

## Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation

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### Abstract

The architecture of international taxation at present is fragmented among multiple institutions. The UN Tax Committee, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and the Global Forum on Transparency and Exchange of Information for Tax Purposes are some of the key institutions which set multiple and overlapping international tax standards. The lack of a genuinely global international tax body has long been a lacunae in the international economic system and a disadvantage for developing countries, who are unable to participate in international tax standard setting as full and equal participants. This has been borne out most recently by the Two Pillar Solution for taxing the digital economy that has come from the OECD/G20 Inclusive Framework. The G-77's renewed demand for a global tax body shows the issue continues to remain a priority for developing countries.

This Policy Brief provides a way for bringing the existing plethora of institutions under unified, universal and democratic control through a UN Framework Convention on Tax Cooperation (UN FCTC). This idea builds on the long-standing idea of a UN Tax Convention, which has also been recommended by the UN FACTI Panel. A UN FCTC would function similarly to the UN Framework Convention on Climate Change (UN FCCC), through a Conference of Parties (COP) which would give the existing institutions such as the UN Tax Committee and Inclusive Framework mandates to work on. In this regard, it would replace the narrow mandates of the OECD and G20 with mandates coming from all the Parties to the UN FCTC, which could be all countries, both developed and developing. A UN FCTC thus provides a practical and realistic way forward for a genuinely universal, intergovernmental framework for international tax rule making under the auspices of the United Nations.

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*L'architecture de la fiscalité internationale est actuellement fragmentée autour de multiples institutions. Le Comité fiscal des Nations Unies, le Cadre Inclusif OCDE/G20 sur l'érosion de la base et le transfert de bénéficiaires (BEPS) et le Forum Mondial sur la Transparence et l'Echange d'Informations à des fins fiscales sont quelques-unes des principales institutions qui fixent de multiples normes fiscales internationales qui se chevauchent. L'absence d'un véritable organisme fiscal international au niveau mondial constitue depuis longtemps une lacune dans le système économique international et un désavantage pour les pays en développement, qui ne sont pas en mesure de participer pleinement et à égalité, dans l'élaboration des normes fiscales internationales. La solution à deux piliers pour la taxation de l'économie numérique, issue du cadre inclusif OCDE/G20, en est la preuve la plus récente. La demande renouvelée du G-77 en faveur d'un organisme fiscal mondial montre que cette question reste une priorité pour les pays en développement.*

*Ce rapport sur les politiques propose un moyen de placer la pléthore d'institutions existantes sous un contrôle unifié, universel et démocratique par le biais d'une Convention-Cadre des Nations Unies sur la Coopération Fiscale (CCNUCF). Cette idée s'appuie sur l'idée déjà ancienne d'une convention fiscale des Nations Unies, qui a également été recommandée par le FACTI, groupe de travail des Nations Unies. La CCNUCF fonctionnera de manière similaire à la Convention-Cadre des Nations Unies sur les Changements Climatiques (CCNUCC), par le biais d'une Conférence des Parties (CdP) qui donnera aux institutions existantes, telles que le Comité Fiscal des Nations Unies et le Cadre Inclusif, des mandats sur lesquels travailler. À cet égard, elle remplacera les mandats étroits de l'OCDE et du G20 par des mandats émanant de toutes les parties à la CCNUCF, qui pourraient être tous les pays, tant développés qu'en développement. Une CCNUCF constitue donc une solution pratique et réaliste pour la mise en place d'un cadre intergouvernemental véritablement universel pour l'élaboration de règles fiscales internationales sous les auspices des Nations Unies.*

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*La arquitectura de la fiscalidad internacional en la actualidad está fragmentada entre múltiples instituciones. El Comité Fiscal de la ONU, el Marco Inclusivo de la OCDE/G20 sobre la Erosión de la Base y el Traslado de Beneficios (BEPS) y el Foro Global sobre Transparencia e Intercambio de Información con Fines Fiscales son algunas de las instituciones clave que establecen normas fiscales internacionales múltiples y superpuestas. La falta de un organismo fiscal internacional verdaderamente global ha sido durante mucho tiempo una laguna en el sistema económico internacional y una desventaja para los países en desarrollo, que no pueden participar en la definición de normas tributarias internacionales como participantes de pleno derecho. Esto ha sido confirmado recientemente por la solución de los Dos Pilares para establecer tributos a la economía digital que ha surgido del Marco Inclusivo de la OCDE/G20. La renovada demanda del G-77 de un organismo de fiscalidad mundial muestra que la cuestión sigue siendo una prioridad para los países en desarrollo.*

*Este informe sobre políticas ofrece una forma de poner la enorme cantidad de instituciones existentes bajo un control unificado, universal y democrático a través de una Convención Marco de la ONU sobre Cooperación Tributaria (CMCT de la ONU). Esta idea se basa en la ya antigua idea de una Convención Tributaria de la ONU, que también ha sido recomendada por el Grupo FACTI de la ONU. Un CMCT de la ONU funcionaría de forma similar a la Convención Marco de las Naciones Unidas sobre el Cambio Climático (CMNUCC), a través de una Conferencia de las Partes (COP) que daría a las instituciones existentes, como el Comité de Cooperación en Materia Tributaria de la ONU y el Marco Inclusivo, mandatos para trabajar. En este sentido, sustituiría los estrechos mandatos de la OCDE y el G20 por mandatos procedentes de todas las Partes del CMCT de la ONU, que incluiría todos los países, tanto desarrollados como en desarrollo. Un CMCT de la ONU ofrece, por tanto, un camino práctico y realista hacia un marco intergubernamental genuinamente universal para la elaboración de normas tributarias internacionales bajo los auspicios de las Naciones Unidas.*

## Introduction

The negotiations taking place in the Inclusive Framework (IF) on Base Erosion and Profit Shifting (BEPS) on addressing the challenges of the digitalized economy are the most important attempt to reform international taxation in a century. The very fundamentals of international taxation have been revisited and for the first time in history taxing rights are being allocated through a global multilateral treaty. The proposals that have emerged for a Two Pillar solution have broken new ground in several aspects of international taxation. However, they also have significant defects<sup>1</sup> and limitations,<sup>2</sup> many of which are due to the domination of the negotiations from the start by the rich capital-exporting countries.

A key factor has been the institutional structure where this negotiation has taken place. The project on BEPS was devised by the Organisation for Economic Co-operation and Development (OECD), but expanded to all Group of Twenty (G20) countries, to accommodate influential non-OECD states in 2013. Subsequently, the IF on BEPS was created and opened to all jurisdictions in 2016, on condition that they pay a fee and commit to implementing the four minimum standards agreed to in the previous phase of the BEPS project. This has greatly expanded the architecture of international tax governance, and despite many impediments developing countries have begun to formulate some clear and cogent proposals. However, the IF's mandate and membership are limited, and it lacks broad political accountability and legitimacy. It reports only to the OECD and G20 countries, and its Secretariat, which has played an increasingly powerful role, is provided by the OECD. Although the current negotiations are drawing to a close, it seems likely that the IF will maintain a continuing role.

In this context, it is necessary to review again the architecture of international tax cooperation. There are

at present a variety of different bodies, including the United Nations Tax Committee, the OECD and the Global Forum on Transparency and Exchange of Information for Tax Purposes, each with limited mandates and different configurations of membership, resulting in a somewhat haphazard set of overlapping international standards. This is unhelpful in itself and runs contrary to the global agreement in 2015 that “international tax cooperation should be universal in approach and scope and should fully take into account the different needs and capacities of all countries, in particular least developed countries, landlocked developing countries, small island developing States and African countries.”<sup>3</sup>

To reduce institutional proliferation, it is necessary to find ways to streamline the system, as well as ensuring that all activities have universal participation, sound political legitimacy and a broad mandate. The aim is to create an overarching framework that would be both more equitable and more effective than the plethora of ad-hoc institutions with differing mandates that exist today. This Policy Brief charts a way forward, building on the United Nations (UN) High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel)'s recommendations for a UN Tax Convention and a global tax body.<sup>4</sup>

To streamline the existing architecture, we suggest that the best way forward would be the negotiation of a UN Framework Convention on Tax Cooperation (UN FCTC) which could provide an umbrella for existing activities and international agreements, while enabling a more inclusive and effective creation of new measures and initiatives.

The Brief begins with a historical overview of the evolution of international tax governance, from the late 1990s to the present day. It then outlines some of the details of the structure and function of a UN FCTC, accompanied by suggestions on the political strategy that can be adopted by proponents of an initiative for a universal, intergovern-

mental tax authority.

## The Effort to Universalize and Democratize International Tax Governance

The need to reform the institutional governance of international tax has become increasingly evident. It is already twenty years since the 2001 report of the UN High-level Panel on Financing for Development (the Zedillo report) recommended that “the international community should consider the potential benefits of an International Tax Organization”.<sup>5</sup> The recommendation was made because there did not exist then, as there does not exist now, a single, genuinely global, International Tax Organization (ITO). The ITO was envisaged to, *inter alia*, “compile statistics, identify trends and problems, present reports, provide technical assistance and develop international norms for tax policy and administration.” Other proposed functions were to restrain tax competition, and even to develop procedures for arbitration to resolve tax disputes between countries.

In parallel, the OECD had launched an initiative in 1998 to combat harmful tax practices, backed by the Group of Seven (G7) world leaders. This resulted in the creation of the Global Forum on Transparency and Exchange of Information for Tax Purposes, which was revamped in 2009. With the creation of the Common Reporting Standard in 2014, the Global Forum has become the main body for exchange of tax information, while the OECD’s Forum on Tax Administration, created in 2002, plays a wider role, but with a smaller membership.

The proposal for a global body met with powerful opposition, however, and resulted only in the upgrading of the Ad Hoc Group of Experts into a Committee of Experts on International Cooperation in Tax Matters (UNTC), as a subsidiary body of the UN Economic and Social Council (ECOSOC).<sup>6</sup> The developing world, through the Group of 77 (G77) and civil society organizations (CSOs), has since then continued to battle for the further upgrading of the UNTC, aiming at the creation of a full global intergovernmental tax body. This demand has remained active over the decades till this day because the essential problem still remains, although there have been some significant institutional changes and innovations. Hence, efforts to solve the problem must take into account the historical evolution, to learn the lessons from the past and point the right way forward into the future.

### Attempts to upgrade the UN Tax Committee

In 2010, Yemen submitted a draft resolution to the ECOSOC (E/2010/L.10)<sup>7</sup> on behalf of the G77 that called for upgrading the UNTC into an intergovernmental subsidiary body of ECOSOC. The Committee was to consist of 47 States to be elected by ECOSOC from UN Member States with four-year terms. The proposed geographical distribution was (a) thirteen members from African States; (b) thirteen members from

Asian States; (c) eight members from Latin American and Caribbean States; (d) six members from Eastern European States; and (e) seven members from Western European and other States.

The proposed mandate of the body was mainly to (a) make recommendations to the ECOSOC on issues concerning international cooperation in tax matters, including, *inter alia*, the formulation of norms and policies and (b) review and update UN manuals and model conventions on international tax issues. The BEPS project, launched by the OECD not long after in 2012, had a much more ambitious agenda for re-examination of international tax rules.

The budget estimate for the Committee based on 2010 prices and various assumptions, worked out to approximately USD 2.4 million per year for three annual sessions, a relatively small cost for such a body.<sup>8</sup>

The resolution did not go through, but a classical bureaucratic compromise was agreed – further examination and analysis. ECOSOC resolution 2010/33<sup>9</sup> requested the UN Secretary-General (UN SG) to produce a report “examining the strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts on International Cooperation in Tax Matters.” This began a process where a series of reports were published by the UN SG. The ensuing debates remain relevant to this day and provide rich material valuable to any researcher interested in the governance of international taxation.

The report<sup>10</sup> (E/2011/76), published the next year in March 2011, provided three options for strengthening international tax governance: (a) strengthening the existing UNTC; (b) upgrading the UNTC into an intergovernmental commission serving as a subsidiary body of ECOSOC; (c) creating an intergovernmental commission with the UNTC as a subsidiary body of that commission.

### Criticisms of a UN intergovernmental tax body

Each option was discussed in detail, with the pros and cons of each. Of particular importance were the views expressed by Member States. Opponents of the proposal to upgrade the UNTC raised relevant points which continue to be made today. In summary, these are as follows:

1. The existing UNTC is not utilized to its full potential and more can be done within the present structure. Upgrading it would not necessarily enhance its effectiveness.
2. It would duplicate the work of other international organizations (while not stated explicitly, reference was clearly to the OECD).
3. It would create multiple and inconsistent international standards in the area of international taxation.
4. Governments would have to bear additional resource requirements for international tax issues.
5. Lack of a clear cost-benefit analysis of a conversion

as well as the need for clarification as to which specific element of the Committee's mandate could not be met, owing to deficiencies in its current structure.

6. The "politicization" of the body would be detrimental, as countries would promote their "narrow" interests.
7. Decisions of such a body would be legally binding and affect tax sovereignty.

In addition to these views expressed in the 2011 report, three further criticisms that are frequently made are worth mentioning:

1. Difficulty in replicating OECD secretariat capacity.
2. It would be redundant and not change the dynamics as it would involve the same set of countries engaging with the same interests, and hence produce the same outcomes.
3. It would be a distraction from and undermine existing negotiations which would be detrimental to progress on international tax cooperation.

These arguments have to be engaged with by those who want to see the UN become the main institution for international tax norm-setting. Our proposal on the way forward provides some responses to each of these, building on similar work by CSOs,<sup>11</sup> which can be used by campaigners from both government and civil society.

Following the 2011 report, ECOSOC resolution 2011/23<sup>12</sup> called on the UN Secretary-General to conduct further assessment on how to strengthen the existing UNCTC structure, essentially discarding the other two proposals on upgrading it.

The subsequent report (E/2012/8<sup>13</sup>) highlighted mainly the problems due to lack of resources, such as inadequate research and secretariat support for meetings, especially at the Subcommittee level, and the inability of some developing country Committee members to participate due to the costs. Additional points were made on the possibility of improving working methods and better engagement and coordination with other actors in the tax space. The narrative was framed in a way that showcased the UN as a site where developing countries could articulate their concerns, and these perspectives could feed into existing international tax discussions which were then, and still remain, dominated by the OECD. The conclusion was a reiteration of the constant request for more funding.

Following this, yet another resolution was passed by ECOSOC at the substantive session of 2012 (E/RES/2012/33<sup>14</sup>) calling for more research by the UN SG on how the Committee could be further strengthened, with the emphasis on more collaboration with other actors, namely the OECD and the Bretton Woods

institutions. However, the issue of converting the Committee into an intergovernmental body was kept alive and mentioned in the resolution.

This dynamic indicates that the developed countries have sought to narrow the UN's focus to supplying developing country inputs, of a technical nature and without political backing, into the work on norm-setting done through the OECD. A loose framework for wider coordination, including the Bretton Woods institutions, has been provided by the creation of the Platform for Collaboration on Tax. However, this has merely confirmed and legitimized the OECD's domination of work on norm-setting.

The last of the reports in this series (E/2013/67<sup>15</sup>) essentially repeated the conclusions of the previous report, specifically on more coordination with other actors, while dwelling a bit more on the outputs of the UN Tax Committee.

### *Addis Ababa Action Agenda and the Inclusive Framework on BEPS*

The next major milestone came at the 2015 Third International Conference on Financing for Development, which produced the Addis Ababa Action Agenda.<sup>16</sup> The effort to upgrade the UN Tax Committee into an intergovernmental body was made yet again, quite strenuously this time, and only frantic efforts of the OECD countries succeeded in killing the proposal.<sup>17 18</sup> As a minor concession, the UN Tax Committee was given one extra session per year (para. 29 of the Addis Agenda).

While relieved at having thwarted the developing countries, the OECD countries realized that major changes were required in the governance of international taxation. This was also because 2015 marked the launch of the reports resulting from the 15 Actions of the OECD/G20 project on BEPS. Developing country support was essential to their success, and hence a year later the OECD/G20 Inclusive Framework on BEPS was established to "ensure interested countries and jurisdictions, including developing economies, can participate on an equal footing in the development of standards on BEPS related issues, while reviewing and monitoring the implementation of the OECD/G20 BEPS Project."<sup>19</sup> However, countries joining the IF were required to accept the minimum commitments resulting from the first phase of the project, even though they had not been involved in their formulation, while the continuing agenda had already been largely determined.

Hence, there are now two key bodies for global cooperation in international tax, the Global Forum and the Inclusive Framework. These are both based at the OECD, which provides their secretariat, but lack a channel for political accountability for all members.

The IF has now become the main site where the negotiations on the international tax reforms to address the challenges of the digitalized economy are taking place, although the UN Committee has begun to play a more prominent role recently. As an intergovernmental body, delegates to the IF negotiate on behalf of their governments, but in a technical setting with little political ac-

countability. The work of the IF is reported only to the OECD Ministerial Council and the G20 Finance Ministers and Leaders, neither of which are global bodies. There are many problems with this structure, which have been well-documented.<sup>20</sup> Nevertheless, it has resulted in an expanded platform for intergovernmental negotiations.

This has overshadowed the effort to create an inter-governmental tax body through the UN, although the G77 has kept up its call. Its 2020 Ministerial Declaration stated:<sup>21</sup>

64. The Ministers reiterated the need to strengthen international cooperation on tax matters, recognizing with concern that there is still no single global inclusive forum for international tax cooperation at the intergovernmental level. In that regard, they reiterated the need to fully upgrade the Committee of Experts in Tax Matters to an intergovernmental body with experts representing their respective governments. The Ministers stressed that the most relevant issues are the challenges posed by the lack of international tax cooperation, the existing illicit financial flows and tax evasion. They reiterated that appropriate emphasis must be placed on an enabling global environment and global partnership for development, balanced against the increased emphasis being placed on domestic resource mobilization. In this regard, they underlined that it is counterproductive to highlight the importance of domestic resource mobilization in developing countries, while at the same time not robustly tackle areas that impede their ability to capture necessary resources.

#### UN FACTI Panel

The UN FACTI Panel proved the next major landmark in the effort for an intergovernmental tax body.

Recommendation 14B of its Final Report of February 2021 was explicit:

*Building up on existing structures, create an inclusive intergovernmental body on tax matters under the United Nations.*<sup>22</sup>

This formulation recognized that considerable work has been done in a variety of forums to reform the governance of international tax, but the lack of an overarching and inclusive global body still remains a glaring defect.

Indeed, since the Zedillo report several of the tasks it envisaged for an ITO have been tackled through arrangements open to all states. In particular, the creation of “a mechanism for multi-lateral sharing of tax information ... to curb the scope for evasion of taxes on investment income earned abroad” has been done through the Global Forum under the auspices of the OECD, as

mentioned above. This also provides the secretariat for the Multilateral Convention on Mutual Administrative Assistance in Tax Matters (MCMAA), which was developed jointly by the OECD and the Council of Europe in 1988 and opened for all states to join in 2010. Another recommendation, to “take a lead role in restraining tax competition” is being tackled through the Inclusive Framework on BEPS. Hence, although global bodies dealing with aspects of tax cooperation have been created, these do not have universal membership or political accountability, but are based at the OECD.

At the same time, despite its limited resources the UNCTC has taken an increasingly active role, particularly in formulating model tax treaty provisions more suitable for developing countries. Indeed, the work done by the UN Committee since its inception in defending the right of States to tax income at source can now be seen as providing a better basis for the necessary reforms than that done by the OECD in the same period.<sup>23</sup> Both the G20 leaders in their St. Petersburg Declaration,<sup>24</sup> and all UN Member States in the Addis Agenda,<sup>25</sup> have called for reforms to ensure that multinational enterprises can be taxed “where their activities occur”. The UN SG’s recommendations that the UNCTC collaborate more closely with other actors such as the International Monetary Fund and the World Bank who do important work on tax and domestic resource mobilization, reached institutional fruition in 2016, the same year the Inclusive Framework was launched. There is now some coordination of the Secretariats of these bodies, through the Platform for Collaboration on Tax (PCT), but this is very limited. Montes and Rangaprasad<sup>26</sup> have highlighted several problems with the creation and functioning of the PCT.

#### Limits of the OECD Forums

The institutional architecture remains defective in significant respects. Neither the Global Forum nor the Inclusive Framework have universal membership or political accountability to all states. Despite claims to representation on an “equal footing”, there remain several governance challenges<sup>27</sup>, hierarchies in membership, and limited representation of non-OECD countries in important bodies such as Working Parties, as shown below:

**Table 1: Involvement of Non-OECD Countries in Inclusive Framework Bodies as of September 2021**

Group Name	Non-OECD country represented in Chair/Co-Chair or Vice Chair?	Non-OECD country representation in Bureau Members
Task Force On The Digital Economy	Yes, 1/5 (China)	3/9 (Brazil, Cote d’Ivoire, India)
Working Party No. 1 On Tax Conventions And Related Questions	Yes, 2/6*	No functioning Bureau
Working Party No. 6 On The Taxation Of Multinational Enterprises	Yes, 1/4 (Nigeria)	4/22 (Argentina, Brazil, India, China)
Working Party No. 10 On Exchange Of Information And Tax Compliance	Yes, 1/3 (India)	1/7 (China)

\* Working Party 1 has a formal Steering Group which has co-Chairs and four Vice-Chairs which include China and Argentina, though this data is not publicly available.

Source: On-Line Guide to OECD Intergovernmental Activity. Authors’ compilation. Available from <https://oecdgroups.oecd.org/Bodies/ListByNameView.aspx?book=true#>.

The most powerful governing body of the Inclusive Framework is the Steering Group, where OECD and non-OECD countries are equally represented out of a total of 24. Further, the deputy chairs as of this writing are from China and Nigeria. However, the functioning of the Steering Group is opaque, and it is not clear how it processes the outputs of the Working Parties and Task Force on the Digital Economy.

A key role is played by the OECD Secretariat, which has become increasingly powerful. Until recently recruitment was limited to OECD nationals, and although some from other countries now seem to have been appointed, the procedures are opaque. Permanent staff continue to be recruited from OECD nationals. Officials from non-OECD states are more evident in work for the Global Forum and in liaising with non-OECD members, which do not involve contentious standard setting. Even more significantly, senior staff in key standard-setting roles are frequently recruited from and return to the private sector, notably all the recent heads of Tax Treaties and Transfer Pricing.

More fundamentally, these bodies have specific mandates. The Global Forum is limited to exchange of information and the Inclusive Framework is limited to the 15 BEPS Actions. Other international tax standards, especially those related to the allocation of taxing rights, are not handled by them. These remain the preserve of the OECD's Committee on Fiscal Affairs, which still has the sole responsibility for updating OECD standards, such as the Model Tax Convention and the Transfer Pricing Guidelines (TPG). The UNTC works in parallel, and while coordination is ensured due to its overlapping membership and composition of its professional staff, this results in weakening of the voice of developing countries.<sup>28</sup> For example, the UN model convention is not an alternative to the OECD's formulated by and for developing countries, but a compromise between the perspectives of capital-exporting and capital-importing countries. Hence, this combination remains an unsatisfactory way of ensuring that all countries are adequately represented in the formulation of international tax norms and standards.

The essential problem, as stated by the G77, thus still remains, and there exists no single global inclusive forum for international tax cooperation at the intergovernmental level.

Hence, any reform would not start with a blank slate. The historical process that has brought the world to this juncture, recounted in the previous section, is important because it shows what has been tried already, what has worked and what has not. What is needed is a new overarching structure that can both strengthen the coordination of these existing initiatives and activities and set them on a sounder basis of political accountability and legitimacy.

Also important is that the structure should be primarily driven by the long-term political interests of governments. Tax is the fundamental means by which States

can fund the fulfillment of their domestic and international human rights obligations, and provision of the life needs for their citizens. International coordination and cooperation at all levels of government and civil society concerned with tax are essential to deliver this. The mobilization of collective resources through taxation is a crucial precondition for dealing effectively with many local and global challenges, not least the existential threats from climate change and disease pandemics and also the achievement of the Sustainable Development Goals. Hence, an appropriate institutional structure should be founded primarily on coordination of technical measures and the collective work of experts, and with universal political oversight and accountability. Such work is also, of course, political in a wider sense, being based in concerns for inclusiveness, equality and justice.

### *A lesson from history*

Before discussing the structure of the proposed way forward, it is important to draw lessons from the historical process for democratizing and universalizing international tax governance, outlined in the previous section. This will help situate the technical solution within a larger political strategy.

The main lesson that can be drawn is that whenever concrete steps were taken to push for upgrading the UNTC, it was thwarted, and in that sense a failure. Each failure, however, led to incremental gains in both the UN system and other forums, and in that sense also represented a success.

For example, in 2010 when the G77 through Yemen tabled a draft resolution for upgrading the UNTC, it triggered the three UN SG reports that placed the issue high on the ECOSOC agenda, produced concrete options for strengthening the UN's role in tax matters, showcased areas where the UNTC could be strengthened and importantly pushed for greater collaboration with other influential bodies in this space.

Similarly, the 2015 push for upgrading the UNTC at the Addis Ababa Financing for Development conference triggered a massive reform, with the creation of the Inclusive Framework, the Platform for Collaboration for Tax, and an additional session for the UNTC. If this pattern can be extrapolated into the future, it can be expected that a renewed push for strengthening the UN's role in international tax governance would yet again lead to helpful though incremental concessions.

We suggest that now is the time for a new approach, aiming to rationalize the work of this hodgepodge variety of bodies within a comprehensive structure.

### **A UN Framework Convention on Tax Cooperation**

We suggest that a suitable approach to reform could be through the negotiation of a UN Framework Convention on Tax Cooperation (UN FCTC). This would combine the aims of two of the recommendations of the FACTI Panel: the negotiation of a UN Tax Convention

(Recommendation 2), and the creation of an intergovernmental body on tax under UN auspices (Recommendation 14B).

The fiscal crisis facing states today is comparable to the climate crisis, and the Convention could be modelled as a Framework Convention, similar to the UN Framework Convention on Climate Change (UN FCCC), or the World Health Organization Framework Convention on Tobacco Control (WHO FCTC). This could both build on and strengthen existing standards to provide strong tax coordination between States and prevent the undermining of global norms and damage to the legitimate tax base of any country. It would finally address the long-standing demand of the developing world and create a universal mechanism of international tax cooperation. Promotion of greater standardization of tax treaty provisions would itself go a long way in curbing international tax evasion and avoidance, which generally take advantage of loopholes and the possibilities of arbitrage due to disjunctures and mismatches in the patchwork of international tax rules. These greatly increase the burdens of tax authorities and undermine government revenues, as well as creating uncertainty for business.

Similarly to the UNFCCC, the UN FCTC should contain general Objectives, Principles and Commitments for all States and create an institutional umbrella for other bodies and instruments. Its commitments could cover principles of transparency, cooperation in tax administration and information exchange, and fairness in the allocation of taxing rights over international business.

It should also create a legal foundation for a new intergovernmental body on tax matters. As laid out in FACTI Panel Recommendation 14B, this could take the form of a Conference of the Parties (COP), a standing Secretariat, and appropriate technical and policy-making bodies. All parties to the UN FCTC would be represented at the COP which would review the implementation of the Convention and any other legal instruments that the COP adopts and take decisions necessary to promote the effective implementation of the Convention, including institutional and administrative arrangements. In that sense it is analogous to the present system where G20 and OECD countries mandate the OECD Secretariat to find solutions to the tax problems they face, with the crucial exception that instead of the mandate coming from a select few, it would come from a COP with universal participation. Thus, the COP to the UN FCTC can provide the practical forum through which all countries can provide the political backing and accountability for work in international tax norm setting on a genuinely equal footing.

It would also create an umbrella for a variety of instruments, ranging from Protocols on specific issues, to Codes of Conduct which can establish standards directly for legal persons. For example, the Kyoto Protocol and the Paris Agreement were created through the UN

FCCC, and the Protocol to Eliminate Illicit Trade in Tobacco Products was created through the WHO FCTC. Regarding Codes of Conduct, one example is the Code of Conduct for Responsible Fisheries adopted by the Food and Agriculture Organization (FAO) Conference in 1995. The COP to the UN FCTC could similarly decide to add new protocols or Codes of Conduct to further its larger Objectives, Principles and Commitments.

An important additional instrument that could be developed can be modelled on the Multilateral Instrument (MLI),<sup>29</sup> to facilitate the more efficient incorporation into existing bilateral tax treaties of solutions agreed to remedy the defects of existing international tax rules. These could include measures developed through the Inclusive Framework, such as the Subject to Tax Rule, and the model treaty provision formulated by the UN Tax Committee on taxation of automated digital services. This approach can be extended more generally to other provisions of the UN Model Tax Convention, such as taxation of fees for services, and its recent updates to the articles on capital gains, royalties, collective investment vehicles, that are beneficial for developing countries. It could also consider adoption of provisions from non-UN and non-OECD standards, such as the African Tax Administration Forum (ATAF) Model Tax Agreement.

The design of the UN FCTC should also take account of its specific context and learn from the experience of the UN FCCC.<sup>30</sup> Hence, it should also become an umbrella for existing multilateral tax conventions and instruments in the field of tax cooperation. These could include, in particular, the MCMAA and the multilateral instrument to implement treaty provisions on base erosion and profit shifting (MLI). Associating these existing treaties with the UN FCTC would achieve the important aim of streamlining the existing institutional architecture of international tax. There could be a combined Secretariat for all related international agreements on international tax cooperation which are open to all states. This has occurred, for example, with the UN Office on Drugs and Crime, which acts as the secretariat to several existing UN conventions, such as those on narcotic drugs, and the UN Convention Against Corruption.

The new framework could therefore also provide a suitable umbrella for existing institutions, such as the UNCTC, the Inclusive Framework and the Global Forum. The FACTI Panel Report recommended that the Global Forum become a “related organization” to the UN system, as was done with the International Organization for Migration (IOM). This approach can be extended to the Inclusive Framework, which if an agreement is reached on the Two Pillar Approach will continue to have an important role in supporting and monitoring its implementation, as well as continuing that work for the previous BEPS measures. Placing them under the umbrella of a new UN-sponsored UN FCTC would enable them to receive overall guidance and political oversight from the COP to the UN FCTC instead of only G20 and OECD countries.<sup>31</sup> The same would of course be done for all the UN’s own work on tax, including the UNCTC. Bringing all

these activities under a single umbrella would both streamline the institutional architecture and improve coordination of these related activities.

## Political Considerations

Thus, an initiative for a UN FCTC could provide a way to rationalize the morass created by the plethora of international tax bodies. However, despite its many benefits, the opposition to it is likely to remain for the same reasons a UN intergovernmental tax body has been thwarted all these years. The OECD countries are content to have the OECD in the lead with the UN and other international organizations such as ATAF and the Interamerican Center for Tax Administration (CIAT for its acronym in Spanish) essentially providing inputs to a process controlled by them. As in the past, they are unlikely to give up this power and allow democratization of international tax rule-making. Any change to the status quo must come from below.

The key challenge thus remains political. Proponents of the UN FCTC must have clear responses to the criticisms raised by opponents of an intergovernmental tax body, which will apply equally to a UN FCTC and its accompanying COP. Our suggested responses are provided below.

**Criticism:** The existing UNTC is not utilized to full potential, and much can be done within the status quo. Upgrading it would not necessarily enhance its effectiveness.

**Response:** It is true that even without intergovernmental status, the UNTC can still continue to play a significant role. Increased funding would enhance its effectiveness. However, no amount of funding will change the fact that the outputs of the Committee will remain those of an expert group acting in their personal capacity and lacking political support, and above all *legitimacy*. As a matter of principle, efficiency and legitimacy are two different things and cannot be used interchangeably.

A UN FCTC will provide the requisite political legitimacy on international tax standards, which have now become a high-level political priority. The lack of clear legitimacy for the existing institutions continues to remain a serious problem with high accompanying costs.

To give a key example, the Two Pillar solution was developed in a relatively short period of time, due to strenuous efforts of the OECD's large and well-resourced Secretariat, with the political support of the OECD Council and the G20 Leaders and Finance Ministers. However, its implementation will entail a political commitment to sign and ratify a multilateral tax treaty from all states, including many that are not members of either the OECD or the G20. A significant number of these have not even joined the IF. The lack of adequate political accountability creates legitimacy concerns and consequent dangers of delayed and uneven implementation, with real costs for the world at large.

**Criticism:** It would duplicate the work of other international organizations (such as the OECD). It would create multiple and inconsistent international standards in the area of international taxation. It would be a distraction from and undermine existing negotiations which would be detrimental to progress on international tax cooperation. There will be difficulty in replicating OECD secretariat's capacity.

**Response:** These inter-related arguments are perhaps the most often used. Our proposal is specifically designed to resolve the problems of incoherence and inconsistency created by the multiplication of bodies that has taken place. It would not create a new completely independent body or strengthen an existing one such as the UNTC. Existing negotiations in these forums would continue. Instead, the aim is to create an umbrella which could oversee existing bodies and agreements and hence rationalize their functioning. Far from duplication of work, it would actually streamline the existing architecture and make it more efficient. The OECD Secretariat can continue to service its Member States, while universal forums like the UNTC, Global Forum and IF can be managed by the Secretariat to the UN FCTC.

**Criticism:** It would be redundant and not change the dynamics as it would involve the same set of countries engaging with the same interests, and hence produce the same outcomes.

**Response:** While the interests of countries may remain the same, there would be a larger set of countries engaging under different rules. This can change the dynamics and significantly change the resulting outcomes. The COP of the UN FCTC would have universal participation, bringing in interests that go beyond the G20 and OECD. The negotiations in the COP and its subsidiary bodies need not take place on the "consensus" principle of decision-making in the Inclusive Framework. There is a plethora of alternative options, ranging from simple to qualified majority voting, each of which can have a major impact on the kind of decisions that are taken. Conversely, the type of decision also affects the approval procedure. For example, in the UNTC, decisions to develop a model treaty provision can be made by a majority, while the views of minorities can be recorded in the Commentary. This makes it easier to achieve results supported by a significant number of states, rather than outcomes dominated by the views of a few strong states, or that patch over differences by compromises expressed in ambiguous wording.

**Criticism:** The "politicization" of the body as countries would promote their "narrow" interests. Decisions of such a body would be legally binding and affect tax sovereignty.

**Response:** Tax cooperation entails finding sustainable solutions that benefit all people in the long run. This necessarily involves both technical and political aspects. The same can be said of other global challenges, such as climate change. The structure we propose could, we believe, be designed to manage the interactions between the tech-



nical and political aspects more effectively than do current arrangements. The work that takes place in both the OECD and the UNTC, although focusing on technical issues, is also political, in that the participants are government officials and take a national viewpoint, even if in the UNTC they are designated as experts. The international tax standards developed by these technical specialists only become binding following political decisions to adopt them. All countries have the obligation to their citizens to promote the national interest in international negotiations. This is the basic premise of the social contract and cannot be dismissed as “narrow”.

The negotiations in the Inclusive Framework have involved much complex technical work, notably in producing around 500 pages of ‘blueprints’ for the two Pillars. This work is reported to the Finance Ministers and Leaders of the G7, G20 and to the OECD Council. However, these exclude most of the participants, although they are pressurized into accepting a consensus. Hence, the work of these institutions is already politicized, though this term need not be seen negatively as it means democratic engagement by countries. On the other hand, the UNTC reports to the ECOSOC, which is led by diplomats, often having no direct knowledge of tax, rather than delegates who would have a more direct interest in its deliverables. Having more delegates from Finance Ministries and/or tax administrations would likely increase ECOSOC’s interest in the work of the UNTC.

There must be clear and effective lines of political accountability involving all members on an equal footing. The UN FCTC would enable all states to send governmental representatives with appropriate knowledge and authority, ideally from Finance Ministries and/or tax administrations, to the COP and any subsidiary bodies it might establish. This would provide broad, clear and coherent political legitimacy to the current arrangements with accountability to all UN Member States. Just as the OECD Secretariat works to fulfil the mandate given to it by G20 and OECD countries, the Secretariat of the UN FCTC would work on mandates given to them by the COP and its subsidiary bodies. This would help to ensure that governments commit to implementing the resulting tax standards.

**Criticism:** Governments would have to bear additional resource requirements for international tax issues.

**Response:** The present setup of multiple forums such as the Inclusive Framework, UN Tax Committee, Global Forum, etc, each dealing with narrow mandates, is more resource-intensive than a universal body with a comprehensive mandate would be. A UN FCTC could streamline and coordinate the functioning of these institutions in a way that places less demands on countries, especially developing ones, both in terms of finances and staff participation. For example, at present tax officials have to travel to Paris, New York and Geneva for

various meetings of the aforementioned forums. A UN FCTC could facilitate fewer meetings with less duplication, where more issues are discussed and resolved in fewer venues.

## The Way Forward

There are two final questions that must be answered: (a) How much will such a body cost? (b) Who is prepared to fund it?

### *Secretariat Cost*

The resource requirements for a standing Secretariat to the Conference of Parties to the UN FCTC will depend upon structure and function, such as the membership, working methods, frequency of meetings and other relevant details. If a draft proposal is submitted to the Economic and Social Council for action, the ECOSOC Secretariat can provide a statement on programme budget implications, in accordance with rule 31 of the rules of procedure of the ECOSOC.

It should be borne in mind that the work of existing bodies, particularly the Inclusive Framework and the Global Forum, is already funded by participating states. If they are subsumed under the UN FCTC as we propose, there would be no additional cost, indeed the current charges could be reduced if they are spread over a wider membership.

There might be additional costs due to the expansion of the agenda of work. An indication of this can be taken from the cost of upgrading the UN Tax Committee to an intergovernmental body. As mentioned earlier, this was estimated at USD 2.4 million per annum for three annual sessions, on 2010 prices. Even if this figure is tripled, it would still be a small amount and a small price to pay for universal participation which will produce international standards that have a much higher chance of being globally accepted and hence be more sustainable in the long run.

In truth, funding is not the obstacle, it can be easily found if there is the political will. To break the current impasse, a group of countries with the ambition to improve international tax cooperation could commit to providing the necessary seed funding. The Inclusive Framework process which has produced the Two Pillar solution has shown the hard limits of what can be achieved through this body, which is not much for developing countries both through Pillar One or Pillar Two. Countries dissatisfied with this process, such as Kenya, Nigeria and Sri Lanka, as well as long standing proponents of the demand to upgrade the UNTC such as India and Ecuador, are some possible examples of countries that could take a lead in this effort.

### *Legal Process*

The first step would be a mandate for negotiation for the UN FCTC from an intergovernmental body. This could be the UN’s ECOSOC. Such a mandate, in the form of a resolution, would normally take place in a substantive session, such as the Financing for Development Forum which is

usually organized in April each year.

The UN General Assembly could also give a resolution in this regard. However, this could be a potentially longer route. This would first have to be negotiated in the General Assembly's Second Committee,<sup>32</sup> and then passed by the Assembly as a whole, which would "call upon" ECOSOC to take action. The aforementioned process would then begin in ECOSOC. Thus, taking the ECOSOC route may be more efficient. Once a political impetus has been received, negotiations could begin.

Due to the wide-ranging nature of the FCTC, its negotiation could take some time. However, this can take place in parallel with continuing work on creating suitable instruments, such as a UN variant of the MLI,<sup>33</sup> which could be subsumed into the FCTC once it is established.

## Conclusion

The creation of fair and effective tax systems is a central concern of States around the world, and high on the political agenda for their citizens. In today's globalized world, this requires a strong institutional framework for international coordination and cooperation, without which national sovereignty becomes an empty shell. Now is the time for a political initiative, taking up the recommendations of the FACTI Panel, to create a coherent and effective institutional basis for the global governance of international taxation.

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<sup>5</sup> United Nations, Report of the High-level Panel on Financing for Development (2001). Available from [https://www.un.org/en/events/pastevents/financing\\_for\\_development\\_report.shtml](https://www.un.org/en/events/pastevents/financing_for_development_report.shtml).

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<sup>13</sup> UN ECOSOC, document E/2012/8. Available from <https://www.undocs.org/en/E/2012/8>.

<sup>14</sup> UN ECOSOC, resolution E/RES/2012/33. Available from <https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-03/N1242145.pdf>.

<sup>15</sup> UN ECOSOC, document E/2013/67. Available from <https://undocs.org/E/2013/67>.

<sup>16</sup> United Nations, Addis Ababa Action Agenda, Paragraph 28. Available from [http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA\\_Outcome.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2015/08/AAAA_Outcome.pdf).

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<sup>27</sup> Irene Ovonji-Odida, Veronica Grondona, and Samuel Victor Makwe, *Assessment of the Two-Pillar Approach to Address the Tax Challenges Arising from the Digitalization of the Economy, Report by the South Centre Tax Initiative’s Developing Country Expert Group* (Geneva, South Centre, 2020) Available from <https://www.southcentre.int/report-by-the-south-centre-tax-initiatives-developing-country-expert-group-august-2020/>.

<sup>28</sup> All three of the professional staff now employed by the UN with duties to support the UNCTC now come from OECD Member Countries, and have worked in their government or the OECD Secretariat.

<sup>29</sup> Radhakishan Rawal, “Conceptualizing a UN Multilateral Instrument”, Tax Cooperation Policy Brief, No. 15 (Geneva, South Centre, 2021). Available from <https://www.southcentre.int/tax-cooperation-policy-brief-15-june-2021/>.

<sup>30</sup> The UN FCCC was agreed at the ‘Earth Summit’ in Rio in 1992, and did not subsume the Convention on Biological Diversity or the Convention on Desertification which were also formulated there, or other related agreements. Thus, although it has provided an umbrella for new measures, particularly the Kyoto Protocol and the Paris Agreement, there remain problems with the climate change ‘regime complex’: see Robert O. Keohane & David G. Victor, “The Regime Complex for Climate Change”, Discussion Paper, No. 10-33, The Harvard Project on International Climate Agreements (Harvard Kennedy School, January 2010). Available from [https://www.belfercenter.org/sites/default/files/legacy/files/Keohane\\_Victor\\_Final\\_2.pdf](https://www.belfercenter.org/sites/default/files/legacy/files/Keohane_Victor_Final_2.pdf), and T. Cadman, ed., *Climate Change and Global Policy Regimes: Towards Institutional Legitimacy* (2013).

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<sup>32</sup> José Antonio Ocampo and Heidemarie Wieczorek-Zeul, “An Intergovernmental Tax Body At The United Nations” (FACTI Panel, 2021). Available from <https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/615461e0355b8>

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