

The FfD Chronicle



**CIVIL SOCIETY
FINANCING FOR
DEVELOPMENT**
Mechanism

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.

PROTOCOL 2: SLEEPING BEAUTY VIBES, ZERO-VALUE OUTPUT

Let's admit it: the sin for which we were punished yesterday, was not committed here in Nairobi, but back in February in New York. Namely, when you, distinguished delegates, decided that instead of devoting yourselves to the burning issues of taxing high-net worth individuals or illicit financial flows, you would rather play a little game called "Dispute resolution and prevention" to cool tempers. As the billionaires breathed a sigh of relief, the rest of us groaned.

The Russian Doll of Optionality

Yesterday, we watched as countries took a collective holiday from the heat of negotiations. Delegate after delegate beeped on their red light to praise a Russian doll of optionality: inside an optional convention you find an optional protocol, inside that optional protocol find an optional menu of dispute settlements, which might or might not interfere with your pre-existing agreements - but don't worry that's optional too.

What is at Stake

Dear delegates, there is so much at stake with this Convention. Countries need to raise (and pay) trillions of dollars in development and climate finance. The few richest people own an astonishingly disproportionate amount of wealth compared to the vast majority of people. Elon Musk is about to become a trillionaire FFS (Fiscally Farcical Scenario). What better challenge for a crack team of tax nerds to get stuck into?

Meanwhile teachers in schools around the world can't afford textbooks. Doctors in cash-strapped public hospitals have to make do without basic drugs. Our public services need money.

That is why we are all here. That is why wasting time on a toothless non-protocol that you have no intention of using to better the world is so offensive.

One Step At a Time: Back to the Framework Convention

The distinguished delegate of Nigeria finally showed us the way out of our sedation, shook off the optionality sleeping pill, and served us a decent coffee: *"I am questioning this protocol itself. One of the issues we had on the floor is, do we have common tax rules? I am of the view that setting up this protocol is like setting up a court, appointing judges without laws. I am not sure we have agreed what the taxing rules will be for which we're going to use this protocol to resolve. [...] We can have this protocol, have whatever mechanisms we want to put there but I suspect that until we have the relevant protocols establishing the agreed taxing rules or standards this protocol is going to be largely dormant."*

We hope those words will inspire a fresher approach today. Because honestly, we are starting to wonder: did some of you ask for this protocol because it gets you off the hook for talking about something real? Namely a convention with meat on its bones rather than a skeleton?



PROTOCOL 2: BUILDING THE ROOF BEFORE YOU HAVE THE WALLS

This week we dive into Protocol 2 on “Prevention and resolution of tax disputes”, also known as the “let’s build the roof before we have the walls” protocol.

It is important to situate these discussions within the broader ongoing negotiations. Workstream 3 seems to be rushing ahead, while essential debates in Workstream 1, and particularly those related to the fair allocation of taxing rights and equitable taxation of multinationals are still at an early stage. Some of the Convention’s core elements, including how it will interact with existing bilateral Double Taxation Agreements (DTAs), remain to be discussed. This raises a fundamental concern: the design of dispute mechanisms should not be detached from the rules that would be the basis for those disputes in the first place. So before discussing any disputes mechanisms, should not the priority be to establish a clear legal common ground? Why are we talking about a roof before we have added any walls?

So, distinguished delegates, let’s start again with the basics: the flooring. Most disputes today come from the transfer pricing system based on the arm’s length principle. This entire messy architecture rests on the magical - and false - idea that transactions inside a multinational group can be compared to similar transactions between independent entities. For many business models, with intangibles, services, intra-group loans, those “comparables” simply do not exist. This is a false assumption, leading to manipulation, uncertainty, and countless disputes. There are better flooring options! A shift toward unitary taxation with formulary apportionment would provide a more fair and efficient way to determine taxing rights. This raises an important point for the negotiations: if the Convention succeeds in establishing a clear, fair, and coherent system for allocating taxing rights, it will lower the need for dispute resolution mechanisms.

Properly designing the Convention is therefore the most effective form of dispute prevention. However, moving ahead with detailed designs for Protocol 2 before these issues are negotiated means wasting time discussing situations and mechanisms that may not align with the final Convention text. Establishing a coherent global tax framework at the level of the Convention is the foundation upon which effective dispute mechanisms must rest.

Read our Joint Response

Read the joint response by a broad coalition of civil society organizations and trade unions to the Co-Lead’s Draft Framework Convention Template.

Available in English, Spanish, and French:

