

Towards Global Tax Justice:

An Interdisciplinary Evaluation of the UN Framework Convention on International Tax Cooperation

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THE ADOPTION OF THE UN RESOLUTION ON THE PROMOTION OF INCLUSIVE AND EFFECTIVE TAX COOPERATION AND ITS GOALS

On 22 December 2023, the Second Committee of the United Nations General Assembly adopted the Resolution on the “Promotion of Inclusive and Effective Tax Cooperation at the United Nations” (hereinafter, the “UN Resolution”).¹ Prior to the UN Resolution’s adoption, the Secretary General had issued a report assessing international legal instruments which may serve the purpose of addressing international tax cooperation (“Report of the Secretary General”). In this report, the Secretary General identified and outlined three main options for the UN to promote inclusivity and effectiveness in international tax cooperation: (i) a *multilateral convention on tax*; (ii) a *framework convention on international cooperation*; and (iii) a *framework for international tax cooperation*.² Ultimately, the UN Resolution, which was

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drafted by Nigeria on behalf of the African Group, opted for the development of a UN Framework Convention on International Tax Cooperation and established a “member-state-led, open-ended and ad hoc intergovernmental committee (“Ad Hoc Committee”) for the purpose of drafting [its] general terms.”³ The Ad Hoc Committee issued a draft of the Terms of Reference (“ToR”) for the UN Framework Convention which the UN Member States approved on 16 August 2024 by a vote of 110 to 8.⁴ The finalized ToR were submitted by the Ad Hoc Committee to the General Assembly for consideration at its seventy-ninth session. The voting took place on 27 November 2024, and the ToR were approved by a vote of 125 to 9, with 46 abstentions.⁵ The ToR will now guide the UN Framework Convention and the work of the new Member-State-Led Committee tasked with developing two early protocols, one of which will address the “taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy” (Art. 15 ToR). Indeed, the ToR established a timeline that foresees the committee completing their work by September 2027.⁶

50 The 2023 UN Resolution and the above-mentioned ToR reflect a nascent demand for decentralization in ongoing international tax policy discussions. For over 60 years, the international tax agenda-setting has been led by the Organization for Economic Co-operation and Development (OECD), famously labeled as the “rich countries’ club.”⁷ Unsurprisingly, amongst those countries voting against the UN Resolution in the General Assembly were the United States, the United Kingdom, and the European Union Member States—all members of the OECD. Critics of a UN tax project, who subscribe to the narrative pushed by the OECD, often argue that it would merely be a duplicate of the OECD.⁸ In practice, it is exactly the opposite. Namely, it is in *not* being a duplicate of the OECD that the Resolution causes panic amongst those developed countries that benefit from the current international taxation landscape. Despite this resistance, 125 countries voted in favor of the Resolution: the demand for improved multilateralism and international tax cooperation that is inclusive in nature, not just in name, was loud and clear. This push for inclusivity is not merely about expanding the number of participants in discussions but about reshaping power dynamics that have long influenced international tax policy. It challenges the existing hierarchy that has allowed certain countries to benefit disproportionately. The Resolution thus supports a more balanced redistribution of rights and responsibilities.

In his report preceding the adoption of the UN Resolution, the

Secretary General highlighted the UN Framework Convention's potential to further global justice.⁹ In this article, we will not only substantiate the latter but we will go one step further and advance the claim that it is crucial for international tax policy makers to place *justice* at the forefront of UN negotiations. If guided by both procedural and substantive justice considerations, the negotiations at the UN could yield an inclusive and equitable UN Framework Convention, a product of the cooperation efforts needed to ensure that all countries' concerns and stakeholders affected are considered in the process. This paper is therefore concerned with exploring and assessing to what extent the UN Framework Convention on International Tax Cooperation can lead to justice in the international tax regime ("ITR").

GLOBAL JUSTICE AND INTERNATIONAL TAX POLICY

Though justice is a term that has more extensively been theorized by political philosophers, it is relevant also from a legal perspective. The term can be used as a normative tool to evaluate a legal system or instrument and, accordingly, legitimize and validate it.¹⁰ With specific regard to the international tax legal framework, some scholars suggest that research methodology and policy making should move beyond purely functionalist approaches focused uniquely on considerations of economic efficiency and instead contemplate a broader range of sociological, political, and moral factors.¹¹ In particular, they claim that a more holistic understanding of international tax issues that acknowledges the complex interplay between law, politics, morality, and economics would better contribute to the enhancement of the current system.¹²

For example, Cees Peters, an international tax law scholar, highlights the need for a critical examination of the existing international tax framework and its underlying principles by applying concepts derived from moral and political philosophy to the theory and practice of international income taxation.¹³ Consequently, he proposes a normative politico-philosophical framework of global social justice and argues that principles like inter-nation equity should be re-evaluated in light of dynamic interrelationships between political, economic, moral, and legal considerations. Most relevant to the present study is Peter Hongler's seminal work on justice in the International Tax Regime. In his study, Hongler questions long-standing principles of international tax law such as neutrality, source, benefit, ability-to-pay, and inter-nation equity through the lens of political philosophy. Specifically, he draws on Sen's comparative theory of justice and Rawls' work in ideal theories

to critique the lack of distributive justice in the international tax regime.¹⁴

These authors highlight the role of academics, practitioners, and policymakers in developing more theoretically and practically embedded normative frameworks that address contemporary societal challenges in international taxation. In doing so, they illustrate the importance of considering political philosophy in international tax policy discussions, argue for the potential justice to inform tax reform efforts, and advocate for interdisciplinary studies that bridge the gap between economic theory and societal considerations.

Against this background, this paper will use political theory to evaluate the validity of justice claims relating to the UN Framework Convention as an integral element of the international tax regime.

We begin by taking Aristotle's conception of justice as the point of departure. Specifically, Aristotle distinguishes between "commutative" and "distributive" justice.¹⁵ Commutative justice concerns transactions between individuals, focusing on fairness in exchange and rectification, and is seen as justice among equals. In contrast, distributive justice involves the equitable distribution of resources within a community, reflecting societal values about fairness among unequals, often linked to individuals' social status.¹⁶ In the context of the UN Framework Convention, commutative justice implications arise in the process of treaty negotiations, rulemaking, and agenda-setting. This part of the UN Framework Convention can be otherwise referred to as the "procedural" dimension. In contrast, distributive justice considerations arise in the substantive dimension of the Convention, in which the focus turns to the effects created by the substantive content of the rules and principles enshrined in the instrument. Thus, for the purpose of this paper, commutative and procedural justice will be used interchangeably, as will distributive and substantive justice. In the current globalized world, both forms of justice can and should inform contemporary international tax law, so that it not only addresses the fairness of transactions but also considers broader equity outcomes among nations.

By combining political philosophy, international relations, and legal research insights, we will build a normative framework that, from an interdisciplinary perspective, can appropriately evaluate the UN Framework Convention's capacity, as a legal instrument, to address both procedural and substantive justice considerations. However, as emphasized by Hongler, understanding relevant historical and societal context is essential for interpreting justice in the current international tax framework.¹⁷ This is the reason why, before delving into our analysis, it is essential to illustrate the broader context

in which the UN Framework Convention would operate.

THE INTERNATIONAL TAX REGIME AND ITS PERCEIVED INJUSTICES

The evolution of modern international tax cooperation dates to the late nineteenth and early twentieth centuries, when taxing income became common and bilateral treaties emerged.¹⁸ For a long time, the goals of international tax cooperation focused on allocating taxing rights between states and mitigating international double taxation. But, recently, the purposes of international tax law have evolved to accommodate “economic, political, social and technical developments.”¹⁹ Since the 1990s, globalization and technology have fundamentally transformed the way taxpayers live and operate.²⁰ The advent of the digital economy has created new ways of sourcing income and has challenged traditional concepts of taxation and international cooperation. In today’s global landscape, taxation has emerged as another pivotal source of inter-state competition.²¹ States, through their tax and spending policies, aim to maximize their national interests and attract investments as well as certain residents, such as corporate groups’ holding entities—so-called “high-net-worth” individuals, and skilled professionals.²² This competition is triggered and motivated by an increased mobility of taxpayers and of the main sources of income and wealth (such as intangible assets), and by a persisting fragmentation of the tax legal framework. In such context, taxpayers can relocate their capital, activities, and residency across different jurisdictions based on their financial and tax convenience.²³

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In turn, tax competition has meant that international tax policies are no longer solely shaped by national sovereign states unilaterally, but are influenced by the invisible hand of the global market. Taxpayers, ranging from individuals to multinational corporations, increasingly seek out jurisdictions with favorable tax regimes, prompting states to vie for investments and residents by offering competitive terms. Indeed, in its 2023 State of Tax Justice report, the Tax Justice Network estimated that governments around the world are losing \$480 billion a year in tax losses—\$311 billion of which is lost in direct tax revenue as a result of cross-border multinational corporations’ profit-shifting schemes, and \$169 billion to offshore tax evasion related to financial wealth.²⁴ Countries with lower incomes consistently bear the brunt of global tax abuse. However, countries with higher GDP (or “developed countries”) experience the majority of annual tax losses, amounting to US\$ 433 billion, which, for reference, sums

to only 9 percent of their average public health budgets. In contrast, though lower GDP countries (or “developing countries”) face tax losses of \$47 billion, these losses constitute almost half (49 percent) of their average public health budgets.²⁵

Scholars and policy makers have long reported on this issue, and the OECD’s 1998 report on Harmful Tax Competition served to foster a shift in international tax cooperation efforts from mitigating international double taxation to combatting the aggressive tax planning and cross-border tax avoidance that gives rise to the phenomenon broadly referred to as “base erosion and profit shifting” (“BEPS”).²⁶ The increased cooperation among OECD Member States led to the establishment of frameworks such as the BEPS Project and the Inclusive Framework.²⁷ These developments have not only reshaped the goals of international tax law but also the legal instruments used, with a growing reliance on multilateral conventions, such as the Multilateral Convention on Mutual Assistance in Tax Matters and, more recently, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (also referred to as the “Multilateral Instrument” or simply “MLI”).²⁸

54 Despite the increase in tax cooperation in the past few decades, there are several angles from which the current ITR may still be perceived as unjust.²⁹ First, the ITR allows for enhanced tax avoidance strategies resulting in multinational enterprises and wealthy individuals not paying their fair share of taxes. Second, the persisting existence of tax havens within the ITR facilitates tax avoidance, tax evasion, and money laundering, while also enabling illicit financial flows.³⁰ Third, base erosion and profit shifting-related practices currently allowed in the ITR undermine the tax system’s integrity as it leads to underfunding, particularly in developing countries where it negatively impacts the state’s public investment and hinders its economic growth. This results in suboptimal resource allocation and exacerbates inequality. Fourth, the current ITR is said to enhance poverty as a result of the concentration of income and wealth and of the public revenue draining it leads too.³¹ Scholars have highlighted the implications of this particular injustice with regards to the UN Sustainable Development Goals (SDGs) and human rights deficits as states lack tax revenue to strengthen their institutions and reduce inequalities.³² This injustice is also due to the unfair tax competition present in the current ITR that not only reduces the revenues of states, but also prevents them from properly taxing all of their constituents, referred to as a “loss of monopolistic power over constituents.”³³

Tax competition between countries induced many governments to alleviate the tax burden on the more mobile types of income—such as financial income arising from intangible assets—thereby impairing the ability of their tax system to achieve redistributive goals and social justice.

The current legal framework that dominates the ITR has been substantially shaped by, or through, the OECD. Indeed, the current ITR is largely a result of vast adoption, by most jurisdictions, of the OECD Model for Double Tax Convention on Income and on Capital (“OECD Model”) as a basis for double tax treaty negotiations, as well as other soft law tools such as the transfer pricing standards and the rules on the allocation of profit to permanent establishments. Given its perceived unfairness, it is unsurprising that the OECD-led policies aimed at reforming the ITR are often perceived as OECD impositions onto non-OECD jurisdictions. The claim, indeed, is that such jurisdictions are only formally involved in the reform project, yet its architecture is decided and designed in Paris by technocrats who are expressions of, and

accountable only to, the OECD Member States.³⁴ This legal framework infringes on the sovereignty of states that did not play a significant role in designing

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the policies or setting their agenda due to their status within the OECD, yet were still compelled to consent to their implementation as a result of political pressure. Authors have argued that this inter-state pressure reflects a Machiavellian behavior, undermining the autonomy of states in shaping their tax legislation.³⁵

It is against this background that the UN Framework Convention was conceived. Echoing the Secretary General, claims of injustice in the current ITR arise from both procedural and substantive dimensions, and thus a solution will need to address both.³⁶

A NORMATIVE FRAMEWORK: PROCEDURAL AND SUBSTANTIVE THEORIES OF JUSTICE IN INTERNATIONAL TAX POLICY

This section develops a normative framework to evaluate justice claims of the

UN Framework Convention from both a commutative (*rectius*, procedural) and distributive (*rectius*, substantive) perspective, drawing on political theory that addresses commutative/procedural justice and distributive/substantive justice, respectively. As anticipated, commutative justice, in the context of international tax law, translates into procedural justice as it relates to the justice present within the relationships, exchanges, and transactions between states, not just among the citizens themselves, adding an additional layer of complexity.³⁷ Transactional justice is particularly pertinent in the context of the UN Framework Convention.³⁸ It concerns the equitable balance of rights and duties within agreements, scrutinizing whether such arrangements are genuinely reciprocal. This framework is crucial when evaluating exchange relationships in which independent parties agree on the mutual transfer of goods and services, each party having the rightful authority to manage their respective contributions.³⁹ In the context of multilateral treaty negotiations, transactional justice demands beneficial reciprocity and departs from the notion that the parties are equal and free to contract. But as previously highlighted, not all international contracts are formed under conditions of complete freedom—significant economic, financial, political, or even military pressures exerted by other contractual parties can influence the terms of agreements. Consequently, the mere ability of states to negotiate and sign treaties does not inherently guarantee their justice or equity, emphasizing the need for careful assessment of transactional justice in these agreements.

Thus, in the context of the UN Framework Convention, whereby an agreement is being reached by seemingly equal parties, it is imperative to evaluate the extent to which transactional justice is upheld during its procedural stages. We draw from Mosquera, who provides criteria for evaluating procedural justice (or input legitimacy, as she terms it). These criteria are *transparency*, *participation*, and *representation*.⁴⁰ Specifically, in international tax law-making, Mosquera stresses the importance of involving developing countries in setting agendas and in drafting content to ensure that these instruments are not dominated by the priorities of developed countries alone. This approach aims to build a legitimate consensus that aligns with the democratic ethos of participation and representation in governance, making international tax law instruments more acceptable and justified across diverse global stakeholders.⁴¹

As previously advanced, to construct a normative framework from which to evaluate the substantive dimension of the UN Framework Convention, we will draw from political philosophy and, in particular, from

different theories of justice in the context of the international tax regime as assessed by Hongler and Benshalom.

Hongler builds on the work of Rawls to distinguish between the normative conditions applicable within states and those applicable between them. He emphasizes that while Rawls could justify redistribution at the national level, the principle of state sovereignty dominates the international level. According to Hongler, any claim of redistributive duties across borders would not be legitimate if it infringed on the fiscal sovereignty of individual states. For Hongler, “fiscal sovereignty” becomes the fundamental principle of international tax justice. This sovereignty allows states to manage their own fiscal policies, which Hongler maintains is crucial for ensuring peace and autonomy in the global order. Hongler argues that states must retain the ability to levy taxes and manage their resources to ensure domestic justice, thereby safeguarding their right to self-determination in fiscal matters. This translates, in practical terms, into ensuring that states can tax income generated within their borders and that other states refrain from taxing income that is not created within their jurisdiction.⁴²

While Hongler supports international tax cooperation and the regulation of tax competition, he stresses that this must not come at the expense of fiscal self-determination. We agree with this point, particularly in the case of developing and non-OECD countries whose fiscal self-determination has been eroded by the current international tax regime’s *status quo*. The UN Framework Convention presents an opportunity to address this imbalance and restore autonomy in international tax matters.

Hongler also introduces the continuous approach to international tax justice, which recognizes that the degree of international integration, cooperation, and coercion between states can incrementally generate duties and responsibilities among states and their citizens. As global interdependence increases, these duties evolve over time. For Hongler, the duties created by the continuous approach are primarily humanitarian duties. He argues that states, especially wealthier ones, have a moral obligation to assist those suffering from extreme poverty and deprivation. These humanitarian duties are rooted in the ethical responsibilities that arise as the interconnectedness of states deepens.

Benshalom builds on the continuous approach, or incremental integration, to make a broader argument.⁴³ In his view, economic interactions between states also give rise to relational-distributive duties. Benshalom critiques the existing international tax regime, asserting that it perpetuates

inequality by favoring the fiscal policies of developed countries and limiting the fiscal sovereignty of developing ones. His approach highlights that as trade relationships become more globalized and imbalanced, the claim for relational-distributive duties grows stronger. He argues that these duties translate into practical measures, such as granting developing countries greater taxing rights on economic activities conducted within their jurisdictions. This method is less disruptive than more radical redistributive proposals, but it still addresses the inequities created by global trade without undermining national sovereignty.

Thus, while both Hongler and Benshalom emphasize the importance of fiscal sovereignty, their views diverge on the types of duties that arise from global integration. Hongler focuses on humanitarian duties, which he sees as essential for international tax cooperation but limited in scope. Benshalom, on the other hand, expands the framework to include relational-distributive duties, which address the structural imbalances in the international tax system. Both authors adopt a gradualist perspective, recognizing that responsibilities among states should increase as global interdependence deepens.

58 While we agree with Hongler's argument for fiscal sovereignty and the continuous approach, we align more closely with Benshalom's view that relational-distributive duties offer a more practical solution to current global inequalities. Humanitarian duties remain important, but they only address the ethical obligation to assist those suffering from extreme deprivation, without challenging the deeper structural issues in the international tax system. Benshalom's approach, by contrast, directly confronts these imbalances and offers a way to empower developing countries through the existing mechanisms of international tax law.

In order to evaluate distributive justice claims in the context of the UN Framework Convention, we advance a normative framework that incorporates the following criteria: fiscal sovereignty, continuous approach, humanitarian duties, and relational-distributive duties. This novel framework respects state autonomy while emphasizing the need for international tax cooperation to address global inequalities. It offers a balanced approach that accommodates fiscal sovereignty while recognizing the evolving responsibilities that come with deeper global integration.

ASSESSMENT OF THE UN FRAMEWORK CONVENTION

Having established our normative framework, we will now turn to assessing

the UN Framework Convention. In light of the final draft of the Terms of Reference being approved by the Second Session of the Ad Hoc Committee and pending General Assembly, its negotiation process and final content will also be considered for assessment. We will begin by assessing the UN Framework Convention's potential for enhancing procedural justice of the ITR in regards to the transparency, participation, and representation in its adoption procedure, considering its decision-making and agenda-setting elements.⁴⁴

The Resolution adopted by the General Assembly on 22 December 2023 outlined a clear path for creating a new intergovernmental process to address international tax cooperation. The process was designed to be transparent, inclusive, effective, and to respect the tax sovereignty of all Member States. Unlike OECD negotiations that happen “behind closed doors,” the UN process is more open, with more proactive involvement of observers, including civil society organizations, which can actively participate and access the ongoing discussions and drafts. Indeed, the Terms of Reference sessions by the Ad Hoc Committee were broadcasted by the UN, with simultaneous translation in all six official UN languages, allowing for public engagement. This reflects what the 2023 UN Resolution stressed: “that a fully inclusive and effective international tax cooperation requires well-established and transparent decision-making structures, and clear and transparent rules, in order to ensure that all participants are on an equal footing procedurally and have the same ability to engage meaningfully in decision-making, as well as clear and cohesive multilateral rules to aid countries and businesses and to prevent opportunities for tax avoidance.”⁴⁵ This openness at the UN is presented as vital for effective governance, allowing for a wider range of inputs and greater public scrutiny, which in turn helps ensure that the resulting standards are more likely to be fair and widely accepted. It is imperative that documents are made available as soon as they are relevant to ongoing discussions, or as soon as decisions are made, to allow timely public scrutiny and feedback—and fortunately, they were.⁴⁶

Other factors to consider regarding procedural justice are participation and representation. The UN Framework Convention would ultimately be adopted by the General Assembly, which would ensure a truly inclusive representation of all Member States. Before adoption, however, representation and participation are ingrained in all steps of the process. The Ad Hoc Committee that drafted the ToR ensured inclusivity through its structure made up of 20 members, one Chair, one Rapporteur, and 18 Vice-Chairs.

The members were elected to balance both geographical representation and gender, with the five regional groups (African Group, Asia-Pacific Group, Eastern Europe, Latin America and Caribbean, and Western Europe and Other States) being equally represented. In addition, the Committee accepted inputs not just from UN Member States but also from UN organizations and entities, international organizations (including the OECD), civil society, academia, and business sector stakeholders. Their participation did not stop at the inputs: during the two negotiation sessions, Member States and other stakeholders had the chance to reiterate their views, ensuring that all contributions were weighed without bias, reinforcing the Ad Hoc Committee's role as a truly representative and participatory forum.⁴⁷ The work and negotiations leading to the issuance of the ToR also included non-broadcasted and closed informal meetings. However, the fact that such meetings were reserved for state representatives only, and that their occurrence was the subject of disclosure, appears to grant transparency and representation.

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The UN's broad membership and its principle of sovereign equality ensure that all countries can participate and have even footing. The 2023 UN Resolution emphasized the need for all countries to participate in developing the rules by right and without preconditions. This approach acknowledges the different needs, priorities, and capacities of all countries, particularly those in special situations, ensuring that the tax rules developed are universally applicable and fair. The UN recognizes that inclusive and effective participation should include support for capacity building to help developing countries implement and adhere to international tax standards.⁴⁸ At the UN, all countries, regardless of their economic status, have an equal voice. In intergovernmental negotiations, countries are allowed to include their national experts, and special support may be provided to encourage the participation of experts from less developed countries to ensure that a wide range of viewpoints are considered during deliberations. This openness to all perspectives was the case for the sessions that led to the issuance of the ToR. This inclusion is crucial in the context of international tax cooperation, where developing countries often feel that their needs and capacities are not adequately considered by organizations predominantly influenced by developed nations, such as the vast majority of the OECD members.

Therefore, it is clear from the analysis that transitioning to a United Nations forum for international tax cooperation discussions would significantly enhance procedural justice in the international tax regime.

The increase in transparency, representation, and participation within the decision-making and agenda-setting processes under the UN framework ensures a more equitable approach to international tax law. The multilateral nature of the UN Framework Convention is particularly crucial in mitigating the power imbalances that have historically favored wealthier nations in the formulation of bilateral treaties.⁴⁹ By involving a diverse array of Member States and allowing for broader observer participation, the UN setting promotes a highly democratized negotiation process. This openness prevents the monopolization of information and ensures that a variety of perspectives are considered, thereby fostering a more balanced and more just ITR.

The procedural justice implications of the UN Framework Convention lay the initial foundation for its potential to enhance the distributive justice of the ITR. While the work on the Convention itself has yet to formally begin, we can still assess the Convention's potential for distributive justice by examining the key objectives and commitments outlined in the 2023 UN Resolution and the ToR. These documents provide relevant elements to assess if, and how, the Convention may advance fiscal sovereignty, adopt a continuous approach, and address relational-distributive and humanitarian duties, which, as illustrated in Par. III, constitute the four main criteria of our normative framework to assess the potential to enhance redistributive justice in the international tax regime.

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The UN Framework Convention, as envisioned, will serve as a legally binding multilateral instrument that is constitutive in nature, meaning that it will establish a comprehensive system of international tax governance.⁵⁰ According to the 2023 UN Resolution, the Framework Convention will define the main objectives and principles that will guide international tax cooperation.⁵¹

In parallel to the Framework Convention, the Resolution established that there could be binding protocols that address specific areas of tax law in more detail (Article 14 ToR). These protocols provide flexibility by allowing states to opt in at their discretion, either at the time they become party to the framework or later. This flexibility is crucial for ensuring that the framework remains adaptable to the evolving landscape of international tax challenges, as different states may have varying priorities and capacities for addressing substantive tax issues. The ToR specifies that two early protocols should be developed simultaneously with the framework (Article 15 ToR). The first early protocol is expected to address the taxation of income derived from cross-border services in an increasingly digitalized and globalized

economy (Article 15 ToR). The second early protocol will be decided at the organizational session of the intergovernmental negotiating committee for the Convention and should be drawn from a list of priority areas, including the taxation of the digitalized economy, measures against tax-related illicit financial flows, the prevention and resolution of tax disputes, and addressing tax evasion and avoidance by high-net-worth individuals (Article 16 ToR). Additionally, the ToR suggest that other protocols could be considered on topics such as tax cooperation on environmental challenges, exchange of information for tax purposes, mutual administrative assistance on tax matters, and harmful tax practices (Article 17 ToR). Each of these areas represents key components in building a transparent, fair, and effective international tax system that can respond to both traditional and emerging tax-related challenges.

These protocols reflect the flexible nature of a framework convention, meaning that it can adapt over time, allowing for incremental additions or modifications through protocols as new tax challenges and consensuses emerge in the future. The voluntary nature of protocols allows countries to

These protocols reflect the flexible nature of a framework convention, meaning that it can adapt over time, allowing for incremental additions or modifications through protocols as new tax challenges and consensuses emerge in the future.

adapt and implement rules in accordance with their needs and preferences, ensuring states retain control over their fiscal policies. This control is crucial for countries to manage their resources, thus advancing fiscal

sovereignty and self-determination of Member States. Furthermore, the protocols emphasize a flexible, evolving framework representative of the continuous approach. This is useful for adapting to the evolving nature of the global economic and financial landscape. At the same time, it ensures that associated responsibilities and relational-distributive duties arising out of trading relationships, in all their forms, are appropriately addressed ensuring a fair distribution of taxing rights over income and profit in a global and digital landscape.

The effort to allocate taxing rights fairly is a principle and objective of the ToR (Article 9(f) and 10(a)), advancing relational-distributive duties. Also advancing the continuous approach is the 2023 UN Resolution and ToR

when they envision the creation of institutional bodies or forums to oversee ongoing discussions and decision-making, ensuring that the framework can continue to adapt to global economic conditions while maintaining engagement among states. This would ensure continued engagement and adaptation of the international tax cooperation framework to changing global economic conditions.⁵² The ToR outline key objectives and guiding principles designed to establish a comprehensive system of global tax cooperation. These objectives include fostering inclusive and effective cooperation amongst all nations in both substance and process (Article 7(a) ToR), creating a system of governance responsive to current and future tax challenges (Article 7(b) ToR), and establishing an international tax system that is fair, transparent, and equitable with an emphasis on enhancing legitimacy, certainty, and the ability to mobilize domestic resources (Article 7(c) ToR).

It appears that the UN Framework Convention would explicitly respect the principle of fiscal sovereignty by reaffirming each state's right to determine its own tax policies while also promoting international cooperation (Article 9(b) ToR). The balance between state autonomy and global cooperation is critical for ensuring that countries, especially developing ones, maintain control over their fiscal policies and resources. This is essential for safeguarding self-determination in tax matters, as well as preventing external interference that could undermine a state's ability to achieve domestic justice. Moreover, the UN Framework Convention would emphasize fiscal sovereignty by outlining how states are to interact within the framework, ensuring that fiscal sovereignty is protected while fostering collaboration on pressing global tax issues. The ToR promote fair allocation of taxing rights and fiscal sovereignty by ensuring that each state retains the right to tax income generated within its territory (Article 9(f) ToR). The inclusion of protocols, which states can opt into as needed (Article 14 ToR), further reinforces the Convention's flexibility and respect for national fiscal sovereignty. Thus, the Convention supports the core premise of fiscal self-determination while accommodating the need for international tax governance.

The continuous approach is embedded in the structure and design of the UN Framework Convention. This approach is reflected in the Convention's adaptability to global tax challenges and its capacity to evolve over time as international cooperation deepens. Both the UN Resolution and the ToR emphasize flexibility in the framework's principles, ensuring that the system remains responsive to changes in the global economy, emerging technologies, and new business models (Articles 9(e) and 10(a) ToR). The continuous ap-

proach also manifests in the creation of institutional bodies and mechanisms for ongoing dialogue and decision-making. These mechanisms ensure that as economic and political integration between states intensifies, the duties and responsibilities among states adapt accordingly. Such ongoing collaboration ensures that the framework remains aligned with global economic shifts and that states are continuously engaged in incremental, mutually beneficial cooperation. The protocols further reinforce the Convention's capacity to ensure continued engagement and adaptation of the international tax cooperation framework to changing global economic conditions.⁵³

Although humanitarian duties are not explicitly outlined in the UN Framework Convention per se, the broader emphasis on inclusive development and support for developing countries indirectly aligns with humanitarian obligations. The Convention aims to foster an international tax system that enhances domestic resource mobilization (Article 7(c) ToR), particularly in developing countries, which contributes to addressing extreme poverty and other humanitarian concerns. By supporting the ability of developing nations to generate sufficient revenue through fair taxation, the Convention indirectly advances humanitarian duties. This is particularly relevant to efforts aimed at closing the sustainable development financing gap, a key goal of the international tax cooperation agenda. The Convention adopts a universal approach that considers the varied capacities and priorities of countries, particularly developing nations (Article 9(a) ToR) which furthers equitable development and indirectly fulfills the humanitarian objective of ensuring that countries have the resources necessary to provide for the basic needs of their populations.

Finally, the UN Framework Convention takes significant steps toward addressing *relational-distributive duties*, particularly through its focus on the fair allocation of taxing rights (Article 9(f) ToR). This principle is key to ensuring that developing countries have the right to tax income generated within their jurisdictions, particularly from multinational enterprises as it addresses the inequalities inherent in the current international tax regime (Article 10(a) ToR). The Convention's approach to fair allocation aligns closely with relational-distributive justice, as it seeks to correct the imbalances that have historically disadvantaged developing countries in the global tax system. By advocating for a more equitable distribution of taxing rights, the Convention not only respects the fiscal sovereignty of developing countries but also ensures that their economic participation in global trade relationships is safeguarded by the fair distribution of taxing rights. This reflects Benshalom's

argument that relational-distributive duties arise out of economic interactions, and as global trade relationships deepen, so too does the legitimacy of redistributive claims by developing countries. Additionally, the flexibility offered through these protocols allows states to incrementally adapt to changing tax conditions and implement rules in a way that respects both fiscal sovereignty and the growing need for relational-distributive justice (Article 15 ToR). The principle of fairness in taxing rights allocation thus directly supports a more balanced distribution of global wealth, contributing to a more equitable international tax system.

In conclusion, it appears that the UN Framework Convention would largely align with the principles of substantive justice as outlined in our normative framework. The UN Resolution and the ToR show that the Convention is set to uphold national fiscal sovereignty while providing mechanisms for continuous international cooperation and adaptation. Although humanitarian duties are not directly addressed, the Convention's emphasis on inclusive development indirectly advances these goals by enabling countries to strengthen their tax bases. Overall, the Convention takes meaningful steps toward promoting relational-distributive justice, ensuring that the tax rights of developing countries are better protected in the global economy. In this way, the UN Framework Convention holds significant potential for enhancing distributive justice in the current international tax regime through a structured yet flexible approach.


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FINAL REMARKS

By evaluating the potential of the UN Framework Convention on International Tax Cooperation from an interdisciplinary perspective, this paper moves beyond technical legal interpretation to engage with fundamental questions of fairness and equity as prescribed by international normative standards.

The normative framework we established allowed us to assess the potential of the envisaged UN Convention to achieve justice from both a procedural and a substantial perspective. From a procedural perspective, this work underscores the importance of transparent, inclusive, and representative participation in shaping a Framework Convention that not only addresses the technicalities of taxation but also embodies the essence of justice in its design and, by extension, expected outcomes. From a substantive standpoint, we scrutinized the Convention's potential to uphold fiscal sovereignty, instill

relational-distributive duties, acknowledge humanitarian duties, and foster a progressive and continuous approach to international economic integration. Through this lens, we critically examined the preliminary structure and intended mechanisms of the UN Framework Convention as reflected in the 2023 UN Resolution and the Terms of Reference.

Although the exact impact of the UN Framework Convention on global justice will hinge on the specifics of its final provisions in 2027, the outcome of the analysis conducted in this paper is that this UN initiative has the potential to serve as a transformative instrument in the pursuit of global justice within the domain of international tax law or at least to stride towards a more just international tax order. 

NOTES

1. UN General Assembly, 78th Session, Second Committee, *Macroeconomic policy questions: promotion of inclusive and effective international cooperation on tax matters at the United Nations*, A/RES/78/230, Resolution adopted by the General Assembly on 22 December 2023, available from <https://documents.un.org/doc/undoc/gen/n23/431/97/pdf/n2343197.pdf>. Please note that this December 2023 resolution was in response to Resolution 77/244 which recognized the need to enhance international tax cooperation, adopted by the UN General Assembly on 9 January 2023. See UN General Assembly, 77th Session, Second Committee, *Macroeconomic Policy Questions: Promotion of Inclusive and Effective International Tax Cooperation at the United Nations: Resolution Adopted by the General Assembly on 9 January 2023*, A/RES/77/244, available from <https://documents.un.org/doc/undoc/gen/n23/004/48/pdf/n2300448.pdf?token=M3wVpgGCHwjSzC8MRG&fe=true>.

2. United Nations General Assembly, *Report of the Secretary General on the Promotion of Inclusive and Effective International Tax Cooperation at the United Nations* (New York: United Nations, 2023), available from <https://digitallibrary.un.org/record/4019360?v=pdf>.

3. Leopoldo Parada, “International Cooperation on Tax Matters at the United Nations: A Turning Point in History?,” *Caribbean Tax Law Journal* 1 (Rochester, NY: Social Science Research Network, February 2, 2024): 10-15.

4. United Nations Department of Economic and Social Affairs, *Report of the Second Session of the Ad Hoc Committee to Draft Terms of Reference for a United Nations Framework Convention on International Tax Cooperation*, A/79/333 (16 August 2024), available from <https://financing.desa.un.org/sites/default/files/2024-09/2415701E.pdf>.

5. UN General Assembly, 79th Session, *Second Committee, Macroeconomic policy questions: promotion of inclusive and effective international cooperation on tax matters at the United Nations - Resolution adopted by the General Assembly on 27 November 2024*, available from <https://documents.un.org/doc/undoc/ltd/n24/356/30/pdf/n2435630.pdf>

6. *Ibid.*

7. “What is the OECD?,” *Economist*, July 6, 2017, www.economist.com/the-economist-explains/2017/07/05/what-is-the-oecd.

8. For example, the European Union’s response to the UN initiative. In a joint note submitted by the Presidency of the Council of the EU and the Commission, the EU cautioned against duplicating existing work and emphasized the promotion of option three, that is, the non-binding framework proposed in the Secretary General’s Report, as the most viable in order to ensure the UN can complement ongoing efforts of the OECD. Council of the European Union and Commission on September 22, 2023. European Union and its Member States, *Position on Tax Cooperation at the United Nations*, <https://data.consilium.europa.eu/doc/document/ST-12967-2023-INIT/en/pdf>.

9. Secretary General Report. Political philosophers make a distinction between international and global justice. The difference is on the “entities among which justice is sought,” The former entails the study of justice between nations (state focused) while the latter moves beyond the state and focuses on inquiring about justice among human beings (human focused). The term global justice will be used as an umbrella term that encompasses both international and global justice as traditionally understood. The paper will explore the justice implications of the UN Framework Convention between states and among human beings; “Global Justice,” *Stanford Encyclopedia of Philosophy*, May 5, 2023, <https://plato.stanford.edu/entries/justice-global/#SomeDefilssu>.

10. Peter Hongler, *Justice in International Tax Law: A Normative Review of the International Tax Regime*, (Amsterdam: IBDF, 2019), 3-20.

11. Vladislav Burilov, “Global Social Justice in International Tax Reform,” SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, 2019).

12. Cees Peters, “The faltering legitimacy of international tax law,” (Doctoral Thesis, Til-

burg University, 2013).

13. *Ibid.*

14. Hongler, *Justice in International Tax Law*, 285-366.

15. Aristotle, *The Nicomachean Ethics*, ed. Lesley Brown et al. (Oxford: Oxford University Press, 2009).

16. *Ibid.*

17. Hongler, *Justice in International Tax Law*, 3-20.

18. Reuven Avi-Yonah and Eran Lempert, "The Historical Origins and Current Prospects of the Multilateral

Tax Convention," *World Tax Journal* 15, no. 3 (2023): 379-411; Peter Harris, *International Commercial Tax* (Cambridge: Cambridge University Press, 2020).

19. Marilyn Sadowsky, "The History of International Tax Law," in *The Oxford Handbook of International Tax Law*, ed. Florian Haase and Georg Kofler (Oxford University Press, 2023).

20. Peter Harris, *International Commercial Tax*, (18): 2.

21. Tsilly Dagan, "Tax Justice in the Era of Mobility and Fragmentation," *Revue européenne du droit, Paris: Groupe d'études géopolitiques*, no. 4 (2022).

22. Tsilly Dagan, *International Tax Policy: Between Competition and Cooperation* (Cambridge: Cambridge University Press, 2018); Shay Simon Moyal, "Back to basics: Rethinking normative principles in International Tax," *The Tax Lawyer* 73, no.1 (2019): 1-41.

23. Sadowsky, History, 24. See also Giulio Allevato, *Non-Fiscal Tax Policies and State Sovereignty: From the Rise of Nation States to Globalization and Corporate Feudalism* (Cheltenham, UK: Edward Elgar Publishing, 2024), 166-68.

24. "The State of Tax Justice 2023," Tax Justice Network, (Bristol, England: Tax Justice Network, 2023), <https://taxjustice.net/reports/the-state-of-tax-justice-2023/>.

25. *Ibid.*

26. OECD, *Harmful Tax Competition: An Emerging Global Issue* (Paris: OECD Publishing, 1998); Addressing Base Erosion and Profit Shifting (Paris: OECD Publishing, 2013); Miranda Stewart, *Tax and Government in the 21st Century* (Cambridge: Cambridge University Press, 2022), 298-300.

27. "Members of the OECD/G20 Inclusive Framework on BEPS," OECD, <https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf>.

28. "Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" (Paris: OECD Publishing, 2017), <https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.html>.

29. Hongler, *Justice in International Tax Law*, 14-20.

30. Some authors underscore the rise of vast grey zone of quasi-legal economic activity as a consequence of secrecy laws. See Joseph E. Stiglitz and Mark Pieth, *Overcoming the Shadow Economy* (Berlin, Germany: Friedrich-Ebert-Stiftung, 2016), While others highlight the role of secrecy laws and tax havens in allowing for illicit financial flows. See Kasper Brandt, "Illicit financial flows and developing countries: A review of methods and evidence," *Journal of Economic Surveys*, 37, no. 3 (2023): 789-820.

31. In 2014 Oxfam estimated that the loss in tax revenue in developing countries would be "almost enough to get every child into school four times over." See Oxfam International, *Turn the tide: The G20 must act on rising inequality, starting with fairer global tax reform* (Oxfam International, 2014), <https://policy-practice.oxfam.org/resources/turn-the-tide-the-g20-must-act-on-rising-inequality-starting-with-fairer-global-346113/>.

32. Thomas Pogge and Krishen Mehta, eds., "Introduction," *Global Tax Fairness* (Oxford University Press, 2016).

33. Dagan, *International Tax Policy*, 35.

34. Parada, "International Cooperation," 12.

35. Peter Essers, "International Tax Justice between Machiavelli and Habermas," *Bulletin for International Taxation* 68, no. 2, (2014): 54–6.
36. Report of the Secretary General.
37. Hongler, *Justice in International Tax Law*, 3–20.
38. See Peter Koller, "International law and global justice" in *Legitimacy, Justice, and Public International Law*, ed. Lukas H Meyer (Cambridge: Cambridge University Press, 2009), 186–206. In particular, Koller highlights that demands of justice are context-dependent, as they relate to certain types of social interaction. Specifically, he identifies four kinds of justice relating to certain types of relationships: "(1) transactional justice applying to exchange relationships; (2) political justice concerning power relationships; (3) distributive justice dealing with communal relationships; and (4) corrective justice focusing on the wrongness relationships."
39. *Ibid.*
40. Specifically, in her analysis of input legitimacy of international tax law instruments, Mosquera builds on the theory of legitimacy as conceptualized by Scharpf, which emphasizes government by the people through inclusive processes. Consequently, Van Staden argues that political decisions gain legitimacy when they echo the public's desires and provide avenues for active participation. Viley highlights that input legitimacy involves factors such as participation, transparency, representation, the inclusiveness of the agenda-setting process, and the presence of a well-rounded and logical public discussion. Indeed, agenda-setting holds paramount importance in international tax cooperation, as emphasized by various scholars. Pendergast underscores that the agenda delineates the fundamental framework of negotiations, shaping the distribution of power and influence among parties. Similarly, Sadiq, Sawyer and McCredie stress that the agenda determines the rules governing cooperation, with developing countries expected to agree. See Irma J Mosquera Valderrama, "Legitimacy and the Making of International Tax Law: The Challenges of Multilateralism," *World Tax Journal* 7, no. 3 (2015): 344–66; Alfred Van Staden, *The Right to Govern: The Democratic Legitimacy of the European Union* (The Hague, Clingendael paper 2003); Fritz Scharpf, *Governing in Europe: Effective and democratic?* (Oxford: Oxford University Press, 1999); Matthias Viley and Peter Bursens, "Diversity and democratic legitimacy in multi-level political systems: what can they learn from federal theory" in *Complex Political Decision-Making. Leadership, Legitimacy and Communication*, ed. Peter Bursens et al. (London: Routledge, 2017), 59–76; William Richard Pendergast, "Managing the negotiation agenda," *Negotiation Journal* 6, no. 2 (1990): 135–145; Kerrie Sadiq, Adrian Sawyer, and Bronwyn McCredie, eds. *Tax Design and Administration in a Post-BEPS Era: A Study of Key Reform Measures in 18 Jurisdictions* (Birmingham, United Kingdom: Fiscal Publications, 2019).
41. Mosquera, "Legitimacy and Making of International Tax Law."
42. Hongler, *Justice in International Tax Law*, 441.
43. Ilan Benshalom, "The New Poor at Our Gates: Global Justice Implications for International Trade and Tax Law," *New York University Law Review* 85, no. 1 (2010): 1–82.
44. For an in-depth evaluation of the OECD, see Mosquera, "Legitimacy and Making of International Tax Law"; Scharpf, *Governing in Europe*.
45. UN Resolution 2.
46. Mosquera "Legitimacy and Making of International Tax Law."
47. *Ibid.*
48. UN Secretary General Report.
49. Avi-Yonah and Lempert "The Historical Origins and Current Prospects of the Multilateral Tax Convention."
50. UN Secretary General Report.
51. UN Resolution.
52. *Ibid.*; UN Secretary General Report.

