

His Excellency
Mr. António Guterres
Secretary-General of the United Nations
New York, NY 10017

Oxford and Geneva, March 15, 2023

Subject: written input on the promotion of inclusive and effective tax cooperation at the United Nations

Your Excellency,

We welcome the General Assembly Resolution 77/244 adopted on 30 December 2022 that requests the Secretary-General to prepare a report on international tax cooperation and outline “potential next steps” to make it more inclusive and effective and would like to offer our contribution to the discussion. In a nutshell: we see this resolution as an opportunity for the international tax community to reflect on the design of *just institutions*. Such institutions are not only normatively required but also have the potential of increasing the legitimacy of future international tax cooperation agreements and thus their viability. In other words, just institutions are both the right thing to do and the more viable option. Establishing *just institutions* entails substantive underpinnings as well as governance features. Both areas demand careful analysis. A short memo such as this is surely not enough to cover all the aspects involved. And yet, we would like to offer a few key points as well as some references which we believe the committee should seriously consider.

Tax is inherently linked to questions of distributive justice, and international taxation entails major questions of global justice. The key debate on global justice engages Statist and Cosmopolitan perspectives of justice. To oversimplify it: Statists argue that duties of justice (beyond humanitarian duties) only arise within the state whereas proponents of cosmopolitan justice argue that such duties also arise across national borders on the international level. There are obviously many nuances in this debate, and it is certainly not the right place and time to settle it here.¹ However, some aspects are, we believe, beyond dispute. Both cosmopolitans and statist necessarily agree that once the international tax regime will reach a certain level of interdependency it must adhere to some principles of global justice. Moreover, even in the absence of substantial interdependence, we believe that any global cooperative accord which builds on the *combined* coercive powers of states cannot ignore the interests of some countries (notably least-developed and developing countries) and their people, while at the same time leveraging their coercive powers to enforce the global deal.²

This insight regarding the significance of justice for the current debate translates into both substantive requirements regarding the allocation of economic resources and institutional aspects concerning how to design just and legitimate (global tax) institutions. In this letter we wish to very briefly consider two such aspects:

¹ For a more elaborate analysis of global justice and international tax see, Tsilly Dagan, “[International Tax and Global Justice](#)” (2017) 18 *Theoretical Inquiries in Law* 1-35.

² For a detailed discussion of this point see Tsilly Dagan, [International Tax Policy: Between Competition and Cooperation](#) (2017), chapter 6.

First, on substance, any global cooperative accord on tax matters that builds on the cooperation and the coercive power of poor countries should take into account the interests of poor countries and particularly of poor people within such countries. The United Nations is a relevant forum to consider these issues given its commitment to promote sustainable development, including ending poverty and hunger. We thus urge the Secretary-General to explore how any proposed international tax regime might affect the wellbeing of poor people and poor states. On this front, there is much to be learned about the fair allocation of rights and duties on the international tax arena from other areas of global cooperation, such as international climate change law and international trade law.³ Such areas have, for example, explicitly recognised the specific needs of developing as well as least-developed countries through the use of differential treatment provisions.⁴ We thus call for a serious consideration of parallel cases of global cooperative agreements in order to learn from their experience on how to actively promote the interests of developing countries and their citizens.

Second, from an institutional point of view, the United Nations – with its more inclusive membership – is a good venue to offer an alternative to the standard promoted by the OECD and the G20. In recent years cooperative initiatives were mostly led by the OECD. The OECD – representing its members and designed to promote their interests – is naturally less focused on the interests and concerns of developing countries. Thus, although the OECD had made an explicit effort to be more inclusive, it is probably not surprising that the recent two pillars initiative was criticized for not giving enough consideration to the interests of developing countries.⁵ Importantly, the significant role played by the OECD and the G20 in setting the agenda has provided them with excessive power in defining what should be discussed and negotiated. In this context, the current status quo has been taken as a baseline and only a limited number of countries have had a real say on how it should be reformed. This has not only delayed the discussion of issues that were a concern for non-OECD countries, but unfortunately, might also have long term effects. As the theory of path dependency has taught us, selecting a certain direction may limit the options which are available in the future. Moreover, the cooperation-enhancing mechanism of pillar two (which only depends on the participation of a critical mass of countries) may create lock-in effects. Thus, if indeed adopted as the common standard, pillar 2 might secure and further promote the interests of some countries at the expense of others for years to come.⁶ The United Nations thus has a unique opportunity and responsibility to offer a real option for an alternative compromise: one that channels the voices of the least-represented states and people. It is also an opportunity to consider innovative ideas and alternatives that may prove superior for the international tax regime, but may no longer be a viable option further down the road if the current OECD proposals gain prominence.

Thank you very much for taking the time to consider this letter.

Yours sincerely,

Tsilly Dagan (University of Oxford) and Alice Pirlot (Geneva Graduate Institute)

³ See Alice Pirlot, [Environmental Border Tax Adjustments and International Trade Law](#) (2017 EE).

⁴ In the context of climate change law, see Alice Pirlot, “[Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument](#)” (2022) 34(1) *Journal of Environmental Law* 25-52. See also Pierre André and Alice Pirlot, “The Just character of Carbon Border Adjustments” (forthcoming), Draft available with the authors.

⁵ For an analysis, see Tsilly Dagan, “GLOBE: The Potential Costs of Cooperation” (forthcoming), Draft available with the author.

⁶ For a more detailed explanation of the strategic aspects of international cooperation, see Tsilly Dagan, [International Tax Policy: Between Competition and Cooperation](#) (2017), chapter 6.