Fifth Session, UN Tax Convention Negotiations
August 11, 2026

Protocol 1 - Article 3

Veronica Grondona - ICRICT

Madame Co-lead, Mr. Chair, Distinguished Delegates,

I speak on behalf of ICRICT.

We welcome the Co-Leads' draft, as a starting point to discuss the text of this very relevant protocol.

On Article 3, the general definitions, we have several questions and points for clarification.

We wonder whether there should be a definition around a "Significant Economic Presence" (SEP) nexus for taxation, as the protocol will address cases where users or data are located.

On this point, we also wonder whether there shouldn't be a Definition of "Physical Presence". The concept of "physical presence" is central to the Protocol's architecture, particularly in Article 9 titled "Taxation Based on Physical Presence." Article 9(1) states that if an enterprise carries on business in another State "through employees or agents that are physically present in such State," the profits may be taxed there. But this is also the case on article 5,.5.a, where the nexus seems to be defined in the first order by physical presence. Yet, the Protocol does not tell us what constitutes "physical presence."

Does "physical presence" require a minimum period of time? Does it include a single day of activity? Does it encompass remote work by an employee?

On the Definition of "Royalties" we understand from what the co-lead was saying, you have included a definition to exclude it. But this will not solve the problem of cases in which treaties do limit taxation of software.

Thank you.