



# Options for Strengthening Global Tax Governance

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- The importance of global cooperation on tax issues is becoming more and more evident. Countries in the global North and South alike have been shown to offer preferential treatment to foreigners: both individuals and huge transnational corporations are using a fragmented and inconsistently regulated global system of trans-border taxation to evade and/or avoid taxes. The sums lost amount to hundreds of billions annually.
- Among the latest efforts to curb losses from an eroding tax base, tax avoidance and evasion are occurring under the roof of the OECD – most notably the BEPS (Base Erosion and Profit Shifting) process and the »inclusive framework« for its implementation – as well as reforms at the United Nations and the establishment of a Platform for Collaboration on Tax between the Bretton Woods Institutions, the OECD and the UN.
- However, gaps in global tax governance remain both in the institutional setting and with regard to substantive issues. For example, there is still no body with universal membership that could discuss issues that are of particular importance to countries in the Global South, such as the taxation of resource extraction, tax competition and preferential tax regimes or the source and residence principles.
- In order to fill these gaps, either existing institutions need to be further developed, or new ones established, or both. In any case, a new body would have to perform certain functions and meet particular criteria with regard to composition. This paper formulates options for achieving this





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## 1. Introduction

The importance of international – or even better, global – cooperation on tax issues is becoming more and more evident in the light of tax evasion and avoidance scandals that have come to wider public attention in recent months and years. Countries in the global North and South have been shown to offer preferential treatment to foreigners – from Panama to Luxemburg and from the Cayman Islands to Hong Kong. Individuals and huge transnational corporations are using a fragmented and inconsistently regulated global system of trans-border taxation to evade and/or avoid taxes. The sums forgone amount to hundreds of billions annually. Depending on the model of estimation, developing countries are losing more than one trillion US dollars per year in illicit financial flows, most of which can be attributed to the abuse of transfer pricing rules (Kar/Spanjers, 2015). A panel of the UN Economic Commission for Africa chaired by former South African president Thabo Mbeki estimates the losses of Africa alone at approximately 50 billion US dollars per year (UNECA, 2015). The Organisation for Economic Co-operation and Development (OECD) puts global revenue losses from Base Erosion and Profit Shifting (BEPS) at between 100 and 240 billion US dollars each year (OECD, 2016).

Countries in both the global North and South are losing money they urgently need to finance basic social services or to finance their human rights obligations, find ways of dealing with problematic levels of sovereign debt and contribute to their international responsibilities in financing the goals, targets, and means of implementation of the 2030 Agenda for Sustainable Development adopted by UN members in September 2015.<sup>1</sup>

It is true that there have been numerous reforms and new initiatives in international cooperation on tax at national, regional, and global levels, building on existing work by various institutions, but they still neglect some critical issues.

1. Cf. <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

## 2. Current state of international tax cooperation

### 2.1 OECD and G20

At the centre of current international discussions on tax is the Organisation for Economic Co-operation and Development, based in Paris. The most prominent attempts at reforming international tax systems, international and global standard setting and developing normative frameworks are to be found there. The OECD is host to several multilateral institutions and fora that play a significant role in global tax governance, the two most notable of which are the Global Forum on Transparency and Exchange of Information for Tax Purposes and the newly established Inclusive Framework for BEPS Implementation.

Originally, the Global Forum on Transparency and Exchange of Information for Tax Purposes consisted of OECD countries and jurisdictions that had agreed to implement standards on transparency and (automatic) exchange of information for tax purposes. Today, the Global Forum has 133 members and sees itself as »the premier international body for ensuring the implementation of the internationally agreed standards of transparency and exchange of information in the tax area.«<sup>2</sup> The aim is to increase the exchange of information among tax administrations of different countries in order to make it impossible for companies or individuals to minimize their tax burden. Most importantly, the Global Forum is currently engaged in establishing and monitoring a system of automatic exchange of information in tax matters among tax administrations and a common reporting standard.

In recent years, however, *the* tax policy process for the OECD has been the so-called Base Erosion and Profit Shifting Action Plan that it was tasked to develop by the members of the G20 in line with the group's focus on fiscal matters. The action plan, finalized in late 2015, contains recommendations and actions in 15 issue areas and aims at laying »the foundations of a modern international tax framework under which profits are taxed where economic activity and value creation occur«,<sup>3</sup> with the ultimate goal of stopping the tax »optimization«

2. Cf. <https://www.oecd.org/tax/transparency/>.

3. Cf. <https://www.oecd.org/ctp/beps-about.htm>.

practices of large transnational corporations. It contains measures, proposals and recommendations on the digital economy, hybrid mismatch arrangements, controlled foreign companies, interest deductions, harmful tax practices, treaty abuse, permanent establishments, transfer pricing, transfer pricing documentation and country-by-country reporting, dispute resolution and a multilateral instrument to modify bilateral tax treaties.

In order to implement this action package, a new »inclusive framework for BEPS implementation« was created. Countries and jurisdictions interested in joining the framework are expected to commit to the implementation of the BEPS package, especially to the minimum standards of model provisions. These include the prevention of treaty abuse, standardized country-by-country reporting, a peer review process and an agreement to secure progress on dispute resolution, as well as to pay a member's fee (at reduced rates for developing countries). Membership is not limited to OECD/G20 members. In return, countries and jurisdictions are being offered the opportunity to work on an »equal footing« in developing standards on remaining issues, review the implementation of agreed standards and monitor BEPS issues (OECD, 2016). However, the language being used to describe the roles for different countries suggests a hierarchy, labelling »interested countries and jurisdictions as BEPS Associates« (ibid.), not full members. The decision-making process in the inclusive framework will have a dual structure: first, technical experts will participate in working groups and second, senior officials will participate to ensure a political commitment to the outcomes. Decisions are to be taken by consensus and outcomes labelled »morally binding to all parties« (ibid.). By 15 July 2016, 85 countries had joined the initiative, with another 19 attending a first meeting in Kyoto, Japan.

## 2.2 United Nations

The United Nations is worth mentioning in the global debates around tax. The UN Committee of Experts on International Cooperation in Tax Matters (UNTC), a 25-member subsidiary body of the Economic and Social Council (ECOSOC) established in 2004,<sup>4</sup> regularly reviews and updates the *UN Model Double Taxation Convention*

*between Developed and Developing Countries* and the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries*. This work is especially important for countries in the global South as it competes with similar model conventions developed by the OECD, the economic organization of the countries in the global North. As the work within the UNTC has shown, the interests and concerns of developing countries are more likely to be reflected in the work of the Committee, the latest example of which is the ongoing discussion of the taxation of cross-border service provision.

The work of the Committee was an issue for discussion during the 3rd International Conference on Financing for Development (FfD3) in Addis Ababa in July 2015. The outcome document of the conference, the *Addis Ababa Action Agenda*, includes decisions to provide the Committee with more resources, increase the frequency of its meetings to two per year and reform its composition. The latter part of this decision was implemented by announcing a second meeting of the Committee in December 2016 in New York, after the regular meeting in Geneva in October. As for reform of membership of the Committee, a subsequent meeting of the Economic and Social Council of the UN on 9 December 2016 could put this item on the agenda (UN Doc. E/2017/L.6). According with the decisions taken in Addis Ababa, members would be chosen according to equitable geographical distribution and will be appointed by the UN Secretary-General, in consultation with member states, and based on nominations from governments (UN Doc. A/RES/69/313, §29).

The United Nations Secretariat, more specifically its Financing for Development Office (FfDO) is carrying out a range of capacity development activities, focusing on tax treaties and transfer pricing and – more recently – on protecting and broadening the tax base of developing countries, as well as strengthening tax administrations.

The latest addition to UN tax activities is a new cooperation between the UN, the International Monetary Fund (IMF), the World Bank and the OECD, labelled Platform for Collaboration on Tax. The initiative, launched a week after the spring meetings of the IMF and World Bank in April 2016, aims at improving cooperation among these international organizations:

4. Its predecessor, the Ad Hoc Group of Experts on Tax Treaties between Developed and Developing Countries, was established in 1968. For more, see <http://www.un.org/esa/ffd/tax/overview.htm>.



The overarching aim for cooperation among the IOs is to better support governments in addressing the tax challenges they face. The Platform will provide a means to help achieve this, by providing a structured and transparent framework for:

1. Producing concrete joint outputs and deliverables under an agreed work plan, implemented in collaboration [...] cover[ing] a variety of domestic and international tax matters.
2. Strengthening dynamic interactions between standard setting, capacity building and technical assistance [...]
3. Sharing information on activities more systematically, including on country level activities. (IMF/OECD/ UN/World Bank, 2016: 3)

To these ends, the Platform has already planned a number of activities, including developing tools for developing countries in the taxation of transnational corporations,<sup>5</sup> supporting developing countries in BEPS implementation, developing capacity development materials and improv-

5. The first of those tools, *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment*, was published in October 2016, cf. [www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf](http://www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf).

ing awareness for exchange of information mechanisms (IMF/OECD/UN/World Bank, 2016).

The Platform will meet three times a year. The Concept Note for the Platform names the representatives of the member organizations as the Director of, or B-level staff in, the Fiscal Affairs Department of the IMF; Director/ Deputy Director CTPA OECD or CTPA Division Heads; Senior Director Government Global Practice (GGP) and Director Public Service and Employment (PSP) WBG; Director of the Financing for Development Office, UN DESA.

### 2.3 Further institutions and initiatives

These efforts are complemented and at times built upon by various initiatives and institutions at different levels, most of them with a clear emphasis on capacity-building and technical cooperation in tax matters. Some regional arrangements, such as those within the European Union, have taken normative and regulatory steps that go beyond the scope of what is possible at global level at present. Furthermore, international organizations such as the IMF or the World Bank are heavily engaged in providing policy advice and technical assistance to countries in need of better fiscal and tax administrations and systems.

#### Box 1: Multilateral initiatives on tax cooperation

<p><b>Addis Tax Initiative (ATI)</b></p> <p>Mandate: Support for raising domestic public revenue to improve fairness, transparency, efficiency and effectiveness of tax systems by doubling cooperation by 2020 and stepping up domestic resource mobilization.</p> <p>Partners: Germany, United Kingdom, United States, Ethiopia, European Commission, OECD and other countries and international organizations.</p> <p>Further information: <a href="http://www.addistaxinitiative.net">www.addistaxinitiative.net</a></p>	<p><b>founded 2015</b></p>
<p><b>African Tax Administration Forum (ATAF)</b></p> <p>Mandate: Improving the capacity of African tax administrations to achieve their revenue objectives, advancing the role of taxation in African governance and state building; providing a voice for African tax administrations and developing and supporting partnerships between African countries and development partners.</p> <p>Members: 37 African countries.</p> <p>Further information: <a href="http://www.ataftax.org">www.ataftax.org</a></p>	<p><b>2008</b></p>
<p><b>Extractive Industries Transparency Initiative (EITI)</b></p> <p>Mandate: Development of transparency standards for payments to governments resulting from resource extraction.</p> <p>Members: 51 implementing countries.</p> <p>Further information: <a href="http://eiti.org/">http://eiti.org/</a></p>	<p><b>2002</b></p>



<p><b>Financial Action Task Force on Money Laundering (FATF)</b></p> <p>Mandate: Development and implementation of measures against money laundering and terrorist finance.</p> <p>Members: 37 governments, including the European Commission and the Gulf Co-operation Council.</p> <p>Further information: <a href="http://www.fatf-gafi.org/">www.fatf-gafi.org/</a></p>	<b>1989</b>
<p><b>Financial Transparency Coalition (FTC)</b></p> <p>Mandate: To curtail illicit financial flows through the promotion of a transparent, accountable and sustainable financial system.</p> <p>Members: Global network of civil society, governments and experts with more than 150 »allies« in 40 countries.</p> <p>Further information: <a href="http://www.financialtaskforce.org/">www.financialtaskforce.org/</a></p>	<b>2009</b>
<p><b>Global Forum on Transparency and Exchange of Information</b></p> <p>Mandate: Implementation of the internationally agreed standards of transparency and exchange of information in the tax area.</p> <p>Members: 133 countries.</p> <p>Further information: <a href="http://www.oecd.org/tax/transparency/">www.oecd.org/tax/transparency/</a></p>	<b>2000</b>
<p><b>Inclusive Framework for BEPS Implementation</b></p> <p>Mandate: Dialogue on an equal footing to directly shape the standard setting and monitoring processes on BEPS issues.</p> <p>Membership: OECD and G20 members and all interested countries and jurisdictions, 85 members (plus a potential 19) by 15 July 2016.</p> <p>Further information: <a href="http://www.oecd.org/ctp/beps.htm">www.oecd.org/ctp/beps.htm</a></p>	<b>2016</b>
<p><b>International Tax Compact (ITC)</b></p> <p>Mandate: To strengthen international cooperation with developing and transition countries with the objective of enhancing domestic resource mobilization.</p> <p>No formal membership; partners include: African Tax Administration Forum (ATAF), Addis Tax Initiative, Germany, Commonwealth Association of Tax Administrators, CIAT, ECLAC, European Commission, World Bank, IMF, International Tax Dialogue, Spain, France, Netherlands, OECD, Switzerland, UN-DESA.</p> <p>Further information: <a href="http://taxcompact.net/">http://taxcompact.net/</a></p>	<b>2008</b>
<p><b>Inter-American Center of Tax Administrations (CIAT)</b></p> <p>Mandate: Supporting the efforts of national governments by promoting the evolution, social acceptance and institutional strengthening of tax administrations, encouraging international cooperation and the exchange of experiences and best practices.</p> <p>Members: 39 member countries and associate members from the Americas, Europe, Africa, Asia.</p> <p>Further information: <a href="http://www.ciat.org/">www.ciat.org/</a></p>	<b>1967</b>
<p><b>International Tax Dialogue</b></p> <p>Mandate: Promoting effective international dialogue and networking between international organizations, governments and their officials on tax policy and administration matters, identifying and sharing good practices in taxation.</p> <p>Participants: European Commission, Inter-American Development Bank, IMF, OECD, World Bank, Inter-American Center of Tax Administrations (CIAT).</p> <p>Further information: <a href="http://www.itdweb.org/">www.itdweb.org/</a></p>	<b>2002</b>
<p><b>OECD Informal Task Force on Tax and Development</b></p> <p>Mandate: To support OECD committees in delivering a programme to strengthen tax systems in developing countries and to improve the enabling environment for developing countries to collect appropriate and adequate tax revenues and to build effective states.</p> <p>Members: OECD and developing countries, international and regional organizations, civil society, business.</p> <p>Further information: <a href="http://www.oecd.org/tax/taxanddevelopment.htm">www.oecd.org/tax/taxanddevelopment.htm</a></p>	<b>2010</b>
<p><b>Platform for Collaboration on Tax</b></p> <p>Mandate: To formalise regular discussions between the four international organisations on the design and implementation of standards for international tax matters; to strengthen their capacity-building support, deliver jointly developed guidance and share information on operational and knowledge activities.</p> <p>Members: IMF, OECD, UN, World Bank.</p> <p>Further information: <a href="https://www.oecd.org/tax/beps/international-organisations-take-major-step-to-boost-global-co-operation-in-tax-matters.htm">https://www.oecd.org/tax/beps/international-organisations-take-major-step-to-boost-global-co-operation-in-tax-matters.htm</a> and <a href="https://www.oecd.org/tax/concept-note-platform-for-collaboration-on-tax.pdf">https://www.oecd.org/tax/concept-note-platform-for-collaboration-on-tax.pdf</a>.</p>	<b>2016</b>



**UN Committee of Experts on International Cooperation in Tax Matters****1968/2004**

Mandate: Review and update UN Model Double Taxation Convention between Developed and Developing Countries and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. Dialogue on enhancing and promoting international tax cooperation; Recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition.

Members: 25 tax experts appointed by the UN Secretary-General.

Further information: <http://www.un.org/esa/ffd/ffd-follow-up/tax-committee.html>

### 3. Gaps in international tax governance

While some advancements have been made toward creating an international system that makes it more difficult for individuals and companies to minimize their tax burden in illegal, illicit or legal ways, civil society organizations in particular have been active in identifying the gaps in global tax governance. These gaps can be identified in both the institutional settings and with regard to the substantive issues that these institutions are dealing with.

#### 3.1 Lack of a universal space for tax issues

Strong criticism is focused on the fact that while there is general agreement that tax issues need to be tackled at a global level and that all countries should participate on an equal footing, there is as yet no institution with a truly universal membership and/or an institutional apparatus that would be equally accountable to all members. All the institutions mentioned above lack particular characteristics in this regard, in one or more ways. The OECD's Global Forum, while having a large membership, can by no means claim to be a universal body, nor can its institutional location be ignored. And the very design of the Inclusive Framework was aimed at curbing criticism right from the start by giving every interested partner the opportunity to come in on an equal footing, as far as possible. The problem here is rather that many of the decisions have already been taken in the OECD during the BEPS process and new members are forced to accept them before being able to participate in decision-making based on the already agreed measures.<sup>6</sup> This is not improved much by the establishment of the Platform on Collaboration on Tax by the IMF, the OECD, the World Bank and the UN. This initiative, while it may bring some improvements in terms of capacity-building, is by design limited by it being a »club« of organizations

rather than a body representative of member states and by its self-ascribed subordination under the BEPS process (Kohonen, 2016).

Another issue with membership in OECD processes is that it is understood differently from that in the United Nations. Unlike in the UN, jurisdictions without full sovereignty can become members of the Global Forum or the Inclusive Framework, as several British crown dependencies and overseas territories have. While in the UN, the United Kingdom speaks with one voice (and has one vote), in the Global Forum Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Guernsey, Jersey, the Isle of Man, the Turks and Caicos Islands, and Gibraltar speak on their own behalf.

The UNTC, on the other hand, lacks legitimacy – by design – in that it comprises experts in their individual capacity. Its very nature rules out the political accountability that can be attributed only to formal government representatives (as the OECD recognizes in its two-layer structure for the Inclusive Framework).

In short, what is still missing is a body that (a) is universal in membership and (b) is composed at a sufficiently high level to take decisions in the name of sovereign governments or countries.

#### 3.2 Missing agenda items

Beyond this institutional gap in global tax governance, there is also a need for a forum that can discuss or at least raise issues that so far have not or have only superficially been dealt with at international and global levels.

One set of issues is related to the taxation of resource extraction. While some progress has been made in increasing the transparency of payments to governments through initiatives such as EITI or legislation, in the EU, the United States and other countries, other problems

6. Cf. <https://financialtransparency.org/oecd-invites-developing-countries-to-join-anti-tax-avoidance-plan-but-only-after-the-rules-have-been-written/>.

persist. One is that of determining the right value of raw materials that are not necessarily traded on open markets but within integrated value chains.<sup>7</sup>

Related to this is the whole issue of tax competition that many countries are engaging in wilfully in order to attract foreign direct investment. While it has been shown time and again that tax rates are at best only one of a range of determinants for companies' investment decisions, relying on manipulating tax rates still seems to be the flavour of the day. It lies within the intrinsic logic of this approach that tax rates will fall overall and that they may drop to levels at which they cannot be compensated for through other sources of income. As of now, there is no system anywhere – not even in highly integrated systems such as the EU – that provides mechanisms for countries to deal with this issue.

This is even more striking when it comes to creating preferential tax regimes (also in the form of subsidies) for potential investors. While the BEPS package addresses the issue by emphasizing greater transparency (for example, on tax rulings), there is currently no mechanism that would allow for disputes among countries to be settled, if, for example, one country were to accuse another one of granting harmful tax incentives to certain companies.<sup>8</sup>

Another fundamental issue missing in almost all approaches towards global agreements in tax matters is the dispute between the principle of taxing companies according to the source or the residence principle. Income or profits that result from international activities such as cross-border investment may be taxed where the income is earned (the source country), or where the person who receives it is normally based (the country of residence). Which principle prevails is a constant source of dispute, including in bilateral treaties on double taxation.

The issue also overlaps with the question of how to deal with intra-group trade, the dealings between separate entities within a single corporation. The currently applied method of attributing tax bases works using transfer pricing in combination with the arm's length principle. Subsidiaries of a common firm are treated as separate en-

tities and taxed individually. Financial transactions among such subsidiaries and parent companies are treated as if they happened among independent entities. Prices for goods and services are supposed to be comparable to what they would be between independent entities. This is problematic because there are goods and services for which no or only a few comparables exist, especially for non-tangibles such as patent or trademark fees. Because this system is extremely complex and has caused many loopholes for tax avoidance, several experts, for example in the Independent Commission for the Reform of International Corporate Taxation, have argued for transfer prices to be replaced as a basis for attributing taxing rights by a formula, and for corporations, including all their subsidiaries, to be treated as single entities (ICRICT, 2015; Picciotto, 2012). A discussion about not just reforming, but fundamentally replacing the transfer pricing system for tax purposes has so far been blocked by the OECD and its members.<sup>9</sup>

## 4. Options for improving international tax governance

In order to fill these institutional and substantive gaps, either existing institutions need to be further developed, or new ones established, or both. Such institutional development should fulfil certain functional and formal requirements.

### 4.1 What a new body should be able to achieve

1) It would need to be able to raise new agenda items as they occur, and without a minority being able to block them. For example, even under the OECD Inclusive Framework, the original partners of the BEPS action plan have already set the stage and potentially excluded certain issues (such as the replacement of transfer pricing rules by a system of so-called unitary taxation). A new institutional framework could also give greater emphasis to the needs and wants of smaller or less affluent countries and thus increase its substantive inclusiveness.

7. Cf. [http://www.christianaid.org.uk/pressoffice/pressreleases/may\\_2015/glencore-in-zambia-the-tax-questions-that-persist.aspx](http://www.christianaid.org.uk/pressoffice/pressreleases/may_2015/glencore-in-zambia-the-tax-questions-that-persist.aspx).

8. The BEPS Action Plan covers only dispute resolution between parties of tax treaties. It does not refer to issues outside such treaties, such as special tax incentives.

9. For more on this issue, cf. <http://www.taxjustice.net/topics/corporate-tax/transfer-pricing/> with many bibliographical references.

2) A new institution would need to be able to actually negotiate new regulations and ensure that its outcomes would be more than just technical models and voluntary guidelines.

3) It might consider mechanisms for non-compliance, which could range from naming-and-shaming exercises to actual conflict resolution mechanisms.

4) A new body would need the capacity to facilitate and support the implementation of its decisions. While this may sound rather simplistic, capacity can be a pre-determining condition of being able to participate in certain agreements (such as the automatic exchange of information, which requires highly efficient systems of data aggregation and processing and may be closed to countries that cannot share the same type and amount of data they would like to receive from others); also, it is not irrelevant who is providing capacity-building and under what conditions: in other words, who is paying teachers and who wrote the textbooks (for more on this, cf. Cortés Saenz/Ryding 2016)?

In line with functional requirements, a new body will need to overcome some of the institutional inadequacies of its predecessors.

a) It will have to have universal membership of sovereign states<sup>10</sup> in order to avoid cases in which even single, small, but non-compliant states undermine the overall effort (as the cases of Luxemburg and Panama have shown).

b) It will have to have the ability to independently monitor the implementation of its decisions (meaning, it should have a minimum capacity in terms of staff and finances to do so).

c) It will have to live up to certain procedural standards that legitimize the outcomes of such an institution not just with governments, but with citizens, for which the openness of processes at the United Nations could serve as a good example. For example, it features the (more or less transparent) inclusion of non-governmental actors such as public interest groups or other international organizations and institutions.

10. The question here is whether members would need to be fully sovereign or whether »tax sovereignty« could be enough in this case. For more on the issue, cf. Rixen 2016.

## 4.2 What a new body could look like

The question remains where or how best to build an institution that meets these criteria. One attempt already on the way is the establishment of the OECD Inclusive Framework on BEPS Implementation (see above). Establishing new institutional frameworks under the auspices of the OECD, however, suffers from several intrinsic weaknesses that prevent it from falling in line with above-mentioned criteria. The OECD will always remain an organization dedicated first and foremost to its full members.

The UN is the one place that would be able to close this gap of legitimacy without having to re-invent itself. A body dealing with the above-mentioned issues could be based on various models.

**1) Strengthening the UN Committee of Experts:** The most pertinent option to strengthen the UN's capacities to work on tax issues would be to strengthen the already existing Committee of Experts, as was decided at the FfD3 conference of Addis Ababa (cf. above). However, this option does not fulfil the listed requirements: it would lack the necessary political legitimacy (experts still act in their personal capacity), would not be binding and would fail to provide proper capacities, even if its »furnishing« were to be increased dramatically.

**2) Upgrading the UN Committee of Experts:** With this in mind, several governments and NGOs proposed to upgrade the present expert body into an intergovernmental one in the run-up to the Addis Ababa conference. Just like the already existing UN Statistical Commission, the Tax Commission would consist of government experts, but still be nationally accountable to take decisions of a binding nature by consensus. While it would have been difficult to envisage such a commission creating binding international law on tax, it could have served as the anchor for further developing existing approaches and setting de facto global standards (as the Statistical Commission does in defining gross domestic products as the de facto standard for measuring a country's wealth).

**3) Creating a functional commission under the auspices of ECOSOC:** A variation on the proposal of upgrading the Expert Committee was also debated during the FfD3 negotiations: creating an inter-governmental, functional commission under the auspices of ECOSOC while retaining the existing Expert Committee as one

of its subsidiary bodies, in order to keep its technical expertise and supplement it with more political legitimacy and accountability. The question remains whether a functional commission could be really universal in its membership. Usually, membership in subsidiary bodies to ECOSOC is smaller than the membership of the council itself (54). There is one notable exception, the UN Forum on Forests, which is listed as a functional commission on ECOSOC's website.<sup>11</sup> Neither is there any rule that would preclude ECOSOC from setting up a commission with universal membership (UN Doc. E/5715/Rev.2, p.11). A way out of this possible dilemma could be to form a body under the auspices of the General Assembly (or under the auspices of the GA and ECOSOC). As the examples of the High-level Political Forum on Sustainable Development or the Peacebuilding Commission have shown, institutional creativity is not unheard of within the UN system.<sup>12</sup>

Several member countries of the OECD, however, blocked any proposal that would have created a new body or institution during the FfD3 talks. Delegates raised the issue of not wanting to duplicate existing institutions, while a new institution could clearly close substantive as well as legitimacy gaps of global tax governance. Another argument was to leave tax issues to experts and not politicize the issues, an argument that seems rather curious, when the same governments put so much emphasis on creating an Inclusive Framework exactly in a way that ensures a political commitment, well aware that without such a commitment, the whole process would be meaningless. Finally, the argument was raised that existing mechanisms (especially at the OECD) were already working with Southern countries' interests at heart and that there were no funds to finance the secretariat of any new mechanism. But if it had been possible to introduce new membership fees for the OECD Inclusive Framework, why wouldn't it be possible to do the same at the UN? Overall, the stance of Northern countries rather leaves the impression that some governments prefer the institutional setting on tax governance as it is, weighted towards their interests and influence.

The discussion could also profit from taking a look into the past of the UN. From the establishment of the organization to 1954, a Fiscal Commission existed and was

tasked with exactly the kind of questions it should discuss today. For example during its fourth session in 1953 the Fiscal Commission addressed »(1) international tax problems, especially the problem of fiscal incentives to increase the international flow of private capital for the economic development of under-developed countries, (2) world tax service, (3) taxation of agriculture [...]« (United Nations 1954), and many other issues.

**4) Establish a global convention on tax and a treaty body:** Should the UN turn out to be the wrong venue for making progress on global tax governance, another idea could be to further the issue through the adoption of an international convention on tax cooperation. The convention could, for example, legally define what constitutes a harmful tax practice and even establish independent arbitration mechanisms among its members. And it could also set standards for international organizations concerning the kind of capacity-building support they grant. As is the case with the Framework Convention on Climate Change or Convention on Biological Diversity, a treaty body would oversee their implementation, formulate optional protocols and create a secretariat function to create oversight and technical expertise.

**5) Establish a new international organization:** The most far-ranging version of such proposals is that of creating a new multilateral or global organization with its own governance, membership and secretariat. A newly established International Tax Organization could be designed in a way that fulfils all the above-mentioned criteria and take shape as a specialized agency of the UN or a body outside the UN system. As is the case in health, agriculture and nutrition, or trade, it is conceivable that such an organization could write binding international norms, standards and rules and enforce them through a system of dispute settlement or arbitration. The examples of the WHO, the FAO or the WTO at the same time make clear that institutional design is of the utmost importance. Possible problems can be viewed, for example, in the discussions around a draft framework of engagement with non-State actors at the WHO, or in the ongoing debates about the relations between trade and other branches of international law. Also, given the current political climate, which seems sceptical towards greater global integration and to creating new global institutions, this proposal appears to be rather unrealistic. Nevertheless, similar proposals come not just from activists or academics. Already in 2001, the High-level Panel

11. Cf. <http://www.un.org/en/ecosoc/about/subsidiary.shtml>.

12. The General Assembly could also be a space to make progress politically, cf. Montes 2016.

on Financing for Development in preparation of the first FfD conference in Monterrey («Zedillo Panel») proposed

[to] consider the potential benefits of an International Tax Organization (ITO) to:

At the least, compile statistics, identify trends and problems, present reports, provide technical assistance and develop international norms for tax policy and administration.

Maintain surveillance of tax developments [...].

Take a lead role in restraining tax competition designed to attract multinationals with excessive and unwise incentives.

Slightly more ambitiously, develop procedures for arbitration when frictions develop between countries on tax questions.

Sponsor a mechanism for multilateral sharing of tax information, [...]

Perhaps most ambitious of all, an International Tax Organization might in due course seek to develop and secure international agreement on a formula for the unitary taxation of multinationals. (UN Doc. A/55/1000, pp. 27-28)

ence to the Panama Papers (Correa, 2016). On 6 October, the G24 – a group coordinating the positions of developing countries in the context of the Bretton Woods Institutions, whose members include Brazil, China, India and Nigeria – issued a communiqué encouraging »greater participation of developing countries in the activities of the Committee of Experts on International Cooperation in Tax Matters, which should be upgraded to an inter-governmental level«. <sup>13</sup> And only a few days later, the Independent Expert on the promotion of a democratic and equitable international order of the UN called for a body to address tax evasion and harmful tax competition, as well as a »binding legal instrument on corporate social responsibility stipulating the obligation to pay taxes where the profits are generated and a prohibition to shift profits should be adopted«. <sup>14</sup>

In short, the discussions around the global governance in tax have only just begun and it will be interesting to see where they will lead in the face of the multiple options open to the international community in creating institutional arrangements to curb tax evasion and avoidance, as well as unnecessary forms of tax competition.

## 5. Epilogue

The idea to institutionally strengthen the UN in its work on tax justice has by no means ended with the conclusion of the 3rd International Conference on Financing for Development or the first Financing for Development Forum in April 2016. With the publishing of the so-called »Panama Papers« and »Bahama Leaks« during the same year, several international actors have given new drive to establish what is usually referred to as an »intergovernmental UN Tax Body«, whatever concrete form this may take in the end. Among the untiring proponents of the idea are civil society activists under the roof of the Global Alliance for Tax Justice (for example, Eurodad, 2016), as well as diplomats and politicians. In September 2016, during the opening weeks of the 71st General Assembly, Ecuadorian President Rafael Correa launched a renewed push towards the establishment of a UN body with refer-

13. [http://g24.org/wp-content/uploads/2016/10/G-24\\_Communique\\_2016\\_October\\_Final.pdf](http://g24.org/wp-content/uploads/2016/10/G-24_Communique_2016_October_Final.pdf).

14. <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20721&LangID=E>.



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