








Convention consequences: analyzing the critical issues from UNTC negotiations

This table offers quick insight into where critical issues landed after the three weeks of debate. It highlights whether the issue was incorporated within the Terms of Reference and offers a rating on how well the issue was addressed.

Key Issue	Terms of Reference inclusion	Rating
Human Rights	Included in the principles of the ToR (9(c)).	
Environment	Not included as an issue in its own right, but included as a component of “sustainable development” in the principles (9(d)) and commitments (10(c)). Environmental challenges referenced as a possible topic for a future early protocol, in 17(a), but not prioritized as an early protocol.	
Sustainable Development	Included in the preamble (6(c)), objectives (7(c)), principles (9(d)) and (9(f)) and commitments (10(c)) of the Convention.	
Gender	Not included despite the critical intersections between tax and gender.	
Civil Society Engagement	Included as part of approaches and timeframe for negotiation (21).	
Protocols	Included and defined in (14) as optional, legally-binding instruments to implement the framework convention. Established in (15) that two early protocols will be developed simultaneously with the convention, one of which should address digital taxation. Additional candidates for early protocols are outlined in (16), while options for future protocols are described in (17).	
National Sovereignty	National sovereignty regarding tax matters is included and emphasized without counterbalancing language regarding how these tax policies can undermine other states.	

Terms of Reference in detail, by issue

a) Human Rights

The final ToR includes **human rights language** in principle 9(c):

stating that efforts to achieve the Convention's objectives should "*in the pursuit of international tax cooperation be aligned with States' obligations under international human rights law*".

This represents a historical step forward in efforts to connect taxation and tax cooperation with existing human rights standards on tax matters, albeit a hard-fought one.

What does this mean?

Including human rights in the principles is a significant victory for several reasons.

- Guiding Principle: The language establishes human rights as a guiding principle for international tax cooperation under the Convention. It anchors international tax cooperation within the established framework of international human rights law, providing a robust legal foundation for future negotiations and implementation, and helping to uphold the accountability of States to ensure they are meeting their human rights obligations. The inclusion of human rights in the principles also sends a clear signal that **human rights are widely considered to be core priorities of a more just and equitable international tax system.**
- Holistic approach: Its inclusion recognizes the intrinsic link between taxation and the realization of human rights, especially economic and social rights, acknowledging that tax policies have a direct impact on states' abilities to fulfill their human rights obligations.
- Giving human rights tangible meaning: Human rights' inclusion in the principles ensures that specific human rights standards relevant to tax-related matters are operationalized. It will help to ensure that international human rights obligations are more robustly and practically integrated into the eventual Convention.
- Interpretive guidance: It provides a basis for interpreting other provisions of the Convention through a human rights lens.
- When CSOs speak, people listen: Human rights' inclusion provides reassurance that the submissions from different stakeholders, including many civil society organizations (who made written submissions on the issue during the process, intervened in the room, and dedicated two issues of the FFD chronicle to human rights), have been listened to.
- Filling the gaps: Human rights standards are the entry point to cover many of the critical issues now left out of the ToRs, such as States' extraterritorial obligations (now deleted from paragraph 9b in fine), tax progressivity, or gender considerations.

How did we get there?

Throughout the negotiations, we saw human rights language being hotly debated, with the final agreed-upon text striking a balance between different country positions.

Ongoing advocacy: As noted in CESR's previous blogs, we and other civil society organizations have long advocated for robust inclusion of human rights in international tax discussions. This advocacy

persisted throughout the intensive 3-week negotiations, with CESR playing a key role in providing expert interventions & analysis on the critical importance of human rights as a pillar of international taxation. This advocacy, including through 2 interventions ([here](#) and [here](#)) delivered by CESR, helped to keep human rights at the forefront of the discussions, even as the specific language evolved through the negotiation process.

LATAM leadership: Several Latin American countries, including Colombia, Chile, Brazil and Mexico, emerged as champions for human rights inclusion, arguing it was critical for designing a fair convention that addressed global inequalities.

UN system support: The Office of the High Commissioner for Human Rights provided crucial input, reminding delegates of the centrality of just taxation for the realization of all human rights.

Balancing act: The negotiations had to navigate different views on the value add of human rights. While many countries stressed the importance of taxation to mobilize resources in fair manners to realize social and economic rights, including the right to development, others -mostly countries from the European Union- seemed to read “human rights” in a thinner and more rhetorical way. Some countries raised concerns that human rights could be “weaponized” to obstruct tax transparency on the basis of the right to privacy. The final wording represents a compromise between those pushing for stronger human rights language, and those who preferred a broader reference to them.

Where to next?

CESR’s position remains firm: human rights principles are fundamental to a just international tax system. Moving forward, our focus will be on ensuring that these principles are robustly interpreted, in line with their interpretation by several UN human rights mechanisms, and applied through the drafting and implementation of the Convention.

b) Environmental considerations

The ToR addresses environmental issues in multiple sections:

Principle 9(d) calls for "*a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects.*"

Paragraph 10(c) mentions "*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.*"

Paragraph 17(a) lists "*tax cooperation on environmental challenges*" as a potential topic for future protocols.

What does this mean?

This multi-faceted inclusion means that environmental considerations must be integrated into international tax cooperation efforts, but primarily through the lens of sustainable development. While emphasis on sustainable development is welcome, CESR is disappointed to see environmental references reduced to mere corollary, and that the explicit reference to “climate”

that the first version of the ToRs made was deleted. The final language does not give climate issues the standalone prominence commensurate with the urgency of the climate crisis. Further, the weak language of section 17, stating that environmental challenges “could be considered” for future protocols, fails to adequately acknowledge the intrinsic connection between taxation and climate vulnerability, mitigation and adaptation.

How did we get there?

The journey to include environmental considerations in the ToR was complex and reflected various competing interests:

- Strong advocacy from some member states and Civil Society Organisations: Several countries, particularly from the Global South and small island developing states, advocated strongly for including environmental considerations in the ToR, many citing their inequitable and disproportionate climate vulnerability. The human rights principle of common but differentiated responsibilities was brought forth by the small island developing states, but was ultimately rejected. This push was strongly supported by CSOs.
- Resistance and compromise: Some countries, particularly those with economies heavily dependent on fossil fuels, were reluctant to give environmental issues prominence in the ToR. This led to the compromise of framing environmental issues within the broader context of sustainable development. Explicit reference to “climate” was deleted after a push by Saudi Arabia. The ultimate framing aligns with the UN’s 2030 Agenda, which likely made it more palatable to a broader range of countries.

Where to next?

While the inclusion of environmental issues in the ToR may not be as robust as originally hoped, there is still cause for optimism. We have a solid foundation upon which environmental considerations can be strengthened. The final ToR draft was rife with references to sustainable development, likely because many Member States were effective in linking the UN Tax Convention process to the pursuit of the 2030 sustainable development goals. This offers another entry point for strengthening climate considerations in the future.

Moving forward, CESR will continue to join our allies in fighting for acknowledgement of the intersection of environmental challenges and taxation. We will also consider opportunities to strengthen environmental commitments during the actual drafting of the convention, and consider how other related provisions, such as the human rights principle in 9(c), could potentially support stronger environmental protections in the context of international tax cooperation.

c) Gender considerations still absent from ToR

It should be emphasized that – despite not being explicitly referenced in the ToR - gender rights are still fully covered within the ToR due to the human rights language. Paragraph 9(c) serves as an entry point. Obligations stemming from international treaties like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) - which sets out robust human rights principles relating to gender – must be fulfilled. Nevertheless, it is **profoundly disappointing**

that the current round of negotiations failed to specifically recognize the crucial links between taxation and gender rights.

How did we get there?

Previous iterations of the terms of reference failed to include specific language on gender. To correct this, CESR joined our civil society allies in sending a [submission](#) on the linkage between tax and gender to the Ad-Hoc Committee. Despite these efforts, mentions of gender in the three weeks of negotiations were discouragingly sparse. The two exceptions were powerful intervention from CESR's partner, [Dejusticia](#), and APMDD which provided a clear picture of how the status quo international tax architecture is currently failing women.

Where to next?

CESR will continue to highlight the gendered impacts of tax policies in all aspects of the Convention's development, and push for the explicit recognition of gender considerations in the Convention text and subsequent protocols. One such way is through the usage of human rights law, such as the Convention on the Elimination of All Forms of Discrimination against Women or [Beijing Declaration and Platform for Action](#), some of the main global commitments on gender.

d) Civil society engagement

Section 21 of the ToR states: "*International organizations, civil society and other relevant stakeholders are encouraged to contribute to the work of the intergovernmental negotiating committee in accordance with established practices.*"

This provision ensures that civil society organizations have a recognized role in the Convention's development process, although the extent of this involvement is not clearly defined.

How did we get there?

The original draft ToR did not include any references to civil society organizations participation, notwithstanding numerous CSO written submissions stressing the critical importance of this being specifically enshrined in the ToR. Throughout the negotiations, CSOs, including CESR, advocated strongly for their meaningful participation, and as a result, the vital importance of CSO input became increasingly evident. Ultimately, Costa Rica stepped up, calling for the protection of CSO's right to participate in the ToR.

Where to next?

Moving forward, CESR will continue to advocate for robust civil society participation in the design of the Convention. We will also continue to advocate to provide our expert input on the Convention's drafting.

e) National sovereignty and international cooperation

Another important development near the end of the week was a subtle but significant shift in language surrounding national sovereignty and international cooperation.

The text on national sovereignty (9(b)) now reads: *“recogniz(ing) that every Member State has the sovereign right to decide its tax policies and practices, while also respecting the sovereignty of other Member States in such matters.”*

Coming into these 3-week negotiations, language in the ToR reduced dramatically the scope of States extraterritorial obligations. For comparison, the prior draft recognized: *“every Member State has the sovereign right to decide the policies and practices of its domestic tax system, and the **responsibility to ensure that such policies and practices do not undermine the effectiveness of the tax base or system of others**”*, largely reflecting States obligations beyond their borders under international human rights law.

This delicate balance was built on Principle 2 in the Rio Declaration, which has worked effectively in climate justice to moderate a sovereignty-at-all-costs approach. In the new version, the tempering influence of the second sentence is unfortunately absent.

How did we get there?

Global North interventions throughout the Convention were frequently punctuated with references to tax sovereignty and national sovereignty. EU countries argued that they could not assess the impact of their actions in other countries. Switzerland led the charge on this front, pushing for the extraterritorial language to be deleted in its entirety. Even more worryingly, the change in language referenced above occurred during closed door sessions, without the opportunity for civil society participation or intervention.

Where to next?

This doubling down on sovereignty presents potential challenges for international cooperation on taxation. In one respect, the original language’s emphasis on extraterritorial obligations will be missed. In our original [submission](#) to the UNTC Ad-Hoc Committee, CESR dedicated comprehensive sections detailing states’ duty to cooperate internationally as well as their extraterritorial obligations, emphasizing the crucial role these principles play in international taxation. As noted in the submission, *“Tax laws enacted by a state hold profound implications for others. If extraterritorial responsibilities are not recognized, a state might avoid accountability for the damage this causes to the international community.”*

Moving forward, CESR will push for the most favorable interpretation of this clause, arguing that the language on “respecting the sovereignty of other states” should be read so as to prevent negative spillover effects of tax abuse. Fortunately, the reference to “international human rights law” under 9 (c) is a good entry point to rebuild extraterritorial obligations in the Convention.

f) Substantive commitments

What do the ToR say about substantive commitments and what does this mean?

The final draft of the Commitments section (paragraph 10) included commitments on six subjects:

10(a): *fair allocation of taxing rights, including equitable taxation of multinational enterprises*

10(b): *addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States*

10(c): *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*

10(d): *effective mutual administrative assistance in tax matters, including with respect to transparency and exchange of information for tax purposes*

10(e): *addressing tax-related illicit financial flows, tax avoidance, tax evasion and harmful tax practices*

10(f): *effective prevention and resolution of tax disputes*

While some of the language on high-net worth individuals is diminished from the previous version, the commitments ultimately reflect many of the most crucial debates in the realm of international taxation. This is due to the insistence of Global South countries and civil society towards keeping the Convention ambitious.

How did we get there?

Substantive commitments were perhaps the most hotly-contested section of the Convention negotiations. Throughout the three weeks, several Member States, mostly from the global north, made repeated requests for “flexibility” and “more analysis”, seemingly reluctant to formalize ambitious commitments within the text. Tellingly, many of the Member States making these requests rank highly in the [International Tax Competitiveness](#) index (read as: tax havens). Still, many Global South countries were able to fight back. The Africa Union was effective in illustrating the impact of illicit financial flows in their region, and Latin America pushed to retain language on taxation of high-net worth individuals.

Where to next?

CESR will continue to strive for substantive commitments to be fully enumerated within the text of the Convention. This is especially vital given efforts by some OECD countries to relegate substantive commitments to the optional protocols, leaving an “empty Convention” filled with mostly procedural language. Some of the key issues moving forward will be building on G20 commitments to taxing the ultrawealthy, establishing a global corporate minimum tax, and dedicating taxation specifically devoted to climate and gender.

g) Protocols

Sections 14-17 of the ToR outline the approach to protocols:

Two early protocols will be developed simultaneously with the framework convention. One early protocol will address "*taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.*"

The second early protocol will be chosen from a list of priority areas including digital economy taxation, measures against tax-related illicit financial flows, tax dispute resolution, and addressing tax evasion by high-net worth individuals. Additional potential protocol topics are listed, including

environmental challenges and information exchange.

The final draft of the Terms of Reference also added a definition of protocols, clarifying that they are separate, legally-binding instruments designed to implement more granular policy details stemming from the Framework Convention. It also clarified that the “early protocols” are ones that will be developed simultaneously with the Convention. As the Framework Convention is likely to be quite broad in scope, it is essential that these protocols be well-developed and targeted towards the most impactful areas of international tax policy.

How did we get there?

Protocols were a central feature of week two and week three discussions. Global North countries were often loath to place any real weight behind the protocols, perhaps sensing that many of the substantive commitments arising from the Convention will be embedded within them. They frequently invoked arguments calling for fewer protocols and an extended timeline, citing their own limited capacity (despite being some of the world’s wealthiest countries), or “concern” (read: mock) for the limited capacity of “other countries”. Fortunately, many countries from the Global South, mainly from Africa, managed to successfully push back against the capacity argument and ensure that two protocols will be included.

Where to next?

Now that the negotiating committee has determined that two protocols will be developed simultaneously with the Convention (one on “taxation of the digitalized economy” and another yet to be chosen), it will be important to advocate for protocols that attain maximum impact, while also pushing countries to sign protocols despite their optionality. Some Latin American countries already signaled their interest in developing a protocol on effective taxation of “high net worth individuals” (the super-rich), in line with the priorities expressed by CESR and some of its partners.