Special Article

Three Lenses on Taxing Multinationals and International Tax Cooperation

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ABSTRACT:

Taxing multinational enterprises (MNEs) remains a complex and contentious challenge in global governance. While international tax cooperation is widely endorsed as essential for addressing profit shifting, tax avoidance, and the financing of sustainable development, the existing OECD-led regime has often facilitated double non-taxation rather than preventing it. Recent efforts at the United Nations, particularly the initiative to establish a UN Framework Convention on International Tax Cooperation, mark a significant shift toward a more inclusive, equitable, and effective global tax system. This paper examines the historical evolution of international tax cooperation and analyzes the current push for a UN-led framework through three analytical lenses: wicked problems, prescriptive public finance, and international regimes and global governance. Drawing on these perspectives, the paper explores the challenges of reconciling diverse national interests, the importance of sovereignty, and the need for consensus-based decision-making. It concludes with policy recommendations for building a robust, inclusive, and sustainable international tax architecture that better serves both developed and developing countries in an era of economic globalization and digitalization.

PALABRAS CLAVES:

cooperación tributaria internacional, empresas multinacionales, tributación, soberanía

RESUMEN:

La tributación de las empresas multinacionales (EMN) sigue siendo un desafío complejo y polémico en la gobernanza global. Si bien la cooperación fiscal internacional se considera ampliamente esencial para abordar el traslado de beneficios, la elusión fiscal y la financiación del desarrollo sostenible, el régimen vigente de la OCDE a menudo ha facilitado la doble no imposición en lugar de prevenirla. Las iniciativas recientes de las Naciones Unidas, en particular la iniciativa para establecer una Convención Marco de las Naciones Unidas sobre Cooperación Fiscal Internacional, marcan un cambio significativo hacia un sistema tributario global más inclusivo, equitativo y eficaz. Este documento examina la evolución histórica de la cooperación fiscal internacional y analiza la actual presión para un marco liderado por la ONU desde tres perspectivas analíticas: problemas complejos, finanzas públicas prescriptivas, y regímenes internacionales y gobernanza global. Partiendo de estas perspectivas, el documento explora los desafíos de conciliar los diversos intereses nacionales, la importancia de la soberanía y la necesidad de una toma de decisiones consensuada. Concluye con recomendaciones de políticas para construir una arquitectura fiscal internacional sólida, inclusiva y sostenible que beneficie mejor tanto a los países desarrollados como a los países en desarrollo en la era de la globalización económica y la digitalización.

MOTS CLES :

Coopération fiscale internationale, entreprises multinationales (EMN), fiscalité, souveraineté

RESUME :

L'imposition des entreprises multinationales (EMN) demeure un enjeu complexe et controversé en matière de gouvernance mondiale. Si la coopération fiscale internationale est largement reconnue comme essentielle pour lutter contre le transfert de bénéfices, l'évasion fiscale et le financement du développement durable, le régime actuel, piloté par l'OCDE, a souvent facilité la double non-imposition au lieu de l'empêcher. Les efforts récents des Nations Unies, notamment l'initiative visant à établir une Convention-cadre des Nations Unies pour la coopération fiscale internationale, marquent une évolution significative vers un système fiscal mondial plus inclusif, équitable et efficace. Cet article examine l'évolution historique de la coopération fiscale internationale et analyse la dynamique actuelle en faveur d'un cadre piloté par l'ONU à travers trois prismes analytiques : les problèmes complexes, les finances publiques prescriptives, et les régimes internationaux et la gouvernance mondiale. S'appuyant sur ces perspectives, l'article explore les défis de la conciliation des divers intérêts nationaux, l'importance de la souveraineté et la nécessité d'une prise de décision fondée sur le consensus. Il conclut par des recommandations politiques pour la construction d'une architecture fiscale internationale robuste, inclusive et durable, mieux adaptée aux pays développés comme aux pays en développement à l'ère de la mondialisation économique et de la numérisation.

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1 INTRODUCTION[1]

Forty years ago, Raymond Vernon noted, with some surprise, that he was only able to identify one functional area where national governments had made a serious effort to resolve their jurisdictional conflicts with multinational enterprises (MNEs): a "rather extraordinary web of bilateral arrangements among themselves that deal with conflicts in the application of national tax laws" (Vernon, 1985: 156). Vernon concluded that the underlying reason was a simple one: MNEs also had a major stake in international tax cooperation and MNEs had been willing participants with national governments in setting up an international tax regime, based on a network of double tax treaties (DTTs) fostered by the OECD's Committee of Fiscal Affairs.

National governments are again engaged in multilateral negotiations, this time at the United Nations, to create a new international tax regime, one that is to be "more effective and inclusive" than the existing OECD-based tax regime. Resolution 77/244, adopted by the United Nations (UN) General Assembly on 30 December 2022, reaffirmed the UN's commitment to international tax cooperation, with the modification that not only the effectiveness but also the inclusiveness of international tax cooperation should be the focus going forward.[2] The goal is to establish a new international tax architecture, one that developing countries hope will reduce what they view as aggressive profit shifting out of their countries and generate more tax revenues.

Over the past 28 months since Resolution 77/244 was approved, much progress has been made. A UN Framework Convention on International Tax Cooperation (FCITC) is under construction, with Terms of Reference, the launch of formal negotiations, and the establishment of a structured, inclusive process to draft a new global tax framework convention and two early protocols. Starting in 2025, three negotiating sessions per year and submission of the final draft to the UN General Assembly in 2027 is planned. Broad stakeholder engagement, especially from NGOs, is also expected.[3]

Framework conventions are designed as an incremental approach to international rule-making. Governments can set up an "umbrella" or general framework in an issue area and then develop more specific commitments and institutional arrangements using protocols (Bodansky and WHO, 1991). The framework convention is a legally binding multilateral instrument, consisting of core components (e.g., objectives, principles, and governance structure), which then guide optional protocols in specific issue areas. Since only the parties to the convention can sign onto the optional protocols, this "precondition guarantees that states are bound by the guiding principles of the framework when interpreting and implementing the rights and obligations under the protocol" (Matz-Lück, 2009: 451). As a result, a framework convention acts both as an umbrella for, and as a constraint on, the protocols.

In thinking about building a framework convention that can provide effective and inclusive international tax cooperation for the global economy and its actors (in particular, nation states and multinational enterprises (MNEs)), I believe there are three literatures that are relevant for this task. Examining the history and practice of international tax cooperation using these three

[1] This manuscript is based on my two submissions to the United Nations on strengthening international tax cooperation and inclusiveness (Eden 2023, 2024), as updated through April 2025. I am grateful to Eva Andrés Aucejo for the invitation to submit this manuscript to the RIEEL.

[2] The resolution commits the Secretary-General to: "Decides to begin intergovernmental discussions in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process, taking into full consideration existing international and multilateral arrangements."

[3] https://www.iisd.org/articles/explainer/United-Nations-International-Tax-Convention-Negotiations

literatures or lenses – wicked problems, prescriptive public finance, and international regimes and global governance – can provide useful insights that would help inform the negotiations and contents of the proposed UN FCITC. Given the policy uncertainties that have plagued the first quarter of 2025, and the recent exit of the United States from the FCITC negotiation process, the need for effective and inclusive international cooperation is even more pressing, not only in the tax but also in the trade, investment and other international policy arenas (Andrés-Aucejo, Akamba, Nicoli and Owens (2022, 2023).

My paper is designed to contribute to the growing literature on the UN FCITC, for example, Chowdhary, Muheet and Picciotto (2021), Andrés-Aucejo and Owens (2023), Andrés-Aucejo, Akamba, Nicoli and Owens (2022, 2023), Andrés Aucejo (2024), Brauner (2024), Choudhury (2024), Grau Ruiz (2024), Márquez Campon, (2024), Owens, Andrées-Aucejo, Brotons, Nicoli, Fernández Pons, and Brynes (2024), Parada (2024), UNCTAD (2024), Raghavan (2025), Jogarajan and Teo (2025) and Lennard (2025). I also hope that my comments may be useful for government policymakers and MNE executives involved in the negotiations for the UN FCITC. I start with a brief history of international tax cooperation. I then review and analyze three streams of research that can help inform the UN FCITC negotiations: wicked problems, prescriptive public finance, and international regimes and global governance. Drawing on insights from these three lenses, I conclude with some policy recommendations for the way forward.

2 A BRIEF HISTORY OF INTERNATIONAL TAX COOPERATION

2.1 INTERNATIONAL TAX COOPERATION IN THE 20TH CENTURY: PREVENTING DOUBLE TAXATION

The beginnings of an international tax regime date back to 1923 when four tax experts (Professors Bruins, Einaudi and Seligman and Sir Josiah Stamp) completed their report on cross-border taxation to the Fiscal Committee of the League of Nations (League of Nations, 1923); see also Jogarajan (2018), Jogarajan and Teo (2025)[4] and Andrés-Aucejo and Owens (2018, 2023). Their report formulated general principles, based on the doctrine of economic allegiance, for classifying and allocating different types of MNE income and payments to residence (home) or source (host) countries or both.

The principles outlined in League of Nations (1923) were first incorporated into the OECD's Draft Model Tax Convention (OECD, 1963) and the OECD Model Tax Convention (OECD, 1977)[5], which formed the basis for international tax cooperation in the post-World War II period. International tax cooperation was organized primarily through a rapidly expanding network of double (bilateral) tax treaties (DTTs), mostly between OECD member states.

Partly in response to the OECD's draft model tax convention, in 1968, the UN Secretary-General set up the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries.[6] The Group of Experts prepared eight reports on *Tax Treaties between Developed and Developing Countries* between 1969 and 1980, culminating in the first UN Model Double Tax Convention in 1980 (UN, 1980a). The eighth committee report (UN, 1980b) was frank in its cautionary assessment of the new model treaty, suggesting that it would (in today's phrasing) be "soft law." Paragraph 22 states that, "like all model conventions, the United Nations Model Convention would not be enforceable. Its provisions would not be binding and furthermore

[4] The first formal double tax treaty (DTT), however, is much older: a 1872 DTT between Great Britain and Switzerland (Canton of Vaud) on death duties (Jogarajan, 2012).

[5] Musgrave (1975) provides a useful critique of the draft model treaty, from the perspective of the principles of international tax equity, efficiency, and neutrality.

[6] https://www.un.org/esa/ffd/tax-committee/about-committee-tax-experts.html

should not be construed as formal recommendations of the United Nations." Rather, the Model Convention was "intended primarily to help point the way towards feasible approaches to the resolution of the issues involved".

The core components addressed in the OECD and UN model conventions and their updated conventions are similar. They include (Picciotto, 1992; Lennard, 2009; Mason, 2020):

- assignment of primary and secondary taxation rights for different income streams, together with methods to relieve double taxation, to residence and source countries;
- a definition of economic allegiance (nexus) based on the permanent establishment test;
- separate accounting for associated enterprises;
- source-based "water's edge" taxation;
- the arm's length principle for cross-jurisdictional related party transactions; and
- bilateral dispute settlement mechanisms.

There are some basic differences between the OECD and UN model conventions, which are directly related to the OECD being an international organization of primarily capital-exporting countries whereas the UN model convention is designed for developing countries that are primarily capital importers (see Whittaker (1982), Lennard (2009), and Kysar (2020)).[7]

One clear response to the development and promotion of the OECD and UN model tax conventions has been the rapid rise and proliferation of bilateral or double tax treaties (DTTs).[8] The DTTs that emerged in the second half of the 20th century were almost wholly "North-North" treaties between pairs of developed (high-income) countries rather than "North-South" treaties involving a developed and developing country.[9] Current estimates of the number of DTTs vary widely. According to UN Department of Economic and Social Affairs there are now more than 3,000 DTTs.[10] As in the 20th century, most are still between developed countries.[11] New DTT databases are providing opportunities for better understanding these primary components of international tax cooperation. [12]

A key role in development of these North-North DTTs has been the "growth of a community of international fiscal specialists, composed of government officials, academic experts and business advisors or representatives" who devised the model conventions, negotiated the DTTs, and then carried out the MNE-state bargaining and dispute settlement processes (Picciotto, 1992: viii). [13]

Also, historically, double tax treaties have been the primary method by which governments have applied the residence and source principles to different sources of MNE cross-border income.[14]

[7] Capital-exporting (home/residence) countries typically favor residence-based taxation while capital-importing (host/source) countries favor source-based taxes. Home countries are typically more worried about double taxation of MNE profits; host countries about under taxation of MNE profits. In double tax treaty negotiations, host countries typically prefer higher withholding taxes on related party outbound payments as long as they are creditable by the home country; home countries typically prefer lower withholding taxes. See Musgrave (1991) and Eden (1998).

[8] For a comprehensive analysis of DTTs see Lang (2021).

[9] See Picciotto (1992, Chapters 1-3) and Brauner (2003) for a detailed history of this period.

[10] https://www.un.org/development/desa/financing/capacity-development/online-courses/un-primer-double-tax-treaties

[11] A useful paper on the reasons for the dearth of North-South DTTs is Brown (2020), which explores the lack of DTTs between the United States and Latin America. She concludes that the reasons for, and the barriers against DTTs, vary widely across Latin American countries.

[12] Hearson (2021) provides a useful statistical analysis of the 800+ DTTs involving G-24 countries, noting the growing importance of inbound services, especially digital services, to developing countries. Baistrocchi and Hearson (2017) examine trends in DTTs using a dataset of 1,610 DTT disputes.

[13] See also Christians (2010) on the role of policy networks in influencing international tax policy.

[14] In the international tax regime (see for example, Eden, 1998, Chapter 2) source and residence principles determined which country (home or host) had the primary right to tax different MNE revenue streams (e.g., royalties, service fees). Where both countries had taxing rights

Frequent criticisms of DTTs are that (i) preventing double taxation has been their primary goal while double non-taxation has been ignored; (ii) DTTs favor capital-exporting (residence) countries at the expense of capital-importing (source) countries [15]; and (iii) the "DTTs spaghetti bowl" has created tax loopholes that have encouraged significant base erosion and profit shifting (BEPS) activities by MNEs.[16]

2.2 INTERNATIONAL TAX COOPERATION IN THE 21ST CENTURY: PREVENTING UNDER TAXATION

The eighth report of the UN Group of Eminent Persons (UN, 1980b), in addition to completing its work on the UN model tax convention (UN, 1980a), included a second section addressing opportunities for "future work on international taxation." This section focused on under taxation of MNE profits as caused by aggressive tax avoidance and evasion. The report explored the problem, discussed the limited work in this area by other international organizations, and suggested that the Group of Experts or the UN Secretariat should study this topic.

The OECD had already moved into this issue area, with the establishment in 1977 of a Working Party on Tax Avoidance and Evasion. In 1979, the OECD published its first *Transfer Pricing Guidelines* on implementation of the arm's length standard in related party transactions (OECD, 1979). In 1987, the Working Party of Tax Avoidance and Evasion issued a report with four studies on international tax avoidance and evasion: tax havens, DDTs and the use of base and conduit companies, and the abuse of tax secrecy (OECD, 1987). In 1989, the OECD set up the Financial Action Task Force on Money Laundering (FATF) to monitor OECD members' anti-money laundering systems.[17]

The focus of international tax cooperation therefore started to shift, with the first steps at the end of the 1970s and continuing through today, from the single goal of preventing double taxation to also including the goal of preventing under taxation of MNE profits. This change began slowly, led by the OECD, responding to pressures from non-governmental organizations (NGOs). Key also in this area was the response by the US Treasury in the 1980s to the Gordon Report's recommendations to cancel US double tax treaties with Caribbean tax havens (see Eden and Kudrle, 2005).

In 1998, the OECD launched the Harmful Tax Competition project (OECD, 1998), arguing that preferential tax regimes and tax havens were diverting foreign direct investment (FDI) and MNE profits away from high-tax jurisdictions.[18] In 2000, the OECD listed 35 countries, most of which were small island economies, as "non-cooperating tax havens", and demanded that they change their tax policies or face retaliation. Almost all the countries that were "named and shamed"

(e.g., foreign affiliate profits) the "first crack" principle gave first taxing rights to the host country, with the home country (if it chose to tax foreign source income) having to provide tax room through a foreign tax credit or deduction.

[15] Net capital-exporters are usually assumed to be developed countries and net capital-importers developing countries. In the 21st century, however, most developed countries have two-way FDI flows and many are net capital importers, in both stock and flow terms. For example, in 2022, the stock of US inward FDI was $US 12.3 trillion while the stock of outward FDI was $9.3 trillion, on a market value basis, so the US is a net capital importer (CRS, 2024). Still, when considering FDI flows and stocks between pairs of countries, with certain exceptions (e.g., investment hubs, tax havens), the net capital exporter is typically the more developed economy.

[16] A common assessment of existing BTTs is that they have favored capital-exporting (residence) countries at the expense of capital-importing (source) countries. Eyitayo-Oyesode (2020), for example, argues that several articles in the OECD Model Tax Convention favor residence-based taxing rights and are therefore biased against developing countries.

[17] Other international organizations also began to study tax havens and offshore finance. For example, the Financial Stability Forum in 1999 established a working group to study offshore financial centers; its first report (FSF, 2000) ranked 37 countries based on their supervision of offshore activities.

[18] See Kudrle and Eden (2003) and Eden and Kudrle (2005) for histories of OECD, US and UN efforts to address tax havens.

eventually signed commitment letters but few real changes were made.[19]

The UN Tax Committee has also been engaged in its own work on international tax cooperation. In 2004, "Ad Hoc" was dropped from the title of the Committee of Experts on International Cooperation in Tax Matters, signifying that the UN Tax Committee was now a permanent subgroup within the UN system, although the committee members continued to serve in their own personal capacities rather than as government representatives. For some years, the committee worked on, and then in 2013, published the first UN *Practical Manual on Transfer Pricing for Developing Countries* (UN, 2013).

After the 2008-2009 global financial crisis[20], governments realized that multilateral, not bilateral, efforts were needed to counteract BEPS activities. In 2012, the OECD reconceptualized the Harmful Tax Competition project as the Base Erosion and Profit Shifting (BEPS) project, with the core purpose of identifying and removing or harmonizing the sources of base erosion and profit shifting generated by differences across national tax policies (Eden, 2019a; Wilkie and Eden, 2022). The rise of digital multinationals and Industry 4.0 activities had also become a concern, providing a second motivation for BEPS.[21]

In 2015, the first Base Erosion and Profit Shifting (BEPS) round resulted in 15 Action Item Reports[22], which led to two important innovations: country-by-country reporting (CBCR)[23] and a new multilateral tax instrument (MLI). The MLI was designed to apply alongside a country's existing BTTs and modify them by allowing the signatories to adopt the action item without having to renegotiate their BTT. The MLI listed BEPS action items to which nation states could sign on voluntarily, with the effect that the MLI could modify multiple double tax treaties at the same time.[24] The action items were designed to close loopholes in the international tax system, responding to the new view that DTTs should prevent double non-taxation of MNE profits. However, the problem to date has been that many governments (including the US) have not signed the MLI and those that have signed, have opted out of many provisions.[25] Lastly, the OECD's *Transfer Pricing Guidelines* were also revised to take into account Action Items 8-10 covering value creation and transfer pricing (OECD, 2017).[26]

[19] Eden and Kudrle (2005) argue that this failure was due to the OECD's unwillingness to target either preferential tax regimes within OECD Member States or Member States that encouraged and benefitted from tax havens (i.e., "inside renegades" to the international tax regime). The OECD's "name and shame" efforts focused solely on non-OECD countries, excluding both OECD Member States and non-OECD countries tied to OECD Member States (e.g., former colonies that had DTTs with OECD Member States). The 35 countries recognized this differential treatment and responded with commitment letters that required the OECD to move on harmful tax practices by OECD Member States prior to any real policy changes by the tax havens. Implicitly, the 35 countries were saying what was "sauce for the goose should also be sauce for the gander." As a result, no real changes were made by the tax havens.

[20] As capital-exporting countries shifted from worldwide to territorial taxation in the 1990s, the significant differences in tax rates and bases across countries provided many opportunities for sophisticated tax planning where MNEs used aggressive profit shifting strategies to move profits into tax havens and investment hubs. The 2007-2009 global financial crisis was the tipping point where the primary objective of international tax cooperation shifted from how to use BTTs to prevent double taxation to how to prevent double non-taxation of MNE profits. The new approach was multilateral, led by the OECD's 2013 BEPS (base erosion and profit shifting) project, which resulted in 15 Action Items that were designed to fill the loopholes in the international tax system that were seen as the primary factors causing base erosion and profit shifting. See Eden (2024) and references, in particular, Mason (2020), for more details.

[21] See Eden (2016a) and Srinivasan and Eden (2021).

[22] https://www.oecd.org/ctp/beps-2015-final-reports.htm.

[23] CBCR was a major initiative because for the first time, national tax authorities would have information not only on a particular bilateral relationship (e.g., a related party transaction involving the MNE's affiliates from two countries) but on the MNE group as a whole. In effect, the "whole octopus" of the MNE group became visible to a national tax authority, not only a "single tenacle." See Eden (2019a).

[24] For assessments of the multilateral tax instrument, see Avi-Yonah and Xu (2018), Kleist (2018), Lang et al. (2018), and Alschner (2019).

[25] See Hohmann (2023) and Deloitte (2023). Current information on the signatories and which countries have opted in and out of the which articles is reported in the OECD's MLI database at https://www.oecd.org/tax/treaties/mli-matching-database.htm.

[26] On the implications of BEPS Action Items 8-10 on transfer pricing, see assessments by Lang, Stork and Petruzzi (2016), Collier and Andrus (2017), and Treidler (2020).

In 2018, the OECD launched a second BEPS round to deal with BEPS Action Item 1 (tax implications of the digital economy). The OECD and its OECD body, the Inclusive Framework (IF),[27] proposed to replace or overlay some of the current international tax rules with fundamentally different ones, outlined in co-called Pillars One and Two. Pillar One includes a new tax on the profits of the world's 100 largest MNEs ("Pillar One Amount A"); Pillar Two includes a new global minimum profit tax of 15 percent on almost all MNEs ("Pillar Two GLOBE").[28] The proposals are complex, mostly untested, and have little to do with the digital economy. A proposed OECD multilateral convention to implement Pillar One Amount A is unlikely to be adopted, given its ratification requirements.[29] In addition, the second BEPS round has been viewed with suspicion by developing countries, most of which are not OECD members and see themselves primarily as bystanders in the BEPS process. [30]

2.3 BUILDING THE FOUNDATION FOR A UN-LED INTERNATIONAL TAX COOPERATION PROCESS

Dissatisfaction with the international tax system has continued to grow since the OECD launched the second BEPS round. Developing country governments, in particular, wanted a process whereby all country governments could participate in decision-making related to how best to tax the profits of multinational enterprises.

As early as 2012, the G77 and China, with the support of some non-governmental organizations (NGOs), had requested an intergovernmental tax negotiation process at the United Nations.[31] For example, the African Group (Group of African States), which is a UN institution, advocated for a UN international tax convention. The UN Tax Committee also held regular ECOSOC special sessions on international tax cooperation.[32] As part of the 2015 Addis Ababa Action Agenda (AAAA), developing countries proposed a UN body for international tax cooperation, which although not accepted, led to a UN commitment to continue work on international tax cooperation (UN 2015a). That same year, the UN also approved the 2030 Agenda for the Sustainable Development Goals (UN 2015b).

In October 2022, the African Group proposed a UN General Assembly resolution on illicit financial flows, which included a UN intergovernmental tax body. Some academics and NGOs

[27] The OECD's Inclusive Framework (IF) is an attempt by the OECD to overcome its "democratic deficit" by bringing in non-member countries to achieve consensus on these rules. Critics take the view that the IF is flawed since it essentially works with a menu set by the OECD. Many developing countries, but not all, are IF members. See https://www.oecd.org/en/topics/policy-issues/base-erosion-and-profit-shifting-beps.html.

[28] For example, Pillar One Amount A replaces the arm's length principle with global formulary apportionment; for detailed analyses of Amount A see Eden (2020a, 2021a,b, 2022). A second example is the income inclusion rule (IIR) in the Pillar Two GLOBE proposal, whereby the right to levy a top-up tax on undertaxed MNE profits was given first to the residence country under the IIR, rather than following the "first crack" principle that gave this right historically to the source country where the income was earned. See Eden (2020b). While a domestic top-up tax was later added, which could be credited against the IIR, restrictions on the domestic top-up tax still tilt the GLOBE in favor of residence countries.

[29] At least 30 countries representing at least 60 percent of ultimate parent entities of in-scope MNEs for Amount A must ratify the convention; therefore, with ratification by the US government necessary and highly unlikely, the convention for Amount A cannot come into force. See https://www.oecd.org/en/topics/sub-issues/reallocation-of-taxing-rights-to-market-jurisdictions/multilateral-convention-to-implement-amount-a-of-pillar-one.html.

[30] See also the comments on problems with the effectiveness and inclusiveness of the OECD BEPS process in the July 26, 2023, Report of the UN Secretary General (A/78/235) at https://financing.desa.un.org/secretary-generals-tax-report-2023.

[31] See the list of statements by developing countries calling for a UN-led process on international tax cooperation, complied by the Civil Society Financing for Development at https://csoforffd.org/post/database-governments-supporting-an-intergovernmental-un-tax-body-and-or-un-tax-convention/. The 2012 statement by the Group of 77 and China is available at http://www.g77.org/statement/getstatement.php?id=120727.

[32] Special ECOSOC sessions go back at least to 2019; see https://financing.desa.un.org/ecosoc-special-meeting-international-cooperation-tax-matters.

also prepared early proposals for a framework convention.[33] The breakthrough event was UN Resolution 77/244, tabled by the African Group [34] and approved by the UN General Assembly without a vote in November 2022.

The UN resolution identified the goals of international tax cooperation as: combatting illicit financial flows; preventing aggressive tax avoidance and tax evasion; and improving the fairness, transparency, efficiency and effectiveness of national tax systems. [35]The resolution stated that UN's efforts should be universal in approach and scope, and take into account the different needs and capacities of all countries. The UN Secretary-General was tasked to prepare a report on ways to "strengthen the inclusiveness and effectiveness of international tax cooperation." The Secretary-General's report would analyze the current international tax framework, evaluate options, and outline potential next steps. As part of that process, the Secretary-General was to consult widely with Member States and other relevant actors including civil society. Many submissions were made by member states, NGOs, academics, think tanks, and the business community. International organizations, including the International Bureau of Fiscal Documentation (IBFD) [36] and the International Centre for Tax and Development (ICTD) [37] also prepared reports.

In July 2023, the UN Secretary General's report[38] concluded that the OECD/IF two-Pillar process had not and could not take the needs of developing countries sufficiently into account and that a UN-led process was needed. The Secretary General emphasized the need for inclusiveness where all countries participated on an equal footing in agenda setting, negotiation and decision making. The decision-making process should be transparent, with sufficient time for consideration of proposals and preparation of positions by all countries. The report also outlined and discussed three possible options for the UN to move forward on international tax cooperation (i) a forum for non-binding discussions, (ii) a binding legal framework convention and protocols or (iii) a comprehensive binding legal agreement) and invited input from outside stakeholders.

At the November 2023 UN General Assembly meeting, Nigeria on behalf of the African Group proposed a draft resolution recommending the "bridge" (second) option of a framework convention with protocols, and the creation of an Ad Hoc Committee (AHC) to draft its terms of reference (ToR). In December 2023, Resolution 78/230 was adopted by the General Assembly, with a vote of 111 (yes), 46 (no), and 10 (abstain); almost all developing countries voted yes and almost all OECD members opposing opposed motion.[39]

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[33] For early proposals for a Framework Convention see Chowdhary, Abdul Muheet, and Picciotto (2021), Ryding (2022) and Andrés Aucejo, Akamba, Nicoli, and Owens (2022).

[34]UN Resolution 77/244 (A/C.2/77/L.11/REV.1) on "Promotion of inclusive and effective international tax cooperation at the United Nations" (November 16, 2022). https://financing.desa.un.org/document/general-assembly-resolution-promotion-inclusive-and-effective-tax-cooperation-united-0.

[35] For recent estimates of illicit financial flows see Chiari (2024), Garcia-Bernardo and Janský (2024) and Chapter 5 in UNCTAD (2025).

[36] IBFD. (2023). *Promotion of Inclusive and Effective Tax Cooperation at the United Nations.* June 1. https://financing.desa.un.org/input-paper-international-bureau-fiscal-documentation-ibfd. The IBFD report suggested adaptation of the BEPS minimum standards, simplification of the other BEPS recommendations, improvement of the Two Pillar Solution, et cetera; that is, essentially working within the OECD/IF process. See https://financing.desa.un.org/input-paper-international-bureau-fiscal-documentation-ibfd..

[37] See Cadzow, Hearson, Heitmüller, Kuhn, Okanga, and Randriamanalina (2023). Their report focused on capacity limitations of participating countries and other organizational challenges. https://pdfs.semanticscholar.org/6cdf/6b91eca545e3e318db054d002c189401c919.pdf

[38] UN General Assembly. Promotion of inclusive and effective international tax cooperation at the United Nations, Report of the Secretary-General (A/78/235). (July 26, 2023). https://financing.desa.un.org/secretary-generals-tax-report-2023

[39] UN General Assembly. Promotion of inclusive and effective international tax cooperation at the United Nations (A/RES/78/230) December 28, 2023. https://financing.desa.un.org/document/promotion-inclusive-and-effective-international-tax-cooperation-united-

The resolution established an Ad Hoc Committee (AHC) to draft Terms of Reference (ToR) for the framework convention. AHC membership consisted of a chair, 18 vice chairs and a rapporteur, representing four members each from the five regions in the UN system. In addition to the ToR for the framework convention, the resolution asked the AHC to develop early protocols in specific priority areas, including tax-related illicit financial flows and taxation of income from cross-border digital services. The AHC was requested to report back to the General Assembly in October 2024.[40] A wide variety of public comments were submitted with respect to Resolution 78/230.[41]

The Ad Hoc Committee (AHC) started work in early 2024.[42] The AHC released its first "Zero Draft" ToR for public consultation in June 2024.[43] The draft ToR outlined the objectives, a long list of principles, and both substantive and structural elements for the proposed framework convention. Additional drafts of the ToR followed in July and August 2024. The August 15, 2024, ToR lists three objectives for the framework convention: [44]

- Establish fully inclusive and effective international tax cooperation in terms of substance and process;
- Establish a system of governance for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis;
- Establish an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience, and fairness of international tax rules, while addressing challenges to strengthening domestic resource mobilization.

Five priority areas for early protocols were identified in the June and July draft ToRs: taxation of the digitalized and globalized economy; taxation of income derived from cross-border services; tax-related illicit financial flows; prevention and resolution of tax disputes; and taxation of high-worth individuals. Four other areas were listed as possible subjects for future protocols: tax measures on environmental and climate challenges, exchange of information for tax purposes, mutual administrative assistance on tax matters, and harmful tax practices. The August 2024 ToR reduced the list of early protocols to two: taxation of income from cross-border services in a digitalized economy and one other to be determined later. The deadline for adoption of the framework convention was extended to 2027, with the AHC to continue meeting at regular intervals. The AHC vote to adopt the ToR passed with 113 countries in favor, 8 against and 42 abstentions.[45]

In December 2024, the UN General Assembly adopted Resolution 79/235, introduced by

nations-ares78230. The country vote on Resolution 78/230 is posted at: https://www.un.org/en/ga/second/78/docs/voting/L18-Rev1-Tax_cooperation.pdf.

[40] The UN Tax Committee continues to function independently from the AHC. Members of the Tax Committee serve on the committee in their personal capacity; however, many Tax Committee members are now also representing their governments in the AHC's work. In addition, the UN Department of Economic and Social Affairs (DESA), which acts as the secretariat for the UN Tax Committee, appears to also be functioning as the secretariat for the AHC and the Bureau.

[41] For comments on Resolution 78/230 see https://financing.desa.un.org/un-tax-convention/inputs..

[42] See, for example, the February 20, 2024 AHC meeting at https://webtv.un.org/en/asset/k1e/k1ed7roiks; the full list is available at: https://webtv.un.org/en/search?query=international tax cooperationandsort_by=newestandpage=1.

[43] Comments on the first draft ToR are available at https://financing.desa.un.org/un-tax-convention/second-session-inputs.

[44] https://financing.desa.un.org/sites/default/files/2024-08/Chair%27s%20proposal%20draft%20ToR_L.4_15%20Aug%202024____.pdf

[45] https://x.com/toveryding/status/1824536607770415263. The eight negative votes were the "Five Eyes" (Australia, Canada, New Zealand, UK, USA) and Israel, Japan, and South Korea. What is also notable is most Western European countries switched from no votes in December 2023 on Resolution 78/230 to abstentions in August 2024 on the Draft ToR for the FCITC.

Nigeria on behalf of the African Group, formally approving the ToR for a UN Framework Convention on International Tax Cooperation (UNFCITC) with its first protocol to be taxing income from cross-border services in a digitalized economy. The Resolution established an Intergovernmental Negotiating Committee, which first met in February 2025 to elect a Bureau consisting of a chair, 18 vice-chairs and a rapporteur, with four members from each of the five UN regional groups.[46] The Negotiating Committee agreed to strive for consensus but if consensus could not be reached, to operate with a simple majority for most decisions and a two-thirds majority for substantive decisions with respect to the protocols. The committee also decided that the second protocol would be prevention and resolution of tax disputes. The United States expressed strong opposition (as it had from the start), stated that it would no longer participate and would reject the outcomes. The European Union abstained, but continued to participate.

2.4 SUMMARY

In summary, the history of international tax cooperation suggests that, as Vernon (1985) opined, the major commitment of nation states to advancing international cooperation in the area of taxing the global profits of multinational enterprises has been primarily through a vast bilateral network of DTTs. The last 10-20 years have involved efforts by the OECD and United Nations to shift the focus of these efforts from preventing double taxation to preventing under taxation of MNE global profits.

In its essence, the UN negotiation process launched by UN Resolution 77/244 argues for a deeper and broader commitment of UN Member States to using international cooperation, through fiscal harmonization and/or coordination measures, to allocate the global profits of MNEs among tax jurisdictions. What, then, is the best way to move forward in terms of international tax cooperation? To address this question, I suggest that useful insights can be drawn by looking at the history of international tax cooperation through three different theoretical lenses: (1) the wicked problem of taxing multinationals, (2) prescriptive public finance, and (3) international regimes and global governance. Each lens is explored below.

3 LENS #1: WICKED PROBLEMS

3.1 WICKED PROBLEMS AND EVIDENCE-BASED POLICYMAKING

The wicked problems literature was developed by scholars in public administration building theories to explain why public policy programs often fail (Head, 2019; Head and Alford, 2015; Rittel, 1972; Rittel and Webber, 1973). Wicked problems are systemic in nature, involve complex interdependencies, and materialize at the interface between public and private interests (Eden and Wagstaff, 2021). A wicked problem has no clear solution or resolution; instead, policymakers must manage the problem. Wicked problems are never "solved"; only resolved – over and over again. Examples of wicked problems include food insecurity, poverty, climate change, gender inequality, and homelessness; the 17 UN Sustainable Development Goals (SDGs) are all wicked problems (Eden and Wagstaff (2021), van Tulder (2018)).

The difficulty in addressing a wicked problem is directly related to its complexity, both in terms of factual uncertainty and of the actors/institutions involved in the issue area. As the number and diversity of stakeholders and institutional contexts rise, so does the heterogeneity of

[46] https://www.iisd.org/articles/explainer/United-Nations-International-Tax-Convention-Negotiations

preferences and interests, which increases the likelihood of conflict. Uncertainty and ambiguity exacerbate both complexity and conflict, increasing the degree of wickedness and the likelihood of policy failure.

The best way to tackle a wicked problem is through a careful application of evidence-based policy making, i.e., putting the best evidence available at the center of policymaking and implementation (Eden and Wagstaff, 2021). Policy outcomes, even when dealing with wicked problems, are likely to be better when the decision-making is informed by the best available evidence (Scott, 2005). Evidence-based policymaking is an iterative process with five steps: agenda setting; policy formulation; policy selection; policy implementation; and policy monitoring, evaluation and revision.

By focusing all parties on the production and sharing of explicit evidence about an issue, the foundation for various positions becomes visible to all. Although not necessarily overcoming disagreements, explicit evidence provides more clarity for conflict management and resolution.

Key insights from evidence-based policymaking are that government policymakers can best cope with wicked problems by the following (Eden and Wagstaff, 2021):

- Formally adopting evidence-based policymaking.
- Expanding the evidence collection process through partnering with other stakeholders.
- Prioritizing evidence collection and analysis before policymaking.
- Also building partnerships with stakeholders during policy implementation and evaluation.

Key insights for managing wicked problems, with respect to the stages of evidence-based policymaking that involve collection and use of evidence, are the following (Eden and Wagstaff, 2021):

- Collection of good evidence is necessary but not sufficient for coping with a wicked problem.
- Good evidence can be misunderstood or misused by policymakers.
- Good evidence is often trumped by politics.
- Good evidence needs networks and partnerships.
- Good evidence that works here (in one location or time period) may not work there (in a different location or time period) so adjustments are needed to take account of differing facts and circumstances across countries and across time.

3.2 THE WICKED PROBLEM OF TAXING MULTINATIONALS

Taxing MNEs is also a wicked problem: the issue area is systemic, involves complex interdependencies, and materializes at the interface of public versus private interests. More than 30 years ago, Raymond Vernon argued that nation states and MNEs were "two systems, … each legitimated by popular consent, each potentially useful to the other, yet each containing features antagonistic to the other" due to their different goals, jurisdictions, and responsibilities (Vernon, 1991: 191). As Eden (2000: 336) noted:

> *The MNE's goals are narrow (profit maximization) while the nation state's goals are broad (economic, sociocultural and political). The MNE's jurisdiction is global while the state is confined to its national borders. The MNE is responsible to its shareholders, the state to its citizens. Each institution is legitimate inside its own sphere of influence, with one power-based asymmetry: the nation state confers institutional legitimacy on the MNEs*

within its borders.

MNEs are global profit-maximizing enterprises, where the subunits within the enterprise (the parent firm and its affiliates) share common goals, common control, and common resources. These shared goals and common resources enable the MNE to develop and implement strategies and structures that are designed to maximize the MNE's long-run competitive advantage and global after-tax profits (Eden, 1991; Eden and Lenway, 2001).

MNEs expand abroad for both basic and group-level motivations (Eden, 2016a). Basic motives include market seeking, resource seeking, and knowledge/strategic asset seeking. Group-level motives include efficiency/growth seeking (arbitrage and integration economies at the group level) and competitive positioning (strategic behaviors such as follow-the-leader and first mover strategies). MNEs expand abroad using a variety of entry modes ranging from low-cost, short-term modes (e.g., exporting) to high-cost, long-term modes (e.g., greenfield foreign direct investment (FDI)), with many hybrid options in between (e.g., joint ventures, international alliances, mergers and acquisitions).

MNEs also benefit from their multinationality in several ways (Eden, 2016a). The advantages of multinationality involve profiting from integration (taking advantage of economies of scale and scope across countries), arbitrage (taking advantage of differences, especially in economic and regulatory aspects, across countries), learning (applying knowledge acquired in one location elsewhere in the MNE group), and flexibility (the ability to shift activities, purchases/sales, inputs and locations across countries in response to environment opportunities, threats or shocks).[47]

The global span of the MNE brings it into direct conflict with nation states, whose reach is limited to their own borders.[48] Given the extensive involvement (breadth and depth) of MNEs in the global economy, it is not surprising that governments have attempted to regulate MNE activities in multiple dimensions. Governmental interest in regulating MNEs reflects the various ways that MNEs interact in the global economy (e.g., international trade, FDI, intellectual property, services) and their impacts on government goals and policies (e.g., balance of payments, economic growth, employment, human rights, innovation, national security, tax revenues).[49]

Taxes on the profits that MNEs earn on these activities (e.g., trade, investment, production, sales, services) have therefore also been a core focus of nation states. Failure to coordinate or harmonize the tax policies of different nation states preserves their national sovereignty but the resulting international competition leads to either double taxation or, more likely, under taxation of MNE profits as MNEs take advantage of the arbitrage and integration economies provided by differences in national regulations. As a result, unilateral government policies are likely to fail. International cooperation among nation states is therefore necessary to cope with the wicked problem of taxing MNEs.

In fact, cooperation between MNEs and nation states over taxing MNE profits was one of the earliest areas of international MNE-state cooperation. As Vernon (1985: 256) noted:

> *I can find only one functional area in which governments have made a serious effort to reduce the conflicts or resolve the ambiguities that go with the operations of multinational enterprises. The industrialized countries have managed to develop a rather extraordinary*

[47] Domestic firms have similar benefits that are limited to their own country; as a result, domestic firms are typically less profitable than MNEs, ceteris paribus.

[48] The most useful reading for understanding MNE-state relations in the 21st century is Vernon (1998).

[49] On international regimes in issue areas other than international tax see: international trade (Eden, 1998: 63-69; Azmeh, Foster and Echavarri, 2020), investment (Eden, 1996a, 1996b, 2016), and intellectual property rights (Helfer, 2009; Yu, 2011).

> *web of bilateral agreements among themselves that deal with conflicts in the application of national tax laws. Where such laws seemed to be biting twice into the same morsel of profit, governments have agreed on a division of the fare. Why governments have moved to solve the jurisdictional conflict in this field but not in others is an interesting question. Perhaps it was done because, in the case of taxation, the multinational enterprises themselves had a major stake in seeking to the consummation of the necessary agreements.*

Perhaps the main reason why the OECD and UN model tax conventions have had prevention of double taxation as their primary goal is that this issue of MNE-state relations provides "win-win" opportunities for MNEs and their home-country governments.[50] The two actors, the MNE and the nation state, share a common interest in reducing double taxation generated by the combination of residence-based and source-based taxation. As a result, home countries have pressured for reduced withholding taxes together with high permanent establishment standards, which were required to demonstrate that the host country had sufficient economic allegiance to have the right to levy a CIT and withholding tax on local affiliates of foreign MNEs.

DTTs have been one of the few forms of international tax cooperation among MNEs and nation states. Since then, governments have retreated from global agreements to hortatory non-binding codes with no "teeth"; as a result, the impacts of international codes of conduct on MNE behaviors has been minimal (see also Vernon, 1998, Chapter 6).

3.3 SUMMARY

The difficulties that have bedeviled international tax cooperation since the millennium may also simply reflect the problem that "win-win" opportunities in MNE-state relations are much fewer when the goal of international tax cooperation is preventing under taxation, rather than double taxation, of MNE profits. The wicked problem of taxing multinationals is now "more wicked" because of the greater probability not only of MNE-state disputes but also disputes between nation states. Given the fewer "win-win" opportunities, the advice in Eden and Wagstaff (2021) on managing wicked problems and the helpful role of evidence-based policymaking should be useful for managing the wicked problem of taxing multinationals going forward.

4 LENS #2: PRESCRIPTIVE PUBLIC FINANCE

A second useful theoretical lens for understanding international tax cooperation is the school of "public finance in the real world", also known as "prescriptive public finance (PPF)." Carl Shoup, Richard and Peggy Musgrave, and their students were founders of the "prescriptive" or "political economy" school of public finance, which is known for its hands-on approach and its commitment to applying theory to real world problems (Wilkie and Eden, 2022). This approach provides useful advice not only for decision-making for national tax systems but also for the international tax system.

4.1 TAX ARCHITECTURE, ENGINEERING AND ADMINISTRATION

Tax policymakers must differentiate among three decision-making tasks, according to Shoup

[50] Vernon (1998: 188) concludes, on the depressing note, that "the world is not ready yet, if it ever will be, for a strong agreement, global in scope, that articulates the basic principles for the treatment of multinational enterprises."

(1991). Although Shoup's definitions were created for national tax systems, based on his experiences leading tax missions in Japan and elsewhere, his definitions can be adopted for international tax policymaking.

The three decision-making tasks are:

- Tax architecture: selection of the types of taxes and rates that form the revenue system and the broad outline of essential features of each tax.
- Tax engineering: determination of the substantive issues with respect to each tax.
- Tax administration: implementation of the provisions in the tax law formulated by the tax architects and engineers.

Tax architecture involves selecting the general outline of a tax system. Tax engineering involves determining the tax details that follow from tax architecture, with the goal of ensuring that the details for the taxes are clear, complete and consistent. Tax administration involves implementation of the rules and procedures. Shoup (1991) argued that the three tasks, especially for a tax mission, may need to be undertaken almost simultaneously since tentative decisions in any two areas influence the third, requiring a "melding" of the three decisions.

Choosing the broad outlines of a tax system involves comparing the principles of a good tax system with the realities of what will work in the real world. The (now) well-known principles of a good tax system (e.g., equity, efficiency, neutrality) must guide tax architecture (Shoup, 1969, Chapter 2; Musgrave and Musgrave, 1989). At the same time, Shoup (1991) counselled that tax architecture and engineering must also involve selecting taxes that are appropriate for a country's economic and cultural background. The implication is that first-best tax policies for one country are unlikely to be first-best in others. Facts and circumstances matter in designing tax systems, reflecting the principle that "what works here may not work there." For example, tax architecture and engineering, when applied in some developing countries, may require taking into account the drain on the financial system caused by informal and arbitrary socioeconomic contributions (e.g., to family, corrupt officials) that discourage entry into the formal sector and the voluntary payment of taxes. Weak and missing institutions (e.g., weak rule of law, failed states, low tax morale) in some countries may also affect and constrain tax policy choices.

4.2 INTERNATIONAL TAX COOPERATION IN THE REAL WORLD

In the study of public finance, cross-border taxation issues are typically one issue among many tax topics (e.g., Musgrave, 1959; Musgrave and Shoup, 1959; Shoup, 1969). However, when multinational enterprises (MNEs) make cross-border tax issues of major importance. From the early days of the corporate income tax (CIT), the global reach and mobility of MNEs have created problems for national tax systems. As a result, early work on international tax cooperation focused primarily on the avoidance of double taxation of MNE profits, which was seen as excessively burdening the returns to capital and interfering with capital flows.

As the number, size and global reach of MNEs expanded in the second half of the 20th century, how to tax their profits in a global economy became an important concern for both nation states and MNEs.[51] At the international level, taxing multinationals required a melding of the prescriptive public finance with both the conflicting realities of international business and the

[51] Some of the pioneering analyses of cross-border taxation of MNEs were conducted by Carl Shoup (1974), Peggy Musgrave (1963, 1975, 1983, 1991, 2002) and Sol Picciotto (1992).

desire of nation states to maintain tax sovereignty.

National sovereignty has always been an important constraint on international tax policy. Musgrave (2001: 1336) noted that residence countries "….so long as there are nation states serving populations with common purposes and interests, such states will wish to retain a degree of sovereignty over the tax treatment of the income-earning activities abroad of their residents." The same was true for source countries: "The right of a jurisdiction to tax all income arising within its geographical borders is recognized as a fundamental entitlement" (Musgrave, 2001: 1341).

A key issue, therefore, was whether cross-border tax disputes would be better handled through "fiscal competition", which would provide maximum weight to national sovereignty, or restriction of national sovereignty using "fiscal harmonization or coordination through international cooperation" among nation states (Musgrave, 1991: 277). Most public finance theorists, historically and now, have argued that international tax cooperation is preferable to tax competition for two reasons. First, tax cooperation is better able to satisfy the principles of a good tax system (e.g., equity, efficiency, neutrality). Second, in a world of mobile capital, tax competition can lead to a race to the bottom. International cooperation is therefore superior to tax competition among nation states as a solution for taxing MNEs (Musgrave, 1991). [52]

Nearly 50 years ago, Shoup (1974) also opined on this issue in favor of international tax cooperation, specifically for developing countries. His technical paper, "Taxation of Multinational Corporations", prepared for the UN Group of Eminent Persons to Study the Impact of Multinational Corporations on Development and International Relations, reviewed the problems involved in taxing MNEs, especially for developing countries, and concluded that more international cooperation was required to protect developing countries from evisceration of their tax bases through aggressive tax avoidance and evasion.

Recently, Scott Wilkie and I made the same argument that public finance in the real world must involve tradeoffs between national sovereignty, the principles of a good international tax system, and the difficult problem of taxing MNEs (Wilkie and Eden, 2022: 258):

> *The current lack of confidence in the international rules for taxing the global profits of multinational enterprises (MNEs) has three underlying causes: (1) tax rules are not universal or natural; (2) taxes must be practical, administrable, and collectible; and (3) tax policy is a domain where national sovereignty and multilateralism are both important and conflictual. As a result, in the real world of public finance, the principles and norms of international tax must be tempered with the need for practicality and respect for national sovereignty.*

The public finance in the real world literature therefore cautions policymakers to pay careful attention to the difficulties of implementing international tax principles into practice; to opt for policy solutions that can be implemented in a world of mobile capital; and to take into account differences across countries in their economic and social conditions and institutions. [53]

[52] On tax competition versus tax cooperation, and the role of the OECD in developing international tax norms see Ault (2009).

[53] My negative opinion of proposals to implement global formulary apportionment (GFA) at the international level stems directly from this argument. GFA may be an efficient and equitable solution to valuation of 24-hour global trading activities within a multinational bank (see Eden, 1998: 561-583). However, GFA works, at best, poorly at the sub-federal level based on the evidence from the US multistate compact allocating state-level corporate income tax revenues. Scaling up GFA to the international level reduces the chances for success to near zero, given the strong commitment of nation states to their national sovereignty and the wide disparity in economic, cultural, and political environments across countries. Without a strong upper-tier organization to enforce the rules and discipline offenders (the proverbial "global benevolent omniscient dictator" in welfare economics), the GFA structure would be subject to gaming behaviors by MNEs and nation states, resulting in worse problems than the current international tax regime. The arm's length standard may not be the "first-best" international tax norm but it is better than the proposed alternatives. See Eden (1998: 313-319, 561-583; 2009, 2019, 2021) and Wilkie and Eden (2022).

Especially at the architecture and engineering stages, international tax cooperation should be consistent with (1) the principles of a good international tax system, (2) the desire of nation states for sovereignty, (3) the realities of making public finance in the real world, and (4) the wicked problem of taxing multinationals.

Building on Shoup's (1991) categories for decision-making with respect to national tax policies. decision-making in international tax cooperation involves three tasks:

- Architecture: Selecting the broad outlines of an international tax system (e.g., scope, breadth, depth). Architectural issues include, for example, assessment of the current international tax system and its strengths and weaknesses, the types of taxes to be included, the mode of international tax cooperation (e.g., treaty, convention, international organization), number of countries involved, and broad outlines of the essential features of that cooperation.
- Engineering: identification and determination of the substantive issues with respect to the broad outlines of international tax cooperation.
- Administration: implementation of the rules and procedures, building on the architecture and engineering decisions made by the tax architects and engineers, at both the international level and as implemented by national governments.

4.3 SUMMARY

At the international level, tax policymakers take into account four factors when making public finance in the real world: (1) the principles of a good international tax system, (2) the economic and social differences across countries; (3) the desire of nation states for national sovereignty, and (4) the wicked problem of taxing multinationals. The choice between international tax competition and international tax cooperation, while affected by the relative importance of these four factors, favors cooperation over competition. The prescriptive school of public finance is therefore supportive of efforts favoring both the effectiveness and the inclusiveness of international tax cooperation.

5 LENS #3: INTERNATIONAL REGIMES AND GLOBAL GOVERNANCE

A third literature that can inform understanding the history and practice of international tax cooperation is the literature on international regimes and global governance.

5.1 INTERNATIONAL REGIMES

Now 40 years ago, the seminal book on international regimes edited by Stephen Krasner defined an international regime as: "sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations." (Krasner, 1983: 2). International regimes are "sets of functional and behavioural relationships among national governments that have been established in response to problems at the international level in particular issue areas," which can be used to "improve global welfare by providing rules of behaviour, supplying information and formalizing dispute settlement mechanisms" (Eden, 2009: 597-598). A wide variety of international regimes exist in issue areas such as international trade, investment, intellectual property, nuclear proliferation, the environment (Eden and Hampson, 1997; Eden, 1998: 63-69).

In international regime theory, regimes are characterized according to: (1) the problem or structural failure that motivates the regime, (2) the regime's purpose and scope, (3) its

components, and (4) an assessment of the regime's effectiveness (e.g., regime strength, structural weaknesses). The components of an international regime are its principles, norms, rules, and procedures. Quoting Krasner (1983:2): "*Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.*"

A number of international relations scholars have examined the formation of international regimes, building on Krasner (1983). Significant attention has been paid to the role of non-state actors such as private firms, non-governmental organizations (NGOs), and think tanks in the formation and evolution of international regimes. See, for example, Haggard and Simmons (1989) categorizing the dimensions of international regimes, Nadelmann (1990) on global prohibition regimes, Haas (1989) on epistemic communities and their impact of regime strength, and Eilstrup-Sangiovanni and Sharman (2019) on international NGOs as enforcers of international law.

Some work on international regimes has focused on the antecedents and consequences of international regime complexes, which are defined as nested, partly overlapping and/or parallel international regimes that are not hierarchically ordered (Alter and Meunier, 2009; Keohane and Victor, 2011; Alter and Raustiala, 2018). Regime complexes are groupings of international regimes that emerge because the global problems they address overlap multiple issue areas or new problems have arisen that nation states attempt to graft onto pre-existing international regimes. A key problem with international regime complexes is that the clarity of legal obligations is reduced due to overlapping sets of rules and jurisdictions. Complexity has several impacts, including: the need for decision-making under bounded rationality due to ambiguity and uncertainty; opportunities for nation states to engage in "chessboard politics"; and unintended spillovers and feedback loops across regimes. The end result is likely to be more contestation and more difficult coordination across international regimes.

5.2 GLOBAL GOVERNANCE

Governance refers to sets of practices whereby interdependent actors coordinate and/or hierarchically control their activities and interactions. Governance structures are "formal and informal institutional devices through which political and economic actors organize and manage their interdependencies" (Eden and Hampson, 1997: 362). Governance structures can be used, for example, to organize negotiations, set standards, perform allocative functions, monitor compliance, and resolve disputes. International regimes are one form of international governance structure; others include trade associations, cartels, treaties, and conventions.

Structural failures create the need for governance structures, which may be established by firms or nation states or both (Eden and Hampson, 1997). At the international level, responses to four different kinds of structural failures (i.e., efficiency failures, distributional conflicts, macroeconomic instabilities, and security dilemmas) have led to the formation of different kinds of international governance structures, many of which are international regimes.

Some insights drawing on the international tax regime and global tax governance literatures are:

- *Clubs are trump*: Hegemonic states are not necessary for the formation of international regimes. However, as the number of regime members rises so does the number of free riders, which makes international cooperation more difficult. As a result, large-N international regimes are more difficult to form in the absence of a hegemonic leader. Instead, smaller "clubs" of like-minded nation states may better able manage complex international interdependencies and achieve greater benefits from deeper integration

than large coalitions (Eden and Hampson, 1997).[54]

- *Information sharing is required*: As the number of member states and/or the number of issue areas rises so too do the uncertainty and complexity of forming and managing international governance structures.[55] In order to reduce uncertainty and informational asymmetries within and across nation states, information generation and knowledge sharing by technical specialists may be a necessary building block before cooperative regimes can be formed.
- *Politics, coalitions and bargaining matter*: The formation of, or changes to, an international regime have allocational and distributional consequences both inside and across nation states. As a result, political bargains and coalitions will emerge based on the likely winners and losers that will affect and may potentially derail the outcomes. Multilateral diplomacy with actors that can build coalitions, fill structural holes in networks, and make connections with stakeholders are particularly valuable for ensuring that smaller countries have their voices heard and their interests protected (Lennard, 2025).
- *Contingencies happen*: The formation of governance structures will be affected by stochastic or nonergodic elements such as shocks (e.g., 2008-2009 financial crisis, the COVID-19 pandemic) and changes in key leadership positions (e.g., national elections). Tipping points, for example, can motivate or derail regime formation.

These conclusions from international regime theory are also important, both for the current OECD proposals for Pillar One and Pillar Two, and ongoing international tax cooperation efforts including UN Resolution 77/244.

5.3 THE INTERNATIONAL TAX REGIME IN THE 20TH CENTURY: PREVENTING DOUBLE TAXATION

Taxing MNEs create additional problems for national tax authorities that do not occur when taxing domestic firms. These problems arise because the MNE is an integrated business that has affiliates around the world that are under common control and share common goals and resources (Eden, 1991, 2009). As a result, the MNE's global reach and capital mobility creates three core tax problems for national tax authorities (Eden, 2009: 596-597):

- Jurisdiction: which government has the right to tax which types of MNE profits.
- Allocation: how MNE revenues and expenditures should be allocated across countries.
- Valuation: how cross-border transactions within the MNE group should be valued.

On the one hand, national sovereignty is best preserved by nation states setting up their own tax systems. However, the goals of nation states to attract inward foreign direct investment (FDI) and jobs lead typically to tax competition and "locational tournaments" where MNEs play off nation states against one another. The resulting international competition results in either double taxation or, more likely, under taxation of MNE profits. On the other hand, international tax cooperation is also difficult. Even with clubs of like-minded nation states that form "coalitions of the willing", nation states have differing national interests. Governments can and do engage

[54] One example comes from the international trade regime where regional organizations such as the European Union and the NAFTA have to fostered deeper integration of trade and investment within the region (Eden, 1996a, 1996b, 2007). On regional clubs, see also Mason (2020) on the historical role in the international tax regime played by the OECD club of 37 Member States, and the likely disruptive impact of the rise of big emerging market countries.

[55] Complexity can be decomposed into three components: multiplicity (the number of actors and issues), multiplexity (the number and variety of relationships among the actors and issue areas) and dynamism (the changing nature of the international environment over time); see Eden and Nielsen (2021). As multiplicity, multiplexity, and dynamism increase, so too does the complexity of international structural failures and thus also the complexity of international regimes designed to manage these failures.

in strategic behaviors, for example, prisoner's dilemma games (each has an incentive to defect) and beggar-thy-neighbor policies (designed to shift costs to other jurisdictions). The wicked problem of taxing MNEs should therefore be viewed as an inherent structural failure at the international level because neither private nor public actors on their own can ensure socially optimal output levels (Eden and Hampson, 1997). As a result, governance mechanisms such as international regimes are needed to manage these structural failures.

To the best of my knowledge, the first work applying international regime theory to the taxation of multinationals was Eden (1998).[56] The book uses international regimes as a theoretical lens for understanding the international tax cooperation response to the dilemma of taxing MNEs at both the global and regional (in North America) levels. Eden (1998, Chapter 2) develops the concept of the international tax regime, starting with the problem that motivates the regime; i.e., taxing MNEs implies overlapping tax jurisdictions, which causes both efficiency failures and distributional conflicts at the international level that need to be addressed. The goal of the regime is, primarily, the prevention of double taxation, with more recent attention also to under taxation. The regime's components are its principles (e.g., equity, efficiency, neutrality), norms (the prescriptive and proscriptive standards of behavior, as captured in DTTs, such as separate entity, nexus), rules (the tax specifics, both national and DTT, implementing the norms), and procedures (national tax and DTT dispute settlement procedures).

In terms of geographic scope, through the second half of the 20th century, the OECD has acted as an international club with a hegemon (the US) and regime supporters (the European Union and other OECD member states) providing an international public good (the international tax regime). This "coalition of the willing" worked together in an international tax organization (the OECD's Committee on Fiscal Affairs) to help establish a complex web of DTTs. Given the dominant role played by the US and the OECD in the maintenance and formation of the regime, Eden (1997, 1998) concluded that the regime, in effect, was an "OECD club" of like-minded nation states (see also Mason, 2020). [57]

The international tax regime is nested not only by geography but also in terms of issue area. Inside the regime is a transfer pricing regime with its own purpose; i.e., the proper valuation of cross-border related party transactions (Eden, 1998). Its goal is the prevention of abusive transfer pricing; i.e., the manipulation of transfer prices so as to avoid or evade government regulations. The scope of the regime includes all cross-border transactions and activities inside the MNE group. The transfer pricing regime also has four components: principles (equity, efficiency and neutrality), norms (the arm's length standard) [58], rules (transfer pricing methods), and procedures (methods for handling domestic and international transfer pricing disputes).[59]

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[56] The term "international tax regime" is commonly used by authors, often interchangeably with "international tax system", to describe a collection of tax policies in place at one time. The term, as Eden (1997, 1998, 2001, 2009) uses it, is built directly on international relations theory in political science. The closest work on the international tax regime is probably Avi-Yonah (2007). The book's first chapter, titled "Is there an international tax regime?", reports on "yes and no" answers by law professors and argues that the international tax regime does exist. However, the book does not draw on or cite to the international relations literature on international regimes or Eden's work on the international tax regime.

[57] The international tax regime can also be viewed as a nested regime in terms of geography since regional tax regimes exist within the regime, both in North America and the European Union. Eden (1998) demonstrates this argument with an analysis of the international tax regime in North America.

[58] The arm's length standard as it appears in Article 9 of the OECD Model Tax Convention on Associated Enterprises reads: "[where] conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly."

[59] Given that international regime theory clearly distinguishes between principles (e.g., equity, efficiency, neutrality, transparency) and norms (prescribed and proscribed standards of behavior), the correct terminology within the context of the international tax regime and international transfer pricing regime should be the "arm's length standard", not "arm's length principle". However, the two terms have

Viewed in this manner, the transfer pricing regime forms, in effect, a second or lower tier within the international tax regime. The top tier or "umbrella" involves the principles, norms, rules, and procedures designed to address the first two core problems in taxing MNEs: jurisdiction (which government has the right to tax which sources of income) and allocation (how MNE revenues and expenditures should be allocated across countries). The lower tier (the international transfer pricing regime) involves the third problem: valuation (how cross-border related party transactions should be valued), together with some attention to allocating the MNE's common overheads and resources (Eden, 1998).[60]

An underexplored issue area in taxing MNEs, suggested by the literature on international regime complexes, are the interdependencies and spillover effects of interactions among the international tax, trade, investment, and intellectual property regimes. MNEs are core actors in all of these regimes. Changes in the international tax regime (e.g., through the BEPS Pillar One and Two proposals) therefore will have second-round effects on, and likely unintended consequences for, other international regimes. For some work in this area see Eden (1996a, 1996b), Alschner (2019), and UNCTAD (2015, 2018, 2021).[61]

5.4 THE INTERNATIONAL TAX REGIME IN THE 21ST CENTURY: PREVENTING UNDER TAXATION

A policy shift occurred around the millennium as the OECD became concerned with the problem of under taxation of MNE profits, caused by tax avoidance and evasion.[62] The OECD's 1998 Harmful Tax Competition project, together with the BEPS initiative launched in 2012, marked a change in the focus of the international tax regime from double taxation to under taxation of MNE profits.

Mason (2020) presents perhaps the best and most useful analysis of how and why the regime shifted during this period. She argues that the 2008 recession was the tipping point that "precipitated an unprecedented international project to curb corporate tax dodging." The tipping point rested on multiple failures by the existing regime to deter abusive tax avoidance and evasion. There were several antecedences: the rise of emerging markets in the 1990s, the growing number of MNEs from developing countries, the emergence of the digital economy, and the growing influence of NGOs and whistle blowers (see, e.g., Vernon, 1998; Baistrocchi, 2013; Eden, 2016; and Mason, 2020).

Tax havens and offshore financial hubs have clearly been a major part of the problem (Palan, 1998, 2002). The international tax regime has been weakened by renegade states, i.e., abusive tax havens and offshore financial centers that have chosen not to comply with the practices of the majority of the regime's members; these renegades can be either insiders or outsiders to the tax regime (Eden, 1998; Kudrle and Eden, 2003; Eden and Kudrle, 2005).

been used interchangeably by tax professionals for many years, albeit "standard" is used more frequently in North America (following the terminology in IRS Section 482) and "principle" in Europe (following the OECD Transfer Pricing Guidelines). Given the confusion, to stand on a point of principle seems rather pointless; in my own work, I have therefore given up and use both.

[60] In later work on diffusion of international norms across countries, Eden (2000) and Eden, Dacin and Wan (2001) explored why and how the arm's length standard, the core norm in the international transfer pricing regime, diffused from the United States first to Canada and then later to Mexico, creating the North American transfer pricing regime.

[61] On the harmonization of tax and investment policies in North America see Eden (1996a,b).

[62] Mason (2019) refers to this shift as a change in the OECD's goals from "no-double-taxation" (companies should not pay tax twice on the same income) to "full taxation" (income should not escape tax). See also (2020) and Christians (2017) for analyses of antecedents to the shift in regime focus.

A new literature on global tax governance, focused on financial flows (e.g., money laundering, illicit financial flows, offshore conduits), also emerged around this time period.[63] This literature has a strong focus on the costs of social injustice and income inequality, the drain of resources from the South, and the need for global tax governance. The role of the OECD as the lead international organization at the heart of the international tax regime has also been questioned; the OECD's response in the second round of BEPS negotiations has been to broaden the decision-making group by including non-OECD Member States from the Group of Twenty (G20) and the Inclusive Framework.[64]

International NGOs, in particular, the Tax Justice Network (https://taxjustice.net/) formed in 2003, now 20 years ago, have been important voices in this area, reflecting the rise of a new epistemic community in tax governance (Christians, 2021; Christensen, 2021). Academic research on international tax avoidance has blossomed also, for example, see recent books by Reuter (2012), Pogge and Mehta (2016), Dietsch and Rixen (2016), Durst (2019), and Unger, Rossel and Ferwerda (2021).

A key theme of the global tax governance literature has been draining development, i.e., that MNEs have engaged in tax evasion, abusive tax avoidance, and aggressive transfer pricing, which have shifted profits from the South into tax havens and investment hubs. Wildly differing estimates exist of the extent of this profit shifting. Reliable estimates of the extent of profit shifting can be found in Bolwijn, Casella and Rigo (2018), Bradbury, Hanappi and Moore (2018), Asen (2021), Dharmapala (2021), and Dyreng and Hanlon (2021). Eden (2012, 2019b) also examines the empirical evidence on the size and direction of abusive transfer pricing, finding that the reported amounts are likely overestimates.

A second theme running through the global tax governance literature has been that the arm's length standard has failed and must be replaced by a combination of unitary taxation and global formulary apportionment (GFA).[65] Drawing on the concept of a nested international tax regime, the arm's length standard is not the problem, and international tax professionals and policymakers "should not shoot the messenger" or replace it with GFA (Eden, 2016b, 2019a, 2020a, 2021a,b). The appropriate solution is to address the underlying causes, i.e., fix the holes in the upper-tier regime that provide opportunities for exploitation through aggressive tax avoidance, evasion and/or fraudulent behaviors. The first round of BEPS reforms were important movements in this direction and, if fully implemented and strengthened, would go a long way to removing the loopholes that still remain in the international tax regime. [66]

Part of the problem can be traced to the differing views among governments, MNEs and NGOs as to the legality and ethics of tax avoidance; like fairness, ethics often varies with the beholder (Eden and Smith, 2022).[67] These differences arise not only at the upper-tier level of the international tax regime (i.e., in terms of jurisdictional and allocational issues such nexus, residence and source, separate entities) but also in the nested transfer pricing regime (i.e.,

[63] See, for example, Rixen (2011), Dietsch and Rixen (2016), Porter and Ronit (2018), Christensen and Hearson (2019), Phillips, Petersen and Palan (2021), and Hearson, Christensen and Randriamanalina (2022).

[64] For a critical assessment of the OECD's fairness-based narratives and broadening of the BEPS decision-making group, see Plekhanova (2022) and Okanga and Latif (2021). On the legitimacy of the OECD making soft law for developing countries see Mosquera Valderrama (2015) and Brosens and Bossuyt (2020).

[65] See, for example, Clausing and Avi-Yonah (2007), Picciotto (2012) and McGaughey and Raimondos (2019).

[66] One of the few remaining big loopholes in the international tax regime are the US Treasury Regulations 301.770-1 through – 3 (the "check the box" regulations), which have enabled US MNEs to avoid paying taxes on their Subpart F (controlled foreign corporation) offshore profits and engage in other forms of tax dodging. See The Tax Law Center (2022).

[67] For a recent discussion of the "fairness" of the taxes on MNE profits see Devereux and Vella (2022).

valuation issues involving application of the arm's length standard). What is – and is not - "abusive" or "aggressive" tax avoidance or transfer pricing is difficult to define, and the views vary widely across different stakeholders (e.g., governments, MNEs, NGOs, academics, the general public).

The fuzziness of the definitions of aggressive tax avoidance and abusive transfer pricing led Eden and Smith (2022) to explore the legality and ethics of tax avoidance and transfer pricing. Using the three-cornered lens of the fraud triangle (motivation, opportunity, and rationalization), they concluded that the solution to abusive international tax behaviors was deterring the antecedents of illegal and/or unethical behaviors; i.e., by focusing on the motivations, opportunities, and rationalization used by MNEs to engage (and by many nation states to foster) aggressive tax avoidance and abusive transfer pricing. Examples of recommended policies include extension of the BEPS Multilateral Tax Instrument and CBCR reporting standards, greater transparency and information exchange, and the creation of a global hypernorm within the UN Global Compact focused specifically on abusive tax avoidance and evasion.[68]

A few insights from the international tax regime and global tax governance literature are the following:

- *The goals of international tax cooperation have changed:* In the 20th century, international tax cooperation involved OECD Member States negotiating double tax treaties among themselves, with the goal of reducing double taxation of MNE profits. These were examples of "win-wins" in MNE-state relations. Since the millennium, the goal of international tax cooperation has shifted to preventing tax avoidance and evasion, bringing MNEs and nation states into conflict, creating additional conflicts across countries.
- *Recent attempts at international tax cooperation have moved away from the international tax regime's core principles and norms:* The OECD's Pillars One and Two project has moved away from the core principles (residence and source, first crack) and norms (arm's length standard). Proposals for global tax governance are now often accompanied by recommendations for adoption of unitary taxation and formulary apportionment. Both trends are worrisome and problematic.
- *Equity and fairness are more important than before but remain fuzzy principles*: The shift in regime goals raised the importance of equity or fairness as a tax principle and an increased focus on distributional issues (sharing of the "tax base pie" of MNE global profits among nation states. Questions of equity and fairness can be fuzzy, especially at the international level. Often, "where one stands depends on where one sits" since fairness involve normative judgements. Perceptions of unfairness and mistreatment are powerful motivators for political action.
- *Where I see legal and ethical, you see illegal and unethical:* The views of MNEs, nation states, and NGOs on what is aggressive tax avoidance and evasion (including abusive transfer pricing) differ widely. This wide gap in perceptions encourages stereotyping, witch hunts, and partisan positioning, making "win-win" international tax cooperation efforts impossible.

5.5 SUMMARY

An international tax regime has existed for several decades, managed primarily by a coalition of willing OECD Member States through a network of DTTs, for the purpose of preventing double taxation. The focus of the international tax regime has shifted to prevention of under taxation,

[68] See also Eden (2016b), Eden, Srinivasan and Lalapet (2019) and Eden and Smith (2022).

fueled by evidence of significant profit shifting through illegal financial flows, aggressive tax avoidance, and abusive transfer pricing. The OECD's policy attempts to respond to these pressures through the BEPS process is changing the international tax regime in significant ways, with impacts on overlapping regimes in trade, investment, services, and intellectual property. These changes are creating uncertainty for MNEs and nation states and the possibility of more distributional conflicts, both MNE-state and state-to-state. Developing countries and NGOs are responding with calls for a more inclusive international tax regime – led by the United Nations - that pays greater attention to the needs of non-OECD countries. (For a comparison of the OECD and UN processes, see Chapter 5 in UNCTAD (2024)).

However, large changes in international regimes usually require a tipping point and the cooperation of a like-minded club of nation states to lead the change. The role played by the African Group, in leading the UN process for international tax cooperation, is an important example of the bargaining power that groups of like-minded states can exercise international governance. However, historical attempts at formalizing and strengthening the UN's role in international tax cooperation have been difficult; thus, the way ahead for international tax cooperation through the United Nations is going to be challenging, especially since the United States withdraw from the process in early 2025. While the remaining countries should be able to move faster without the US raising objections, both the implementation and the success of a FCITC that does not have the active participation of the United States could be problematic.

6 DISCUSSION AND POLICY RECOMMENDATIONS

6.1 INSIGHTS FROM THE THREE LENSES

UN Resolution 77/244 reaffirmed the UN's commitment to international tax cooperation but with the modification that not only the effectiveness but also the inclusiveness of international tax cooperation should be the focus going forward. Given that the goal of the FCITC process is to strengthen the inclusiveness and effectiveness of international tax cooperation, some suggestions for the structure and content of the consultative process, drawing from the three lenses explored in these comments, are the following.

First, taxing multinationals is a wicked problem that must be managed and cannot be solved. The best approach is evidence-based policy making that pays close attention to the political problems involved. A formal commitment to an evidence-based policymaking process, one that pays attention to the wicked problem of taxing MNEs, is a suggested approach to addressing Resolution 77/244.

Second, PPF cautions that the three decision-making tasks (architecture, engineering, and administration) involve tradeoffs. The "first best" goal of achieving the principles of a good tax system must be tempered with: (1) recognition of the sovereignty of nation states, (2) the need to take into account the differing economic and social circumstances across countries, especially the least developed, and (3) the wicked problem created for nation states of the global reach and mobility of multinational enterprises. Public finance must "fit" the real world and facts and circumstances do matter. Balancing these tradeoffs is best achieved through international tax cooperation, not international tax competition. In addressing Resolution 77/244, the United Nations should focus on the tax architecture and engineering tasks; commit to strengthening international tax cooperation; and take into account the tradeoffs involved in making public finance in the real world.

The consultative process should focus on international tax architecture and engineering, rather

than administration. As Shoup (1991) explained, these are the two areas where a tax mission can be most useful. A complex (and often criticized as ineffective and non-inclusive) international tax regime already exists, with its own organizations and actors. As a result, any changes introduced by the United Nations should build on, and not simply add to, the complexity of the existing international tax regime.

Third, an international tax regime has existed for several decades, managed primarily by a coalition of willing OECD Member States through a network of double tax treaties, for the purpose of preventing double taxation. The focus of the international tax regime, especially since the 2008-2009 global financial crisis, has shifted to prevention of under taxation, fueled by evidence of significant profit shifting. The OECD's policy attempts to respond to these pressures through the BEPS process is changing the international tax regime in significant ways (with impacts on related regimes). These changes are creating uncertainty for MNEs and nation states and the possibility of more distributional conflicts (MNE-state and state-to-state). Developing countries and NGOs are responding with calls for a more inclusive international tax regime – led by the United Nations - that pays greater attention to the needs of non-OECD countries.

However, large changes in international regimes usually require a tipping point and the cooperation of a like-minded club of nation states to lead the change. With the United States leaving the UN FCITC process – walking away from the table – it comes even more important for the European Union to provide leadership and resources. Also, small open OECD member states, which historically have played (and continue to have) important roles on the UN Tax Committee, such as the Scandinavian countries, Canada and Australia, can provide important sources of multilateral tax diplomacy, which will be needed if the FCITIC is to succeed (Lennard, 2025). Greater resource mobilization in developing countries will need both domestic policy changes in developing countries and greater resource mobilization through the FCITC (Choudhury, 2024; UNCTAD, 2025).

6.2 POLICY RECOMMENDATIONS

Drawing on these insights from these three lenses on international tax cooperation, I make the following recommendations for the UN FCITC.

6.2.1 Objectives and Principles of the UN FCITC

I recommend the following as the FCITC's overarching objective:

> *"The objective of the FCITC is to strengthen international tax cooperation among Member States in terms of its inclusiveness and effectiveness, in both substance and process, while respecting where feasible national tax sovereignty."*

My proposed objective inserts the phase "where feasible"[69] as a qualifier to national sovereignty. My reason is that unrestricted tax sovereignty by one or more countries could have large negative spillovers on other countries and impair the FCITC's effectiveness and inclusivity. Thus, some losses in tax sovereignty may be justified by gains in FCITC effectiveness and inclusivity.

The FCITC should provide a clear list, with definitions, of the fundamental principles that would satisfy its objective or objectives. Decomposing my summary of the FCITC's objectives, the principles should:

[69] "Feasible" in the sense of being possible to accomplish in a realistic and practical manner, given existing facts and circumstances.

- Strengthen inclusiveness in (i) substance and (ii) process
- Strengthen effectiveness in (i) substance and (ii) process
- Respect, where feasible, national tax sovereignty.

Effectiveness and inclusiveness in substance and process should be defined and these definitions should embody the FCITC's principles and be used to assess its success.

The prescriptive school of public finance can offer useful advice to selection of principles because it takes a hands-on approach committed to applying theory to real world problems that have real-world constraints. The prescriptive school argues that tax architecture and tax engineering should select taxes appropriate for a country's economic and cultural conditions and institutions. As a result, the tax policy mix and tax rates will differ across countries.

At the international level, the objective of international tax cooperation should reflect tax principles such as international and inter-nation equity, efficiency[70] and/or neutrality, transparency, and administrative feasibility. Policymakers must recognize the difficulties of putting principles into practice, given they are likely to conflict; opt for policy solutions that can be implemented in a world of mobile capital; and take account of differences across countries in their economic and social conditions and institutions.[71]

This last point is especially helpful in terms of creating a FCITC that is both inclusive and effective but also respects national tax sovereignty. Differences across countries matter and should be taken into account. My recommendations, building on WTO practices, are:

- The FCITC should include a "Special and Differential Treatment" section, where the least developed countries that sign the FCITC are given a longer time period, with a fixed endpoint, to meet their commitments.[72]
- Similar to preferential trading agreements, coalitions of like-minded signatories should be permitted to move faster, deeper and broader than FCITC commitments.
- Member States that refuse to meet FCITC commitments should be excluded from the FCITC and its benefits. [73]

6.2.2 The transparency norm

My second recommendation is that the FCITC should include transparency norms for MNEs and governments in the FCITC. Transparency is a fundamental "building block" of a good tax system. More transparency increases the likelihood of achieving other tax principles because it encourages compliance. Transparency "shines the light in the dark corners", identifying and discouraging illegal practices. Transparency builds trust, which fosters trade, FDI, and economic

[70] Tax efficiency and tax neutrality are often viewed as synonyms and used interchangeably. I find it helpful, however, to differentiate between the two principles. I define the neutrality principle as implying that taxes should be neutral and not interfere with private/economic decisions. The efficiency principle, on the other hand, permits taxes to be used to encourage or discourage particular activities where there are differences between private and social benefits or costs (e.g., provision of public goods, discouraging negative spillovers). In sum, the neutrality principle focuses minimizing the impact of taxes on economic decisions; whereas the efficiency principle focuses on optimizing the allocation of economic resources. As a result, the efficiency principle is more interventionist than the neutrality principle.

[71] While the principles of international equity, efficiency and neutrality are applied from the perspective of the investor in the home (residence) country, the inter-nation equity, efficiency and neutrality principles instead take the perspective of the investment made in the host (source) country. The literature on international versus inter-nation equity, efficiency and neutrality is voluminous; suffice it to say that both cannot be achieved simultaneously except in a world where every country had the same tax mix, rates and bases. See Musgrave (1991), Brooks (2009) and Ozai (2020).

[72] See Islam (2021) on the benefits of WTO special and differential treatment rules but the need for limit the benefits in terms of membership, scope, and time period.

[73] See, for example, the analysis of tax havens as "renegade states" in the international tax regime, and appropriate responses, in Eden and Kudrle (2005).

development.

MNEs should provide greater transparency on their ownership, activities and finances. This would also benefit substantive area #2 (harmful tax practices and tax-related illicit financial flows). Governments should also provide transparency in terms of their governance and management of national tax systems. Greater transparency would discourage government corruption, build trust in tax systems, enhance tax morale, encourage inward FDI, discourage illicit outflows, and increase domestic revenues.[74]

The FCITC should adopt the following transparency norms for MNEs and governments:

- Multilateral automatic exchange of information among tax authorities of financial information including financial accounts and other asset classes.[75]
- A UN public registry of beneficial ownership information of companies, trusts, partnerships, and other legal entities.
- Public reporting [76] by MNEs at the company level on a country-by-country basis, including financial and tax data, economic activities, and intra-group transactions.
- A UN public registry of national tax policies and practices, with attention to harmful tax practices, secrecy provisions, and low or no effective tax rates.

6.2.3 Harmful tax practices and tax-related illicit financial flows

My third recommendation is that an early protocol for the FCITC should be removing harmful tax practices and tax-related international financial flows. Aggressive tax practices by MNEs in the globalized digital economy have encouraged large financial flows – legal and illicit – into tax havens and investment hubs. Transfer pricing has often been blamed as the primary cause of BEPS activities, with recommendations that the arm's length principle (ALP) be replaced with global formulary apportionment (GFA). "Anti-ALP" views have had some success; e.g., OECD Pillar One Amount A would replace the ALP with GFA to allocate some profits of the largest MNEs to market jurisdictions.[77]

However, as I have argued elsewhere, blaming profit shifting on transfer pricing is akin to "shooting the messenger." [78] Transfer mispricing is a symptom; the cause lies elsewhere. The problem is not transfer pricing but loopholes in the international tax regime, often placed there by governments, that encourage BEPS behaviors.[79] The solution is to fix the loopholes, not discard the ALP or replace it with the unprincipled method of GFA. The FCITC should re-commit to:

- basic tax principles of residence, source, separate entity, and ALP;
- ensuring that profits are declared where MNE activities take place and value is created; and

[74] https://www.worldbank.org/en/programs/the-global-tax-program.

[75] In addition, I recommend that automatic exchange should be implemented gradually for tax jurisdictions with limited capacities, taking account of "special and differential treatment."

[76] https://www.globalreporting.org/standards/standards-development/topic-standard-for-tax/

[77] For a detailed analysis of the problems with Amount A see Eden (2020a, 2021a,b, 2022).

[78] See Eden (2020, 2019, and 2016) for more details.

[79] Four factors that encourage illegal and fraudulent tax behaviors by MNEs: motivation, opportunity, capability, and rationalization. See Eden and Smith (2022) on the fraud triangle as applied to tax avoidance and transfer pricing.

- source countries having "first crack" rights to MNE profits using CIT and withholding taxes.[80]

I do not believe there is anything fundamentally wrong with the residence and source principles; however, comparisons of the OECD and UN model tax conventions[81] point to the greater importance of source-based taxes to developing countries, in terms of the corporate income tax (CIT) and withholding taxes. My recommendations, therefore, are to (i) build on the MLI, (ii) make a "back to basics" renewed commitment to international tax principles, and (iii) broaden UN protocols to cover tax.

The MLI, although not an unqualified success, still provides a useful model for multilateral tax cooperation.[82] The FCITC should also take a multilateral, flexible, "fast track" approach that:

- enables revising multiple DTTs at the same time;
- adds or revises clauses that benefit developing countries; and
- encourages DTTs between developed and developing countries.

Existing UN protocols could also be expanded to cover BEPS activities. For example, the UN Global Compact[83] consists of 10 corporate sustainability principles. Principle #10 is anti-corruption: "Businesses should work against corruption in all its forms, including extortion and bribery." I propose revising its last clause as: "…, including extortion, bribery, abusive tax practices, and tax-related illicit financial flows." MNEs that sign the Global Compact would then commit to avoiding abusive and illicit tax practices.

6.2.4 Taxing MNE profits in the Digital Economy

A core problem that still needs attention, despite Pillars One and Two, is BEPS Action Item 1: Taxing the Digital Economy.[84] My fourth recommendation focuses on the digital economy, where I have four policy suggestions.

First, governments need a 21st century "fit for purpose" definition of the permanent establishment (PE), one that provides nexus to countries where digital activities take place so their governments can levy CITs and/or withholding taxes on those profits. In my view, the problem is how to determine when digital activities are sufficiently permanent in a host country that governments and MNEs agree that the activities constitute inward FDI, and not trade flows. As an example, should digital flows from country A to country B be classified as B's imports (so the appropriate tax by B is a customs duty or import services tax) or as inputs to the production process (a VAT) or as inward FDI (a PE with nexus for CIT and withholding taxes)? ICSID's definition of FDI (the Salini test) may be helpful here, as Scott Wilkie and I have argued elsewhere.[85]

Second, a PE definition that covers digital FDI would also help with DSTs and taxing income from cross-border digital services. Even if Pillar One Amount A were adopted, it is highly unlikely that

[80] Unlike the GLOBE proposal, which assigned first crack rights to the residence country under the IIR, and only belatedly permitted source countries to go first with a much-restricted QDMTT.

[81] See, for example, Lennard (2009) and Eyitayo-Oyesode (2020).

[82] On lessons from the MLI, see Avi-Yonah and Xu (2018), Bravo (2018), and Matabudul (2023).

[83] https://unglobalcompact.org/what-is-gc/mission/principles.

[84] See Eden, Srinivasan and Lalapet (2019) and Srinivasan, Eden and Lalapet (2019) for more details on the digital economy and implications for international taxation and transfer pricing.

[85] Wilkie and Eden (2023) suggest using the ICSID criteria (the Salini test) for inward FDI as the basis for determining when digital inflows shift from trade flows (taxed as goods, services, intangibles) to FDI flows (taxed on a net profit basis with a CIT).

DSTs – whether digital sales taxes or digital services taxes – will wither away. DSTs are a relatively easy and attractive source of tax revenue, especially for countries that have difficulty collecting income taxes. A benefit of creating a PE definition that covers digital flows and activities would be easier separation of:

- Digital FDI: Firms have a PE and nexus in the source country so pay CIT and withholding taxes.
- Digital trade: Firms export digital goods and services, where a tariff, DST or VAT on imports is the appropriate revenue-raising policy by the market jurisdiction.

International tax cooperation for the FDI group belongs to the domain of the FCITC. Tax cooperation for the trade group typically belongs at the WTO under the GATT (digital goods and electronic transmissions). MNE cross-border services (e.g., automated digital services) may fall under both the GATS and the FCITC since services are often intertwined with FDI.

Separating FDI (where residence and source principles apply) from international trade (where origin and destination principles apply) would be much easier with a PE definition that defines what is and what is not digital FDI.

Third, taxing the digital economy also requires the development of transfer pricing guidelines for 21st century firms and activities. UN (2021) should include a chapter on "Transfer Pricing of Digital Transactions." [86] The chapter should cover digital business models (e.g., digital platforms, automated digital services, Internet of Things, 3D printing, etc.), accurate delineation of the digital transaction or activity, comparability analysis, and application of transfer pricing methods.

Lastly, the UN should also include a firm commitment to the arm's length principle as the core principle for pricing related party transactions and allocating MNE profits among countries.

7 CONCLUSIONS

Given the great differences in economic and social circumstances across countries, the shift in the balance of economic power to big emerging markets, and the twin global challenges of coping with the devastating socio-economic impacts of the COVID-19 pandemic (especially for developing countries) and moving forward on the 2030 Agenda of the SDGs, the United Nations is the only intergovernmental organization where all voices can be heard.

The road ahead is difficult. Prior attempts at formalizing and strengthening the UN's role in the international tax regime have not been successful. The road ahead is a difficult one. The cautionary words at the end of Vernon's book, *In the Hurricane's Eye: The Troubled Prospects of Multinational Enterprises*, are as appropriate today as they were more than 25 years ago (1998: 219):

> *"… a prolonged struggle between nations and enterprises runs the risk of reducing the effectiveness of both, leaving them distracted and bruised as they group toward a new equilibrium. To shorten that struggle and reduce its costs will demand an extraordinary measure of imagination and restraint from leaders on both sides of the business-govern ment divide."*

The appropriate response for the United Nations – and the European Union also - is to be a

[86] See Eden (2023) and Eden, Srinivasan and Lalapet (2019) on taxing the digital economy. For an example of applying the existing transfer pricing methods to the digital economy, see the case study of the Internet of Things in Srinivasan, Lalapet and Eden (2019).

realist – in what is becoming a realist world - adjust the sails and move forward.

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