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The UN Framework Convention on International Tax Cooperation Negotiations

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Executive summary

The UN Framework Convention on International Tax Cooperation (UNFCITC) presents a historic opportunity to restructure an international tax system that has been designed and governed in ways that systematically disadvantage developing countries. This policy insights provides an analysis of the key issues under negotiation and the implications for developing countries, specifically African countries, and makes textual proposals and recommendations.

The framework convention must give priority to correcting the structural imbalances in international tax governance. Article 5, which deals with the fair allocation of taxing rights, is particularly important as it addresses source taxation restrictions embedded in international tax rules. As such, it has the most direct and immediate impact for developing countries' revenue. Negotiators must, therefore, ensure that the article is drafted with strong binding commitments to ensure it delivers on its objectives. The governance framework is equally important. It determines whether future international tax standards are set through a genuinely inclusive process or merely replicate the exclusions of the past. The Conference of the Parties (CoP) must ensure balanced geographical representation and democratic decision-making, based on consensus or majority voting where consensus cannot be reached. International cooperation through exchange of information and mutual administrative assistance on tax matters is also foundational, as, without it, substantive taxing rights cannot be effectively enforced.

Background

International tax norm-setting has been dominated by the OECD, which usually reflects the interests and priorities of developed economies.[1] The OECD Inclusive Framework lacks legitimacy, accountability and transparency, affording developing countries limited influence over agenda-setting, technical drafting and consensus formation. Moreover, it incorporates rules that are usually complex, with limited revenue potential for developing countries.[2]

Various proposals by developing countries to create a more inclusive intergovernmental tax body under the UN were usually met, in the past, with resistance from developed

1 Annet Wanyana Oguttu, *Base Erosion and Profit Shifting: A Blueprint for Africa's Response* (IBFD, 2021), 118; Yariv Brauner, "What Can the UN Do That the OECD Can't or Won't?", *Intertax* 53, no. 1 (2025): 44, 49.

2 Yariv Brauner, "Serenity Now! The (Not So) Inclusive Framework and the Multilateral Instrument", *Florida Tax Review* 25 (2021): 489; Allison Christians and Laurens van Apeldoorn, "The OECD Inclusive framework", *Bulletin for International Taxation* 72, no. 4/5 (2018); Vladimir Starkov and Alexis Jin, "A Toss Up? Comparing Tax Revenues from the Amount A and Digital Service Tax Regimes for Developing Countries" (South Centre Research Paper no. 199, South Centre, 2024).

nations, but the political space gradually opened up to deeper reform.[3] A turning point came in December 2023 when the UN General Assembly adopted Resolution 78/230 to pursue the UNFCITC, in a historic vote.[4] This followed a foundational report by the UN Secretary General that evaluated possible options to enhance international tax cooperation.[5]

Resolution 78/230 established an Ad Hoc Intergovernmental Committee to draft the Terms of Reference (ToR) for a UNFCITC, which were subsequently adopted in December 2024 through Resolution 79/235.[6] The proposed convention aims to establish an inclusive, fair, transparent, efficient, equitable and effective international tax system to support domestic revenue mobilisation for sustainable development, which is responsive to current and future tax challenges.[7]

Resolution 79/235 also established the Intergovernmental Negotiating Committee (INC). Its mandate is to negotiate the framework convention and its two early protocols and submit the final text to the General Assembly in the first quarter of the eighty-second session – effectively in late 2027.[8] The INC has since structured its work across three workstreams: Workstream I on the Framework Convention; Workstream II on the Taxation of Cross-Border Services protocol; and Workstream III on the Tax Dispute Prevention and Resolution protocol. The negotiations have progressed from conceptual discussions to the drafting of substantive treaty text.[9]

What this means for countries

The drafting phase is the most important part of the negotiations. The UNFCITC's potential to deliver tangible improvements in developing countries' revenues will depend largely on the text negotiated between now and mid-2027. Once the final text of the convention is adopted and opened up for signature, it will be difficult to amend.[10] It has taken almost

3 UN General Assembly, *Addis Ababa Action Agenda of the Third International Conference on Financing for Development*, A/RES/69/313 (July 27, 2015); UN, *Report of the High-Level Panel on Financing for Development*; Abdul Muheet Chowdhary and Sol Picciotto, "Streamlining the Architecture of International Tax through a UN Framework Convention on International Tax Cooperation" (South Centre Tax Cooperation Policy Brief no. 21, South Centre, 2021).

4 UN General Assembly, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*, A/RES/78/230 (December 22, 2023).

5 UN General Assembly, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations: Report of the Secretary-General*, A/78/235 (2023).

6 UN General Assembly, *Terms of Reference for a United Nations Framework Convention on International Tax Cooperation*, A/AC.298/2 (2024); UN General Assembly, *Promotion of Inclusive and Effective International Tax Cooperation at the United Nations*, A/RES/79/235 (December 24, 2024).

7 UN General Assembly, *Terms of Reference*, A/AC.298/2, para. 7 (on objectives).

8 UN, *supra* note 7 para.18; UN General Assembly, *Addis Ababa Action Agenda*, A/RES/69/313, para. 27.

9 UN Department of Economic and Social Affairs, "Intergovernmental Negotiations for UN Framework Convention on International Tax Cooperation".

10 Amendment after adoption is procedurally lengthy, politically difficult and requires renewed state consent through formal treaty amendment procedures; hence the importance of incorporating flexibility mechanisms during treaty negotiations. See "Vienna Convention on the Law of Treaties", opened for signature May 23, 1969, 1155 UNTS 331, Articles 39–40; Laurence R. Helfer, "Flexibility in International Legal Design: Treaty Exit, Escape, and Amendment", *Theoretical Inquiries in Law* 14, no. 1 (2013): 175–233.

one hundred years to reach this stage, as international tax rules were developed over a century ago, and since then there has not been a legitimate, inclusive international tax governing body. This rare opportunity to shape the convention must not be lost.

> The UNFCITC's potential to deliver tangible improvements in developing countries' revenues will depend largely on the text negotiated between now and mid-2027

Developing countries must engage fully through active participation in the negotiations and make concrete textual proposals. The Africa Group at the UN (made up of 54 countries)[11] has long been engaged in the INC process. It continues to call for a UNFCITC that is equitable, inclusive and responsive to the capacities and development priorities of developing countries.[12] This policy insights is designed to support African countries in the negotiations. It provides an analysis of the main issues under negotiation and the implications for developing countries, and the key risks and negotiating priorities. It also provides draft textual proposals that can be advanced during negotiations for each workstream. The next section explores each workstream in more detail.

Framework Convention

Workstream I (WS I) will develop the text of the UNFCITC.[13] WS I has organised its work in phases. It began with the commitments of the convention. These will be followed by governance and institutional provisions, and later by final clauses dealing with amendments, adoption of protocols, entry into force, depositary arrangements and other formal matters.[14]

During the third and fourth INC sessions, negotiations focused on the draft text for the commitments under Articles 4–12 of the January 2026 Co-Leads' draft of the UNFCITC. These include sustainable development, fair allocation of taxing rights, high-net-worth individuals, illicit financial flows, harmful tax practices, mutual administrative assistance, exchange of information and capacity-building.[15] The January 2026 Co-Leads' draft

11 African Union Permanent Mission to the United Nations, "The African Group".
12 African Group, "WS I–African Group Submission", submission to the Intergovernmental Negotiating Committee on a UN Framework Convention on International Tax Cooperation, March 2026.
13 Intergovernmental Negotiating Committee, *Road Map and Working Methods*, A/AC.298/CRP.12 (2025).
14 Intergovernmental Negotiating Committee, "INC Tax: Presentation, Nairobi Plenary", November 12, 2025, PowerPoint presentation.
15 Intergovernmental Negotiating Committee, *Workstream I–Framework Convention: Co-Lead's Draft Framework Convention Template*, A/AC.298/CRP.26 (January 22, 2026).

followed the initial draft of 24 October 2024.[16] It is an evolving document, with a recent draft having been released on 21 July 2026, ahead of the August 2026 negotiations.[17]

Developing countries' priorities should be to ensure that the UNFCITC corrects historical injustices and has substantive text that provides strong and binding commitments that will deliver on the objectives in the ToR. The provisions of the January 2026 Co-Leads' second draft of the UNFCITC are analysed systematically below.

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Article 1 and 2 – Objectives and Principles

The objectives establish the UNFCITC's overarching goals, providing political direction and an interpretive standard for all provisions of the UNFCITC and its protocols. The principles establish the legal, ethical and operational boundaries within which the UNFCITC and its protocols are designed and applied. The two form the foundational architecture of the UNFCITC, anchoring its operation, guiding its interpretation and orienting all parties towards a common framework of purpose and conduct.

The Co-Leads' second draft of the UNFCITC indicates that the content of Articles 1 and 2 will be drawn directly from the ToR. The objectives and principles agreed in the ToR should not be reopened for negotiation in the UNFCITC, since they represent the foundation of the entire process. They could, however, be transformed to reflect the operative language of the UNFCITC. Developing countries should ensure that this transformation does not change or dilute the original intention in the ToR. Words that dilute the language, and qualifiers such as 'to the extent possible', 'as appropriate' and 'where feasible' should be avoided. All three objectives and all nine principles in the ToR should be included in the UNFCITC.

Article 3 – Definitions

Countries have not yet agreed on the terms to be defined under Article 3. The objective should be to limit definitions to those strictly necessary to operationalise the UNFCITC without pre-empting the scope or interpretation of substantive commitments.

16 Intergovernmental Negotiating Committee, *Workstream I–Co-Lead's Draft Framework Convention Template*, A/AC.298/CRP.21 (October 24, 2025).

17 Intergovernmental Negotiating Committee, *Workstream I–Co-Lead's Zero Draft of the UN Framework Convention on International Tax Cooperation*, A/AC.298/CRP.32 (July 21, 2026).

Developing countries should support definitions of only the key terms necessary for the interpretation and implementation of the UNFCITC's substantive provisions. Definitions that narrow obligations or limit the scope of commitments should be avoided. Further, controversial definitions may delay negotiations and make consensus more difficult. Where possible, such terms may be left for future consideration by the CoP or addressed through future protocols. The interpretation of the provisions of the UNFCITC must comply with the Vienna Convention on the Law of Treaties of 1969.

Article 4 – Sustainable Development

This article is broadly worded to situate international tax cooperation within the three dimensions of sustainable development (economic, social, environmental) and recognises the varied capacity of different states.

Countries like the UK have proposed detailed text[18] for the article. However, during the fourth INC session,[19] several developing countries (including Pakistan, Ghana and Zambia) cautioned against going into detail about sustainable development or human rights. They felt that this could potentially lead to overly restrictive interpretations, thereby limiting certain obligations of the state or constraining taxation.

These concerns should not, however, be understood as opposition to human rights obligations, which, if met, could create an environment to support domestic resource mobilisation for sustainable development. Rather, many states, including members of the Africa Group, believe that human rights obligations pose some interpretation uncertainties. Further, such obligations are already addressed in other international instruments and fora, such as the International Covenant on Economic, Social and Cultural Rights and the UN Human Rights Council. In addition, the objectives and principles set out in the ToR already make reference to sustainable development and to international human rights law.

Civil society organisations, including the Center for Economic and Social Rights, Financing for Development Children and Youth Constituency and FEMNET, have also called for clearer references to sustainable development objectives. Small island nations, in turn, have called for recognition of environmental vulnerabilities.[20] From the foregoing, the present wording may therefore represent a balanced compromise capable of attracting broad support while keeping negotiations manageable and focused on tax, given the limited negotiation timeframe.

18 United Kingdom, "WS I–United Kingdom Written Comments on the Draft United Nations Framework Convention on International Tax Cooperation", December 2025.

19 UN Department of Economic and Social Affairs, "Fourth Session: Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation",.

20 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 1st Meeting", February 2, 2026, video.

Article 5 – Fair Allocation of Taxing Rights

Article 5 is an important article in the UNFCITC which addresses the allocation of taxing rights, potentially challenging the existing international tax standards that favour residence taxation.[21] The article seeks to move beyond physical presence by recognising taxing rights in jurisdictions where 'markets are located, revenues are generated or economic activities take place'.

The current version has some areas of weakness that can be enhanced or improved:

i) Meaning of 'fair allocation'

The concept of 'fair allocation' remains unclear and open to different interpretations. There is currently no universally agreed definition of 'fairness' in international taxation.[22] Academic literature approaches fairness from different perspectives, including economic efficiency, inter-nation equity, distributive justice, benefit theory and legal certainty.[23] As a result, what is considered 'fair' often depends on institutional priorities, political interests and underlying power relations within international tax governance.

Dominant actors in international tax norm-setting end up shaping the meaning of fairness. Arik[24] argues that the OECD-led tax discourse has largely framed fairness from an economic perspective, focusing on revenue allocation, profit taxation and efficiency. Developing countries, however, often approach fairness differently, placing greater emphasis on source taxation, market jurisdictions, domestic resource mobilisation and development needs, as seen in the INC negotiations.

Therefore, having some level of clarification or definition of what 'fair allocation' means could help reduce uncertainty and guide the interpretation of Article 5. It also reduces the risk of dominant actors importing their own interpretations, such as the OECD-based understandings of fairness, into the convention.

It should, however, be noted that developing a precise definition reduces flexibility, is politically difficult and may not be concluded within the negotiation timelines. A more balanced approach may therefore be preferable. Rather than attempting to define

21 Oguttu, *Base Erosion and Profit Shifting*, 118.

22 Irene J.J. Burgers and Irma Johanna Mosquera Valderrama, "Fairness: A Dire International Tax Standard with No Meaning", *Intertax* 45, no. 12 (2017): 767; Ezgi Arik, "Hidden Dynamics and Hierarchies in Tax Policy: A Critical Assessment of Fairness in OECD, EU, and UN", in *Redefining Global Governance: A Tax, Trade and Investment Perspective in the EU and Beyond*, ed. Irma Johanna Mosquera Valderrama et al. (Cham: Springer Nature Switzerland, 2025).

23 Burgers and Mosquera Valderrama, "Fairness".

24 Arik, "Hidden Dynamics and Hierarchies in Tax Policy".

fairness exhaustively, the convention could provide interpretive guidance by anchoring the concept in broader principles and objectives. For example, the text could refer to:

- equitable allocation of taxing rights between states;
- recognition of market jurisdiction contributions and economic activity; and
- the developmental needs and capacities of developing countries.

Alternatively, a soft definition could be considered, such as:

'Fair allocation means an allocation of taxing rights that reflects economic activity, market participation, and development needs, taking into account different countries' capacities.'

This approach would preserve flexibility while still providing useful interpretive guidance for implementation and future negotiations.

ii) 'Value creation' risk

The term 'value creation' as applied to the allocation of profits under the OECD approach has a narrow interpretation. It recognises only supply-side factors reflected in the functions, assets and risks analysis, such as research and development, production activities and ownership of assets, while ignoring demand-side factors, such as markets and user participation.[25] This interpretation is economically flawed since the market plays a vital role in determining sales revenue and profits, yet its contribution is ignored in the current tax rules.

Thus, retaining the term in Article 5 as it is, risks importing restrictive OECD interpretations into the convention and limits taxation at source. The term 'value creation' should therefore either be removed from the article or clearly defined to include value created by demand-side factors. Removal of 'value creation' from Article 5 would not create any gaps, as the UNFCITC is a new instrument that is not bound by existing OECD constructs.[26] Further, the current wording of Article 5 – 'markets are located, revenues are generated, or economic activities take place' – already incorporates both the demand- and supply-side factors.

Further, it is important to ensure that each factor should independently establish nexus. The use of 'or' should therefore be retained, rather than 'and', as seen in the July draft.

25 Michael P. Devereux and John Vella, "Taxing the Digitalised Economy: Targeted or System-Wide Reform?", *British Tax Review*, no. 4 (2018): 387; Vinay Kumar Singh, "Interaction of Transfer Pricing and Profit Attribution: Conceptual and Policy Issues for Developing Countries" (South Centre Tax Cooperation Policy Brief no. 3, South Centre, 2018).

26 "Value creation" has never been incorporated into tax treaties as a binding legal standard; it appears only in OECD interpretive instruments, namely the 2010 Authorised OECD Approach (AOA) and the BEPS project since its launch in 2013.

iii) Wording that restricts profit allocation

The phrase, 'States Parties agree that all jurisdictions in which value is created, markets are located, revenues are generated have a right to tax a **portion of the income** generated from such activities', is problematic. As mentioned in the paragraph, it could limit the extent to what a country may tax – a factor that was pointed out by delegates (including India) during the fourth session.[27] Wording like this, which restricts profit allocation, should be avoided.

iv) Renegotiation of existing tax agreements

Many developing countries have signed treaties that restrict their taxing rights, without being shown evidence of the possible gains from entering into such treaties.[28] Renegotiating bilateral treaties is slow and politically difficult.[29] Article 5 mentions renegotiation of existing tax agreements, which could be particularly significant for developing countries with restrictive treaties.

The UNFCITC should trigger the renegotiation of existing tax agreements, where necessary, to give effect to its provisions. However, it should not provide for automatic treaty override to preserve legal certainty. The CoP can provide further guidance during the implementation, as they deem necessary.

v) Relation with existing instruments

Developed countries expressed the need for further clarification on how this article and the other provisions of the UNFCITC in general are related to existing treaties and instruments. This will be addressed in a later section on Article 15, now Article 21, on 'Relation with existing Instruments'.

vi) No mention of profit allocation rules

The article expands the nexus rules but does not address how profits should be allocated once new taxing rights are established. The absence of guidance on profit allocation may create uncertainty as to how to allocate profits for the new nexus. Without corresponding allocation rules, the practical effect of expanded nexus may remain limited. Further, the current profit allocation rules, which are based on the arm's-length principle, are highly complex and require administrative capacity for developing countries to enforce effectively.[30]

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27 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 2nd Meeting", February 2, 2026, video.

28 Aiwei Feng, Shristi Joshi and Quinn McGannon, "Analysis of Imbalanced Tax Treaties of Developing Countries: Insights from the Tax Treaties Explorer Database" (Graduate Institute and South Centre, 2024); Martin Hearson, "When Do Developing Countries Negotiate Away Their Corporate Tax Base?", *Journal of International Development* 30, no. 2 (2018): 233.

29 Helfer, "Flexibility in International Legal Design," 175–233; Vienna Convention on the Law of Treaties, Articles 39-40.

30 Annet Wanyana Oguttu, "Challenges of Applying the Comparability Analysis in Curtailing Transfer Pricing: Evaluating the Suitability of Some Alternative Approaches in Africa", *Intertax* 48, no. 1 (2020): 74.

Article 5 of the UNFCITC should therefore provide broad guidance on profit allocation or provide for the development of allocation rules through a future protocol or CoP process.

Text suggestion

Article 5: Fair Allocation of Taxing Rights

1 States Parties recognize that jurisdictions in which markets are located, revenues are generated, or economic activities take place have taxing rights over income derived or attributed therefrom.

2 States Parties shall ensure an equitable allocation of taxing rights among relevant jurisdictions, taking into account:

a) the contribution of jurisdictions to the generation of income;

b) the market jurisdiction contributions, including user participation and data generation;

c) the jurisdictions in which revenues are generated;

d) the location of economic activities;

e) sustainable development and domestic resource mobilisation needs; and

f) the capacities and circumstances of countries.

3 States Parties shall take appropriate legislative, administrative, and treaty measures to give effect to this Article, including, where agreed by the parties concerned, the review and renegotiation of existing international tax agreements that are inconsistent with this article.

4 The Conference of the Parties may develop protocols or guidance for the implementation of this Article, including rules or methods for the allocation of profits to the jurisdictions in which taxing rights arise, taking into account the different administrative capacities of developing countries.

Article 6 – High-Net-Worth Individuals

The article addresses taxation of high-net-worth individuals (HNWI), which is important for African countries due to rising levels of wealth concentration and inequality across

the continent.[31] Over the past five years, African billionaires have increased their wealth by 56%, with the five wealthiest growing their fortunes by 88%. Dollar millionaires, in turn, representing just 0.02% of the population, own nearly a fifth of the region's total wealth, while the bottom 50% hold less than 1%.[32]

The article has received broad support, especially cooperation in the exchange of information during the INC negotiation sessions. However, several developed countries, including Germany, Canada, the UK, Austria and Hungary, have argued that the article should remain high level and avoid creating new legal obligations or duplicating existing instruments.[33] Many developing countries, by contrast, have expressed their support for stronger commitments, including measures on beneficial ownership transparency and asset registries, as mentioned by Lesotho during the fourth session of the INC.

Civil society organisations, including Tax Justice Network Africa, Global Alliance for Tax Justice and Oxfam, have also noted that the January 2026 Co-Leads' second draft of the UNFCITC is diluted and does not contain concrete measures to address taxation of HNWIs effectively.[34]

Text suggestion

Article 6(3) strengthened:

3 The States Parties shall develop and implement coordinated approaches to ensure effective taxation of high-net worth individuals.

New paragraph 4:

4 The Conference of the Parties may develop protocols, guidelines, or minimum standards concerning the implementation of this Article, including on minimum taxation, reporting obligations, beneficial ownership transparency, and administrative cooperation mechanisms.

The article should move beyond broad cooperation language and provide stronger commitments for effective taxation of HNWI. The CoP can provide more details through a future protocol or guidance on taxation measures, including minimum taxation measures

31 Annet Wanyana Oguttu, "Taxing High-Net-Worth Individuals: Recommendations from an African Perspective", *World Tax Journal* 16, no. 4 (2024).

32 Anthony Kamande and Christian Hallum, *Africa's Inequality Crisis and the Rise of the Super-Rich* (Oxfam, 2025).

33 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 4th Meeting", February 3, 2026, video. The first part of the session discussed the HNWI article.

34 UN Web TV, "Fourth Session, 4th Meeting".

and reporting requirements for HNWI. Strong words like 'shall' should be maintained while qualifying language like 'shall explore' or 'shall adopt' should be strengthened.

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

The article covers the full range of mechanisms needed to combat illicit financial flows (IFFs), including mutual administrative assistance, exchange of information and 'any other agreed forms of international co-operation'.

A contentious issue under this article is the lack of an agreed definition of IFFs. Developed countries favour a narrow definition that is limited to illegal activity, which in effect excludes tax avoidance as this is considered legal.[35] Developing countries favour a broader definition that encompasses tax avoidance.[36] In 2020, the United Nations Conference on Trade and Development (UNCTAD) and the UN Office on Drugs and Crime (UNODC) released a statistical definition of IFFs to monitor progress towards Sustainable Development Goal (SDG) 16.4.1.[37] This definition includes aggressive tax avoidance. The negotiations should consider a definition of IFFs that includes tax avoidance. The definition in the most recent draft of July 2026 reflects this.[38]

During the fourth session, Zambia and several other African countries also emphasised that jurisdictions in which IFFs originate should retain taxing rights over the income and profits underlying those flows.[39] This provision is now reflected in the July 2026 draft. It can be operationalised through a dedicated future protocol on IFFs.

The body of the article must explicitly reference tax avoidance and tax evasion, not just tax-related-IFFs, to ensure internal consistency.

Text suggestion

Insert the phrase 'tax avoidance and tax evasion' into the existing text of the article (shown in red below), so that it reads:

'The States Parties shall develop and implement measures to combat tax-related illicit financial flows, tax avoidance and tax evasion, including effective tools for …'

35 Global Initiative, *Measuring OECD Responses to Illicit Financial Flows from Developing Countries* (OECD Publishing, 2013).
36 African Union and Economic Commission for Africa, *Report of the High Level Panel on Illicit Financial Flows from Africa* (Addis Ababa: AU/ECA, 2015), 23.
37 UNCTAD and UNODC, *Conceptual Framework for the Statistical Measurement of Illicit Financial Flows* (UNCTAD, 2020).
38 Intergovernmental Negotiating Committee, *Co-Lead's Zero Draft*, A/AC.298/CRP.32.
39 UN Web TV, "Fourth Session, 4th Meeting". The session discussed the IFF article from the 1:40:00 time stamp.

Additional paragraphs:

1 States Parties shall cooperate to ensure effective taxation of income, profits, and assets associated with tax-related illicit financial flows, including tax avoidance and tax evasion, including in jurisdictions where such flows originate.

2 For purposes of this Article, tax-related illicit financial flows shall be interpreted consistently with the UNCTAD–UNODC statistical definition on illicit financial flows under SDG indicator 16.4.1.

Article 8 – Harmful Tax Practices

Article 8 is important for helping countries to identify and deter harmful tax practices that erode tax bases and undermine domestic resource mobilisation. However, the article requires a clear definition of 'harmful tax practices'. Without a definition of 'harmful tax practices', reflecting developing-country perspectives, this article risks being interpreted through the lens of the OECD's Forum on Harmful Tax Practices (FHTP) which has largely focused on preferential tax regimes.[40] The FHTP evaluates tax regimes using criteria such as transparency, exchange of information, ring-fencing and substantial activity requirements.[41] These criteria disproportionately burden developing countries as they impose high administrative compliance costs and restrict fiscal autonomy of states in developing tax incentives to attract investment.[42]

African countries should therefore support a broader definition that supports domestic resource mobilisation and aligns with economic substance[43] calibrated to developing countries' administrative capacity and priorities. The review criteria should evaluate the substantive design and actual cost–benefit analysis of tax incentives, considering that countries have different economic circumstances and capacities.

The review of harmful tax practices should also be conducted through a transparent, inclusive and representative process under the UNFCITC. The article can be operationalised by the CoP through a future protocol on harmful tax practices.

40 Irma Johanna Mosquera Valderrama, "Regulatory Framework for Tax Incentives in Developing Countries after BEPS Action 5", *Intertax* 48, no. 5 (2020): 446.

41 OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: 2015 Final Report* (OECD Publishing, 2015).

42 Mosquera Valderrama, "Regulatory Framework for Tax Incentives".

43 OECD, *Action 5: 2015 Final Report*, incorporates an economic substance requirement for preferential regimes, but that standard was developed without the full participation of developing countries.

Text suggestion

Additional paragraphs:

3 States Parties shall cooperate to develop and adopt a definition of harmful tax practices that support objectives of domestic resource mobilisation and genuine economic substance, and that reflects different countries' capacities and circumstances.

4 The Conference of the Parties may adopt further guidance or protocols to guide implementation of this Article, including establishing a review process of harmful tax practices which should be transparent, inclusive, and representative of all regions.

Article 9 – Mutual Administrative Assistance

The obligation to afford 'the widest measure of mutual administrative assistance' is important for developing countries, though some countries like Saint Kitts and Nevis, India and Switzerland expressed concern that it is open ended.[44] The article can provide a non-exhaustive list of measures. The enumerated forms of assistance in paragraph 1 may limit the scope of assistance, as pointed out during the fourth session of the INC negotiations by many countries, including India, Norway, Canada, Belgium, Israel, Singapore and Portugal. However, it can still remain, since it is not an exhaustive list and provides important examples of forms of assistance that can be provided.

The mention of 'effective assessment' in paragraph 1 narrows the scope for assessment, as pointed out by countries such as India, Italy, Norway and Jamaica during the fourth session of the negotiations.[45] It could be replaced with 'effective tax administration and enforcement' (shown in red) so that it reads as follows:

'States Parties shall afford one another the widest measure of mutual administrative assistance in tax matters to facilitate the effective tax administration and enforcement of taxes and to combat tax evasion and avoidance.'

The July 2026 draft has removed the restrictive wording, 'effective assessment'.

44 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 5th Meeting", February 5, 2026, video. The session discussed the HTP article from the 2:09:00 time stamp. See also UN Web TV, "Fourth Session, 6th Meeting", February 5, 2026, video.

45 UN Web TV, "Fourth Session, 5th Meeting".

Article 10 – Exchange of Information

Article 10 should be retained as a standalone provision, given the central role of exchange of information (EOI) in effective international tax cooperation.[46] During the fourth session, many developing countries, including Zambia, India, Kenya, Nigeria and Brazil, supported a dedicated EOI article and more precise drafting,[47] as the January 2026 Co-Leads' second draft of the UNFCITC was too detailed. The July 2026 UNFCITC draft retains the same detailed text. The article should therefore establish binding core obligations to exchange information while leaving operational details to future protocols.

Developing countries also pointed out that the principle of 'foreseeable relevance', normally used in EOI instruments to guard against fishing expeditions, can restrict automatic exchange of information or frustrate legitimate requests from developing countries.[48] Thus, the mention of 'foreseeable relevance' can be removed from the article and included in a future protocol. The latter should clarify that this standard must not be used to restrict automatic exchange of information or frustrate legitimate requests from developing countries.

The article should also preserve confidentiality provisions while ensuring that banking secrecy and opaque beneficial ownership structures cannot be invoked to refuse cooperation.

Concerns were raised by Kenya and other African countries regarding the high costs of participation in existing information exchange systems, including costly infrastructure and high annual subscription fees.[49] In view of this, the article should retain the mention of differentiated capacities and provide for technical and financial support for implementation.

Text suggestion

1 The States Parties shall exchange information relevant for the effective administration and enforcement of their tax laws, including information necessary to prevent tax avoidance and evasion.

2 Information exchanged under this Article shall be subject to confidentiality provisions and shall be used solely for the purposes for which it was provided.

46 Annet Wanyana Oguttu, "A Critique on the Effectiveness of 'Exchange of Information on Tax Matters' in Preventing Tax Avoidance and Evasion: A South African Perspective", *Bulletin for International Taxation* 68, no. 1 (2014): 2.

47 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 7th Meeting", February 6, 2026, video.

48 Oguttu, "A Critique on the Effectiveness of "Exchange of Information on Tax Matters"".

49 UN Web TV, "Fourth Session, 7th Meeting" at the 1:48:00 time stamp.

3 A State Party shall not decline to provide 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.

4 States Parties shall take into account their different capacities in implementing this Article and shall provide technical and financial support to facilitate effective participation by developing countries.

5 The operational modalities of exchange of information, including standards of relevance and mechanisms for automatic exchange, shall be elaborated on through a protocol, which shall ensure that such standards are not used to restrict or frustrate legitimate requests.

Article 12 – Capacity-Building and Technical Assistance

Article 12 provisions provide for strengthening of the technical and administrative capacity of states to effectively implement the UNFCITC. The article should retain binding commitments on technical assistance and capacity-building, while clarifying that support must be demand-driven and aligned with national priorities, as emphasised by several countries, including the Africa Group, during the fourth session.[50] Particular attention should be given to technology transfer, data infrastructure, digital systems and data-analytics capabilities, which are critical for implementing exchange of information frameworks and combating illicit financial flows.

To strengthen accountability, the article could also provide for periodic assessment of the effectiveness and impact of capacity-building measures. Overly prescriptive lists of assistance areas within the article should be avoided. Instead, operational details should be developed through a protocol or CoP guidance to preserve flexibility and responsiveness to country needs.

Qualified phrases like 'to the extent possible' within the article renders it effectively non-binding and should be removed in paragraph 3.

50 UN Web TV, "Intergovernmental Negotiating Committee on the United Nations Framework Convention on International Tax Cooperation, Fourth Session, 8th Meeting", February 6, 2026, video, at the 1:48:00 time stamp.

Text suggestion

3 Accordingly, the States Parties shall, in coordination with each other and with international and regional organizations, provide technical assistance and capacity development on a demand-driven basis, aligned with the national priorities of the requesting State Party, with particular attention to technology transfer, data infrastructure, digital systems, and data analytics capabilities necessary to implement this Convention. (to replace the current paragraph 3)

Additional paragraphs:

6 The operational modalities of the assistance described in paragraph 3 shall be further elaborated on through protocols or guidance issued by the Conference of the States Parties.

7 The Conference of the States Parties shall periodically assess the effectiveness of capacity-building measures provided under this Article and report on such assessments through the review mechanism established under Article 14.

Articles 11, 13–28: Priority Positions on the Articles

The priority areas for developing countries on the remaining articles are outlined in Table 1.

TABLE 1 PRIORITY AREAS FOR DEVELOPING COUNTRIES

Article	Priority area for developing countries
Article 11 – Data Collection and Analysis *(Article 15 in July 2026 UNFCITC draft)*	This article is important as the effective implementation, review and monitoring of the convention depend on reliable data collection and analysis. It supports Article 14 on Review and Verification. The data may include data on the implementation of the UNFCITC's objectives, revenue outcomes and implementation progress, and should avoid placing excessive reporting burdens on developing countries.
Article 13 – Prevention and Resolution of Tax Disputes *(Article 9 in July 2026 UNFCITC draft)*	Cross-reference Article 13 to Article 22 below and Protocol II on Dispute Resolution. Article 13 (now Article 9 in the July 2026 UNFCITC draft) appears to address domestic disputes while Article 22 covers state-to-state disputes, and Protocol II provides operational detail. The two dispute-prevention articles within the UNFCITC should be combined so that we have only one consolidated article with a clear scope. The consolidated article should be a brief article establishing that States Parties are committed to the prevention and resolution of tax disputes through mechanisms developed under Protocol II. The article should cover state-to-state disputes arising from the implementation and interpretation of the UNFCITC. It should not interfere with domestic dispute procedures or tax sovereignty of states to resolve domestic tax issues under their national laws.

Article 14 – Review and Verification *(Article 16 in July 2026 UNFCITC draft)* *(priority article)*	This is the UNFCITC's accountability architecture; without it, all substantive commitments are unenforceable. It should review and monitor the implementation of the UNFCITC and the protocols. Key elements are: clear evaluation criteria and a transparent review process; self-national reporting on implementation; an independent expert review panel with balanced geographical representation; public access to review reports; and a follow-up mechanism for states found to be non-compliant, and provision of targeted technical support to bridge implementation gaps. The current version in the July 2026 UNFCITC draft (now Article 16) provides a brief version and allows the CoP to develop the review processes. The July 2026 draft contains a high-level provision and leaves the detailed design of the mechanism to the CoP. Developing countries should ensure that the core elements of the review and verification mechanism are reflected in the UNFCITC, while allowing the CoP to develop the operational details.
Article 15 – Relation with Other Agreements, Instruments and Domestic Law *(Article 21 in July 2026 UNFCITC draft)* *(Important article for African countries to ensure that the convention is not subjected to other instruments)*	This is an important article that developed countries want to be given priority. The objective of the UNFCITC is to establish a transparent, equitable and inclusive international tax system. Such a system should therefore not be subject to work done in other fora that are not truly inclusive. The governing body of UNFCITC, however, can incorporate the work done in other fora into the new system – in whole, in part or with modifications. This would be effected through the rules procedures of the UNFCITC, provided such incorporation is consistent with the objectives and principles of the UNFCITC. To this end, the Vienna Convention on the Law of Treaties (VCLT) (1969) should be observed. According to the VCLT, a later agreement supersedes earlier agreements unless agreed otherwise by the parties.[a] The UNFCITC should not automatically override existing inconsistent international tax agreements, unless the parties mutually agree. This can be expressly stated in the article. However, it should still provide room for amendment of existing tax agreements that are inconsistent with the UNFCITC provisions, either through the UN fast-track mechanism or by triggering bilateral renegotiations. It should not affect domestic laws of states that are not signatories to the convention. Instruments such as the double tax agreements, the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters, other exchange of information instruments, and the Financial Action Task Force Beneficial Ownership standards can be considered by the CoP for incorporation under the UNFCITC's rules of procedure, through a genuinely inclusive process. Text suggestion 1 *This Convention shall not affect the rights and obligations of States Parties under other international agreements that are compatible with this Convention.* 2 *The Conference of Parties may, in accordance with its rules of procedure, decide to incorporate, in whole, in part or with such modifications as it deems necessary, standards, rules or instruments developed in other international or regional fora into the framework of this Convention or its protocols, provided that such incorporation is consistent with the objectives and principles of this Convention.* 3 *This Convention shall not automatically supersede an existing international agreement that is inconsistent with it, except where the parties to that agreement mutually agree to align it with this Convention. To facilitate such alignment, a State Party may avail itself to a fast-track instrument adopted under this Convention or may trigger bilateral renegotiation of the inconsistent agreement.*

	4 *Participation in or compliance with another international or regional tax cooperation instrument shall not, in itself, exempt a State Party from its obligations under this Convention.* 5 *Nothing in this Convention shall affect the domestic law of a State that is not a Party to this Convention.*
Article 16 – Conference of the States Parties *(Article 13 in July 2026 UNFCITC draft)* *(priority article)*	The CoP is the governing body of the UNFCITC. The role of the CoP will include: • Performing governance and oversight of the UNFCITC implementation; • Setting the global agenda and deciding the issues to work on (work programme); • Establishing subsidiary bodies and developing tax instruments, including protocols and guidelines, to implement the UNFCITC; • Addressing emerging tax issues; • Setting standards on international tax issues; • Engaging in capacity-building in tax matters; and • Managing dispute prevention and resolution. Must establish: • One-member–one-vote decision-making for substantive matters; decision-making by consensus and, if not possible, by a simple majority; • A bureau constituting Finance ministers or heads of tax administrations with tax technical capacity, reporting to the member states; • Balanced geographical and gender representation in the bureau and subsidiary bodies, serving on a rotational basis to ensure equal representation; • Open participation for civil society, academia and other stakeholders to give them a voice; • Regular sessions of the bureau (not less than two annually); and • A clear mandate to develop guidelines, recommendations and best practices under each substantive article, as necessary to implement the UNFCITC.
Article 17 – Secretariat	Must be a permanent Secretariat of the convention hosted by the UN Department of Economic and Social Affairs, with adequate independent resources financed through Article 19. It should also have balanced regional representation. Staff should be professionals with relevant expertise in their roles, with balanced geographical and gender representation.
Article 18 – Subsidiary Bodies *(Article 14 in July 2026 UNFCITC draft)*	Must include: • A technical committee with tax expertise (the UN Committee of Experts on International Cooperation in Tax Matters can be made a technical committee subsidiary body); • A capacity-building committee; • A committee on dispute prevention and resolution; • A committee on convention implementation; and • A committee on data collection and analysis; constituted as necessary to implement the UNFCITC. All committees must have balanced regional and gender representation.

Article 19 – Financial Resources *(Article 18 in July 2026 UNFCITC draft)*	Developing countries must be willing to contribute to this process, to invest in their future. Must establish defined (not voluntary) contributions from States Parties based on their capacity. Must have a dedicated capacity-building fund and a core budget for Secretariat operations and implementation of the UNFCITC.
Article 20 – Amendments *(Article 19 in July 2026 UNFCITC draft)*	Any amendment to the UNFCITC and protocols by a simple majority of States Parties present and voting, with entry into force for ratifying states only.
Article 21 – Relation with Protocols *(Article 20 in July 2026 UNFCITC draft)*	A state must be a party to the UNFCITC before becoming a party to a protocol. Protocols are subsidiary instruments. They must be consistent with the objectives and principles of the UNFCITC and cannot override or contradict the UNFCITC. Protocols are optional for states that are party to the UNFCITC. Protocols are not binding on states that have not signed and ratified the protocol. States Parties that have not ratified a protocol retain the right to become party to it at any later time without conditions.
Article 22 – Settlement of Disputes under the Convention	See Article 13 above.
Article 25 – Reservations	Reservations to substantive Articles 4-8 and institutional arrangements for Articles 13–18 should be prohibited. The substantive articles are the core commitments; reservations would allow states to opt out of the fundamental obligations while remaining parties to the convention. Institutional arrangements make the convention operational.
Article 26 – Entry into Force	A threshold of 30 ratifications is appropriate to ensure the early entry into force of a substantive number of states, which is consistent with some multilateral conventions.[b] The CoP and the Secretariat should actively promote universal participation, which includes encouraging ratification and accession by all states. The UNFCITC should also include provisions on provisional application for states that sign but have not yet completed ratification procedures.

Notes

a) Vienna Convention on the Law of Treaties (1969), Article 30;

b) Convention on Biological Diversity, Article 36(1), adopted June 5, 1992, entered into force December 29, 1993; UN Convention against Corruption, Article 68(1), adopted October 31, 2003, entered into force December 14, 2005. Both conventions entered into force on the 90th day after deposit of the 30th instrument of ratification, acceptance, approval or accession.

Source: Author's compilation

Conclusion

The INC negotiations will determine whether the content of the UNFCITC delivers meaningful structural change or entrenches existing asymmetries within a new multilateral framework under the UN. The technical choices currently under consideration – including commitments, institutional structure, nexus, profit allocation, and dispute prevention and resolution –will shape international tax rules for decades to come. African countries will need to continue engaging in all the negotiation sessions and providing collective written submissions, with technically solid inputs and contributions, to shape the new system. Ultimately, the convention's success will be judged by its effectiveness in expanding revenue capacity, reducing disputes and advancing a truly inclusive, fair and transparent international tax system that supports developing countries' priorities.

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