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St.Gallen/Leiden – 9 July 2025

**Comments on the “Co-Leads’ Draft Issue Note” on Workstream I as of 27 June 2025.**

**ABSTRACT**

Currently, it appears that there is an intention to transform the Framework Convention into a convention with extensive substantive obligations. To counter this and to avoid the risk of the Framework Convention being doomed to fail from the outset, we recommend focusing on the following four areas and moving the substantive elements (incl. commitments) into the optional protocols:

- Competencies, composition, and functioning of the Conference of the Parties.
- Competencies, composition, and functioning of the Secretariat.
- Necessity and design of intergovernmental dispute resolution.
- Necessity and design of capacity building.

Dear Mr. Nuer,

We appreciate the opportunity to comment on the “Co-Leads’ Draft Issue Note” on Workstream I as of 27 June 2025.

## General Remarks

Before discussing the draft in more detail, we would like to highlight the overarching goal of a new UN Framework Convention: establishing a new framework for cooperation in tax matters to replace the current opaque regime.

To shift cooperation from the G7/G20/OECD/IF to the new body in an effective manner, a very broad consensus is necessary, and this requires agreeing on the lowest common denominator. Therefore, we strongly believe that Workstream I should be freed from unnecessary burdens that could jeopardize broad agreement on the Framework Convention

We also believe that Workstream I should not be used as a ‘framework protocol approach’ which contains commitments that are and should be in the focus of the two (or more) protocols. These two protocols are optional for countries, and therefore, by having this protocol approach, Workstream I should focus on achieving an effective, inclusive international tax cooperation framework, i.e. an umbrella so that countries can agree on further obligations through protocols.

It is our understanding, and we have emphasized this in earlier contributions,<sup>1</sup> that the international tax regime lacks an institutional structure that allows international tax cooperation to take place in a fair, legitimate and equitable manner. To change this, the drafters of the Framework Convention should ensure that the convention is limited to the lowest common denominator among the largest possible number of countries. Only this would enable an effective development of the international tax regime in the decades to come.

This brings us to the commitments and the essential part of the Draft Issue Note: If overly progressive commitments are included, it is unlikely that a large majority of states will sign the framework.

## Objectives vs. Principles vs. Commitments

In our view, it makes little sense to distinguish between objectives, principles, and commitments within the Framework Convention. Since the beginning of the project, it has been known that separating objectives, principles, and commitments is not necessary and risks creating confusion. We have already expressed this in prior contributions.<sup>2</sup>

We believe that the Framework Convention should of course have objectives, but we do not see any additional value of including commitments on top of the objectives. In general, a framework convention requires that countries are committed to cooperate – nothing more than that (the UNFCCC – as we will discuss this below – is different and maybe the wrong source for inspiration).

## Relation between the Commitments and other Provisions

The draft states:

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<sup>1</sup> See by I. Mosquera, UN Framework Tax Convention and Global Tax Governance: What changes are needed to enhance global tax governance? June 19, 2024 available at <https://globtaxgov.weblog.leidenuniv.nl/files/2024/06/Contribution-GLOBTAXGOV-Leiden-University-.pdf> and <https://globtaxgov.weblog.leidenuniv.nl/2025/03/26/the-legitimacy-of-the-un-negotiations-and-the-path-towards-inclusive-and-effective-international-tax-cooperation-are-we-getting-it-right/> and The legitimacy of the UN Negotiations and the Path Towards Inclusive and Effective International Tax Cooperation. Are we getting it right? <https://globtaxgov.weblog.leidenuniv.nl/2025/03/26/the-legitimacy-of-the-un-negotiations-and-the-path-towards-inclusive-and-effective-international-tax-cooperation-are-we-getting-it-right/>. By P. Hongler, Getting the Priorities Right: The Central Role of Workstream I in the UN Framework Convention on International Tax Cooperation <https://globtaxgov.weblog.leidenuniv.nl/2025/06/27/getting-the-priorities-right-the-central-role-of-workstream-i-in-the-un-framework-convention-on-international-tax-cooperation/>.

<sup>2</sup> P. Hongler & S. Habich, Comments on the Zero Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation, June 18, 2024.

*“The work plan prioritizes drafting of the commitments by the end of 2025, as many of the other provisions will flow naturally from them.”*

We do not find this assessment convincing. The essential provisions of a framework convention are those that regulate cooperation. Cooperation can function even without commitments. In our view, the mode of cooperation should first be discussed, and only subsequently the question of whether and which commitments should be part of the Framework Convention or not.

In the following, we outline why it may even be preferable to have no commitments at all, and how the core objective of the Framework Convention could be pursued equally well — if not better — without them.

## No Need for Commitments

The concept of commitments appears to stem from the UNFCCC (at least this is our assumption). However, it does not fit the field of tax cooperation. Addressing this commitment in Workstream I deviates the attention from other more important issues that need to be addressed such as the need to enhance capacity building (ToR para. 11-12) and the governance of the Framework Convention including the role of the secretariat, conference of the parties among others (ToR para. 13).

However, neither para. 11-12, nor para. 13 have been addressed at this stage in the proposed Draft Issue Note of 27 June 2025 under Workstream I. Instead the technical drafting of the entire Framework Convention is being left to 2026. With this project having 3 years, starting one year later, it will leave little time to address the most important issues to achieve a legitimate, effective and inclusive tax cooperation framework. If not done correctly the risks exist that countries will not feel obliged to participate and commit to the success of the Framework Convention.

In addition, Commitments must be concrete; otherwise, they are merely empty words. This exact risk exists here. In the UNFCCC context, precise commitments were feasible. For example, states can be concretely obliged to maintain an inventory of anthropogenic GHG emissions or to reduce GHG emissions by a certain percentage.

In the tax field, however, this seems impossible or at least not meaningful. In addition, the commitments discussed have already been addressed extensively (but presumably not solved) by policy makers, civil society, and scholarship in the past. By focusing on these commitments we may engage in discussions that will deviate the attention to what is really important, i.e. the governance of the Framework Convention and the institutionalization of capacity building. A look at the discussed commitments illustrates this:

- Effective prevention and resolution of tax disputes: A commitment would require something concrete, such as an obligation to include an arbitration clause in all double tax treaties by all signing countries. Such an approach would, however, face significant resistance and this is why the topic is covered by the protocol – i.e.

the optional part of the Framework Convention. This topic has been extensively addressed in discussions in tax, trade, and investment, without any concrete results.<sup>3</sup>

- Fair allocation of taxing rights, including equitable taxation of multinational enterprises: We do not wish to sound presumptuous, but states have been striving for decades to achieve a fair allocation — which is ultimately impossible, as there is no objectively ‘fair’ allocation. Also fairness has different meanings, which also constitutes an obstacle to achieve these commitment.<sup>4</sup> Therefore, in our view, allocation rules can only approximate fairness from different perspectives and even more important, fairness is mainly achieved through fair terms of cooperation (input legitimacy). Therefore, the focus should be on fair terms of cooperation.
- Sustainable development: It is unclear how a commitment to individual or all SDGs (or similar goals) would produce a positive effect in the tax area. It is just an additional risk that countries would sign the final version of the framework Convention. Moreover, there are other bodies within the UN with a focus on the SDGs, such as the United Nations Development Programme and its Tax for SDGs initiative

Furthermore, unlike the UNFCCC, where cooperation is focused on a main objective (combating climate change), tax cooperation is pursued for its own sake. We do not know in which areas states will want to cooperate in tax matters in 20 or 50 years. Therefore, the Framework Convention should be drafted in an open and flexible manner. Commitments might even harm future cooperation as agreed commitments would again need to be deleted by the signatory countries in the future if they are not relevant anymore.

## Conclusions

We would encourage the responsible parties to be bold enough not to focus on commitments at this stage of the process, but rather on the following four areas:

- Competencies, composition, and functioning of the Conference of the Parties.
- Competencies, composition, and functioning of the Secretariat.
- Necessity and design of intergovernmental dispute resolution.
- Necessity and design of capacity building.

Together with a group of students from the University of St. Gallen we have simulated a model negotiation, inter alia, on these four topics. We hope that such draft of a framework convention could serve as a source of inspiration for the discussion about the four points about.<sup>5</sup>

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<sup>3</sup> See for an overview of the problems the special Section Asia Pacific Law Review The Future of International Tax Disputes. Eds. I. Mosquera and J. Chaisse. See also introductory article Public International Law, International Taxation and Dispute Resolution by I. Mosquera and J. Chaisse. 2022. [Link to special section](https://www.tandfonline.com/doi/full/10.1080/10192557.2022.2102585)  
<https://www.tandfonline.com/doi/full/10.1080/10192557.2022.2102585>

<sup>4</sup> I.J.J. Burgers and I. Mosquera Fairness: A Dire International Standard with no Meaning? Intertax (45(12):767-783 2017. Link <https://globtaxgov.weblog.leidenuniv.nl/files/2020/06/Burgers-Mosquera-Fairness-Intertax.pdf> .

<sup>5</sup> <https://globtaxgov.weblog.leidenuniv.nl/files/2025/06/Final-draft.pdf> .

We are convinced that an agreement on these four points is conceivable, provided the convention is not overloaded. Currently, it strongly appears that there is an intention to make the Framework Convention into a convention with extensive substantive obligations. To counter this and to avoid the risk of the Framework Convention being doomed to fail from the outset, we recommend focusing on the four areas mentioned above and move the substantive elements (incl. commitments) into the optional protocols.

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We would like to thank you for the opportunity to provide our feedback on the Zero Draft. We hope that successful negotiations will lead to a global consensus and enable international tax cooperation to help societies prosper.

Kind regards



Peter Hongler



Irma Mosquera