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Tackling Illicit Financial Flows (IFFs) at the United Nations: what will the FACTI Panel deliver?

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On 28 January 2020 the President of the General Assembly (PGA), Tijjani Muhammad-Bande, and the President of ECOSOC, Mona Juul announced a new initiative: "a high-level panel on international financial accountability, transparency and integrity (FACTI)". This joint endeavour is framed as a means to target and recover assets for investment in the Sustainable Development Goals.

At present, the UN estimates the financing gap to achieve the Sustainable Development Goals (SDGs) totals a staggering $2.5 trillion. Proponents of a robust and strong agenda on tackling illicit financial flows (IFFs) suggest that this gap could in part be closed by addressing the various forms of illicit financial flows that divert or "rob" governments of vital public resources that could and should be invested in public goods to achieve the SDGs.

Since the adoption of the Addis Ababa Action Agenda (AAAA) in 2015, the definition and regulation of illicit financial flows has been a contentious topic, played out in the annual Financing for Development Forum and UN GA Second Committee on financial and economic matters. While this new FACTI Panel responds to a long-standing and well-documented concern, it is being met with reluctance from a number of Member States, potentially with interests in limiting regulation on tax havens, financial secrecy and profit shifting.

Announcing the FACTI Panel

As noted by the PGA, the initiative will be "a high-level panel on international financial accountability, transparency and integrity (FACTI) as an impetus to ongoing efforts to achieve the 2030 Agenda for Sustainable Development." In his remarks, the PGA framed this high-level panel as a response to the General Assembly Resolution 74/206 on IFFs, with the aim to not only address this issue, but also "strengthen good practices on asset return in order to foster sustainable development".

Further, the PGA noted:

> "financial integrity is pivotal if we are to sustain the efforts to address the challenge of sufficiency in financing…The lack of financial integrity is a cross-border problem that requires inclusive multilateral action."

The President of ECOSOC similarly emphasized the importance that the high-level panel deliver:

> "At every Financing for Development Forum (FFD Forum), ECOSOC outcome documents have addressed, and recommitted us, to eliminating illicit finance. We are keen to show real progress."

Composition, Focus and Timeline for the FACTI Panel

The President of ECOSOC highlighted the expected timeline for the FACTI panel, enumerated in the Terms of Reference (ToR) released on the PGA's website. The panel will publicly launch on 2 March 2020 at UN Headquarters in New York. At the joint briefing of ECOSOC and the GA, the PGA announced, FACTI "will be co-chaired by Her Excellency Helle Thorning-Schmidt, the former Prime Minister of Denmark, and the former Prime Minister of Niger, His Excellency Ibrahim Mayaki".

The ToR recognizes IFFs are a "global problem that requires a global solution" and the need to focus on "all types of illicit finance – from criminal, corrupt or commercial activities". It details various issues such as "…financial transparency, tax matters, combatting bribery and corruption, preventing money laundering and returning stolen assets". In particular it calls for a "rethinking and redesigning" of international frameworks related to financial accountability, transparency and integrity, which is "critical to financing the Sustainable Development Goals".

This recognition of the responsibility for addressing externalities inherent in a hyper-globalized international financial order places emphasis on regulation: "in a world of cross-border trade, investment and finance, there are limits to the ability to raise resources and enforce integrity through domestic action alone".

The FACTI panel's objectives are to:

- Review current challenges and likely future trends and their relationship to the existing international legal and institutional frameworks related to financial accountability, transparency and integrity;
- Identify gaps in the legal and institutional architecture related to financial accountability, transparency and integrity, especially where universality has not yet been achieved;
- Make recommendations for:
    - Updating existing international frameworks related to financial accountability, transparency and integrity;
    - The creation of new DRAFT international frameworks, where warranted;
    - Governance arrangements to match the challenges; and
    - Proposals to strengthen international cooperation that will enhance capacity to implement the recommendations.

The panel will be comprised of 15 members and two co-chairs, "drawn from academia, policymakers, civil society, and the private sector, with due consideration to geographic and gender balance". Over the next year, the panel will hold four meetings of up to three days each, presenting an interim report at the ECOSOC High-level Segment in July and final report at UNHQ in January 2021. The panel is also planning a series of regional consultations in October-November 2020.

Mixed Responses from Member States to the FACTI Panel

There was considerable push back when the FACTI panel was announced, mainly from the same Member States that rejected language on IFFs in the GA Second Committee in October 2019 during negotiations on A/RES/74/206.

The Resolution's emphasis on involving the UN Office on Drugs and Crime (UNODC) and its insistence on the "return of stolen assets" and on criminal activity (theft and terrorism) reflects the lack of a universally agreed upon definition of "Illicit Financial Flows". While many see IFFs as a term to address cross-border and extraterritorial issues related to tax avoidance and trade malpractice, others make an effort to restrict the definition to issues of domestic corruption, embezzlement and theft of cultural assets. The Resolution as a result reflects this in an effort to achieve consensus amongst the Second Committee's membership.

A similar emphasis on corruption and stolen assets dominated the discussion at the joint ECOSOC and GA briefing when the FACTI panel was announced. Several Member States expressed discontent regarding the panel's inception and scope, among them the European Union, United States, United Kingdom, Lichtenstein, and Switzerland. Those very much in favor of the panel included Guyana on behalf of the G77 and China, Pakistan, Morocco, Denmark, Finland, Nigeria, and Norway.

The representative of Guyana, on behalf of the Group of 77 and China welcomed the panel: "We reiterate that illicit financial flows reduce the availability of resources for financing sustainable development and negatively impact the economic, social and political stability and development of societies, especially in developing countries." Nigeria also highlighted the "seemingly indifference of the international community to take concrete measures to abolish financial secrecy, make profits shifting illegal, and assure that of attrition of proceeds of illicit financial flows".

The representative of Denmark, whose former Prime Minister will co-chair the panel, framed the panel as an opportunity to change the direction of action on IFFs: "now, as we enter the decade of action, it is clear that we need to do more, not only faster, but also to do it differently". Finland emphasized that "we must strengthen our tax bases and prevent tax evasion" while Norway echoed this sentiment with the warning that "cross-border corruption and crime, mis-invoicing or trade and services and tax evasion threaten to derail the entire development process. Although there is no definitive definition of illicit financial flows, greater awareness of this issue has shown that there are definitive ways of stopping these flows".

The representative of Pakistan noted that the panel's focus would help in "filling the gap under the existing legal regime of the United Nations Convention Against Corruption" and would support "eliminating tax havens and…promoting equitable distribution of profits earned by multinational business".

Not all Member States, however, view the panel as a means to fill a gap in the regulatory architecture. The European Union (EU) presented a critique of the panel, with emphasis on the lack of consultation to Member States in identifying the panel's priorities. The EU suggested any "work on financial integrity and illicit financial flows has to be closely linked to UN bodies dealing with these issues, such as the UN Office on Drugs and Crime, the UN Convention Against Corruption and its policy making body, the Conference of State Parties".

This was supported by the United States (US): "we do not believe that there is a clear mandate and think the creation of this panel sets an unfortunate precedent". The US along with the United Kingdom called for the panel to consult with and avoid duplication of work in the UN Convention Against Corruption, the Financial Action Task Force, the UN Office on Drugs and Crime, the OECD and the G20.

This is reminiscent of statements during the negotiations in the Second Committee on IFFs reflecting differences between a focus on existing frameworks (primarily on corruption and stolen assets) and efforts to broaden the policy space to address IFFs in the form of tax havens, corporate tax avoidance, profits shifting and financial secrecy that undermine public resource mobilization for sustainable development.

Lichtenstein drew attention to the various compromises required among Member States to achieve consensus on A/RES/74/206, suggesting "the panel itself should reflect those views in particular that have helped sustain this consensus over time." Further, Lichtenstein enumerated, "the panel should avoid the duplication of work that is being done in other formats or standard setting bodies. In past discussions, we have consistently cautioned against undermining the existing legal framework in the fight against corruption. In particular, the UN Convention Against Corruption, and we will continue to engage for the integrity of that framework".

In response to Member State comments, the PGA and ECOSOC President remained resolute in their decision to move forward with the FACTI Panel, and released the ToR with additional detail on the composition and mandate. The PGA promised Member States: “I can assure you that FACTI panel is not a closed-door process. It is about financial transparency.”