

Global Tax Governance: Searching for consensus and legitimacy

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Legitimacy

- Legitimacy developed by other scholars in other areas than tax law
F. Scharpf and V. Schmidt.
- Legitimacy provides for a framework to evaluate
 - the participation and representation in decision making (i.e., input legitimacy),
 - the outcome being useful for all stakeholders (output legitimacy).
 - the process being transparent, inclusive, accountable and open (throughput legitimacy).

MOSQUERA VALDERRAMA I.J. (2024) Throughput Legitimacy of the peer review process of the BEPS 4 Minimum Standards: A case study. Intertax. Vol 52. Issue 3. Link [here](#)

MOSQUERA VALDERRAMA I.J. (2023) Global Tax Governance: Legitimacy and Inclusiveness. Why it matters. Link [here](#)

MOSQUERA VALDERRAMA I.J. (2015) Legitimacy and the Making of International Tax Law The Challenges of Multilateralism World Tax Journal 7(3):344-366. Link [here](#)

Legitimacy deficits BEPS

1. BEPS Inclusive Framework: Peer review input limited from peers due to technical capacity among others. IF only for implementation of BEPS 4 Minimum Standards. MLI different mismatches – bilateral negotiations.
2. Different needs of developing countries, speed of the reforms and the need to balance raising revenue vs attracting investment
 - IMF 2019 Corporate Taxation in the Global Economy
 - IMF 2019 The Rise of Phantom Investments
3. Alignment with Sustainable Development Goals and the 2030 SDG Agenda
 - Ensure responsive, inclusive, participatory and representative decision making at all levels (SDG 16.7)
 - Develop effective, accountable and transparent institutions at all levels (SDG 16.6)

BEPS and developing countries: Decision making process and legitimacy deficits

Limited lower-capacity country representation and participation, as well as scarce opportunities for collaboration among these countries to articulate common positions, have meant that developing countries have typically had less influence on setting the Inclusive Framework agenda, establishing priorities and putting forward proposals, often limiting themselves to reacting to other countries' positions.

<https://www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-october-2021.pdf>

What has happened until now?

*Recognising the diverse membership of the Inclusive Framework, which includes different types of non-OECD economies, current chairing arrangements could evolve to comprise **two co-chairs, including one from a non-OECD/non-G20 economy**. Feedback from regional consultation events on practical ways to **enhance inclusivity indicated strong support for greater representation by developing countries in the leadership of the Inclusive Framework and its subsidiary bodies**.*

Similar co-chairing arrangements could be considered for the Working Parties and other subsidiary bodies. In addition, consideration could be given to the revision of the memberships of the bureaux or steering groups of the subsidiary bodies, to ensure that they more systemically include representatives from a range of non-OECD economies, including lower-capacity countries

What has happened until now?

Regional organizations have created new committees to address taxation and to enhance legitimacy in international tax law making

The African Union created in 2020, an Extraordinary Specialized Technical Committee (STC) on Finance, Monetary Affairs, Economic Planning and Integration This Committee has been convened under the theme, Securing Africa's Taxing Rights, Stemming Illicit Financial Flows and developing payment system for AfCFTA.

A Regional Tax Cooperation Platform for Latin American and the Caribbean created in July 2023.

What has happened until now?

At international level, the African Group at the United Nations has led the adoption in November 2022 of a UN Resolution to develop a globally inclusive new tax framework and in November 2023 of an UN Resolution to develop an international tax framework Convention under the auspices of the UN.

As a result, an ad hoc intergovernmental committee has been mandated to develop the terms of reference for the development of such convention. The Committee has finalized its work by August 2024.

In 2025, the Framework Convention will be drafted. Governance structure and content are both important.

See also Roundtable: UN vs. OECD – Quo Vadis International Tax Governance? 23 November 2023 [[Recording](#)] and 12 July 2024 [[Recording](#)]

What has happened until now?

Voting Started			11/27/2024			10:43:32 AM							
A/C.2/79/L.8/Rev.1 – as a whole - Promotion of inclusive and effective international tax cooperation at the United Nations [Item 16 (f)], 26th meeting													
+	AFGHANISTAN	+	CAMEROON	×	FINLAND	+	KUWAIT	+	NEPAL	+	SAUDI ARABIA	×	UKRAINE
×	ALBANIA	-	CANADA	×	FRANCE	+	KYRGYZSTAN	×	NETHERLANDS (KIN...	+	SENEGAL	×	UNITED ARAB EMIR...
+	ALGERIA	+	CENTRAL AFR REP....	+	GABON	+	LAO PDR	-	NEW ZEALAND	+	SERBIA	-	UNITED KINGDOM
×	ANDORRA	+	CHAD	+	GAMBIA	×	LATVIA	+	NICARAGUA	+	SEYCHELLES	+	UNITED REP TANZA...
+	ANGOLA	+	CHILE	×	GEORGIA	+	LEBANON	+	NIGER	+	SIERRA LEONE	-	UNITED STATES
+	ANTIGUA-BARBUDA	+	CHINA	×	GERMANY	+	LESOTHO	+	NIGERIA	+	SINGAPORE	+	URUGUAY
-	ARGENTINA	+	COLOMBIA	+	GHANA	+	LIBERIA	×	NORTH MACEDONIA	×	SLOVAKIA	+	UZBEKISTAN
×	ARMENIA	+	COMOROS	×	GREECE	+	LIBYA	×	NORWAY	×	SLOVENIA	+	VANUATU
-	AUSTRALIA	+	CONGO	+	GRENADA	×	LIECHTENSTEIN	+	OMAN	+	SOLOMON ISLANDS	+	VENEZUELA
×	AUSTRIA	×	COSTA RICA	+	GUATEMALA	×	LITHUANIA	+	PAKISTAN	+	SOMALIA	+	VIET NAM
+	AZERBAIJAN	+	COTE D'IVOIRE	+	GUINEA	×	LUXEMBOURG	+	PALAU	+	SOUTH AFRICA	+	YEMEN
+	BAHAMAS	×	CROATIA	+	GUINEA-BISSAU	+	MADAGASCAR	+	PANAMA	+	SOUTH SUDAN	+	ZAMBIA
+	BAHRAIN	+	CUBA	+	GUYANA	+	MALAWI	+	PAPUA NEW GUINEA	×	SPAIN	+	ZIMBABWE
+	BANGLADESH	×	CYPRUS	+	HAITI	+	MALAYSIA	+	PARAGUAY	+	SRI LANKA	+	
+	BARBADOS	×	CZECHIA	+	HONDURAS	+	MALDIVES	+	PARAGUAY	+	SUDAN	+	
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+	BELIZE	+	DENMARK	+	INDIA	+	MARSHALL ISLANDS	×	POLAND	×	SWITZERLAND	+	
+	BENIN	+	DJIBOUTI	+	INDONESIA	+	MAURITANIA	+	PORTUGAL	+	SYRIAN ARAB REP...	+	
+	BHUTAN	+	DOMINICA	+	IRAN (ISLAMIC REP...	+	MAURITIUS	-	QATAR	-	TAJIKISTAN	+	
+	BOLIVIA	+	DOMINICAN REPUB...	+	IRAQ	+	MEXICO	×	REP OF KOREA	×	THAILAND	+	
×	BOSNIA-HERZEGOVI...	+	ECUADOR	×	IRELAND	+	MICRONESIA (FS)	×	REP OF MOLDOVA	×	TIMOR-LESTE	+	
+	BOTSWANA	+	EGYPT	-	ISRAEL	+	MONACO	+	ROMANIA	+	TOGO	+	
+	BRAZIL	+	EL SALVADOR	×	ITALY	+	MONGOLIA	+	RUSSIAN FEDERATI...	+	TONGA	+	
+	BRUNEI DARUSSAL...	+	EQUATORIAL GUINEA	+	JAMAICA	×	MONTENEGRO	+	RWANDA	+	TRINIDAD-TOBAGO	+	
×	BULGARIA	+	ERITREA	+	JAPAN	+	MOROCCO	+	SAINT KITTS-NEVIS	+	TUNISIA	+	
+	BURKINA FASO	×	ESTONIA	+	JORDAN	+	MOZAMBIQUE	+	SAINT LUCIA	+	TURKIYE	×	
+	BURUNDI	+	ESWATINI	+	KAZAKHSTAN	+	MYANMAR	+	SAINT VINCENT-GR...	+	TURKMENISTAN	+	
+	CABO VERDE	+	ETHIOPIA	+	KENYA	+	NAMIBIA	+	SAMOA	+	TUVALU	+	
+	CAMBODIA	+	FIJI	+	KIRIBATI	+	NAURU	+	SAN MARINO	×	UGANDA	+	
+									SAO TOME-PRINCIPE	+			
+	IN FAVOUR: 125		-	AGAINST: 9		×	ABSTENTION: 46						

Legitimacy UN Process: ToR UNFITC

Objectives

7(b) Establishing a **system of governance** for international tax cooperation capable of responding to existing and future tax and tax-related challenges on an ongoing basis

Principles

Capacity Building

Para. 13: Other elements

The framework convention should also include, inter alia, the following additional substantive and procedural elements: definitions; relationship with other agreements, instruments and domestic law; review and verification; exchange of information (for implementation of the framework convention); data collection and analysis; financial resources; Conference of the Parties; Secretariat; subsidiary bodies; dispute settlement mechanisms; and procedures for amendments to the framework convention and adoption of protocols; and final provisions.

Legitimacy UN Process: Governance

What changes are needed to enhance global tax governance?

What the UN and countries in the UN Process should do (1) to be accountable, transparent, responsive, and inclusive, and (2) to enhance countries' commitment to the UN process?

Legitimacy: Input/Output/Throughput

Input:

- What would be the decision-making process? Majority, consensus?
- How to achieve true (inclusive) participation? Who is negotiating the Convention?
- How to be open to all stakeholders? Which stakeholders?

Output:

How to prevent duplication of work? Building on what it has been already established ? Or new work? Or combined?

What topics, and how these topics will contribute to the SDGs?

How to measure these objectives?

Throughput

- How to achieve transparency?
- How to be accountable?
- How to be responsive?

Legitimacy UN Process vis- à-vis developing countries

- Training, coordination and communication within the tax administration and the Ministry of Finance/ Ministry of Foreign Affairs
- Coordination between OECD, UN, EU and countries with help of Regional Tax Organizations to provide input to the UN.
- Voice of developing countries: Requires long-term investment. More than capacity building.
- Role of regional tax organizations and consultative academic/expert groups to deal with issues of global tax governance.
- UN should lead the discussions, but without disregard of already existing governance structures.

UN Process (Peter Hongler/Scholarship)

- The most recent results of the current governance structure (Pillar 1 and 2) show that there is a lot of room for improvement. Many people are frustrated with the current modus operandi: (i) intransparent governance structure, (ii) unclear decision making, (iii) mingling of the OECD and the Inclusive Framework
- We do not necessarily need more “global” tax projects but need an institutional structure that enables cooperation in tax matters under fair terms and in a legitimate matter
- Coalitions of the willing within and outside the EU should have a platform to initiate and finalize new forms of cooperation
- The work of the Global Forum and the Inclusive Framework should not be duplicated but be institutionalized.
- The focus should first be on the governance structure (para. 13 of the Terms of Reference)
- (Non-mandatory) protocols are a great opportunity to achieve a broad consensus on the UNFITC but at the same time create an environment for more intense cooperation in the future.

See Hongler P. and Habich S. Plurilateralism in International Tax Law: a Unique Chance for the UN Framework Convention. Forthcoming World Journal of Investment and Trade