

GETTING IT RIGHT: WHAT THE NEGOTIATIONS AROUND THE UN FRAMEWORK CONVENTION SHOULD FOCUS ON

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1. INTRODUCTION

The UN Framework Convention on International Tax Cooperation (UNFCITC) is moving forward. It has the backing of a majority of countries, mainly due to the voting power of the Global South. While an outcome is highly likely under these circumstances, for the framework convention to have a significant impact on the international tax regime, it must be signed by as many countries as possible.

Although the nature of this outcome in terms of substantive tax rules has drawn considerable attention during the negotiations so far, other important aspects include the governance structure and the link between the framework convention and its protocols, as well as its role in the existing international tax regime. We want to focus on these other aspects because they are crucial for the success of the UNFCITC and should be addressed before any substantive issues.

The first area of focus is the UNFCITC itself. We will shed some light on what we can typically expect from framework conventions in terms of substance, and we will apply these conclusions to the upcoming UNFCITC. One apparent

conflict is that some countries aim to swiftly reach solutions in decisive critical areas, while others merely observe.

Following up on the substantive question, the focus naturally shifts to the protocols. We recently wrote about the nature of protocols and what, in our opinion, their preferred function should be.¹ Instead of repeating those thoughts, we will focus on the relationship between the protocols and the framework convention and explain why timing matters so much. Lastly, we want to take a step back and assess the current international tax regime. Over the last hundred years, this regime has grown in terms of its number of participants, treaties and organizations. Specifically, we want to consider the place, timing and relationship of the UNFCITC with the existing regime. We would like to express our opinion here that a successful UNFCITC should strive to become the central piece of governance in the international tax regime. However, being born into an existing regime might necessitate a gradual rise.

2. FROM FRAMEWORK CONVENTIONS TO THE UNFCITC

Framework conventions have been around for a while; however, they have mostly been used in the area of international environmental law.³ The most prominent example is the UN Framework Convention on Climate Change, although it is also the most contested, so it should be considered with some reservations. Framework conventions can be characterized as establishing “a general system of governance, and not detailed obligations”.³ Following this characterization, framework conventions formulate the objectives of a regime along with a governance system.



More detailed treaties are necessary to achieve the laid-out objectives, which are often found in protocols to framework conventions. This two-step procedure – framework convention and protocols – contrasts with the piecemeal approach, in which problems are dealt with through the isolated regulation of certain aspects.⁴

Currently, no framework convention exists within the international tax regime; a more piecemeal approach has been followed over the past few decades. However, the piecemeal approach is accompanied by some level of coordination. For many years, the backbone of the international tax regime has been thousands of double tax treaties between two countries at a time. Some coordination was achieved through the OECD and UN model treaties. Since the turn of the millennium, multiparty treaties have emerged, such as the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, and several agreements on administrative assistance, including the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA). More recently, the Two Pillar Project has attempted to build on this momentum by establishing more substantive tax rules at the multiparty level.

Although there are some governmental structures behind the Two Pillar Project – namely the OECD, the G20, and the Inclusive Framework – none of these can be considered a legitimate and inclusive institution.⁵ In other words, their operating mechanisms remain opaque, and behind the institutional curtains, only a few countries are steering international tax policy. Considering this, it is not surprising that the most recent development was agreed upon in another political forum: the G7. In this forum, the United States obtained a favorable position regarding the global minimum tax through the so-called side-by-side agreement.⁶

In light of this, the efforts to establish a framework convention for international tax cooperation, backed by the Global South, are not surprising. In our opinion, a formal governance structure agreed upon in a treaty is highly desirable for the international tax regime, as it provides an opportunity for the regime's further development. However, we would like to highlight two aspects that are of the utmost importance.

First, as the title suggests, the objective of the framework convention above all should be international tax cooperation. Other objectives are to be considered very carefully, no matter how desirable

they may seem. Human rights protection and fighting climate change, for example, are sensitive topics that hold significant meaning for participants. Nevertheless, we question whether these issues should be addressed through a framework convention for international tax cooperation. The primary goal of a cooperation framework should be to enable cooperation.

Second, governance is key. The structures behind the current and past dynamics of the international tax regime remain opaque and are mainly power-driven. While a framework convention cannot give all states the same weight, it can create transparency by setting out processes for participation, negotiation and ratification. Additionally, a successful framework convention would provide an ideal forum for addressing future challenges in the international tax regime that require multiparty solutions. It is important to understand that we cannot predict the future challenges and problems the international tax regime will face in 20 or 50 years. However, the framework that is to be established should be able to address these new challenges.

3. THE PROTOCOLS

As previously discussed, protocols are the appropriate place for substantive tax rules, and there appears to be a significant enthusiasm to advance Protocol 1, which addresses the taxation of services. While we acknowledge the frustration surrounding the taxation of cross-border services, we would like to take this opportunity to highlight some important aspects of the protocols.

First, the right place for substantive issues is in the protocols. Following this approach allows the UNFCITC to be very slim in terms of substantive issues and focus mainly on governance. However, coalitions of the willing may agree in the protocols to progress in a more substantive manner. Once an agreed-upon framework convention and a governance structure are in place, attention could shift to more sensitive technical issues, such as the taxation of services. This would prevent these topics from jeopardizing a broad consensus among countries on the Framework Convention, particularly regarding international tax cooperation.

Second, building on the first point, immediately negotiating Protocol 1 might be premature as long as the UNFCITC is not in place. We understand the perceived urgency of finding a solution, but the issue has existed for years, and many ideas have been proposed, none of which have worked globally.⁷ Pillar 1 once promised to solve these issues, but it has consumed many resources, and it is now highly unlikely to be implemented. We must avoid a situation in which another grandiose solution is advertised, only to be watered down and drawn out over the following years, resulting in essentially nothing.

Third, protocols are optional. It is important to understand that, while they are open to all members of a framework convention, they are not mandatory. This may be disappointing, but it is a reality that must be accepted. On one hand, forcing countries to participate might result in them blocking the effort or leaving the table altogether. It will most likely not result in their

participation if they have enough power. On the other hand, negotiating with members interested in a solution offers the advantage of obtaining and implementing consensus among coalitions of the willing. This approach also allows solutions to prove themselves and allows countries to join a protocol at a later stage.

4. THE UNFCITC IN THE EXISTING INTERNATIONAL TAX REGIME

Placing the UNFCITC within the existing international tax regime might raise the question of what the convention seeks to address, given that the system has been operating for over a hundred years. One obvious answer is the taxation of services, which we mentioned, and which remains unsolved to this day. However, setting up a framework convention to solve only one issue would be a disproportionate effort, and it would be wasteful to have a framework convention in place and not make further use of it. Another use for the Convention could be addressing future challenges that require solutions at such a stage.

We envision a broader application of the Framework Convention, not necessarily in competition with existing systems, but rather by institutionalizing them. For example, many standalone agreements could benefit from a governance structure, including mutual assistance agreements. These agreements might be linked to the Framework Convention in a way that a protocol will be linked to it. This would give them access to the governance structure, secretariat services, and even a possible dispute settlement mechanism. This structure could be especially useful for further developing or amending treaties. Therefore, one



goal could be to institutionalize the work of the Global Forum and the Inclusive Framework.

Another area where the Framework Convention might be useful is where states have acted unilaterally thus far, but coordination would be preferable. In other words, this would apply to areas where no international system exists and therefore no competition emerges between regimes. For example, digital service taxes have surfaced and, at times, have been implemented. There is a wide variety of regulations that could increase further, making comparability and compliance more difficult. Therefore, we could envision a protocol to the framework convention that contains a blueprint for a (harmonized) digital service tax. The protocol could specify which services are to be considered, what thresholds apply and how the assessment procedure works while leaving crucial elements to each state to decide upon, e.g., the tax rate.

The UNFCITC could gradually become more important and the desired forum for the international tax regime by dealing with challenges and the accession of treaties. However, it would have to prove itself along the way and convince skeptics. This further emphasizes the importance of creating a well-thought-out framework convention capable of achieving its objectives, which is what the negotiations should focus on.⁸

5. OUTLOOK

The UNFCITC offers a once-in-a-lifetime opportunity⁹ to achieve a more legitimate international governance structure. All involved policymakers should focus on the lowest common denominator among the largest possible number of countries. Therefore, the UNFCITC should be understood primarily as a framework convention for cooperation – nothing more, nothing less. Substantive issues should be dealt with in protocols, while the Framework Convention should contain essential governance rules, such as those regarding the role and functioning of both the secretariat and the conference of the parties, as well as potential rules on interstate dispute settlement and capacity building.



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¹ See Peter Hongler & Simon Habich, 'The New U.N. Framework Convention: Plurilateralism Could be a Key to Success', (2024) 114 TNI, 491; Peter Hongler & Simon Habich, Plurilateralism in International Tax Law: A Unique Chance for the UN Framework Convention, (2025) 26 JWIT, 247.

² See inter alia the Barcelona Convention for the Protection of the Mediterranean Sea against Pollution, the Convention on Biological Diversity, the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, the Convention on Long-range Transboundary Air Pollution, the Convention for the Prevention of Pollution from Ships, the Vienna Convention for the Protection of the Ozone Layer, the United Nations Framework Convention on Climate Change. See also Daniel Bodansky, 'The Framework Convention/Protocol Approach', (1999) WHO/NCD/TFI99.1 7, 15-16.

³ Bodansky, 'The Framework Convention/Protocol Approach' (n 2) 15.

⁴ Nele Matz-Lück, 'Framework Conventions as Regulatory Tools', (2009) 1 GoJIL 439, 446-447.

⁵ Allison Christians and Laurens van Apeldoorn, 'The OECD Inclusive Framework' (2018) BIT 226.

⁶ See the G7 Statement on Global Minimum Taxes <G7 statement on global minimum taxes - Canada.ca> accessed 17 July 2025.

⁷ See already OECD/G20 Base Erosion and Profit Shifting Project Addressing the Tax Challenges of the Digital Economy, Action 1, 2015 - Final Report.

⁸ See also on solving the power imbalance in the current system Jeroen Lammers, 'Rebalancing Power: A UN Tax Council as A Political Counterbalance in the Global Tax Debate', (2025) 53 Intertax 67.

⁹ The term is also used by Luís Eduardo Schoueri, 'The UN Framework Convention: A Once-in-a-Lifetime Opportunity', (2025) 53 Intertax 492.