



UNITED NATIONS GENERAL ASSEMBLY RESOLUTION 78/230
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What are some specific problems that could be addressed by a UN framework convention on international tax cooperation?

Introduction

1. There are (at least) three broad issues that need to be addressed in the context of developing a UN framework convention. These three issues are:
 - i) Institutional structure – what structure should be established within the UN Organisation (“UNO”) to take forward international tax cooperation?
 - ii) Substantive issues – what substantive tax issues may be appropriate for protocols to a framework convention?
 - iii) Ongoing coordination between intergovernmental organisations (“IGOs”) engaged in work on international taxation – this is “the elephant in the room” which needs to be addressed in the discussions on the UN framework convention.

1. Institutional structure

2. Unquestionably the most important issue that needs to be addressed is the form of structure is to be established through the framework convention to carry out ongoing work in relation to taxation. The structure that is created needs to be appropriate for that work, and have sufficient flexibility to adjust to future problems and demands. It needs to have an appropriate balance between governmental representation and involvement of qualified experts, together with adequate arrangements for the participation of NGOs and civil society groups.
3. The pattern that appears to be under discussion at present is broadly based on the structure established by the *UN Framework Convention on Climate Change* of 1992,

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with its focus on regular meetings of the Conference of the Parties (“COPs”). However, it is debatable whether that pattern is appropriate for international tax cooperation.

4. Climate change is an existential threat to humanity; it has presented itself largely within the last 20 years; it needs to be resolved conclusively in the short-term; and it relies heavily upon major commitments by governments represented at COPs by heads of government or senior ministers.
5. By contrast, international taxation is a critical issue for many countries, but does not represent an existential threat. Current discussions build on over-100-years of developments and can rely upon a body of experts (both in government and outside) and an established pattern of work within IGOs. As a highly technical issue, it is not necessarily appropriate for high-level discussions at the level of heads of state or ministers.
6. There is a danger here, in adopting a pattern based upon the Climate Change Convention, that the institutional structure created will be inappropriate to the task in hand.
7. There are, of course, many different patterns of institutional structure that exist to achieve cooperation between governments in various fields.
8. One pattern that merits consideration is that of Functional Commissions of ECOSOC. Several Functional Commissions exist, including the *Commission on the Status of Women*, the *Commission on Population and Development*, and the *Commission for Social Development*. All of these have established structures and patterns of work, and carry out valuable work within the UNO. Basing future work in the area of tax cooperation on the Functional Commission structure uses a tried-and-tested institutional structure within the UNO and avoids reinventing the wheel.
9. It is little known, but a *Fiscal Commission* was established as a Functional Commission of ECOSOC in 1946 (which continued the work of a similar commission within the League of Nations that was largely responsible for the early development of rules on international taxation). That Fiscal Commission was wound up in 1954 for a variety of reasons, including differences of opinion between regional groupings, and a failure to establish a work pattern between governments and experts in the field. (A consequence of this was that the OECD stepped in to fill the lacuna that was created). However, since 1954 the problems that confronted the Fiscal Commission have been faced and resolved in the context of other Functional Commissions.
10. A good example of this is the former *Commission on Human Rights* (which was subsequently elevated to the status of *Human Rights Council* in 2006). The Commission consisted of 53 member states, elected on a rotating three-year term and based upon the usual regional representation at the UN. Particularly significant was the existence of a *Sub-commission on the Promotion and Protection of Human Rights* consisting of 26 non-governmental experts. The Commission also established a variety of working groups and special rapporteurs.
11. In developing an institutional structure for tax cooperation, much can be learnt from existing structures within the UN. In particular, a balance has to be struck between highly technical issues, on which significant expert input is required (from within and

outside governments) and broader policy issues, that are matters for negotiation and compromise between governments.

12. Rushing into creating an institutional structure based upon an inappropriate pattern could have disastrous consequences and lead to a failure of international cooperation on tax matters within a relatively short time.
13. As a final comment, any institutional structure needs to have flexibility and be capable of evolving (in much the same way that the *Commission on Human Rights* evolved into the *Human Rights Council*). The long-term establishment of an “International Tax Organisation” may be a valid, long-term goal, but not appropriate at this point in time.

2. Substantive issues

14. Some reports suggest that a long list of potential substantive topics has been presented to the Ad-Hoc Committee as candidates for inclusion in protocols to the framework convention.
15. There has been a tendency in recent years to suggest that aspects of the international tax regime are broken and require fundamental reform. That fails to recognise that in large measure the current international tax system operates effectively to relieve double taxation and to remove barriers to cross-border investment, trade and movement of persons.
16. That being said, there are clear issues with the current international tax regime, particularly for developing countries. Many of those issues are already being addressed by the *UN Committee of Experts on International Cooperation in Tax Matters* (“UN Tax Committee”). It is important not to assume that the establishment of a framework convention would be able to remedy all issues of international taxation in a short period. The rules on international taxation have developed over more than a century, and there are constantly new issues arising that require novel solutions. It is partly for that reason that an institutional structure needs to be robust and flexible to deal with future problems.
17. *Operative Paragraph 6(e) of Resolution 78/230* refers to two priority issues in respect of early protocols: “measures against tax-related illicit financial flows” and “the taxation of income derived from the provision of cross border services”. In respect of these issues, it is appropriate to make the following comments:
 - i) With regard to illicit financial flows, the *Ad-Hoc Committee* may well ask themselves whether there is anything useful that a protocol can add to existing measures to deal with such financial flows. There are already extensive arrangements for cross-border automatic exchange of information for tax purposes. A more efficient use of information that is already being exchanged would be an appropriate response to these illicit financial flows.

- ii) With regard to the cross-border taxation of services, the *Sub-Committee on the Digitalized and Globalized Economy* of the *UN Tax Committee* is already examining this topic and developing measures in response.
18. This paper cautions against creating a long list of potential topics for protocols for a framework convention without properly considering existing measures adopted or under discussion and without having regard to the feasibility of achieving an acceptable solution to these issues. Trying to solve all the problems of an international tax system, whether major or minor, within a short period of time is likely to be a recipe for failure.

3. Coordination between IGOs

19. It is not entirely clear that this topic is within the scope of the current discussions of the Ad-Hoc Committee, but it should be. This is the elephant in the room: there has to be some discussion of how the work of different IGOs and regional organisations in the tax field will be coordinated going forward.
20. In the last 50 years, major contributions to the rules of international taxation have been developed by several organisations. Leading amongst them are the OECD with its *Committee on Fiscal Affairs* and its *Centre for Tax Policy and Administration*, and the *UN Tax Committee*. In addition, major contributions have been made by the IMF's *Fiscal Affairs Department* and the World Bank's *Global Tax Program*. Contributions have also come from the European Union and other regional bodies such as the African Tax Administration Forum.
21. Going forward, it would be unrealistic to think that all of this work will be rolled into the work of the UN under the framework convention, or that these other bodies will cease to function. All of these bodies have significant expertise and can contribute to a rational and sustainable system of international tax cooperation.
22. What is required is a structure of coordination between these different bodies. The danger if there is no coordination is that the bodies waste resources on overlapping projects, which may lead to conflicting outcomes. Also, important areas of tax policy may fall into the cracks between the agendas of different organisations.
23. Whether it is explicitly part of the framework convention, or a separate discussion that takes place on the fringes of the UN work, a discussion on this topic has to take place. The votes on the GA Resolutions that led to the Secretary-General's Report and to the proposal for a framework convention disclosed a split between the OECD and EU countries on the one hand and the rest of the world on the other. That split has to be healed by a sensible coordination of activities going forward.
24. In institutional terms, these bodies have secretariats or staff members with high levels of expertise. Initial coordination between these administrators is the starting point. However, at the end of the day, potential turf-wars will need to be resolved by some form of intergovernmental coordination that ensures, for example, that two or more IGOs do not undertake the same project with conflicting objectives and outcomes. That intergovernmental coordination committee will probably have to apply some form of

weighted voting so that no regional grouping can be outvoted. It is doubtful whether the G20 could fulfil this function of resolving any disputes over conflicting agendas because it has become too close to one IGO in recent years.

25. In substantive terms, it is realistically beyond this input statement to suggest how different aspects of the tax cooperation agenda might be allocated going forward. It would seem somewhat obvious, however, to note that the work on Pillar 2 is likely to occupy the OECD for years to come, while much of the existing work on developing the international tax system for the benefit of developing countries might come from the ongoing work of the UN Tax Committee. The IMF has particular experience in the field of VAT, GST and other indirect taxes.
26. There may, however, be certain bodies currently administered by the OECD – such as the *Forum on Tax Administration* – which, going forward, might more appropriately be administered through an institution with wider membership of countries, to encourage greater involvement in the Forum.
27. Looking back over the last few years, it is not difficult to see the potential dangers if there is no cooperative collaboration between IGOs and regional bodies in this area. It would be a major mistake not to recognise this third issue as a critical one for the success of UN work in this area.

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