

The Assault on UNCTAD's Mandate Must Be Reversed

September 15, 2021

The fifteenth session of the United Nations Conference on Trade and Development (UNCTAD) will be held from October 3 to 7, 2021. UNCTAD plays an important role in the UN system with a focus on developing country priorities and the nexus between trade, development, finance, and technology. This Conference will negotiate and establish the mandate for UNCTAD's work over the next four years at a crucial time when the world and particularly developing countries face interconnected economic, health, environmental, and social crises.

Civil society has been repeatedly blocked from contributing actively throughout the process of the negotiations towards the UNCTAD XV mandate. Although many paragraphs are agreed as of the latest publicly available text, there are many key areas of the text still under consideration, for which the expertise and perspectives of civil society must be heard.

First, the text does not in any way measure up to the current and interconnected economic, health, social and environmental crisis that developing countries are facing. Throughout the text, it is clear that Group B countries, particularly those represented by the European Commission, were largely successful in blocking any recognition of the direct responsibility of developed countries (and the global institutions that they dominate) in creating the debt crisis, the climate emergency and environmental crisis, or the damage that their trade, investment, climate and financial policies and practices have wrought on developing countries. The entire narrative is one of the benefits of these systems not being evenly shared, because developing countries lack the capacity to achieve them. Under this false narrative, the solution is for UNCTAD to assist developing countries to adjust more to take advantage of the benefits trade, investment, digitalization. Of course, if the origin of the problems of today's world are not accurately assessed, then the "solutions" will not resolve these crises.

The current draft UNCTAD text does not strengthen the work of UNCTAD on finance, debt, South-South cooperation, Palestine, and much more; and in some areas, such as on some trade and investment issues, it goes in the wrong direction. If concluded as anticipated, it will not advance the development agenda from Nairobi, despite the heightened pressures on developing countries arising from Covid 19, heightened debt distress and reduced fiscal space. As things stand, these pressures rule out any hope of achieving the Agenda 2030 in the vast majority of developing countries.

With regards to the **management of UNCTAD** overall, the latest Chair's text in orange in paragraph 95 speaks to the importance of UNCTAD's role. Paragraphs 95.bis and 95.bis.primus are transparent efforts by the EU to micromanage the institution to their liking and should have no place in the document. With regards to the **role of UNCTAD overall**, references in the text to "avoiding duplication" with other agencies should be removed, as: UNCTAD's work on many issues pre-dates that of other institutions, such as the World Trade Organization (WTO); UNCTAD's work on issues such as debt have been mandated by Member states for decades; and UNCTAD's work represents a development-centered approach rather than, for instance, a lender-based approach as in the IFIs, and thus represent an important contribution to the global debates.

The consensus-building and technical cooperation pillars of UNCTAD must be based on the outcomes and evidence identified by the **analysis and research pillar**. Paragraph 96.bis.primus is a naked attempt to censor, *a priori*, the independence of the analytical pillar. This paragraph must be removed for the institution to function according to its mandate. Rather, it is the policy recommendations of the other pillars which should be subject to review as to whether they are coherent with the outcomes of research and analysis, to ensure they are evidence-based. The work of UNCTAD to support **South-South cooperation** should be strengthened.

On **trade**, the texts fails to acknowledge the single most important issue facing developing countries in the current crisis: that of vaccine apartheid. Intellectual property barriers on vaccines, as well as treatments and diagnostics, enforced by the WTO are the single biggest cause of harm to developing countries, in addition to severely constraining their ability to use trade for development. The current multilateral system constrains, rather than facilitates, countries' ability to create jobs, protect environmental sustainability, and ensure food security and financial stability, and must thus be transformed. Rather than lauding the WTO (an institution with liberalization, not development, at its center) and calling for its expansion, the document should call for UNCTAD work across all three pillars to: 1. Assess the asymmetries and imbalances in the rules multilateral system which constrain the ability of developing countries to use trade for their development, and provide technical cooperation and build consensus towards ameliorating them; 2. Strengthen Special and Differential Treatment (SDT) provisions, including within the Fisheries negotiations in the WTO; 3. Work towards concluding the development agenda; 4. Remove barriers to achieving food security including through public stockholding provisions; 5. Condemn unilateral coercive measures and work for their removal under international law; 6. Assess critically the impacts on trade and development of various bilateral and regional agreements, rather than praising them uncritically; and 7. Work to support developing countries in their structural transformation, including through the removal of barriers to the implementation of industrial policy; 8. Call for an immediate agreement to the TRIPS waiver proposal so that barriers to trade in under the rubric of intellectual property can be removed to end the pandemic for all; 9. Work to reduce economic concentration.

On **technology and the digital divide**, it is not only increasing access to technology but the digital economic divide, as demonstrated by UNCTAD's research, that must be addressed. Efforts to utilize UNCTAD in the service of an agenda of digital behemoths based in developed countries is deplorable and must be halted. All governments need the policy space to pursue digital industrialization to create jobs and spur innovation in the digital age, free of the pernicious impacts of economic monopoly and concentration. They also need policy space to manage the governance of data in the public interest, such as in the strengthening of quality public services which are essential for development and the achievement of the Sustainable Development Goals (SDGs). Thus, 1. References to "data flows with trust" should be excised; 2. 'Multistakeholder approach' is a code word for corporate driven policy making and this term should be removed; 3. UNCTAD's mandate should include work across all three pillars on digital industrialization, the value of data for developing countries and its use and governance in the public interest, and ensuring shared prosperity including by reducing economic concentration.

On **the climate emergency and environmental crisis**, the text fails to recognize the overwhelming responsibility of developed countries in causation and falls short in a number of critical areas, including by attempting to limit the work of UNCTAD to specific groups of countries when all developing countries are affected. Thus, 1. When international instruments are mentioned, those that are most crucial to developing countries should be included; 2. The well-established underlying principle of Common But Differentiated Responsibility (CBDR) must be affirmed; 3. With regards to references to climate finance, adjustment, and mitigation efforts, all developing countries and not just LDCs, LLDCs, SIDS must be referenced; 4. The efforts to support a transition to a just, sustainable and fully inclusive economy, such as UNCTAD's work to promote a global green new deal, must be strengthened; 5. Technology Transfer must be emphasized as a solution which UNCTAD's three pillars should be mobilized to accelerate; 6. The potential impacts of climate-related tariffs on developing countries should be studied.

On **Palestine**, UNCTAD's work in this area must be strengthened.

On matters of **taxation**, the text does not measure up to the current global debates on the problem of illicit financial flows and transnational corporations which increasingly utilize digitalization to not only evade but avoid paying taxes, which greatly affects developing countries' development prospects. In this regard, the text should include Para 22 of [2021 FfD outcome document](#) which acknowledged that *"any consideration of tax measures in response to the digital economy should include a careful analysis of the implications for developing countries, taking into account their inputs, with a special focus on their unique needs and capacities"*. We support the input from G77 on the lack of a global inclusive intergovernmental tax body and continue to call on governments to support the long-standing G77 proposal to establish a universal, intergovernmental tax body at the UN. We do not support inclusion or reference to work by FATF and OECD in the text as they are exclusive membership bodies that do not represent developing country interests. Inclusion of 'tax avoidance', in addition to tax evasion, is crucial as the central challenge for international cooperation on tax matters remains the issue of tax avoidance by multinational corporations.

On **Finance for Development (FfD) and Debt issues**, it cannot be underestimated how important the Role of UNCTAD is in these areas. After the deletion of Paragraphs 71-76, little analysis of debt issues and their structural causes remain here. The analysis section should reference: the critical role of UNCTAD in the UN system on debt issues; the need for a multilateral sovereign debt workout mechanism building on the UN General Assembly resolutions 68/304 and 69/319; the growing reliance on riskier and short-term international financial markets for lack of appropriate access to low-cost/concessional public lending; the need for substantive debt cancellation (not just partial debt standstills), including MICs; development-oriented long-term debt sustainability analysis and frameworks for policy design; the problematic role of private credit rating agencies and non-cooperative bondholders and growing incentives for sovereign debt litigation. These should be placed more explicitly in the context of the Covid-19 crisis, aggravating already unsustainable debt burdens in developing countries. Vulnerability and debt issues are "major global challenges" which arise from structural flaws in the international financial architecture and require multilateral solutions. In this context, the role of the Intergovernmental Group of Experts on FfD should be strengthened as it has proven highly participatory and beneficial.

In addition, in the Role of UNCTAD section on FfD must absolutely be strengthened, including work across all three pillars to: 1. Strengthen its work in measuring and combating illicit financial flows; 2. Strengthen UNCTAD's analytical and policy advice work on new creditor-independent frameworks for debt sustainability analysis (with a view to compatibility of this with long-term development goals) and on reforms of the international financial architecture, including sovereign debt architecture; 3. Strengthen its technical cooperation on debt issues in particular through its Debt Management and Financial Analysis (DMFAS) Programme; 4. Strengthen work on vulnerability by including environmental and economic vulnerability as relevant criteria; 5. Provide policy options for the reform of the international financial and debt architecture in order to improve its effectiveness in resolving developing country debt sustainability issues.

This document conveys the collective positions of a large number of civil society organizations and networks that engage with UNCTAD in the various domains of its mandate, including trade, investment, technology, structural transformation and climate transition, and financing for development, among others. We look forward to engaging with country delegates to ensure that these essential changes are brought on board.

ANNEX: Inputs to draft negotiation text on FfD issues

Note: These inputs are to the version "Chair's proposals for remaining issues (Rev.1 as of 6:30 p.m 7 September 2021)"

69. Open and equitable cooperation is key in tax matters, including the fight against tax evasion, tax avoidance and capital flight resulting from corruption, embezzlement, and fraud. The unfounded singling out certain countries as non-cooperative tax jurisdictions or countries can have long lasting and detrimental effects on the economies of the countries concerned and their ability to build resilience. There is a need to strengthen international cooperation on tax matters, recognizing with concern that there is still no single global inclusive forum for international tax cooperation at the intergovernmental level (retain G77 text). We acknowledge that any consideration of tax measures in response to the digital economy should include a careful analysis of the implications for developing countries, taking into account their inputs, with a special focus on their unique needs and capacities (2021 FfD outcome document). ~~and to continue to promote the full and meaningful participation of developing countries in intergovernmental forums for international tax cooperation.~~

70. The accumulation of debt by developing countries has reached a record high. The COVID-19 pandemic has exacerbated pre-existing debt vulnerabilities and exposed fragilities in the international financial architecture, with many vulnerable developing countries at high risk of or already in debt distress. ~~Important~~ Limited progress was nevertheless achieved through the G-20's Debt Service Suspension Initiative (DSSI) in facilitating higher pandemic-related spending and the Common Framework for Debt Treatments beyond the DSSI to address debt vulnerabilities on a case-by-case basis. All ~~official bilateral~~ creditors should implement the DSSI fully and in a transparent manner. Concerted efforts are needed to further examine ways to improve the UN architecture for sovereign debt restructuring that enables involving bilateral, multilateral and private sector creditors, in a transparent, neutral

forum and ensures inclusive participation of all developing countries on equal footing. Such a UN architecture reform could enable to implementation of initiatives that contribute to debt treatments in developing countries, such as responsible borrowing and lending in accordance with the Addis Ababa Action Agenda, including UNCTAD's Principles on Promoting Responsible Sovereign Lending and Borrowing. Additionally, continued inclusive dialogues and cooperation with and between relevant international financial institutions are needed to advance the discussion on debt treatment, debt transparency, data quality, debt management capacity building and the rules of engagement, including with the private sector. Due attention should be given to the responsibilities of lenders and borrowers for taking measures to minimize the risks of new debt crises.

101. The work of the intergovernmental groups of experts established at the fourteenth session of the Conference are important vehicles for transforming the priorities of the quadrennial conference into intergovernmental action. The work of the two intergovernmental groups of experts will therefore continue under the oversight of the Trade and Development Board, which shall take the necessary steps to update their Terms of Reference in line with the experience since their creation and to take into account key contemporary issues, including as reflected in the outcome of UNCTAD 15. (Retain the IGE FfD)

C. Work programme of UNCTAD

Financing for Development

(XLVI) Continue and strengthen the analytical and policy-oriented work of UNCTAD to participate in the Inter-Agency Task Force on Financing for Development and contribute to the Financing for Development issues and process;

(XLVII) Continue to assess the role of official development assistance as a source of financing for development, including the effectiveness of the increased focus on mobilizing private capital, particularly in the context of the emergence of new sources of financial assistance in conjunction with the Sustainable Development Goals; [Maafikiano 55 g]

(LI) Strengthen its work supporting international efforts to assist developing countries in designing and implementing tools to quantify illicit financial flows trade and assessing their impact on ~~trade and~~ development and in combating illicit financial flows;

(LII) ~~Continue~~ Strengthen its analytical and policy work and technical assistance on debt issues, including the Debt Management and Financial Analysis System Programme, debt architecture reforms, and to promote policies for responsible sovereign borrowing and lending, complementing the work done by in cooperation with other UN agencies, the World Bank and the International Monetary Fund and other stakeholders, as appropriate; [Adapted from Maafikiano 38 h]

(LIII) Contribute to the discussion of considering criteria beyond GDP/GNI per capita and continue the work on vulnerability indices, including environmental and economic vulnerability, as relevant eligibility and graduation criteria when determining official development assistance and concessional financing facilities.

(LIV.bis) Provide policy options on the reform of the international financial, debt, and tax architecture in order to improve the ~~efficiency~~ effectiveness of the global financial system, debt sustainability and to realize the Agenda 2030 and Sustainable Development Goals;