



The FfD Chronicle

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.

WHAT MANDATE?

From the back rows, the FfD Chronicle has been observing the work of the INC and we ask ourselves: what would the Terms of Reference have looked like if they had been drafted with the same level (i.e. lack) of ambition as we're seeing in the room today?

It seems paragraph 10 would have said:

10. The framework convention should include high-level commitments to consider pursuing achieve its objectives. Commitments on the following subjects, *inter alia*, should be:

- (a) Fair allocation of taxing rights, without including equitable taxation of multinational enterprises;
- (b) Addressing tax evasion and avoidance by high-net worth individuals and exploring ensuring their effective taxation in relevant Member States;
- (c) A top-level, non-operational agreement to pursue international tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner;

(d) Effective mutual administrative assistance in tax matters, limited to including with respect to transparency and exchange of information for tax purposes.

Similarly, paragraph 21 would have said:

21. International organizations, civil society and other relevant stakeholders are encouraged to contribute wait patiently while the Member States carry out to the work of the intergovernmental negotiating committee in secret Zoom meetings, contrary to accordance with established practices.

Delegates - we cannot stress this enough: The UN General Assembly has provided a very clear mandate. We are not here to redraft and water down the ToRs – we are here to deliver the job the INC was set up to produce.

ZOOMING OUT?

We are aware that tomorrow is the last day of workstream 1, and that the plan now is for the Member States to meet in secrecy over Zoom for the coming 6 months, and then come back with a full proposal for a Convention in August. To state the obvious, this will not simply be a technical exercise – it will be highly political.

We are not aware of any other examples from this house where a legally binding UN instrument has been written in secrecy over Zoom. We look in the ToRs and the decisions from the operational session in February 2025, and we do not find any paragraph that mandates secret Zoom meetings.

What we do find is para 21 of the ToR, which stresses that we as civil society are encouraged to contribute to this process. To state the obvious, we cannot do that if 6 months of crucial negotiations are being hidden away online.

The “decision”(?) to write the tax Convention in secret Zoom meetings seems to have been taken on Zoom – in violation of the UN procedures. We believe this practice jeopardizes the entire legitimacy of the UN Tax Convention, and we urgently call on all Member States to ensure proper process. A fair and transparent international tax system cannot be written in secret Zoom meetings.

BINDING, DID YOU SAY BINDING?

Delegates have regularly been wondering this week whether, because the Convention would be “high-level”, it will create “legally binding” obligations. We however would like to clarify this once and for all: everything that will be written in the convention will be legally binding. It is the very nature of a convention, that is to say a treaty, to create legally binding, international law.

It is up to the drafters to make the language abstract or not. Some treaties are very specific such as the 1993 Chemical Weapons Convention, and some are more general, like the 1992 Chemical Weapons Convention. Some discuss procedural matters, they create a body or a procedure, and are means-oriented. Others are more substantive, and commit states to achieve certain results.

Either way, they’re all equally legally binding.

There are international treaties that commit states to strong substantive action, and are still abstract. For instance, article 2.1 of the International Covenant on Economic, Social and Cultural Rights (a convention that has been ratified by 173 states in this room), legally binds states to spend “the maximum of their available resource” to realise rights. This general clause requires states to take action, which has been further unpacked by interpretative bodies, courts, UN resolutions, etc., tasked with interpreting international law.

How about implementation?

Some of the clauses listed in the Convention will easily be directly implementable. Others require further action or guidance to be readily implemented. This is not a problem however: this is why we advocate for a strong and effective Conference of Parties (COP), that is mandated to flesh out the details. For instance, we call for a clear article in the framework convention on public country by country reporting, that can be operationalized by the COP.

But again, in any case, the convention is... legally binding to its parties.

It's a framework convention, not a framework

However general or abstract the language delegates choose, you're creating a framework convention, not a framework. This the exclusive mandate that was given in paragraph 2 of the General Assembly resolution 79/235.

So yes, everything you do here will create, however you word it, a text that is, wait for it... legally binding!

