

Advancing Drug Policy Reform within the UN Framework Convention on International Tax Cooperation

Written contribution for the Intergovernmental Negotiating Committee (INC) for the UN Framework Convention on International Tax Cooperation

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Abstract

The negotiation of the United Nations Framework Convention on International Tax Cooperation presents a pivotal opportunity to address the financing of drug-related transnational organized crime (TOC). This contribution, submitted in Ágora, proposes the systematic integration of the UN Common Position on Drug Policy (UNCPDP) into the Convention's core framework and protocols.

Illicit Financial Flows (IFFs) from drug trafficking are a major global threat, undermining financial stability, the rule of law, and sustainable development. By embedding UNCPDP principles—such as Human Rights, Sustainable Development, and Common but Differentiated Responsibilities (CBDR)—the Convention can transcend simple revenue mobilization and become a decisive instrument for countering financial crimes and fostering peaceful development.

Key enhancements focus on three workstreams:

- **Core Commitments (Workstream I):** Mandating explicit commitments against TOC-related IFFs, enhanced beneficial ownership transparency, and establishing a mechanism for the non-conviction-based seizure and equitable repatriation of drug-related assets.
- **Cross-Border Services Protocol (Workstream II):** Utilizing tax policy to promote licit economies through targeted incentives, such as a reduced or zero Withholding Tax (WHT) rate on payments to certified Alternative Development (AD) enterprises.
- **Dispute Resolution Protocol (Workstream III):** Establishing a specialized, multi-disciplinary Asset Recovery and Repatriation Panel (ARRP) to efficiently resolve complex disputes over the seizure and allocation of drug-related assets, with a focus on equitable repatriation and earmarking funds for UNCPDP goals in victim countries.

This approach advocates for a coherent global governance architecture, leveraging international tax cooperation to advance social justice and human security objectives.

I. Introduction: The Nexus of International Tax and Drug Policy Governance

The 21st century requires integrated approaches to complex global challenges, including the threat of transnational organized crime (TOC), largely fueled by illicit drug trafficking profits, and the urgent need for equitable international tax cooperation. The UN Framework Convention on International Tax Cooperation provides a critical moment to address the financial underpinnings of TOC.

The Connection

- **Illicit Financial Flows (IFFs):** IFFs from drug trafficking destabilize economies, corrupt institutions, and fund violence. Effective international tax cooperation—through enhanced transparency, information exchange, and asset recovery—is essential to disrupting this financial ecosystem.
- **Mandate Alignment:** The Convention's foundational mandate to boost economic growth and achieve the 2030 Agenda for Sustainable Development provides a clear directive for integrating counter-IFF and anti-money laundering (AML) dimensions related to illicit drug markets.

Overview of the UN Common Position on Drug Policy (UNCPDP) Adopted in 2018, the UNCPDP shifts drug policy from punitive strategies towards an integrated, human-centered approach. Its core principles align drug policy with broader UN goals:

- **Human Rights and Public Health:** Prioritizing evidence-based public health interventions and upholding human rights.
- **Sustainable Development:** Promoting Alternative Development (AD)—sustainable, licit livelihoods for communities dependent on illicit cultivation.
- **Whole-of-System:** Advocating for coordinated responses across all UN entities and engaging civil society.
- **Common but Differentiated Responsibilities (CBDR):** Tailoring approaches based on respective national capacities and needs.
- **Critical Entry Point:** The UNCPDP's focus on disrupting the financial dimension of drug trafficking and promoting licit economic alternatives is the direct link for integration into the UN Tax Convention. Robust beneficial ownership registers and the pursuit of tax evasion linked to IFFs directly advance the UNCPDP's security and development goals.

II. Foundational Principles for Harmonized Global Governance

Integrating the UNCPDP requires leveraging the UN Tax Convention's unique position to counter the financing of drug-related organized crime.

A. Countering Illicit Financial Flows (IFFs) and Money Laundering IFFs from drug trafficking deplete public resources and fuel corruption.

Required Tax Convention Inclusion (Workstream I):

- **Explicit Mandate:** The Framework Convention's core commitments must explicitly recognize the fight against IFFs linked to TOC and drug trafficking as an integral component of equitable tax cooperation and the 2030 Agenda.
- **Beneficial Ownership Transparency:** Commitments must go beyond general AML statements to mandate implementing and automatically exchanging information from public or accessible beneficial ownership registers. This is crucial for tracing shell companies used to launder drug profits.
- **Coordinated Investigation:** Mandating cooperation between tax authorities and Financial Intelligence Units (FIUs) for cross-border investigations of wealth derived from drug-related IFFs.
- **Asset Recovery and Repatriation:** Including provisions for the non-conviction-based seizure and equitable repatriation of assets derived from drug-related IFFs, with a portion earmarked for Alternative Development (AD) programs in affected countries.

B. Development Alternatives and Licit Economies Tax policy is a powerful tool to shape economic incentives and support the UNCPDP's focus on Alternative Development (AD).

Required Tax Convention Inclusion (Workstream II):

- **Targeted Tax Incentives:** Introducing provisions for reduced withholding taxes, preferential corporate tax rates, or enhanced tax credits for multinational enterprises (MNEs) and cross-border investors engaged in verifiable, sustainable economic activities (e.g., ecotourism, specialty crops) in AD zones.
- **Certification and Recognition:** Establishing a mechanism for the mutual recognition of certifications (e.g., from UNODC or reputable NGOs) to ensure tax benefits are targeted and support legitimate, sustainable, licit economic alternatives.
- **Capacity Building:** Mandating technical assistance for developing countries to administer local tax systems that are fair and supportive of small businesses and cooperatives engaged in AD.

C. Common but Differentiated Responsibilities (CBDR) for Enforcement CBDR is central to both the UNCPDP and tax cooperation, recognizing that developing countries have the least capacity to combat IFFs despite being disproportionately affected.

Required Tax Convention Inclusion:

- **Flexible Implementation:** Allowing longer transition periods and flexible implementation mechanisms for complex transparency rules (like beneficial ownership registers) for developing countries.
- **Mandatory Technical Assistance:** Coupled with a mandatory commitment from developed nations to provide targeted technical assistance (e.g., software, training) for tracing and combating drug-related IFFs.
- **Enhanced Information Exchange:** Including provisions for enhanced, multilateral information exchange specifically targeting data relevant to IFFs from TOC, and providing technical/legal assistance to developing countries to utilize this intelligence.

III. The Protocols: Operationalizing the UN Common Position

The ongoing Intergovernmental Negotiating Committee (INC) is developing the Framework Convention (Workstream I) and two protocols: Cross-Border Services (Workstream II) and Dispute Prevention and Resolution (Workstream III).

A. Protocol on the Taxation of Cross-Border Services (Workstream II): Taxing for Development

This protocol should provide tax certainty and incentives for AD investments.

- **Targeted AD Tax Incentives (The "AD WHT Rate"):** Introducing a provision for a significantly reduced or zero Withholding Tax (WHT) rate on payments from a foreign company to a resident of a developing country for certified AD services or technology. This lowers the cost of high-value expertise (e.g., agronomy, specialty processing) needed to scale licit enterprises, making them competitive against the illicit economy.
- **De-Risking Investment and New Nexus Alignment:** Providing multilateral assurances that the use of digital services to support Certified AD Enterprise (CADE) activities will not, on its own, create an unexpected Permanent Establishment (PE) for the foreign investor in the AD zone. This mitigates tax risk in high-risk territories.
- **Integrity Measures:** Introducing an "Anti-Illicit Income Clause," which mandates the immediate revocation of all tax incentives if income is determined by the ARRP to be derived, in whole or in part, from illicit drug trafficking activities.

B. Protocol on Dispute Prevention and Resolution (Workstream III): Asset Justice

This protocol must ensure efficient and equitable dispute resolution over the seizure, ownership, and repatriation of drug-related assets.

- **Dispute Prevention:** Prioritizing Coordinated Advance Tax Rulings (AD-ATRs) on the tax treatment of cross-border investments into officially recognized AD zones to provide investors with legal certainty.
- **The Asset Recovery and Repatriation Panel (ARRP):** Establishing a multi-disciplinary Roster of Experts with certified expertise in International Tax Law, AML, Counter-TOC Financial Investigations, and Asset Recovery.
- **Binding Determination:** The ARRP's mandate is to provide a binding determination on the equitable distribution of seized or confiscated drug-related assets, balancing the claims of countries that suffered the harm (source) and those that incurred the costs of tracing and seizure (destination).
- **Tiered Resolution Process with Optionality (CBDR):** A process starting with mandatory consultation, then optional non-binding mediation. Crucially, developing countries shall have the option to unilaterally refer asset repatriation disputes to the ARRP's binding determination, ensuring victim countries can compel a resolution.
- **Equitable Repatriation and Earmarking:** The ARRP's determination must prioritize the return of the highest possible value of assets to the country(ies) that suffered the greatest socio-economic harm. The receiving country should be encouraged to earmark a substantial portion of the recovered assets for UNCPDP-aligned purposes: financing Alternative Development, public health initiatives, and criminal justice reform.

IV. Conclusion and Strategic Recommendations

Integrating the UNCPDP is a strategic necessity for the UN Tax Framework Convention, not a diversion from its core mandate. By targeting the IFFs that sustain drug-related organized crime, the Convention directly addresses a primary obstacle to sustainable development, public health, and peacebuilding.

Key Recommendations:

- Ensure that the Convention's anti-Base Erosion and Profit Shifting (BEPS) and transparency measures are explicitly directed against the financial secrecy exploited by TOC.
- Embed specific mandates for beneficial ownership transparency.
- Include targeted tax incentives for Alternative Development.
- Establish the specialized mechanisms for asset recovery and repatriation.

By adopting these measures, the UN Tax Convention can become a powerful instrument for social justice, helping to dry up the funding sources of organized crime while simultaneously promoting licit economies in vulnerable regions.

For a comprehensive analysis of the legal, economic, and procedural mechanisms underpinning these recommendations, including the proposed model provisions, please consult the full report available at the following link: agoralab.org/DrugPolicyintheTaxConvention