YTJN New York Tax Talks Day Three Roundup: Fifth Session of the Intergovernmental Negotiating Committee to Develop a UN Framework Convention on International Tax Cooperation

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The Big Picture: Defining Harm, Resolving Disputes, and the Battle Over "Informal-Informals"

Day 3 was a packed day of negotiations. The morning session focused on wrapping up Article 8 (Harmful Tax Practices) and then diving into Article 9 (Prevention and Resolution of Tax Disputes). The afternoon session continued with Article 10 (Mutual Administrative Assistance) and Article 11 (Exchange of Information), the operational machinery of the convention.

The morning was marked by a significant procedural debate over whether to hold "informal-informal" meetings on contentious articles and a clear divide emerged between those who want more time for deep discussion and those who fear running out of time to finish the work.

The Co-Lead opened with a thought-provoking question: "*Why do people prefer preferential tax regimes? Is it that there's no alternative revenue source? How can we as a collective help them to get revenue sources that they can use for their development and at the same time deal with these practices?*"

Article 8: Harmful Tax Practices (Morning Continuation)

The Core Debate: Build on Existing Work or Start Fresh?

The morning session on Article 8 revealed a fundamental divide over how the convention should relate to existing international frameworks on harmful tax practices.

One side (led by the UK, Peru, Republic of Korea, Austria, Belgium, Singapore, Germany, Israel, Switzerland, Japan, and Portugal) argued that the article should recognize and build upon existing work, particularly that of the OECD's Forum on Harmful Tax Practices (FHTP).

Switzerland proposed a practical compromise: instead of "develop and apply" common principles and standards, the text should say "apply and further develop" common principles and standards acknowledging that standards already exist while leaving room for refinement.

The Africa Group and its supporters (Kenya, Nigeria, Zambia, Algeria, South Africa, Ghana, Mauritius) pushed back strongly. **Kenya**, speaking for the Africa Group, stated: "*We do not support any calls for complementarity or conformity with existing frameworks and mechanisms.*" They argued that these negotiations originated from "the lack of effectiveness and inclusivity of the existing mechanisms and frameworks."

Nigeria made a powerful point: "*Not all delegations that are here under the UN umbrella are part of the development or membership of the organization that may have developed the existing instruments.*" The UN, they argued, is "big enough to take everybody."

India offered a nuanced position: "*It is not that we have to simply follow what has been done in the past... The test is how well developed is that work and how well has that work served the interest of its stakeholders.*" India cautioned that developing countries "have not had really a say in the rules of the game."

Peru asked a critical question that echoed through the room: "*What is the specific gap that Article 8 is trying to address and what would be the added value of the obligations proposed?*"

Honduras offered a way forward: The debate "should not be seen as a decision between automatically adopting existing standards or developing a regime that is completely new." Instead, the question should be whether existing standards are "effective, inclusive, and developed through transparent, non-discriminatory processes."

CIVIL SOCIETY FINANCING FOR DEVELOPMENT MECHANISM

The Tax Chronicle

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CIVIL SOCIETY FINANCING FOR DEVELOPMENT — The CS FfD Mechanism is an open civil society platform including several hundreds of organizations and networks from diverse regions and constituencies around the world. CS FfD Mechanism's core principle is ensuring that civil society can speak with one collective voice.

YES – THAT'S WHAT AMBITION LOOKS LIKE!

We civil society are often told we're always negative. Here's an article to prove you wrong!

Yesterday's discussion on High-net Worth Individuals was a heartwarming and much needed reminder of what ambition looks like. Brazil, India, the Africa Group, Spain, Pakistan and several other Member States delivered a strong push for reintroducing much stronger and more action oriented language in Article 6. Thank you, champions!

This could not be more timely. Governments around the world are struggling to fund healthcare, education, environmental protection, gender equality, and the fulfillment of human rights.

Meanwhile, the exclusive club of dollar-billionaires keeps hoarding wealth and power at record speed, and the world has just seen the emergence of the world's first trillionaire. This extreme concentration of wealth must urgently be addressed!

On the backrows, we felt a very strong urge to applaud yesterday. Sadly, we remain aware that this practice was banned in the UN Tax process in 2024 when a European delegate (who wasn't receiving any applause) complained that she was "not used to that". But we hope you all felt our positive energy of appreciation, when ambition finally reemerged in Conference Room 3.

WHY DOES PROGRESSIVITY MATTER?

As we all know tax progressivity is a cornerstone of fair and effective tax systems because it aligns tax obligations with the ability to pay. It means that individuals and corporations with greater economic capacity contribute a larger share of their income or wealth, helping to reduce inequality while generating the public resources needed to finance sustainable development and the progressive realization of human rights. Progressive taxation is therefore not only a matter of equity, but also of economic efficiency and social cohesion.

Under the current global tax rules, national efforts to implement progressive taxation are constrained by the mobility of capital, multinational enterprises, and high-net-worth individuals. As a result of tax competition, profit shifting, hidden offshore wealth, and unfair arbitration, those with the greatest capacity to contribute minimize or avoid taxation, shifting the burden onto workers, consumers, and small domestic businesses. Because of this, countries, particularly developing countries, face significant revenue losses that weaken their ability to fulfill human rights obligations.

For this reason, as several Member States stressed yesterday in the Article 6 discussion, progressivity should become a central objective of international tax cooperation rules.

International cooperation enables countries to protect and strengthen progressive tax systems by reducing opportunities for cross-border tax avoidance and evasion. Effective taxation of multinational enterprises, transparency of beneficial ownership, automatic exchange of information, administrative cooperation, and effective taxation of high-net-worth individuals all contribute to ensuring that our tax systems can be progressive. Without international coordination, countries acting alone often face a "race to the bottom," lowering tax rates or granting preferential regimes to attract mobile capital, which ultimately undermines their own fiscal sovereignty. Addressing these challenges requires multilateral solutions that close loopholes and establish a fair allocation of taxing rights among countries.

Finally, embedding progressivity within international tax cooperation reflects a broader commitment to fairness, solidarity, and sustainable development. It recognizes that globalization should not enable those with the greatest economic power to escape their tax responsibilities while ordinary citizens bear a disproportionate share of the tax burden.

It's high time for Member States to embrace the concept of progressivity in the UN Tax Convention.

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The Definition Problem

Several delegations raised the need for clarity on what constitutes a "harmful tax practice."

Mauritius asked: "*How do we identify harmful tax practices? What are the features? What are the criteria that should be used?*"

Jamaica noted that under the existing regime, "jurisdictions that introduce practices that are harmful are held accountable by the FHTP." This article appears to be "transferring that monitoring role to each state"—raising questions about how accountability would work.

Brazil cautioned against defining the term in the Framework Convention, arguing that it should "resist the test of time and adapt to how situations evolve."

India agreed that a definition might be unnecessary now, suggesting it could be developed "as and when we get down to negotiating a protocol on this matter."

The "International and Regional" Debate

Several delegations (Kenya, Nigeria, Brazil, Mauritius, Ghana) proposed deleting the words "at international and regional levels" from paragraph one.

Kenya argued that "what we are in pursuit of here is international tax cooperation, and having the words regional could probably lead to misalignment of the frameworks to be developed."

Brazil found the reference "a bit strange" because "regional in this context, I think it means international."

Oxfam (civil society) agreed: "Regional approaches vary and the standards of one region may be discriminatory against other states from different regions."

The "Explore vs. Adopt" Debate

The Africa Group and civil society stakeholders pushed for stronger language in paragraph two.

Kenya noted "the watering down of the draft language" compared to the March draft and called for "more action-oriented terms."

The Africa Group's proposal from March included a broader commitment to combat harmful tax practices "including through development or implementation of effective tools, through effective sharing of relevant information, and by introducing appropriate measures."

Mauritius proposed replacing "exploring" with "adopt appropriate measures and tools."

Civil society (DMUN Foundation) called for "clear and objective criteria for determining when a tax practice is harmful," including factors like "whether a measure facilitates profit shifting, lacks sufficient economic substance, provides preferential treatment without substantial economic activity, lacks transparency."

The Procedural Battle: Informal-Informals

A significant procedural debate emerged over whether to hold "informal-informal" meetings on contentious articles.

Kenya, speaking for the Africa Group, expressed concern that "we have less than one year to finalize these negotiations, and a majority of the articles of the Framework Convention are yet to be discussed." They argued that the committee should "stick to the approved organization of work."

Kenya also warned against holding informal discussions during Workstream Two or Three sessions, noting that "many member states have different delegates for each of the workstreams, meaning that there are many Workstream One delegates that would actually be leaving by the end of this week."

Nigeria supported this position: "We have a large number of articles that have yet to be discussed, and our position is that we should just go ahead and complete the agenda as has been agreed."

Zambia echoed this: "It is our view that we stick to the agenda before us so that we can have time in this session to discuss the new articles that we've never discussed before."

Germany pushed back, clarifying that the proposal for informal-informals "was not put forward at all" as a deviation from the work program. The only desire was "to deepen the discussions between delegations on Article 5 with an aim of gaining a better understanding of the respective positions."

Article 9: Prevention and Resolution of Tax Disputes

"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."

The Core Debate: What Kind of Disputes?

A central question emerged: **Are we talking about domestic disputes or cross-border disputes?**

India argued that "this article seems to give an impression that we are only trying to dictate as to how state parties should deal with domestic disputes." India proposed that paragraph one should read: "The state parties commit to implement effective measures for avoiding and resolving **cross border** tax disputes with the ultimate goal of supporting domestic resource mobilization."

The Russian Federation agreed: "From the draft of the article, it's not really clear what types of disputes are these, cross border or domestic disputes."

Norway echoed this: "The wording here seems unclear. From how we read this article, it could cover both, but then again, it could not."

Israel asked: "Is this article only for domestic dispute? Something is not really clear in the text."

Germany (in his capacity as Workstream Three Co-Lead) offered important context: "The TOR do not have a limitation to cross border tax disputes but rather mandates us to address tax disputes as a whole." He cautioned that limiting the commitment "might to some extent be inconsistent with both the protocol as well as the TOR."

Brazil supported including "cross border" before "disputes" in paragraph one.

The Africa Group's Proposal

Zambia, speaking for the Africa Group, proposed splitting the article into **three paragraphs**:

1. A reinforced commitment: "The state parties shall take measures to ensure effective prevention and resolution of tax disputes" (removing "in accordance with its needs, capacities and priorities")
2. The existing measures (minimizing disputes through clear legislation and implementing fair dispute resolution mechanisms)
3. A new paragraph: "The state parties shall develop guidance, protocols, or additional instruments as may be necessary for the effective implementation of this article."

Mauritius and **Morocco** aligned with this position.

Kenya supported the Africa Group's proposal and also backed Nigeria's suggestion to add "transparent" to paragraph two B.

India's Proposals

India made several specific suggestions:

- Add "cross border" before "tax disputes"
- Add a reference to "domestic resource mobilization" to connect the article to the convention's broader purpose
- Delete the final phrase "for both taxpayers and the tax authorities involved" because it creates "a right and an obligation for both" that may be unnecessary

Estonia agreed with India on deleting the final phrase: "I agree with India that we should not impose any obligations to the taxpayers in this convention."

International Chamber of Commerce pushed back, arguing that the wording ensures "inclusiveness and accessibility" for taxpayers.

The Anchor for Protocol Two

Multiple delegations recognized that Article 9 serves as the anchor for Protocol Two (the early protocol on dispute resolution).

Singapore proposed adding a new paragraph: "The state parties agree to work together to achieve the effective prevention and resolution of cross border tax disputes."

The UK asked for clarity on "whether this article is intended to draw meaning from Protocol Two."

Austria supported this, stating they "understand it as an anchor for Protocol Two."

Nigeria argued that paragraph three of the Africa Group's proposal would address the link to the protocol.

Germany (as Workstream Three Co-Lead) provided important context: "The commitment must be consistent with the protocol and both cannot contradict each other." He also noted that "signatories to the second protocol wouldn't have to adopt, implement all possible measures for dispute prevention and dispute resolution that the protocol provides." The phrase "in accordance with its needs, capacities and priorities" was introduced to ensure consistency with the protocol's optional approach.

Courtesy Photo; A cross section of the participants in the Negotiations.

Other Key Interventions

The United Arab Emirates raised practical concerns: "Who would be responsible for determining whether domestic legislation and administrative guidance are sufficiently clear?" They also questioned whether paragraph two was needed at all.

Czechia proposed deleting paragraph two altogether, arguing that "these issues can be tackled by the second protocol."

China proposed adding "through negotiation or consultation where necessary" to paragraph one, arguing that the current draft "does not adequately manifest the willingness and endeavors of contracting parties to resolve disputes by way of consultation."

Cameroon proposed adding "simple rules" to paragraph two A, alongside "clear and accessible legislation."

BCAS (Bombay Chartered Accountants Society) raised a technical point: the term "disputes regarding taxpayers" may be too narrow and should also cover disputes involving tax authorities.

BCAS also questioned what "independent" means in paragraph two B: "Every tax system in the world runs on the same two-stage architecture... the internal review... the administration itself reconsidering itself... I'm not sure how independent that approach would be."

Brazil proposed deleting "in accordance with its needs, capacities and priorities" from paragraph one, arguing it "does not add too much to the reference we already have in the principle section."

New York University (NYU) noted that "every other article in this convention and obviously Protocol Two address cross border or globalized issues. But in the context, this article is very domestic." They questioned "how it fits in" with the rest of the convention.

Article 10: Mutual Administrative Assistance (Afternoon Session)

> *"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."*

The Core Debate: Build or Build On?

The discussion on Article 10 centered on whether the UN should create its own system of mutual administrative assistance or build on existing frameworks.

Key issues raised included:

Institutional architecture: A key question is which body will serve as the primary global authority for mutual administrative assistance—the newly proposed Conference of the Parties (COP) or existing bodies like the Global Forum on Transparency and Exchange of Information for Tax Purposes and the OECD's Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MAAC)?

Building on existing frameworks: Several delegations noted that there appears to be "increasing alignment" between the UN Framework Convention and the work of the Global Forum and the OECD. Some experts have suggested integrating the MAAC as a protocol to the UN Framework Convention to reduce duplication and legal uncertainty.

"The widest measure" of assistance: The draft language is ambitious, but questions remain about whether it will translate into practical obligations. Developing countries have emphasized that administrative assistance is "essential to avoid reproducing existing inequalities in access to tax cooperation systems."

Barriers to assistance: Paragraph 2 requires States to "identify barriers to effective mutual administrative assistance" and "cooperate to eliminate them." This could include everything from capacity constraints to legal obstacles to data protection concerns.

Assistance in tax collection: One of the listed forms of assistance. Questions remain about whether it will be implemented in practice or remain aspirational.

Safeguards for taxpayers' rights: The MAAC protects taxpayers' rights. Questions remain about whether the UN Framework Convention will do the same.

Article 11: Exchange of Information (Afternoon Session)

"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.

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."

The Core Debate: How Much Information, and Under What Conditions?

Exchange of information (EOI) is a "crucial pillar of international tax cooperation" and "goes to the heart of fiscal sovereignty, of who gets to tax whom."

Key issues raised included:

The standard for exchange: The draft brackets two options: "[may be]" and "[is foreseeably] relevant." The "foreseeably relevant" standard is the established international norm. Which one will prevail?

Automatic or upon request? Currently, the draft focuses on exchange "upon request." But civil society has called for "automatic information exchange on the basis of a commonly agreed standard." Will this be added?

A UN Global Asset Register? Some stakeholders have proposed "a UN Global Asset Register that links all types of assets." Will this be included in the convention or left to a future protocol?

Developing countries' capacity: Paragraph 6 requires States to "take into account the needs and capacities of developing countries." But will this translate into concrete support—technical assistance, training, and infrastructure?

Coverage of tax avoidance: Given the heated debate on Article 7 about whether tax avoidance should be treated as illicit, this question resurfaced here. Will information exchange cover avoidance schemes, or only evasion?

The "bank secrecy" provision: A country cannot refuse to supply information solely because it is held by a bank or financial institution. Will this provision survive?

Safeguards for taxpayer rights: The draft mentions confidentiality and personal data protection. But will these safeguards be robust enough to prevent misuse of information?

Relationship to existing EOI frameworks: The Global Forum already provides peer review and technical assistance for implementing EOI. Will the UN Framework Convention complement or compete with this existing infrastructure?

What's Next?

Day 4 will move to the institutional arrangements of the convention:

- **Article 13:** Conference of the Parties (COP)
- **Article 14:** Subsidiary Bodies
- **Article 15:** Data Collection and Analysis
- **Article 16:** Review and Verification
- **Article 17:** Secretariat
- **Article 18:** Financial Resources

These articles will determine the governance structure of the convention—how decisions will be made, who will participate, and how the convention will be funded and implemented. The debates will likely revisit many of the same questions: Should the UN build on existing frameworks or create its own? How will developing countries' capacity constraints be addressed? What safeguards for transparency and accountability will be included?

What Do YOU Think? 🫣

On harmful tax practices (Article 8):

Should the UN create its own standards for identifying harmful tax practices, or build on existing OECD work? Some say we need a fresh start because existing frameworks weren't inclusive. Others say duplication wastes resources. Where do you stand?

On the "informal-informal" debate:

Some countries want more time for deep discussion on contentious articles. Others fear running out of time to finish the work. How should the negotiations balance depth and speed?

On dispute resolution (Article 9):

- Should dispute resolution be mandatory or optional? Should taxpayers be able to initiate procedures directly, or should this be left to governments?
- Should Article 9 cover only cross-border disputes, or should it also apply to domestic disputes? Some say cross-border disputes are the convention's focus. Others say domestic mechanisms affect international tax cooperation.
- Should the Framework Convention include detailed provisions on dispute resolution, or should this be left entirely to Protocol Two?

On mutual administrative assistance (Article 10):

- Should the UN create its own system of administrative assistance, or build on existing OECD/Global Forum frameworks? What are the risks of duplication?
- Should assistance in tax collection be mandatory? What about countries that lack the capacity to collect taxes effectively?

On exchange of information (Article 11):

- Should countries automatically exchange information, or only upon request?
- Should information exchange cover tax avoidance schemes, or only illegal tax evasion?
- Should there be a UN Global Asset Register that tracks wealth across borders?
- How should taxpayer confidentiality and data protection be balanced against the need for transparency?

On sovereignty and existing frameworks:

Some countries want the convention to "build on" existing international frameworks. Others say those frameworks weren't inclusive and we need a fresh start. How do we balance continuity with reform?

We want to hear from YOU! Share your thoughts on these questions. Tag us on social media or write to us. Your voice matters in building a tax system that works for people—not just profits.

Stay Engaged

The UN Framework Convention on International Tax Cooperation is one of the most important negotiations of our time. **Young people have a stake in the outcome.** Follow YTJN for daily updates and use your voice to demand a tax system that works for people—not just profits.