current mechanisms on harmful tax practices. Not all UN member countries have been involved in building those standards.

India and Honduras took a more moderate position by noting that automatic deference is uncalled for, but so is the assumption that the work of harmful tax practices should start from a blank slate. Existing standards that have been developed inclusively and non-discriminatorily should be able to serve as a legitimate reference point. The convention should fill the gap when and to the extent developing countries were not involved in the norm setting process.

Brazil preferred the article in any case to be redrafted to stay principle-based and durable, with questions of duplication left to be worked out later in protocols or working groups.

- *Defining harmful tax practices*

Another issue raised was the need for a definition of harmful tax practices. Countries like Czechia and Jamaica argued for there to be a positive definition of harmful tax practices in article 3 of the convention. Czechia believed that without such a definition, it would be impossible to ascertain what the article was intending to achieve.

Jamaica supported the call for a definition, liking its relevance to the peer monitoring function that can only operate effectively if countries share a clear definition. Peer monitoring is the only suitable way for countries to hold each other accountable consistently.

Countries like Russia, Mauritius and Azerbaijan argued that a positive definition of harmful tax practices may not be necessary, but the article should at least contain appropriate language on features or criteria, (for example, lack of transparency, ring-fencing, absence of substantial economic activity) that would allow to identify such practices.

The African Group acknowledged that the definition of harmful tax practices was key, but the creation of the definition should be part of the mandate of the conference of parties, rather than included in the treaty text itself. The mandate should include the setting of criteria to define such practices and monitoring practices.

Brazil and India strongly opposed the need for agreeing on a definition at this time in the process. Brazil believed the framework convention generally needs resilience and adaptability over time. A definition would not serve this purpose. India, too, believed a definition would better be left to a future protocol. India added that, ideally, the first paragraph of the article should contain a statement of purpose, explaining why a practice counts as harmful and to whom. India reiterated that it had in the past suggested language to tie the framing of the article to the distortion of cross-border taxation or the eroding of another jurisdiction's tax base.

China suggested to delete "*common principles and standards*" from the first paragraph altogether on the basis that the wording does not accommodate varying state circumstances.

Article 9 – Prevention and Resolution of Tax Disputes

Zero-draft text

The text on prevention and resolution of tax disputes in the draft convention text read as follows:

"*1. The States Parties shall take effective measures, in accordance with its needs, capacities and priorities, to ensure effective prevention and resolution of disputes regarding taxpayers.*

2. In furtherance of paragraph 1, the States Parties shall, among other measures,

(a) minimize the potential for disputes by providing clear and accessible legislation and interpretative guidance regarding tax obligations; and

(b) implement dispute resolution mechanisms that are fair, independent, accessible, and effective in resolving disputes in a timely manner for both taxpayers and the tax authorities involved."

Floor discussion

- *Textual changes throughout*

Zambia and the African Group suggested to remove the terms "*in accordance with its needs, capacities and priorities*" in the first paragraph should be removed because they weakened the text, rather than adding anything substantial to it. This suggestion was supported by Mauritius and Brazil. India suggested to remove the terms "*for both taxpayers and the tax authorities involved*" in the second paragraph because this wording was implying that the article was creating obligations and rights for taxpayers.

Belgium, Czechia and a few other countries believed the second paragraph was generally written in a way that made it appear operational, as in, instating obligations on countries. The operationalisation of the commitment should be left to the protocols, and the second paragraph should be rewritten to express this understanding.

- *Anchor for the protocol on dispute resolution protocol*

India and Singapore noted that the article should serve as the anchor for the (draft) protocol in dispute prevention and resolution. As such, its wording should match the (draft) protocol and this, in turn, implied that the article should focus only on cross-border tax disputes and not on domestic tax disputes.

The African Group agreed that the focus should be on cross-border tax disputes, in line with the choices made in the draft protocol.

There were also voices opposing the idea of matching of article and protocol and thus restricting the article to cross-border disputes.

The United Kingdom, for example, believed that, given the optional nature of the protocol, the article and the protocol should be capable of being read and understood independently.

Germany believed that the convention article on disputes should remain sufficiently flexible and also cover work on domestic dispute resolution mechanisms, if deemed relevant in the future. The German delegate (who also in another capacity acts as co-lead on the dispute resolution protocol workstream) noted that the draft protocol had been limited to cross-border disputes after thorough negotiations. This decision should however not inform the scope of the convention article on which the protocol is based. He noted that the draft article is based on the Terms of Reference. The mandate given for this article in the Terms of Reference is for the article to cover both domestic and cross-border disputes. In the future, countries may very well contemplate protocols on domestic dispute resolution mechanisms. This should be supported in the article, as any given countries can always decide not to adopt such protocols.

Article 10 – Mutual Administrative Assistance

Zero-draft text

The text of the commitment on mutual administrative assistance in the draft convention read as follows:

"*1. States Parties shall cooperate to promote mutual administrative assistance in tax matters to facilitate the administration of taxes, combat tax evasion and avoidance and support domestic resource mobilization, including through:*

(a) exchange of information;

(b) assistance in tax collection;

(c) simultaneous tax examination;

(d) tax examination abroad;

(e) service of documents; and

(f) any other form of mutual administrative assistance as may be agreed by the States Parties from time to time;

in each case, under procedures to be specified in future protocols or other instruments.

2. The States Parties shall identify barriers to effective mutual administrative assistance in tax matters and cooperate to eliminate them if and as appropriate."

Floor discussion

- *Textual changes throughout*

India broadly agreed with the draft text of the article, although it wondered what exactly was meant with "*other instruments*" besides protocols that would serve to specify the procedures for administrative assistance in line with the article. India also wondered whether all items in the list in the first paragraph, as concepts like ‘simultaneous tax examinations’ and ‘tax examinations abroad’ have been dealt with separately in the dispute resolution protocol.

Zambia and the African Group also supported the current draft of the article, although these countries believed the first paragraph could be made stronger by saying that state parties “*shall promote*” rather than “*shall cooperate to promote*” administrative assistance. With regard to the “*other instruments*”, Zambia suggested to include language on the development of guidance or additional instruments that may be necessary for the effective implementation of the protocol.

Belgium, Austria and South Korea suggested to change the terms “*shall cooperate to promote”* into “*shall cooperate to enhance*”, to recognise the relevance of existing frameworks on administrative assistance and avoid duplication.

Kenya believed the conditional terms of “*if and as appropriate*” in the second paragraph should be deleted. The purpose of the article is to identify and effectively eliminate all barriers to assistance.

- *Relationship with existing instruments*

A recurring question raised by countries was the nature of the intended relationship between the draft article and existing instruments like the multilateral Mutual Administrative Assistance Convention (MAAC). The United Kingdom, for example, wondered whether the MAAC was understood as being able to be the realisation of the principles expressed in the article.

Germany believed the text should explicitly recognise that existing instruments like the MAAC already provide comprehensive frameworks for administrative assistance. The article should build upon existing mechanisms rather than establishing parallel legal obligations.

Senegal noted that point of the article was not to reinvent the wheel. Existing instruments have good components that should be used and built upon. But the point for the article is to identify vacuums and shortcomings of the existing instruments that need to be fleshed out. The point of the

Framework Convention is to enforce international tax cooperation and this cannot be achieved if the Convention ignores the matter of administrative assistance.

Kenya repeated its principled stance that it had also expressed in relation to other commitment articles: the mandate of the negotiation committee is to establish fully inclusive and effective international tax cooperation, a standard which the existing mechanisms and frameworks do not meet because not all UN member countries in the room were involved in their development. Existing mechanisms can be considered, but outright conformity with those mechanisms should therefore not be supported.

- *Need for a high-level commitment*

Senegal believed that what was needed for this article to play its role was a high-level commitment, representing the legal basis for implementation. The Senegalese delegate added that the implementation should be obligatory because administrative assistance is a fundamental component of the convention.

The United Kingdom expressed support for the inclusion of high-level principles relating to mutual administrative assistance and transparency. Brazil, too, supported the idea of replacing the list with specific forms of assistance with a general provision for states parties to afford one and another mutual administrative assistance. The specific modalities of cooperation would be developed through protocols or other instruments.

The idea to keep the article more general was also supported by Sweden, Japan and Switzerland. In the same vein, Russia and a few other countries argued that the list of administrative assistance measures was superfluous. Some countries would likely not adopt all types of assistance measures. Omitting the list would make the article more high-level. Morocco and Austria too, preferred to remove the list, simply to make clear that article is a high-level commitment, and that there is no exhaustive list of mechanisms that could be looked at in future protocols. Morocco added that the current approach of a list and mention of procedures to be inserted in future protocols, seems to indicate that the protocol has operational force, which should not be the case. Protocols should determine both the mechanism to be pursued and the procedures to be followed.

Germany and Switzerland too, raised concerns regarding the fundamental nature of the article and whether its operational language was undermining the optionality of future protocols.

- *Allow reservations or make optional, clarify or delete*

Switzerland noted that expressed concerns regarding the nature of the article, giving rise to obligations on countries to undertake certain types of assistance which it simply cannot live up to under its domestic law.

For Germany, the need to recognise existing instruments like the MAAC also implied the recognition of the need, in this article, to include reservations and limitations on administrative assistance mechanisms, as allowed in the MAAC. Belgium supported the idea of the option to reserve the right to provide assistance in the collection of certain types of taxes. The Belgian delegate challenged the draft convention's principled stance in its draft article 25 that no reservations should be possible under the convention.

China, too, believed that the text of the article, as it stands, required the addition of reservation clauses. Otherwise, they felt, many countries would not be able or willing to sign the Convention. This sentiment was echoed by Isreal and Czechia. Singapore added that constitutional constraints may make it impossible for some countries to sign up the convention, given this article's apparent creation of binding obligations in the field of administrative assistance. If the text is not changed, reservations should be allowed. Alternatively, the text should make clear that both type and procedure of assistance mechanisms should be left to be decided in optional protocols. U.A.E. too noted that countries should be given the option to opt-out of individual types of assistance mechanisms, just like under the MAAC.

France noted that unless paragraph two of the draft article could be given a reasonable explanation of what it actually entails, it should be deleted.

Article 11 – Exchange of Information

Zero-draft text

The text of the commitment on exchange of information in the Zero-draft read as follows:

“1. The competent authorities of the States Parties shall exchange such information as [may be][is foreseeably] relevant for the administration or enforcement of the domestic laws of the State Party concerning taxes of every kind and description imposed on behalf of the State Parties (but not including social security contributions). In particular, information shall be exchanged that would be helpful to a State Party in preventing avoidance or evasion of such taxes, including:

(a) information regarding types of assets and instruments that in the future have been identified by the States Parties as providing opportunities to circumvent then-existing automatic exchange of information mechanisms;

(b) transaction information to allow the matching of exports and imports of goods and services to facilitate the detection and prevention of tax-related illicit financial flows; and

(c) such other information as may be agreed by the States Parties from time to time through protocols or other instruments.

2. Any information received by a State Party under paragraph 1 or Article 9 shall be treated as secret in the same manner as information obtained under the domestic laws of that State and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards which may be specified by the requested Party as required under its domestic law. It shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may, however, disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a State Party the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other State Party;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other State Party; or

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a State Party in accordance with this Article, the other State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a State Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a State Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. In implementing this article, the States Parties shall take into account the needs and capacities of developing countries and countries in special situations as well as such limitations as may be agreed by the States Parties from time to time through protocols or other instruments.]

Floor discussion

- *Removal of the article?*

Austria began, joined by a number of countries, challenging the necessity of article on exchange of information. This group of countries believed that the draft article, much more than any other of the articles on the commitments, creates operational rules, and thus goes beyond a high level commitment. Austria therefore called for the deletion of the article. While Austria stated that it remains fully supportive of exchange of information, it did not find it appropriate to establish a separate legal standard for exchange of information in the Convention. The reference to exchange of information in article 10 as one of the types of administrative assistance would be sufficient to serve as an anchor for an operationalising protocol or other instruments for state parties wishing to adopt this.

Poland, the United Kingdom, Czechia, Italy, France and Norway all supported Austria's charge against article 11. Germany also believed the current text of article 11 was difficult to reconcile with the character of the convention as a framework convention, confirming once again its general position that any operational provisions or commitments in the framework convention that are of operational nature are misplaced and should be changed.

France added that the text of the article added many safeguards and conditions to exchange of information for which there is no consensus among states. The article should be deleted to avoid long discussions on these aspects.

The co-chair interjected that at the Third Session, the decision had been taken to create a designated article for exchange of information after it had become clear that references to exchange of information were popping up in various other articles. India reenforced the co-chair's observation by noting that because exchange of information is a crucial tool to achieve other objectives, like combatting illicit financial flows or the effective taxation of high net worth individuals, the most elegant solution was to point to replace separate references with a dedicated article on the matter.

Switzerland agreed with the European views on the article, but were nevertheless open to retain a standalone article if it eliminates the operational, self-executing and open-ended obligations.

- *Relationship with other instruments*

Similar to the case of administrative assistance, many countries questioned the exact nature of the relationship between the article and existing international frameworks and instruments on exchange of information.

India was adamant that it was not the country's intention to step away from established practices and instruments or frameworks like the Global Forum, and urged countries not to see the article as a threat. The sole purpose of the article in the convention is to ensure that exchange of information can be developed as a tool to achieve the objectives set by countries under the convention. India did understand that the current formulation of the article is not consistent with other commitment articles, although its many detailed provisions are merely a reconciliation of previous concerns and demands raised by countries. India concluded that the article should stay but that its language should be made more of a high-level nature.

Norway added that if the current version of the article would not be changed, the possibility to provide reservations needs to be considered because the current text is not in line with the current standard on exchange of information developed under other frameworks.

Zambia expressed its sentiment of surprise after hearing some countries suggestions to delete the article or to have reservations inserted. Zambia noted that it too is a member of the Global Forum on Transparency and Exchange of Information but this fact does not alter the fact that exchange of information provisions are needed to execute the specific commitments under the convention, such as the one on illicit financial flows. Zambia wondered whether the deletion of the article would imply that the negotiations on these commitments would have to be reopened to make sure suitable information exchange provisions would be reinserted to the various commitment articles.

Brazil too expressed its loyalty to the Global Forum, mostly because of the high amount of sunk cost that Brazil and other countries have absorbed to comply with its standards. Brazil noted that about 60 UN member countries are not a member of the Global Forum currently, so the issue to provide rules for tax transparency beyond the Global Forum's reach was not a merely theoretical one. Brazil believed that, on the other hand, a provision in the convention that would force countries to exchange information based on standards that are different than the Global Forum ones, would be sufficient a reason for many countries not to sign the convention. Brazil believed a midway solution could be for the article to somehow express the commitment to issue recommendations to guide countries that are currently not party to the MAAC or to tax treaties to membership of such instruments so they can partake in the existing frameworks.

- *Foreseeable relevance standard*

A number of countries took positions vis-à-vis the standard of foreseeable relevance, which is a foundational rule of cooperation limitation in the current exchange of information regime in the MAAC and in the tax treaties:

countries should only exchange information that "*is foreseeably relevant*" to enforce the requesting country's tax laws. In the first paragraph of the draft article, it is suggested that the standard could be lowered so that the threshold for exchange by obliging countries to exchange any information that "*may be relevant*".

Italy objected to any attempt to get rid of the standard. Indonesia and Czechia believed that the standard of foreseeable relevance was appropriate. The U.A.E. also supported retaining the stablished standard of foreseeable relevance and added that robust data protection and confidentiality safeguards were essential and should be added in any provision on exchange of information. Similarly, Saudi Arabia mentioned reciprocity and equivalent data protection standards in all participating countries as important cornerstones of the exchange of information regime that should be reflected in the second paragraph and should be accompanied with a governance and review mechanism.

Zambia and the African Group had some reservations on the reliance on the foreseeable relevance standard. Zambia recognised that the concept is an important and internationally recognised standard. However, the rule should not be reflected in the convention article itself. Rather, it should be dealt with in a protocol in which criteria can be developed to properly interpret the standard in light of the convention.

PART III TECHNICAL ASSISTANCE

Article 12 - Capacity Building and Technical Assistance

Zero-draft text

The text of the article on capacity building and technical assistance in the Zero-draft read as follows:

1. Each State Party shall cooperate to strengthen its capacity in tax matters, including infrastructure and human resources, taking into account the needs, capacities and priorities of each State Party, in order to fulfill its obligations under this Convention.

2. States Parties shall, according to their capacity, provide one another technical assistance, especially for the benefit of developing countries.

Such cooperation shall promote the transfer of technology and technical and legal expertise to strengthen international tax cooperation and capacities of States Parties to effectively administer taxes, implement this Convention, boost domestic resource mobilization and drive accountability in the use of mobilized resources. Such technical assistance may include, inter alia:

> *(a) Establishment of institutional mechanisms to support Member States, especially developing countries, in their efforts to build capacity on relevant international tax practice and related issues including through exchange programmes;*
>
> *(b) Assistance, upon request, in the development of a strong legislative foundation to support domestic resource mobilization;*
>
> *(c) Setting up data analytics and exchange of information frameworks;*
>
> *(d) Financial and material assistance to support capacity building and technical assistance; and*
>
> *(e) Where feasible, coordination of technical assistance or capacity-building programmes for States Parties, from various stakeholders, in a manner that ensures efficient use of resources, avoids undue duplication of efforts and boost impact.*

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective.

<u>Floor discussion</u>

- *Domestic Resource Mobilization*

Czechia opened discussions stating their support for the Article is key to capacity building to facilitate domestic resource mobilisation. They wished to insert language that created actions in para 2 on a "voluntary basis".

Czechia also pointed to an ambiguity in the legal language in paragraph 4 “question is whether it makes sense to have a, what we would call in the Czech legal science, a permissible legal norm” concerning the sentence “may conclude bilateral or multilateral agreements or arrangements”. The co-lead immediately clarified on this point explaining that following earlier discussions paragraph 4 provided the option for the member states to have bilateral arrangements to support each other.

Belgium added their support for the article and referenced the Sevilla Commitment which recognises the importance of scaling up support for DRM and strengthening capacity building efforts in developing countries.

Kenya on behalf of the Africa Group stated their support for the Article seeing it as key to support the effective administration of taxes, to meet their obligations under the convention and its protocols, and improve domestic resource mobilisation.

- *Demand-driven needs – and duplication*

Belgium referenced the work already in place by several agencies that support capacity building. In particular, Belgium saw merit in capacity building that was demand-driven (!) and that this was especially helpful alongside the flexibility established in the article that would help to prevent unnecessary duplication of activities. Norway however stressed that the article would be stronger if indeed it was more flexible and had less prescriptive language. Norway used their intervention to agree that support needed to be demand driven and existing initiatives and organisations were well positioned to provide technical expertise and support, and specifically highlighted their own Tax For Development programme working in partner countries. Norway moreover felt a listing of initiatives could inadvertently narrow the support opportunities for technical assistance. Norway suggested that the paragraphs 3 and 4 might be deleted since they did not add value to the task of technical assistance. India concurred. Sweden, China and Singapore supported the position expressed by Norway and Belgium in terms of capacity building being demand driven and also said that for them capacity building should be framed as key to the Financing for Development project. Germany too, lent its’ support to the article and the focus on DRM and like others, cited bilateral and other initiatives to provide technical assistance, but also emphasised the need for capacity building support to be demand-driven.

Japan similarly saw that collaboration with regional and international capacity building and technical assistance initiatives would avoid duplication.

Algeria however highlighted a counter point; that a process that is demand led could be reductive, cautioning that states will create or gaps or legislation weaknesses. Algeria proposed that support from the Secretariat for cooperation under capacity building operalisation would be helpful (although it was not clear whether the Secretariat could have such a role).

- *Equal distribution of technical support*

Jamaica expressed concern that para 3 in listing national, regional and international approaches to technical support could create and unwelcome category

Brazil intervened with a statement that they believed that states had to commit to building their own capacity, and commit resources to do so, as well as supporting capacity building in other states. Brazil said the Convention does not require this of states, but wording should be introduced to do so.

- *Relationship to protocols*

Kenya, speaking on behalf of the Africa Group stated that capacity building and technical assistance should extend to the protocols and not been seen as the focus on the Convention only. Morocco supported Kenya's intervention.

- *Clarity of Language*

India spoke out about need for clarity concerning the phrase concerning driving accountability in the use of mobilised resources (para 2). This seemed an operational provision which was perhaps not well placed, but more so – not clear and consequently would be difficult to support. Morocco agreed with India's position.

PART IV INSTITUTIONAL ARRANGEMENTS

Article 13 - Conference of the States Parties to the Convention

Zero-draft text

The text of the draft article on conference of the states parties read as follows:

1. A Conference of the States Parties to the Convention is hereby established to achieve the objectives set forth in this Convention and to promote and review its implementation.

2. The Secretary-General of the United Nations shall convene the Conference of the States Parties not later than one year following the entry into force of this Convention. Thereafter, regular meetings of the Conference shall be held in accordance with the rules of procedure adopted by the Conference.

3. The Conference of the States Parties shall adopt rules of procedure and rules governing the activities set forth in this article.

4. The Conference of the States Parties shall facilitate the implementation of this Convention by the States Parties. In particular, it shall:

(a) Facilitate the exchange of information on legal, policy and technological developments pertaining to international tax cooperation;

(b) Take into consideration the work of other relevant forums in the area of international tax cooperation;

(c) Review periodically the implementation of this Convention by its States Parties in accordance with Article [16] of this Convention;

(d) Elaborate and adopt supplementary protocols to this Convention on the basis of article [20] of this Convention; and

(e) Consider the technical assistance and capacity-building requirements of States Parties regarding the implementation of this Convention and recommend any action it may deem necessary in that respect.

5. The Conference of the States Parties shall examine the most effective way of receiving and acting upon information, including, inter alia, information received from States Parties in accordance with Article [15] and from competent international organizations.

<u>*Floor discussion*</u>

- *Governance structures - role and powers*

Germany opened discussions on Article 13 by underlining the importance of strong governance. Strong governance, they stated, would encourage broad participation by states and meaningful engagement by other stakeholders as well as effective implementation and application of the Convention. At the same time Germany stated the need for governance arrangements to enable the development of the Convention over time. This led Germany to a key point, reiterated by many other states including (India, Jamaica), the need for a clear definition of the functions and powers of the Conference of the Parties, and appropriate limits on those powers. In the same vein being precise about the role and functions of the subsidiary bodies was important to Germany supporting this article and at this point they felt it lacked necessary clarity. The UK and Czechia supported the points made by Germany including on transparency and accessibility for other stakeholders (see below).

Italy, also supported Germany, UK, Estonia, Norway, Sweden, Czechia, Poland and others, and clarified that they viewed the primary role of the COP to interpretation and implementation of the Framework Convention.

Brazil, India, Honduras, Indonesia, Colombia and others (inc the African Union) expressed the view that the COP was the 'supreme' authority. for the Convention and its protocols. Furthermore, Germany stated that the role of the COP would be both the promotion of the objectives and oversight of implementation of provisions. India saw the Article as important to clearly lay down the rules of procedure in support of the COPs primary administrative role. Belgium supported India's position for detail and clarity.

Brazil felt it was important for the COP to have some flexibility to assist it in organising its work effectively and not to be placed in a "procedural straitjacket". Indonesia shared the view to allow the COP to respond to future developments. Kenya on behalf of the AG was concerned that the rules of procedure were limiting, and needed more detail – Core d'Ivoire, Nigeria,

Azerbaijan urged for the COP to have a clear role in capacity building i.e. coordinating assistance, identifying funding, and monitoring its delivery.

The African Union added some nuanced, yet important points related to governance -for example, changing language to Conference of the Parties rather than Conference of the State Parties. AU citing the latter as a deviation from the TOR.

- *Procedural matters (other than specifically decision making rule)*

Austria also wanted to underline the extreme importance it put upon the role of the COP and particularly rules of procedure. It went further to suggest given the importance of this issue it especially (but by implication) not exclusively, the rules of procedure should be adopted by consensus (see also note on decision making below). India flagged the need to clarify what constituted a quorum in respect of decisions. Honduras and Singapore shared the view that 'rules' of procedure must be clarified and then adopted at the outset. Others including Kenya + AG shared this view that there was insufficient detail but substantive comments would be submitted.

Azerbaijan called for clarity about safeguards and confidentiality for data/information submitted to the conference for the purpose of capacity building or otherwise.

- *Decision making – simple majority vs consensus*

Germany stated the importance for Article 13 to expressly address decision-making procedures and voting requirements. Germany stated clearly that effort should generally be made to reach decisions by consensus. Moreover, the convention could provide a clear procedure for situations in which consensus cannot be reached using the approach taken on other UN conventions. Germany felt this would help when distinguishing between budgetary, procedural, and substantive matters. This point of reaching decisions by consensus was supported by Czechia, the UK, Italy, Austria, Norway, Mexico, Japan, Korea, Ireland, Malta, Netherlands, Denmark, Estonia and others.

An alternative position was presented by Kenya on behalf of the 54 African nations, specifically that decisions should be reached by *simple majority*. This position also attracted much support including from Nigeria, Russia, Senegal, Cote d'Ivoire, Ghana, ATAF, AU, Burkina Faso, Algeria and others. Tanzania added their concern that a strict consensus may delay implementation and weaken the ability of the convention to deliver its objectives.

On decision making more generally for the COP, Brazil thought it should follow the default rules applicable within the United Nations system, should adhere and would provide institutional coherence.

Azerbaijan pressed for clarity on decision making approach without stating their own preference.

Mexico however, elaborated that the rule of decision making was dependent on the objective the convention - if about international tax cooperation, then the traditional consensus-based decision making seemed correct. But if the convention is about enforcement, which is Mexico's understanding, they suggest avoiding having a discussion in which member states might be forced to make a decision – the proposal was to return to a discussion on purpose!!

- *On substance/purpose*

Sweden wanted to underline that the purpose of Art 13 was not to address tax matters but rather ensures it aligns with Treaty law and adopts language closely to other UN Convention language.

Kenya + AG (and Nigeria) expressed concern that current language does not provide a clear mandate to facilitate achievement of the Framework Convention's objectives. Nigeria and Cote d'Ivoire, Russia agreed.

- *Subsidiary Body / Technical WGs – reflecting commitments*

Discussion also focused on the institutional architecture supporting implementation. Delegates questioned how subsidiary bodies and technical working groups should reflect the commitments established under the Convention, with several interventions seeking greater clarity regarding their respective mandates and relationship to the COP. India believed it was the role of the COP to set up Subsidiary bodies. Kenya will submit detailed comments on this.

- *Resources and financing*

Kenya on b/h of AG clarified a collective view that it was critical for the COP to have the mandate to adopt financial rules for itself and its subsidiary bodies, and to strategise for and ensure sufficient funding for the implementation of the convention and its protocols. Senegal supported Kenya + AG and stated that as an implementation body the COP needs to understand the needs, and the financing, to support implementation of the Convention and protocols. Cameroon also touched upon this point.

- *Sovereignty*

A recurring theme underlying the discussion was the preservation of State sovereignty, particularly in relation to institutional decision-making and the allocation of functions between the COP and subsidiary bodies. Italy made the point that mandate of the conference of the party is defined taking into account the domestic, constitutional constraints and the limits of the international law. Italy was concerned that the COP could impose substantive obligations without the express authority of a specific state. This drew the discussion further into decision making, on which Italy support consensus. Portugal wanted recognition and support for constitutional limits.

Sweden added a concern about the seeming authority of the COP and questioned what authority is granted so that it is clear that it should not be granted any powers that would infringe upon state sovereignty. Israel also hinted at this in their concern that 'excessive burden' could be placed on state parties. Norway expressed concern about the scope of the provision. Spain was also concerned that the COP should not impose any substantive obligations. And Colombia was clear that the principle of sovereignty must be respected, as was Portugal in not wanting to see substantive obligations created at national level.

- *Modalities/Rules of procedure*

India recognized the importance of clarifying how many times the COP should meet – annually or otherwise. Brazil supported the provision of regular COP meetings – on an annual basis. The regularity of meetings of the COP was critical, Brazil felt, for political continuity, for momentum in developing future protocols and monitoring. Cote d'Iviore thought once a year or every two years sufficient.

- *Transparency: Access for multi-stakeholders*

During its opening statement Germany described this Convention as much 'leaner' and narrower relative to other conventions. In this they referred to the absence of a clear mandate to cooperate with other stakeholders. For Germany such cooperation was highly desirable and subsequently called for a clear basis for observers to participate and to draw on their expertise and knowledge. Many countries (like Germany, Brazil, India Jamaica, UK, Estonia, Sweden, the Netherlands, Kenya on behalf of the African Group, Norway) supported this position as did several interventions from civil society, and regional observers. Norway pointed to other Convention and article language that set a precedent and that might be adopted on this matter. Brazil added the suggestion that the COP should draw on the expertise of Committee of Experts on International Tax Matters. Zambia highlighted the important contribution UN observers could make as did the EU delegate, and Ghana supported the formal inclusion of observers.

Article 14 - Subsidiary Bodies

Zero-draft text

The text of the draft article on conference of the states parties read as follows:

1. A subsidiary body for implementation is hereby established to assist the Conference of the States Parties in the effective implementation of the Framework Convention and its protocols. This body shall be open to participation by all States Parties and shall comprise government representatives who are technical experts on matters within the scope of the Framework Convention. The subsidiary body for implementation shall report regularly to the Conference of the States Parties on all aspects of its work. No later than [2035] and then every five years thereafter, the subsidiary body for implementation will recommend to the Conference of the States Parties such actions as it considers necessary to ensure implementation of this Convention.

2. The Conference of the States Parties shall also establish, if it deems it necessary, additional mechanisms or bodies, including technical working groups, to assist in the effective implementation of the Framework Convention and its protocols. Such mechanisms or bodies may report directly to the Conference of the States Parties or to the subsidiary body for implementation as directed by the Conference of the States Parties. They may be temporary to perform specific tasks or research particular topics or standing bodies to provide ongoing advice to the Conference of the States Parties.

3. The Conference of the States Parties shall determine the rules of procedure for the mechanisms and bodies established pursuant to paragraph 2 of this Article. In determining the composition of standing bodies, the Conference of the States Parties shall ensure equitable geographical representation.

Floor discussion

Discussion on Article 14 centred on the institutional architecture supporting the implementation of the Convention. While delegates broadly supported the establishment of subsidiary bodies, the discussion focused on these three issues: the relationship between the Conference of the State Parties (COP) and its subsidiary bodies, the scope and composition of those, and the frequency of reporting to the COP.

Italy opened the discussion emphasising lack of detail and clarity in the article (others agreed – India,

- *Institutional architecture*

A recurring theme during the discussion was the need to define the institutional hierarchy under the Convention. India proposed a two-tier structure comprising permanent subsidiary bodies supported by the technical working groups, with all decision-making authority remaining with the COP. Indonesia, Singapore and Papua New Guinea argued that provisions relating to the establishment and governance of subsidiary bodies would be more appropriately located under Article 13, as these fall within the functions of the COP. Honduras similarly stressed that the respective responsibilities of the COP, the subsidiary bodies for implementation and any technical working groups should be clearly defined. Moreover, India flagged early in the discussion the status of subsidiary bodies needing to be 'standing' and not temporary in nature. The creation of technical working groups would need, India felt, to be identified as examining technical issues without decision making powers and be subordinate to the subsidiary bodies.

The African Group developed an alternative institutional suggestion, arguing that the Convention itself should establish a number of standing technical bodies covering key areas of the Convention, rather than leaving the creation entirely to the COP. Kenya, Nigeria, Cote d' Ivoire, Morocco and the African Union supported this approach, while also calling for geographical representation.

- *Mandate and reporting*

Several delegations also questioned the mandate of subsidiary bodies, and the scope of their authority. Italy, Germany, the United Kingdom, Norway, the Republic of Korea and Ireland argued that subsidiary bodies should have clearly defined purposes and technical mandates, without creating new obligations or exercising decision-making powers that should remain within the COP. Saudi Arabia stressed that recommendations issued by the subsidiary bodies should not acquire biding effects beyond the Convention itself. Kenya, Nigeria and Cote d'Ivoire questioned the proposed five-year reporting cycle, arguing that recommendations should happen more frequently to support implementation. They also proposed means to strengthen the effectiveness of subsidiary bodies' work including specifying when 'actions' arising from recommendations should be completed – offering a specific set of timelines.

Nigeria also noted the importance of the COP being able to create a subsidiary body when it deemed it necessary/helpful.

- Sovereignty

The issue of sovereignty was raised by Italy first and in the context of decision making within the subsidiary bodies.

- *Composition*

Concerns were raised about the composition of sub-bodies, in particular Italy raised the point that they should be open to all states, having interpreted language to mean restricted composition. India offered clarification, proposing that states rotated within the subsidiary bodies but without decision making powers.

In line with India, Kenya on behalf of the African Group, Nigeria, Philippines and others, Morocco underlined their support that the wording of the article as drafted will ensure the fair representation of states.

Article 15 - Data Collection and Analysis

Zero-draft text

The text of the draft article on data collection and analysis read as follows:

1. Each State Party shall collect and develop statistical and research data to enable them to formulate, analyse and implement policies to give effect to the Framework Convention and any of its protocols to which it is a party.

2. States Parties shall share with each other generic information, including statistics, analytical expertise and information concerning the subject matter of the Framework Convention and any of its protocols to which they are parties with a view to developing common definitions, standards and methodologies, as well as best practices, in the implementation of such agreements. This may be done bilaterally, multilaterally, or through regional organizations.

3. The process of collecting, maintaining and sharing the information described in this article shall comply with internationally accepted professional standards in the collection and use of statistics. Before sharing such information under paragraph 2, a State Party shall ensure that it will not disclose any taxpayer-specific information that would be protected by Article [11] or anonymize the information.

Floor discussion

Articles 15 and article 16 on review and verification (*see* below) were discussed jointly, with delegates broadly recognising the importance of data collection and review in supporting implementation of the Convention. The discussion centred on three main issues: the relationship between the two articles, safeguards for confidential information, and the scope of the obligations established under Article 15.

- *Relationship between Articles 15 and 16*

India opened discussion by questioning the need for a standalone article on data collection and analysis, arguing that these functions should instead feed into the review mechanism under Article 16. Germany developed this point further, arguing that review mechanisms should facilitate implementation rather than establish additional reporting obligations. Kenya, Nigeria and the African Group questioned the clarity of the current drafting, arguing that the purpose, scope and expectations of both articles required further clarification before negotiations could progress.

- *Confidentiality and taxpayer information*

The dominant theme of the discussion concerned confidentiality safeguards. Singapore opened this debate by warning that the current drafting could require disclosure of information capable of compromising domestic audits and investigations. This concern was echoed by Austria, Ireland, Norway and the UAE. Israel proposed that the article should focus on professional knowledge and anonymised information rather than taxpayer-specific information, while Germany argued that anonymisation alone would not provide sufficient protection and that stronger confidentiality and data protection standards were needed throughout the Convention. Saudi Arabia similarly proposed that confidentiality should become a standing principle under the Convention.

- *Scope of obligations*

A second recurring concern related to the scope of the obligations established under Article 15. China recognised the importance of information sharing but stressed that implementation should take account of differences in national capacity, while Czechia cautioned against creating unnecessary administrative burdens for States Parties. Azerbaijan called for clearer standards on the availability, quality and updating of data, and Colombia questioned the operational implications of the current drafting. Brazil broadly supported the draft, proposing only minor drafting amendments.

Article 16 - Review and Verification

Zero-draft text

The text of the draft article on review and verification read as follows:

1. Each State Party shall monitor its policies and practical measures to give effect to this Convention and any of its protocols to which it is a party in order to assess the effectiveness and efficiency of such policies and measures. Each State Party shall provide the Conference of the States Parties with information on its programmes, plans and practices, as well as on legislative and administrative measures to implement this Convention, as required by the Conference of the States Parties.

2. The Conference of the States Parties shall undertake periodic reviews of the extent to which the Framework Convention is achieving its objectives as set out in Article 1.

3. The process for such reviews shall be established by the Conference of the States Parties and may be adjusted as necessary to ensure that all States Parties participate in such reviews on an equal footing.

Floor discussion

Joint discussion with article 15, *see* above.

Article 17 - Secretariat

Zero-draft text

The text of the draft article on secretariat read as follows:

1. A secretariat is hereby established. The Conference of the States Parties, at its first meeting, shall make arrangements for the functioning of the secretariat.

2. Until such time as the secretariat commences its functions, the Secretary-General of the United Nations shall perform the secretariat functions under the Convention.

3. The secretariat shall:

(a) Assist the Conference of the States Parties in carrying out the activities set forth in this Convention;

(b) Make arrangements for sessions of the Conference of the States Parties and any subsidiary bodies and provide them with services as required;

(c) Prepare reports on its activities and present them to the Conference, and compile and transmit reports submitted to it;

(d) Upon request, assist States Parties in providing information to the Conference of the States Parties, as envisaged in this Convention;

(e) Ensure the necessary coordination with the secretariats of relevant international and regional organizations;

(f) Enter, as needed and under the guidance of the Conference of the States Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) Perform the other Secretariat functions specified in the Convention and any of its protocols and such other functions as may be determined by the Conference of the States Parties.

Floor discussion

Discussion on Article 17 centred on the role and functions of the Secretariat. While there was broad support for establishing a Secretariat to support implementation of the Convention, delegates differed on the scope of its mandate, particularly whether it should remain a lean technical body or play a broader role in supporting implementation and capacity building.

- *Functions of the Secretariat*

The African Group opened discussion by arguing that the current draft did not sufficiently define the Secretariat's functions. Kenya proposed expanding its mandate to include support for implementation, capacity building, technical assistance, and assistance to developing countries in compiling and submitting information. The African Group also proposed language to promote balanced geographical representation and indicated that it would submit text establishing a Technical Advisory Committee, composed of twenty-five tax experts with balanced regional representation, to support the Secretariat and subsidiary bodies. Indonesia aligned with this broader approach.

A contrasting position emerged from Germany, which argued that the Secretariat should remain a lean body exercising primarily technical and administrative functions. France, the Republic of Korea, Ireland and Estonia echoed this position, emphasising that the Secretariat's role should focus on supporting, rather than implementing, the Convention.

Alongside these broader institutional discussions, Nigeria and Singapore proposed a number of drafting clarifications concerning the Secretariat's reporting functions and responsibilities, including references to the Conference of the States Parties and the scope of information to be reported.

Article 18 - Financial Resources

Zero-draft text

The text of the draft article on financial resources read as follows:

1. Each State Party shall, within its capabilities, ensure that it has sufficient resources to support its national activities that are intended to achieve the objectives of this Convention, taking into account its national policies, priorities, needs and capacities.

2. The State Parties agree that:

(a) to assist Parties in meeting their obligations under the Convention, all relevant potential and existing resources, financial, technical, or otherwise, both public and private, that are available for international tax cooperation, should be mobilized and utilized for the benefit of all Parties, especially developing countries;

(b) State Parties shall promote, as appropriate, the utilization of bilateral, regional, subregional and other multilateral channels to provide funding to support the capacity building and technical assistance activities set out in Article 12;

(b) the Secretariat shall advise developing country Parties and Parties with economies in transition, upon request, on available sources of funding to facilitate the implementation of their obligations under the Convention.

3. The Conference of the States Parties in its first session shall review existing and potential sources and mechanisms of assistance based on a *study conducted by the Secretariat and other relevant information, and consider their adequacy. The results of this review shall be taken into account by the Conference of the States Parties in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to channel additional financial resources, as needed, to developing country Parties to assist them in meeting the objectives of the Convention.*

Floor discussion

Discussion on Article 18 centred on the financial arrangements necessary to support implementation of the Convention. While delegates broadly agreed that adequate resources would be required, the discussion focused on whether the current draft provided sufficient clarity on how the Convention would be financed and whether financial support should rely on voluntary contributions or a more structured funding mechanism.

- *Financing the Convention*

Brazil opened discussion by questioning the drafting of Article 18, arguing that the current text did not clearly explain how sufficient financial resources would be mobilised and proposing additional language on regular contributions by States Parties. Nigeria echoed these concerns, calling for explicit provisions on how Parties would finance the activities of the Convention. Kenya, on behalf of the African Group, similarly argued that the current language remained too vague and indicated that the Group would submit revised text clarifying the Conference of the States Parties' role in mobilising financial resources. Côte d'Ivoire and Senegal aligned with this approach, with Senegal also questioning the role of private financing and potential conflicts of interest.

A contrasting position emerged from Germany, which supported greater clarity while maintaining that financial assistance should remain voluntary and subject to national priorities. France, the Republic of Korea, Czechia, Estonia and Sweden aligned with this position, favouring voluntary funding arrangements rather than establishing new financial obligations.

- *Sources of the draft text*

Norway and the Netherlands, meanwhile, questioned the origins of the drafting in Part IV and sought greater clarity regarding the precedents used, while the Secretariat recalled that any use of the UN regular budget would ultimately be subject to decisions by States Parties and the applicable UN budgetary rules.

Part IV – Final Provisions

Article 19 - Amendments to the Convention

Zero-draft text

The text of the draft article on amendments to the convention read as follows:

1. Any State Party may propose amendments to the Convention.

2. Amendments to the Convention shall be adopted at an ordinary session of the Conference of the States Parties. The text of any proposed amendment to the Convention shall be communicated to the States Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories to the Convention and, for information, to the Depositary.

3. The State Parties shall make every effort to reach agreement on any proposed amendment to the Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by [ ] majority vote of the States Parties present and voting. The adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all States Parties for their acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above shall enter into force for those State Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least [ ] of the States Parties to the Convention.

5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

Floor discussion

Discussion on Article 19 centred on the procedures for adopting amendments to the Convention, with delegates divided over whether amendments should be adopted by consensus or by voting.

- *Consensus versus majority voting*

Czechia opened discussion by arguing that Article 19 should draw as closely as possible from existing framework conventions while maintaining consensus as the preferred method for adopting amendments. The United Kingdom developed this argument further, noting that amendments to a tax convention have direct implications for domestic taxing rights and should therefore remain consensus-based. Austria, Israel, Ireland and Azerbaijan aligned with this position, although Azerbaijan suggested a two-thirds majority could be considered as a fallback where consensus cannot be reached.

A contrasting position emerged from the African Group, which supported simple majority voting. Kenya argued that only Parties to a protocol should participate in decisions amending that protocol, a position echoed by Nigeria, the African Union and Cameroon. Brazil similarly questioned why amendments should require consensus if the Convention itself is not adopted by consensus and recalled that amendments would bind only those States Parties that accepted them.

A secondary discussion focused on drafting issues. Several delegations questioned the drafting choices made in Article 19 and called for greater clarity regarding the precedents used, while Singapore queried why detailed decision-making rules were included for amendments but not elsewhere in the Convention. Belgium also raised drafting questions concerning the amendment procedure in paragraph 4.

Article 20 – Relation with Protocols

Zero-draft text

The text of the draft article on relation with protocols read as follows:

1. The Conference of the Parties may adopt protocols to implement or elaborate this Convention.

2. The requirements for the entry into force of any protocol shall be established by that instrument.

3. In order to become a Party to a protocol, a State must also be a Party to this Convention.

4. A State Party to this Convention is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.

Floor discussion

Discussion on Article 20 centred almost entirely on the optional nature of protocols. While there appeared to be broad agreement that States Parties should not be required to join any protocol, much of the discussion focused on whether the current drafting expressed this principle with sufficient clarity. A secondary discussion concerned the relationship between the Framework Convention and its protocols.

- *Optionality of protocols*

Singapore opened discussion by proposing that the optional nature of protocols should be reflected more explicitly in the text. This concern was echoed throughout the discussion by France, the United Kingdom, Germany, Norway, the UAE, Israel, Belgium, Poland, Ireland, Portugal, Denmark, Spain and others, with several delegations arguing that the current drafting could be read as suggesting that protocols were necessary to implement the Convention. The United Kingdom also questioned the legal status of protocols and whether they were intended to operationalise existing obligations or create new ones. Czechia complemented this discussion by proposing a more detailed procedure for the submission of new protocols, drawing on language from other framework conventions. A contrasting view emerged from Brazil, India, Zambia and the African Group, all of whom argued that the current drafting already reflected the optional nature of protocols. Brazil nevertheless indicated that it would support additional clarifying language if this would facilitate agreement, while Kenya, speaking on behalf of the African Group, proposed amendments clarifying the relationship between the Convention and its protocols. Nigeria and Lesotho aligned with the African Group, while the African Union reiterated that the existing language on optionality was already sufficient.

Article 21 - Relation with Other Agreements, Instruments and Domestic Law

Zero-draft text

The text of the draft article on relation with other agreements, instruments and domestic law read as follows:

1. (a) Each State Party shall take such legislative, administrative and other measures as may be necessary to give effect to its obligations under this Convention in accordance with its domestic law and constitutional procedures.

(b) The provisions of the Framework Convention and its protocols shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with the State Party's commitments under the Framework Convention.

2. Subject to paragraph 3, this Convention shall not affect the rights and obligations of any party under a bilateral, regional or multilateral agreement into which a State Party has entered prior to the entry into force of this Convention.

3. States Parties shall take progressive and meaningful steps towards aligning their existing international tax agreements and related instruments with the provisions and principles of this Convention, including, where necessary, the renegotiation of existing agreements. Where a State Party requests the renegotiation, amendment, or modification of an existing agreement to achieve such alignment, the other State Party shall enter into negotiations in good faith and without undue delay.

4. Each State Party shall report to the Conference of the States Parties, at intervals and in a form to be established by the Conference of the Parties, on actions that they have taken in furtherance of paragraph 3, including information regarding the number of requests they have made or received to renegotiate existing treaties and the disposition of such requests, in a form to be established by the Conference of the States Parties.

Floor discussion

Key points – discussion on para 3 and 4 deletion or not, addition to para 1.b. or not, impact on existing agreements or not, timing/mechanism to help countries adjust treaties in accordance with convention (if adjusting), suggestion to add "supranational", leaning on Vienna Convention art 30. Our superstars: Lesotho, Kenya, Brazil, India, AG.

Discussion on Article 21 focused on the relationship between the Framework Convention and existing international tax agreements. While there was a broad agreement that the Convention should provide legal certainty, delegations diverged on whether it should require State Parties to progressively align existing agreements with its commitments or merely complement existing tax frameworks.

- *Relationship with existing agreements*

The UAE opened the discussion by arguing that the Framework Convention should complement existing bilateral and multilateral tax agreements, while preserving State's flexibility to negotiate future treaties. This position was echoed by Czechia, Switzerland, Austria, Germany, Norway, the United Kingdom, France, Japan, Singapore, Korea, the Netherlands, among other delegations, which argued that paragraphs 3 and 4 could undermine legal certainty and State sovereignty. Many also questioned the meaning of concepts such as "progressive and meaningful steps", the reporting obligations contained in paragraph 4, and the relationship between the Convention and existing treaty networks, with several proposing that these provisions be deleted or substantially redrafted.

A contrasting position was presented by Brazil, India and the African Group, who argued that Article 21 is essential to ensuring that commitments undertaken under the Framework Convention are affectively implemented. These delegations maintained that State Parties should progressively align their domestic legislation and existing tax agreements with the Convention, while allowing sufficient flexibility in implementation. Brazil characterized the obligation as one of the best efforts, rather than guaranteed outcomes, while the Africa Group proposed strengthening paragraph 3 by removing the requirement that treaty alignment be triggered only upon request and suggested empowering the Conference of State Parties to establish implementation timeframes. Nigeria, Cote d'Ivoire, Morocco, Algeria, Mauritius and the Philippines broadly aligned with this positioning. Indonesia, Mexico and Saudi Arabia accepted the objective of promoting consistency between the Convention and existing agreements, but called for greater clarity regarding implementation, suggesting consultations, mutual consent and casa-by-case assessment over mandatory renegotiation obligations.

Article 22 - Settlement of Disputes regarding the Convention

Zero-draft text

The text of the draft article on settlement of disputes regarding the convention read as follows:

1. The States Parties shall endeavour to settle any dispute among them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to conciliation in accordance with Annex 1.

Floor discussion

Few flags were raised by delegates to comment on the draft of this article. Those countries who did formulate interventions, commented on the following aspects of the text.

- *Peaceful means*

Nigeria and Jamacia asked what the exact meaning was supposed to be of settling disputes through "*other peaceful means*" besides negotiation. Côte d'Ivoire noted that the conciliation mentioned in the second paragraph appeared to be a type of other peaceful means, making the second paragraph redundant. The country delegate added that conciliation is however not recognized under the constitutional laws of all countries, which may be problematic, especially if it is the other country involved that can unilaterally trigger the conciliation procedure to apply also the country that does not recognize it. Czechia agreed on the redundancy of paragraph 2 but aspired to keep conciliation in the text of a revised article.

- *Institutional role, Annex 1 reference and reservations*

The African group emphasised that article 22 should establish a mechanism that facilitates the operalisation of the protocol on dispute resolution and prevention through an explicit link.

With regard to the reference to "*Annex 1*", Belgium and Czechia noted that the Framework Convention currently does not contain a provision which establishes that annexes will serve as an integral part of the Convention. More detail on the status and procedure to develop annexes under the convention is needed.

India noted that, while the country generally opposes allowing reservations under article 25 (see below), it would be open to allow reservations that are confined to the dispute settlement mode under article 22, something which is common practice in comparable framework conventions.

Article 23 – Depositary

Zero-draft text

The text of the draft article on depository read as follows:

The Secretary-General of the United Nations shall be the depositary of the present Framework Convention and of protocols adopted in accordance with Article [ ].

Floor discussion

Not discussed.

Article 24 - Signature, ratification, acceptance, approval and accession

Zero-draft text

The text of the draft article on signature, ratification, acceptance, approval and accession read as follows:

1. This Convention shall be open to all States for signature in [ ] from [ ] to [ ] and thereafter at United Nations Headquarters in New York until [ ].

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Floor discussion

Few interventions were made. Nigeria and Mexico proposed to delete the closing date for the signature in the first paragraph. The countrries argued that limiting the window during which the Framework Convention is open for signature is unnecessary. Countries should be able to join anytime they see fit. Mexico added that removing it is consistent with the broader objective of maximising country participation over time.

Article 25 - Reservations

Zero-draft text

The text of the draft article on reservations read as follows:

No reservations may be made to this Convention.

Floor discussion

This article was one of the most heavily contested provisions of the Zero-draft. The discussions split between two positions.

- *Admit country reservations*

A first group of countries advocated for a change in article 25 by which country reservations to certain provisions in the Framework Convention would be allowed. Malaysia, for example, noted that the lack of reservation room could diminish the flexibility of the convention and may discourage wide participation. UAE argued that an absolute ban may unduly restrict states' ability to meet constitutional or other domestic legal requirements, like in the case of administrative assistance. Austria, China, Czechia, Guatemala and Sweden echoed the these points.

Jamaica suggested to keep the main rule but add that reservations are possible under specific provisions, yet to be identified by the INC. Belgium and Switzerland agreed, with the latter country delegate suggesting that there should be "core provisions" that are non-negotiable, like the high-level commitments, and then there may be certain operational provisions, like in the case of mutual administrative assistance, that should allow reservations for constitutional and sovereignty reasons.

Singapore refered to other UN treaties like the UNCAC, the Cybercrime Convention, and UNCLOS as precedents that support allowing reservations in the case of unresolved substantive issues in a convention. Azerbaijan claimed the opposite: the no-reservations norm clearly existed in other UN treaties but in the case of tax cooperation and its deep interaction with domestic tax systems and existing treaty networks, reservations may be unavoidable, provided they are compatible with the convention's object and purpose.

The Netherlands argued that the current draft text reflected a minority view and should therefore be revised to a least present reservations as an option, without prejudging the final outcome of the negotiations.

Norway took a middle position by noted that it would prefer broad participation without needing reservations if possible but recognized that if the final convention contains substantive obligations conflicting with domestic constraints, reservations may become necessary. Germany, too, believed reservations should not be excluded as a general matter but cautioned against the risk of fragmentation if reservations are allowed.

- *Retain "no reservations"*

There were also countries that strongly opposed allowing reservations in the Framework Convention. These countries supported the current text of the draft article

The Africa Group viewed the no-reservations rule as consistent with the objectives, principles and commitments in the Framework Convention, and noted that a similar rule was also included in the UNFCCC and the Kyoto Protocol. Lesotho added that article 21 provides for a transition mechanism to bring contrary domestic law into compliance without the need to terminate obligations. Reservations were, they argued, not needed as an additional layer of flexibility. Zambia and Kenya noted that opening reservations would simply water down the impact and relevance of the Framework Convention. Tanzania warned against unlimited optionality in the convention, by allowing protocols to be optional, protocol provisions to be optional and now also the convention articles to be optional. All of this would produce optional international tax cooperation, rather than an effective one. Cameroon noted that allowing reservations in crucial articles would simply be in violation of the Vienna Convention on the Law of Treaties which in its article 20 prohibits reservations that conflict with a treaty's object and purpose.

India made a lengthy intervention in which it went over the Convention's provisions on objectives, principles and commitments, and concluded that it could not identify any provision where an added reservation clause would be needed or sensible. As noted, before, the only clause suitable to be expanded with a reservation clause is article 22 on dispute resolution.

Draft Protocol on the Taxation of Income from Cross-Border Services (Workstream II)

In the second week of negotiations, delegates focused their attention on two early protocols that are negotiated simultaneously with the Framework Convention. The first protocol to be discussed was the protocol on the taxation of income from cross-border services. The discussions focused on the Zero-draft, released by the Secretariat and the Lead of Workstream 1 on 20 July.

Below follows a summary of the floor discussions, divided in general points of contention and article-by-article discussions.

General points of contention

- *Process*

The Lead of Workstream 1 noted that the Zero-draft had been the result of the intersessional discussions between the delegates but not necessarily an exact copy of some of the suggested drafts that had been shared by European country delegates or African country delegates. She noted that these alternative drafts (which have not been made public) seemed not to gather sufficient support across the aisle, and hence the Zero-draft was an attempt to bridge the gap. The Lead remarked that a good middle point in negotiations usually leaves all sides dissatisfied.

The Lead's prediction was right. Especially the European country delegates showed irritation over the fact that their previous championed draft had been abandoned without explanation. The alternative draft would supposedly incorporate a two-tier system and presumably allow more 'optionality' for countries, yet the delegates did not disclose much detail on the substantive provisions of the discarded draft. The Lead explained that the protocol decision making rules have been decided before and are straightforward: countries aspired to decide by consensus but if consensus cannot be found, decisions will be made by ordinary majority. And a handful of OECD countries, the Lead noted, simply do not represent that majority.

In a remarkably harsh response, the Belgian delegate condemned the opaque process by which the Secretariat and Lead rejected previous drafts in favour of the one currently discussed, adding that if there would be no genuine effort to reconcile views and decisions would be taken by majority, there was no point in contributing to the negotiations for countries who expressed dissent.

In an attempt to put pressure on the Lead, a few European delegates sat out part of the afternoon session of the negotiations. These countries' position was not shared by all dissenting members, with many continuing to actively engage as part of the much needed 'courtship' (as the Jamaican delegate put it) between the opposing camps. The Swiss delegate reminded his peers that there is an empty seat of a workstream co-lead next to the one occupied by the current Lead, but none of the countries, including Switzerland, had had the stomach to occupy it.

The Swiss delegate, at the same time, also noted that the current Zero-draft lacked majority support, an observation that was not entirely inaccurate. The African Group, representing 54 African countries, also expressed dissatisfaction about their suggested draft text had not prevailed. While no details on the substantive provisions of the African draft were disclosed, the African opposition against the Zero-draft was far less forceful, as compared to the European tantrum.

- *Gross taxation*

The emphasis on gross taxation in the Zero-draft turned out to be one of the biggest points of contention. Countries like Italy, UK, Netherlands, Switzerland, France, Belgium, Noray, Japan and UAE were skeptical about the fact that the Zero-draft pushed for a design of gross taxation in source countries granting new taxing rights in the draft protocol. Those countries believed gross taxation solutions risk double or excessive taxation, impact investment and cost of services provided. They also urged for more economic impact assessments to be made.

Later in the session, business representatives extensively repeated countries' concerns regarding gross taxation, leading the Lead to conclude that their emphasis on gross taxation issues, did not seem to imply that business does not oppose source taxation in the form of net taxation.

The African Group generally believed gross taxation by withholding is a practical necessity for capital-importing countries that can not realistically enforce net-basis Permanent Establishment rules.

- *Optionality*

Despite the Lead's plea to shelve the issue of compatibility of existing bilateral tax treaties with the protocol until after there was more consensus of the substantive rules, European delegates pleaded for any substantive solution to come embed 'optionality'. Optionality would imply that countries decide individually whether or not the protocol's new rules would override the rules in existing bilateral tax treaties. European countries generally defended the BEPS MLI approach of full optionality: signing the protocol would then only affect existing bilateral treaties if the country has listed the bilateral tax treaty to be overridden. Switzerland took a more moderate position by suggesting that the protocol can also combine provisions that are optional with those that are not. The ATAF representative rightly noted that the BEPS MLI, too, contains substantive provisions that are not optional.

The Lead noted that delegates should not forget that participation in the protocol is, in itself, optional. The African Group, too, strongly rejected the idea of full optionality. Ghana added that if the protocol's core rules on nexus, taxing rights or anti-abuse rules are optional, there would be much of a protocol left. Only rate thresholds and administrative details may be subject to optionality.

Article-by-article discussion

Preamble

The Zero-draft does not contain a preamble. Countries like Jamaica, Finland and Portugal urged to add a preamble for the sake of interpretative clarity, given how similar the protocol is to a bilateral tax treaty. The relevance of tax treaty preambles is well documented.

Article 1 – Persons Covered

Para 1: no comments

Para 2 (hybrid entity rule): Kenya noted that this rule is a near replica from the OECD Model rule on transparent entities. Kenya believed it embedded a clear imbalance against source states, as these states cannot independently verify whether a residence state effectively taxes income or not. Kenya therefore believes this rule should be supplemented by mandatory exchange of information as a condition for the restriction of source state taxing rights.

Para 3 (subject-to-tax rule/STTR): The draft rule is based on the STTR rule included in the UN Model (2025). Norway, Singapore and Czechia read "*any income*" as broader than services income subject to the rules of the protocol, potentially also applying to dividends and capital gains. The African Group flagged "*statutory rate*: as an undefined and problematic concept, given that a country can have several rates. The African Group also question the switch-off mechanics, urging the rule to be clarified so that the consequence of its application triggers the application of domestic law and not the underlying/overridden bilateral tax treaty. Italy opposed the inclusion of the STTR rule altogether, arguing that the protocol should only amend allocation rules and nothing else.

Para 4 (savings clause): The African Group generally supports the clause, although Nigeria questioned why the whole of article 9 cross-references rather than only the second paragraph on non-discrimination if that is the rule's rationale.

Article 2 – Taxes Covered

Delegates generally agreed with the fact that VAT/GST taxes should be excluded from the scope of the protocol. Many delegates believed that the current drafting of the article on scope was not very clear.

The African Group agreed with the Co-Leads' plea for a broad and functional approach to the taxes covered under the protocol. The protocol should apply to any tax with similar economic effect as an income tax. This position was supported by Brazil and Honduras.

Some countries - Norway, UK, Spain, Singapore and UAE - worried that the current drafting blurs the line between indirect taxes which, they believe, should not be covered and direct taxes which should be covered. The inclusion of 'excise taxes' especially led to confusion among delegates. As pointed out by India and Burkina Faso, excise taxes are typically indirect taxes so it was not very clear why these taxes were mentioned in the draft article.

The Co-Lead explained again that the point was not the denomination of the tax but its effect in practice. Certain countries impose what they call excise taxes on the import on services. The key example is the US excise tax on insurance premiums paid to foreign insurers. In terms of economic effect, these taxes are close to a gross tax on services income. Brazil also pushed back against a scope that would be too legalistic and limited by mentioning examples of other types of taxes on services, like taxes on insurance premiums, telecom, gambling, that may (or may not) be covered by the protocol but that have a similar economic effect as an income tax in certain situations.

Countries like Ghana, Kenya and Nigeria generally supported the idea for digital services taxes (DSTs) to be expressly covered by the protocol. Nigeria added that national distinctions between direct and indirect taxes may be irrelevant as even direct taxes may turn into indirect taxes if they are effectively passed through by companies to consumers.

France and Spain raised more structural issues, noting that their DSTs were domestically classified as indirect taxes by the national courts so treating them as a 'covered tax' may create domestic law issues. The Co-Lead noted that the domestic classification should not per se matter for international agreements on the fair allocation of taxing rights.

Article 3 – General Definitions

In relation to the list of defined terms in article 3(1) of the draft, many delegates suggested additional terms used throughout the draft that were in need of a definition, like "end user", "user data", "consumer", "agent" or "business".

Mauritius noted that a fundamental term like "income" or "statutory rate" also required a definition. The African Group believed the term "payer" required a specific definition and also the current definition of "international traffic" may need to be improved.

The African group generally believed that consistency could be achieved by relying as much as possible on the exact definitions of terms in the UN Model (2025).

In relation to the interpretative rule in article 3(2) of the draft (a standard tax treaty rule that refers back to domestic law meaning in case of an undefined term) Honduras noted that the protocol should, as much as possible, rely on autonomous protocol level definition, given that domestic meaning among all parties to a multilateral instrument can vary tremendously. Kenya, too, believed the standard tax treaty rule of article 3(2), which is designed to function in bilateral context, may not be fit for purpose in a multilateral instrument. A certain form of centralised and multilateral interpretation mechanism under the Meeting of the Parties of the protocol may be more suitable than mere reliance on domestic law meaning.

Article 4 – Resident

Norway noted that the corporate residence tie-breaker rule in article 4(3) of the draft refers to agreement by competent authority as the deciding factor. In practice, many bilateral tax treaties contain the old rule of place of effective management as the ultimate deciding factor. This may imply countries may have different countries of residence assigned under the protocol as compared to under the bilateral tax treaty that the protocol attempts to alter. This may lead to problems in practice.

Article 5 – Fees for Services

Para 2 (source state taxing rights). Countries like the United Kingdom, France, Germany, Italy, Singapore and UAE all reiterated their long standing concerns regarding taxation on gross basis in the source state. Italy suggested that net taxation should be the primary method of taxation in the article. Japan raised concerns regarding fairness and ability-to-pay if taxpayers are subjected to a uniform rate on gross tax that does not take into account individual and sectoral profit rates.

Nigeria countered some of the criticism somehow by noting that the text of the paragraph did not necessarily make net taxation optional and gross taxation the primary method of taxation. If the protocol allows a source country to tax "*according to the laws of that state*" in para. 5(2) but up until a certain threshold, this implies that the country can levy net taxation and does not have to resort to gross taxation. Also, allowing non-resident taxpayers to opt between gross or net taxation may discriminate against resident taxpayers who do not have a similar option.

The Co-Lead noted that in her experience, taxpayers frequently prefer gross taxation by withholding for its simplicity, rather than having net taxation as the default rule. She also questioned whether the UAE and other countries' opposition against gross taxation (only) implied that these countries supported source taxation if it was levied on net-basis. The UAE did not confirm this conclusion.

Para 4 (net taxation election rule): A first point of contention under this article was the current draft's election rule for net taxation. India supported the option for net taxation but expressed concerns on its current design. The option would rely heavily on domestic legislation, and this would make the net alternative not equally effective or accessible across countries. The fact also created a structural bias toward gross taxation, which is designed under the protocol to be simpler to administer.

India also strongly rebuked any form of optionality by which countries would be allowed to opt-out of applying substantive provisions of the article that would undermine the protocol's core. India generally objected to optionality that conditions a state's taxing rights on a separate bilateral agreement or another state's consent.

Russia and Zambia were generally in favour of the draft's approach and its reliance on gross basis taxation, which is in line with the UN Model's approach in article 12AA and 12B.

Para 5 (nexus ordering rule): One of the main point of contention was the question whether the three-tier nexus test in article 5(5) of the draft protocol operates as a type of tie-breaker and assigns a single source state to be the state in which the income of services is derived for the purpose of the protocol, or whether the rule is or should assign multiple source countries based on differing nexus rules.

Norway worried the intended hierarchy may work bilaterally but fail multilaterally: various source states may claim to be the source state for the purpose of the protocol. Switzerland agreed. While it believed the hierarchy in itself was acceptable, the current text could be interpreted as allowing various source countries, also because it is not clear how individual countries' qualification as source countries should prevail or inform other countries' own qualification efforts. Spain and the United Kingdom shared these worries but agreed with the ordering principle and single source country rule, just like Japan and UAE.

Germany agreed with the ordering principle but question the underlying interaction of the nexus rules. France, on the other hand, wondered whether the ordering principle was in line with the fair allocation of taxing rights commitment in article 5 of the Convention.

Singapore preferred to keep the protocol anchored in the established framework centred on the permanent establishment concept, while adding new nexus rules for specific type of services and only where such addition is believed to be relevant.

Article 6 – Income from Automated Digital Services

Singapore questioned the underlying policy rationale for creating a distinct article with distinct nexus rules for automated digital services (article 6) and insurance (article 7) instead of keeping one broader rule on all services (article 5).

Para 3 and 4 (definition and list of automated digital services (ADS)): The African group suggested to changing the requirement of "*minimal human involvement*" into "*no or minimal involvement*" simply to fully capture autonomous AI. It also suggested to add AI related services to the open list of services covered in paragraph 4. Kenya added that it is impossible to list all types of ADS in an exhaustive manner so a good catch-all clause is necessary, like "*any other service carried out over the internet or an electronic network not expressly provided in the list*". Russia supported adding references to AI services.

The UAE urged caution and noted that the current definition is exceptionally broad and lacked limiting criteria like revenue or transaction value thresholds. If combined with gross taxation, this risks imposing severe compliance difficulties.

Article 7 – Insurance Premiums

Not discussed separately

Article 8 – International Shipping and Air Transport

Delegates from Panama, Belgium, UAE and Singapore strongly supported the exclusion of income from international transport in the draft.

Nigeria and the African Group did not object to the exclusion but proposed a definition of income from international traffic that was narrower so that it would only cover income from the carriage of passengers, mail, livestock or goods. Nigeria noted that a narrow definition is needed to prevent the exclusion to spill over on income from container leases, bareboat charters and industry related interest payments.

Russia question whether the exclusion should also be expanded to income from road and rail transport.

Article 9 – Taxation based on Physical Presence

The main points of contention was the draft article's reference to "*reasonable allocation of profits*" in its third paragraph and the article's general lack of specific thresholds for physical presence.

Nigeria and the African Group suggested to split the article into two separate rules, one as the default rule for profit allocation in case of physical presence and one on with the net alternative for taxation based other nexus rules than physical presence. Nigeria added that the net taxation rule for physical presence should apply irrespective of the length of time of the presence in the source state.

Switzerland welcomed the net taxation rules but believed the profit attribution rules in cases without physical presence were unclear and unpredictable. France, too, believed the current phrasing was unworkable in practice and required much greater clarity.

Kenya criticized the phrase "*reasonable allocation*" as legally unsound and sophisticated MNEs will use it to argue that profits reasonably belong to offshore countries were the IP, asset or executive personal is located.

The remaining articles of the zero-draft were not discussed.

Draft Protocol on the Prevention and Resolution of Tax Disputes (Workstream III)

In the latter part of second week of negotiations, delegates shifted their attention second early protocol in dispute prevention and resolution. The discussions focused on the Zero-draft, released by the Secretariat and the Lead of Workstream 1 on 20 July.

Below follows a summary of the floor discussions, divided in general points of contention and article-by-article discussions.

General points of contention

- *Character of the instrument and level of detail*

Delegates from the African Group, India and Mauritius criticised the draft's level of detail and noted that its prescriptiveness was not in line with its fundamental nature of a 'treaty'. Japan and France, too, argued that the protocol should be a legally sound, self-contained instrument confined to the rights, obligations and essential elements of the prevention and resolution mechanisms. Procedural detail should be moved to annexes, explanatory notes, guidance documents.

The Netherlands added that the draft is detailed in some respects but not in others, meaning that additional instruments, like competent authority agreements, would in any case be needed to flesh out outstanding details. Switzerland noted that using competent authority agreements would allow to tailor some of the non-mandatory detail of the procedures to the linking of the party involved.

The Co-Leads defended the level of detail in the protocol. The choice seemed justified given that countries without any existing instruments or domestic law underpinning, need a procedural pathway in the protocol. Reducing the text to the legal foundations may make it impossible to apply in practice in some countries.

- *Optionality and 'core' mechanisms*

Nearly all delegations endorsed (once again) the 'optionality' of the mechanisms, i.e. the ability to opt-out of specific mechanisms.

Switzerland contradicted this with the stance against optionality under the services protocol, which it believed should include the same level of optionality to be signable.

Opinions were divided regarding the pre-agreed choice that needed to be made as to whether certain mechanisms would be ‘core’ and therefore mandatory in case a country signs the protocol. India, China and Singapore believed advance pricing arrangements (APAs) and MAPs should be the core mechanisms for prevention and resolution, respectively.

The African Group believed the MAP should be the sole core mechanisms and opposed making any prevention mechanisms (including APA) mandatory.

The Co-Leads confirmed that the question of ‘core mechanisms’ remained unresolved and was ‘parked’ for future negotiations. Arbitration would in any case not be assigned as a core mechanism.

- *Capacity building under the protocol*

Delegates from the African Group, Honduras and Papua New Guinea repeatedly emphasised that prevention mechanisms requiring transfer pricing expertise (like APAs) impose disproportionate demands on lower-capacity administration. To make these mechanisms work, stronger language on capacity building should be included in the protocol. Phased implementation, pilot programmes and technical guidance were mentioned as tools to support the roll-out new mechanisms in practice.

Japan proposed adding a reference to role that should be played by international and regional organisations so that there could be coordination and duplication of existing capacity-building efforts would be avoided.

In relation to the dispute prevention mechanisms, Algeria linked capacity building to the problem of access to relevant transfer pricing information. Algeria welcomed the setting up of a new Task Force that would be tasked to investigate this matter.

Article-by-article

Articles II(1)(2)(3) - Bilateral, Multilateral and Coordinated Unilateral Advance Rulings

Azerbaijan argued that the protocol should confine itself to essential principles, deferring to existing APA guidance by the OECD and the UN to avoid duplication of detailed technical rules. Ireland questioned whether some of the detail on the provision goes beyond what is currently included in countries' APA guidance.

The United Kingdom wondered whether under the rules, as currently drafted, a request for a multilateral APA would have to be denied if one of the countries involved refused, or whether in case of such a refusal, the APA request would have to be granted by the remaining will countries.

Peru asked for examples of transactions that could fall under the non-transfer pricing mechanism in article II(2). The Co-Leads mentioned profit attribution to permanent establishments and dual residence cases as examples. The African Group expressed concern that the mechanism could also be used in cases regarding the application of anti-avoidance rules. These cases should be carved out from the mechanism's scope.

India emphasised that the new mechanism of coordinated unilateral APAs may serve as an important first capacity-building step towards bilateral and multilateral APAs.

Articles II(5)(6) - Simultaneous Tax Audits and Joint Audits

Japan raised the concern that the current provisions are more prescriptive than the ones on similar mechanisms currently contained in the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC). The requirement that foreign officials may be permitted at least a passive presence during joint audits under Article II(6) may conflict with domestic legal constraints in some state. Japan suggested to mirror the language in the MAAC.

The Co-Lead responded that the current design of the provisions deliberately goes beyond the MAAC language but the issue remains open for reconsideration.

Kenya stressed the importance of robust exchange of information infrastructure that are needed to make these mechanisms work in practice.

Article III(1) - Mutual Agreement Procedure (MAP)

The dispute prevention mechanisms of MAP attracted the broadest cross-regional support of any mechanism in the draft. The African Group, India, China, Singapore, the UAE and the United Kingdom all explicitly endorsed it as a core mechanism of dispute resolution.

On certain drafting points, there was however division among delegates.

The Netherlands and the UAE suggested to allow a MAP request to be filed in any treaty state, and not just in the residence state, consistent with many modern tax treaties (and the OECD Model).

Germany noted that the draft does not contain rules for what happens in the case a MAP request is refused by the competent authorities. Brazil objected to the rule requiring mandatory consultation before the competent authorities may find an objection justified to reject a MAP request.

A number of countries found it unnecessary for the mechanism to include a clause to allow countries to not engage in the MAP in case of constitutional limitations. Ghana argued that if a country faces constitutional limitations in using the MAP mechanism, these would be revealed during the parliamentary ratification process of the protocol, and if needed, the country should just opt-out of the mechanism.

Israel questioned why the draft mechanism provides that the MAP is suspended when the same issue is pending before a domestic court, rather than the opposite way around which is more typical in current practice. Nigeria suggested to leave the suspension question to domestic law. South Africa suggested the same in relation to the matter of the collection of the disputed tax while a MAP is pending.

Brazil questioned the overall character of the MAP mechanism in the draft, which it believed to be too focused on taxpayer-facing procedural features. This shifted the nature of the MAP away from its traditional government-to-government character under the UN Model. Such a shift may risk impeding the competent authorities' discretion in managing MAP caseloads.

The Netherlands believed that the draft mechanisms' resolution period for MAP of 24 months was too ambitious. The country believed that any mention of time periods in the mechanisms should be seen as aspirational, rather than a deadline with legal consequences if not met. Developing countries generally agreed that some the MAP timelines and other timelines were too rigid, especially in view of their capacity constraints and the high complexity of some cases. India and Nigeria suggested to increase the MAP resolution term to three years.

Article III(2) - Mediation and Conciliation

The African Group welcomed the including of the mechanisms of mediation and conciliation which are genuinely new (in international tax) but urged these mechanisms to remain strictly voluntary. It should be clarified whether these mechanisms are a standalone form of dispute resolution are an add-in to the MAP.

France, Russia, Singapore, Germany and the Netherlands supported the work on mediation and conciliation, and so did the United Kingdom which offered to share some of its domestic expertise in the field of alternative dispute resolution (ADR).

Germany proposed to add specific safeguards in relation to the participation of taxpayers in the deliberations between the mediators/conciliators as well as between the competent authorities. Germany also proposed adding a rule that mediation/conciliation will only pause or extend the time within which a MAP should be resolved if the competent authorities agree so.

Article III(3) - Arbitration

Arbitration is and remains the most contested dispute resolution mechanism included in the draft. The African Group reiterated its longstanding view that the mechanism of mandatory arbitration should not be included in the protocol, not even as an optional mechanism. The Philippines repeated that mandatory binding arbitration conflicted with constitutional sovereignty and domestic court's final authority over revenue collection.

Switzerland, France, the UK, the Netherlands and Japan reiterated their strong support for arbitration as an optional, last-resort mechanism, believing it to be an important incentive for the competent authorities to settle earlier under MAP.

The crucial point of dispute is the trigger of MAP arbitration: the draft allows any one competent authority to request arbitration unilaterally (the same as in the UN Model), which according to the African Group constitutes a forced imposition of arbitration on non-consenting states in cases where these states do not want binding arbitration. Germany, Singapore and the United Kingdom argued that the trigger should instead belong to the taxpayer (as under the OECD Model).

Switzerland and Russia proposed a middle ground, by allowing MAP arbitration mechanisms that would allow a case-by-case opt-in.

Article IV(1) - Consultations in the Absence of an Applicable Tax Instrument

A large bloc of countries including Brazil and the African Group questioned the added value of the proposed mechanism because the understanding reached is essentially non-binding and cannot depart from domestic law. It was also said to offer little prospect of resolving double taxation or double non-taxation, while still using up scare administrative resources on information gathering.

Brazil also warned the mechanism may creatin expectations on the part of the taxpayer who may demand an effective resolution of the underlying dispute. Nigeria commentated that without a common legal ground in an underlying instrument (like a bilateral tax treaty), one party's arguments based on domestic law is unlikely to persuade the other. Algeria noted that the mechanism currently does not offer a possibility for reservation, meaning a country cannot opt-out of the resource burden it may impose.

A second bloc of countries was in favour of the mechanism. The Netherlands, Singapore and Italy pointed out that the mechanism may be useful for countries with limited treaty networks. Lesotho agreed, pointing to the example of non-resident taxpayers complaining about the lack of recognition of the withholding taxes it duly levies on those taxpayers in their country of residence. These taxpayers do not have relief for double taxation, and Lesotho has no recourse to consult or deliberate with these jurisdictions. The Netherlands and Singapore disagreed with Brazil's view: the mechanism was country-driven and not taxpayer initiated, and its application requires unanimous consent of all competent authorities before the consultations begin, meaning that countries keep sufficient control over the resources the mechanism may need.

The Co-Lead from Jamaica also defended the mechanism, noted that it can play an important role also in the case of underlying bilateral or regional tax treaties that do not come with a full-blown multilateral agreement procedure (MAP) article. The protocol's mechanism can create some kind of a framework for dealing with cross-border disputes in such cases.

Article V(1) - Reservations

On of the most crucial points of contention was the issue of 'optionality' of the new mechanisms. In previous negotiations, it had been agreed that some of the new mechanisms in the protocol would be subject to country reservations whereas other mechanisms would be considered 'core mechanisms' which were mandatory for protocol countries. It had not been established which of the mechanisms would be the 'core mechanisms'. The Co-Leads expressed a clear preference to assign at least one prevention mechanism and one resolution mechanism as core mechanisms. The African Group did not agree with this view and strongly opposed any of the dispute prevention mechanisms to be assigned as mandatory. The African Group did, however, strongly support assigning the mutual agreement procedure (MAP) in article III(2) as the one and only core mechanism under the protocol. The African Group believed the protocol on cross-border tax dispute resolution whose central mechanism i.e. MAP that can be opted out of, loses all relevance.

Germany asked why the current draft only allows reservations to be made once, at the time of signature. They pointed out that would be better to allow countries to also make reservations at a later point. The Co-Leads explained that the choice depends on the degree of flexibility versus certainty that the protocol intends to achieve.

Article V(2)(3) - Relationship with other instruments and replacement of current mechanisms

Many of the OECD countries, joined by the UAE and China supported 'Alternative A', proposed in draft article V(3). Alternative A allows countries to opt-in of the protocol's mechanisms if protocol countries jointly agree to have the protocol override substantially similar mechanisms in their existing agreements. ‘Alternative B’ does the opposite by making the override of existing mechanisms by protocol mechanisms the default rule while leaving countries the option to agree otherwise on bilateral or multilateral basis. The African Group was more in favour of Alternative B.

Proponents of Alternative A explained that this alternative was more in line with the need for legal certainty and for respect of the negotiated balance of existing treaties. A selective opt-in was also said to be easier to manage than a general override requiring active opt-out under alternative B. The UK and the Netherlands also wished not to automatically supersede mechanisms taxpayers had become accustomed to and which were working well in practice.

Spain expressed yet another view, questioning whether the alternatives were needed at all, given that the mechanisms in the protocol and in existing instruments can coexist without legal uncertainty. Spain referred to the example of the mechanisms under the MAAC operating alongside similar mechanisms for administrative assistance in the tax treaties without any significant problems. Russia, too, believed no general compatibility rules were needed: similar mechanisms can coexist and the protocol’s alternative mechanisms should apply of competent authorities agree on an ad-hoc basis. India, too, suggested that mechanisms could operate in parallel and subject to preferences of the parties. India did caution against creating opportunities for strategic forum shopping by taxpayers, in light of the available options.

The African Group strongly supported Alternative B, explaining that existing mechanisms should be superseded by default, subject to reservations or party agreement otherwise – on the ground that many existing treaty provisions reflect historical imbalances in negotiating power that a new multilateral protocol should be able to correct without requiring country affirmation on bilateral basis. Ghana connected this point to the broader position held by the Africa Group that the MAP mechanism should be a non-reservable core mechanism under the protocol.