

The ‘new’ (?) United Nations Tax Convention

Plenary 3

panel members

Rachel Saw

Head, Asia-Pacific of IBFD

Michael Lennard

Chief, Tax Section, UN

Radhakishan (‘RK’) Rawal

Dhruva Advisors LLP India

Kees van Raad

ITC Leiden, Loyens & Loeff



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Agenda

1. Setting the stage

Kees van Raad

2. Steps towards the UN Tax Convention

Rachel Saw

3. UN decision making process

Michael Lennard

4. Inventory of int'l tax work to be undertaken

Radhakishan Rawal

5. Discussion



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1. Setting the stage: *what we will NOT be focusing on*

Committee of Experts on International Cooperation in Tax Matters

UN Tax Committee, subsidiary body of ECOSOC (the United Nations Economic and Social Council)

- ❑ 25 members nominated by governments and selected by the UN SG, but serving in a personal capacity.
- ❑ works in 4-year periods: 2021-2025 period: setting of program and delivering on it within 4-year period
- ❑ 28th session: 19-22 March 2024 NYC

<https://financing.desa.un.org/events/28th-session-committee-experts-international-cooperation-tax-matters>

agenda: <https://financing.desa.un.org/sites/default/files/2024-02/28th%20Agenda.pdf>

18 March – ECOSOC special meeting on: *UN Framework Convention on international tax cooperation* and *Wealth taxes*

- ❑ 29th session: 15-18 October 2024 – Geneva
- 30th session: 24-27 March 2025 – NYC



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1. Setting the stage: *what we will NOT be focusing on*

Subcommittees

<https://financing.desa.un.org/subcommittees>

UN Model Tax Convention between Developed and Developing Countries

Transfer Pricing

Update of the UN Manual for the Negotiation of Bilateral Tax Treaties Between Developed and Developing Countries

Environmental Taxation Issues

Relationship of Tax, Trade and Investment Agreements

Taxation of the Digitalized and Globalized Economy

Increasing Tax Transparency

Wealth and Solidarity Taxes

Health Taxes

Indirect Tax Issues

Extractive Industries



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1. Setting the stage: *what we will NOT be focusing on*

Subcommittee on the UN Model Tax Convention between Developed and Developing Countries

□ Works on **updates** of the UN Model and Commentary.

□ Agenda for the *March 2024* session:

- Extractives and Other **Natural Resources**
- The Treatment of **Services**, including issues of overlap
- International **Shipping** Activities
- Income derived from Cross-Border **Insurance** Activities
- Other Issues

□ Important items already dealt with in the *October 2023* session:

- Inclusion of payments for **Computer Software** in the definition of royalties
- Introduction of a **Subject-to-Tax Rule** in the UN Model



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1. Setting the stage: *what we will NOT be focusing on*

Subcommittee on Taxation of the Digitalized and Globalized Economy

- ❑ **Workstream A – UN Fast Track Instrument (FTI):** *March 2024*
providing for a Multilateral Convention (MLC) to collectively amend existing treaties
with specific recent UN Model changes and additions
= proposal developed with the assistance of Philip Baker
- ❑ **Workstream B – Single UN Model treaty article for cross-border services:** *March 2024*
consolidating UN Model articles 5.3.b (Service PE), 12A (Fees for technical services)
and 14 (Independent personal services)
= proposal prepared with the assistance of Brian Arnold
- ❑ **Workstream C – Cross-border taxation of remote workers:** *October 2024*
adding a paragraph 4 to Art. 15 (Employment income))
= proposal prepared with the assistance of Brian Arnold



UN Tax Framework Convention *evolution*

Rachel Saw

Head of IBFD Asia Pacific Knowledge Centre



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The past: 2022 & 2023

30 December 2022: Calling resolution GA Resolution 77/244

- Addis Ababa Agenda goals
- Promotion, inclusion & tax cooperation assessment

22 November 2023: Historic vote Resolution A/C.2/L.18/REV.1

- Framework tax convention (2nd choice)
- 148 votes in favour, 48 against and 9 abstentions

8 August 2023: UN SG's report Resolution A/78/235

- International tax challenges findings
- Three choices pointed out

22 December 2023: Adopting resolution GA Resolution 78/2023

- Ad-hoc intergovernmental committee instructed
- Terms of reference draft indicated

The present: Q1 2024

First formal steps towards the UN Framework Tax Convention (UNTC)

Ad hoc
committee
integration
20 members*
geographically
represented

5 *broadcasted*
organizational
meetings
February 20-
22, 2024 at
UN HQ

Call for input
papers for
substantive/
procedure
matters for the
UNTC

Over a 100
input papers
received;
several crucial
issues
addressed**

*Asian countries: China, India, ROK & SG

** Emphasis on cross-border services, harmful tax competition, digital & environmental taxation.
Structure planned similar to the COP design with possible simultaneous protocols

The future: late 2024 & 2025

Substantial meetings

April 16 - May 8
2024

Negotiation on
the terms of
reference

July 29 - August 16
2024

Incorporation
of the terms of
reference

2025 onwards

Expected
implementation
phase

Diverse challenges ahead:

- Addressing concerns equally
- Maintaining representation & transparency
- Simultaneously adoption
- Interaction with other international tax projects



Questions?
Thank you!

Rachel Saw
r.saw@ibfd.org

UN Decision Making

Michael Lennard



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UN Decision Making on Tax Matters

The nature and stages of decision-making:

- The UN Committee of Experts (A non-governmental subsidiary body of the UN Economic and Social Council - ECOSOC)
 - Based on ECOSOC rules
- The Ad Hoc Committee on Terms of Reference for a UN Tax Convention
 - Based on UN General Assembly rules
- The next decisions of the General Assembly?
- The treaty negotiations themselves?



The nature and stages of decision-making (cont.):

- Adoption, Signature and ratification?
- Entry into force of the Convention?
- Amendments to the Convention?
- New protocols?
- Interpretations and other matters?
- Input from business, advisers, academia and non-governmental organisations?

What are the implications in terms of Inclusiveness, legitimacy, effectiveness?

Similarities and differences to OECD/ Inclusive Framework processes?

Is the OECD a Consensus Body and the UN a Majority Body, as some claim?

Inventory of super-national activities with regard to international taxation

Radhakishan Rawal

Super-national activities with regard to international taxation

- development of model tax treaty rules and commentary, and underlying policies
- int'l tax policy initiatives (such as: BEPS, Pillar I, Pillar II)
- policy & monitoring taxpayer MAPs (i.e., Art. 25.1 and .2)
- administrative assistance regarding
 - > information concerning individual taxpayers
 - > assistance in tax collection
 - > making available / sharing TP data bases
- capacity building re individual countries tax administration
- Wealth Taxes

What are the forums ?

- OECD
- Inclusive Framework
- Global Forum
- UN Tax Committee
- Platform For Collaboration on Tax [OECD+UN+World Bank Group (WBG) + IMF]
- UN Ad hoc Tax Committee (UN Intergovernmental tax Forum)

What are the strengths of these forums?



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Who is currently performing those activities?

Work stream	Forum
development of model tax treaty rules and commentary, and <i>underlying policies</i>	
int'l tax policy initiatives (such as: BEPS, Pillar I, Pillar II)	
policy & monitoring taxpayer MAPs (i.e., Art. 25.1 and .2)	
administrative assistance regarding <ul style="list-style-type: none">> information concerning individual taxpayers> assistance in tax collection> making available / sharing TP data bases	
capacity building re individual countries' tax administration	
wealth taxes	

Who is better equipped to perform these activities?



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Submissions to the Ad hoc Committee

- **GENERAL COMMENTS**

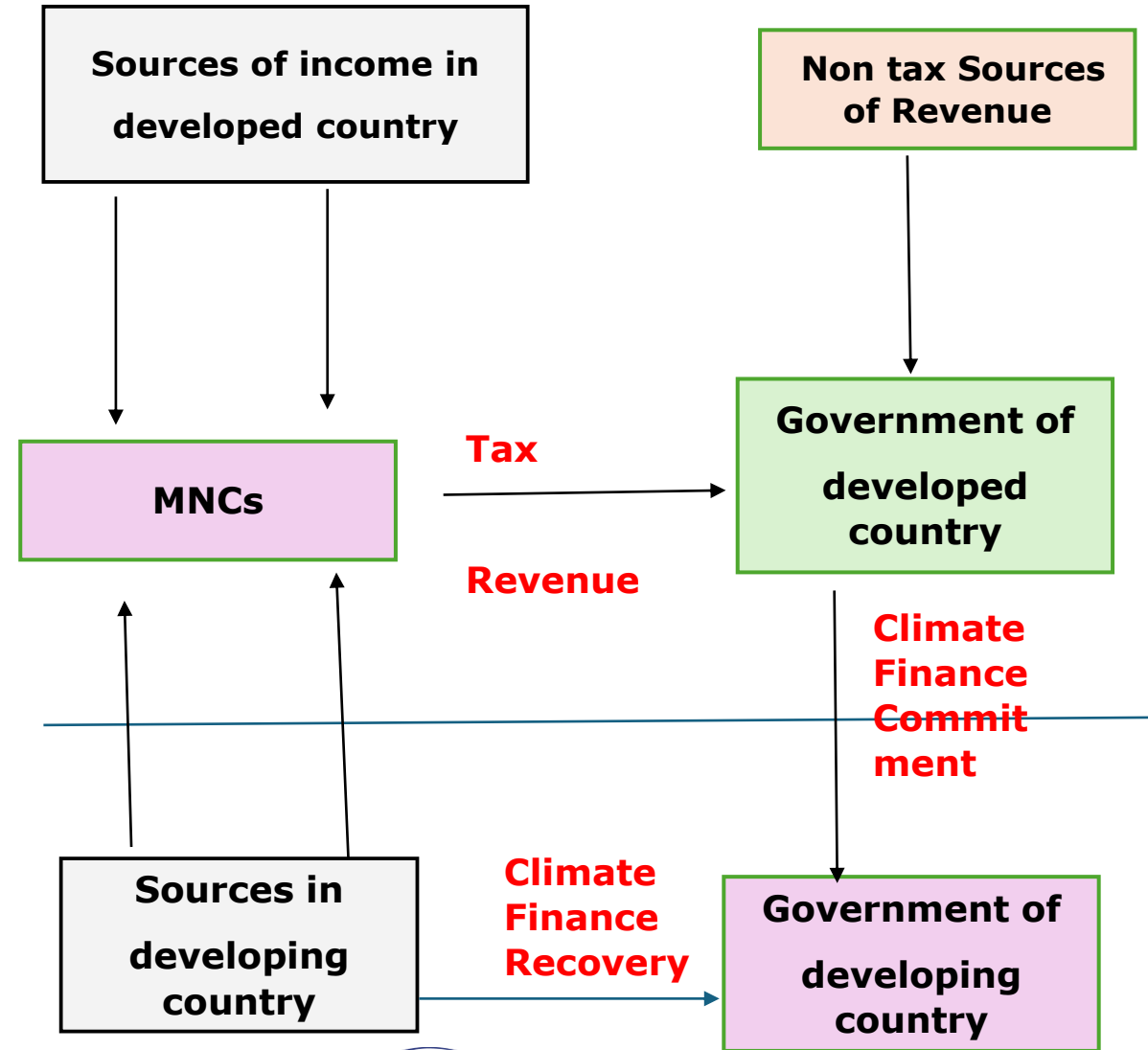
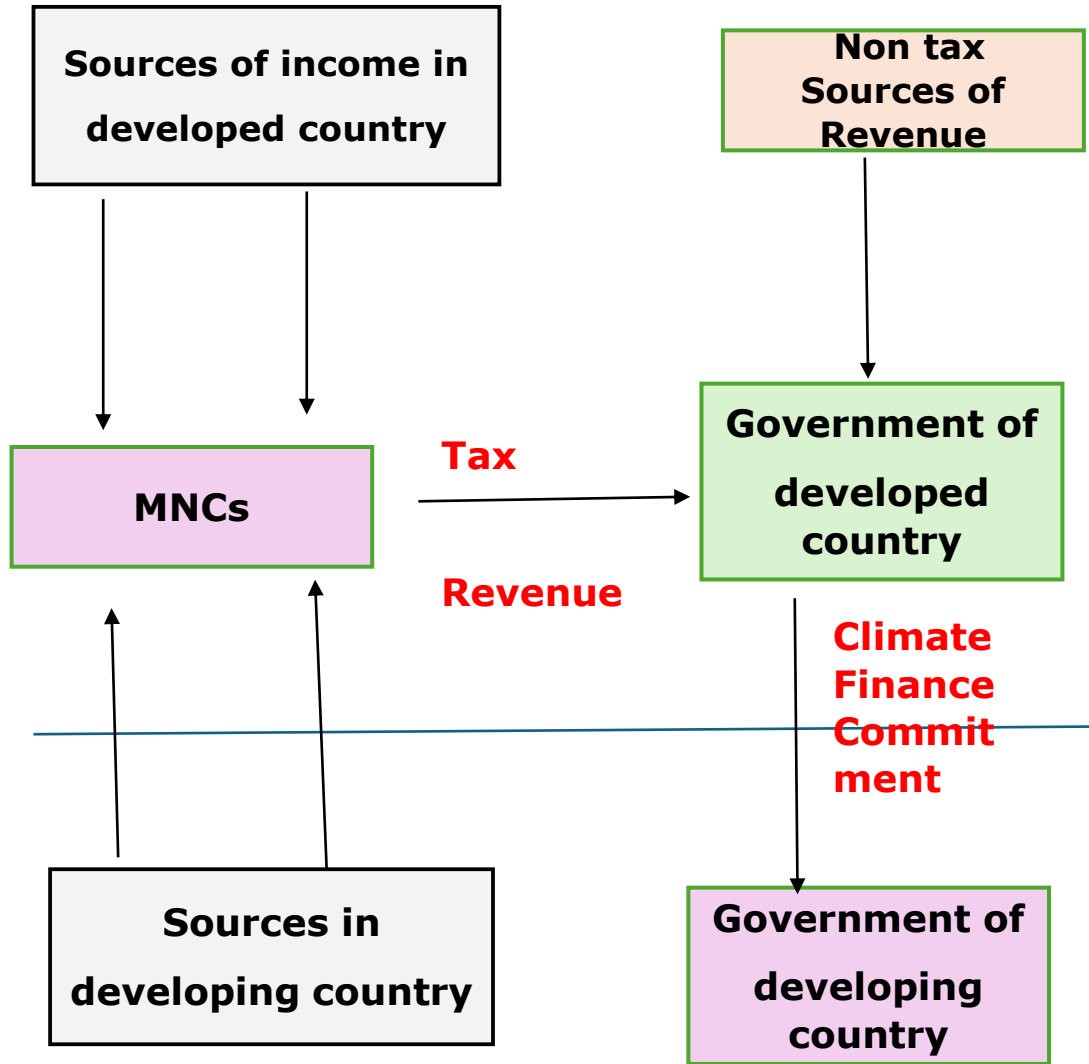
- Rich and wealthy to pay higher tax
- Brownfield approach - Continuation of existing mechanisms
- Approaches for acquiring or leveraging on technical depth

- **SPECIFIC RECOMMENDATIONS**

- Taxation of digital economy
 - *Accept DSTs as a solution and grant credit in the country of residence*
 - *Article 12B of the UN Model*
 - *P1 + DSTs*
- United Nations – Multilateral Instrument (UN MLI)
- Remote Worker Permanent Establishment (RW-PE)
- Subject to tax rule (STTR)
- Climate Finance Withholding Mechanism (CFWM)



Climate Finance Withholding Mechanism (CFWM)



https://www.southcentre.int/wp-content/uploads/2023/01/TCPB28_Climate-Finance-Withholding-Mechanism_EN.pdf



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RK – OLD SLIDES

Report of the High-Level Panel on International Financial, Accountability, Transparency and Integrity for Achieving the 2030 Agenda

FACTI Panel

FACTI Panel - Background

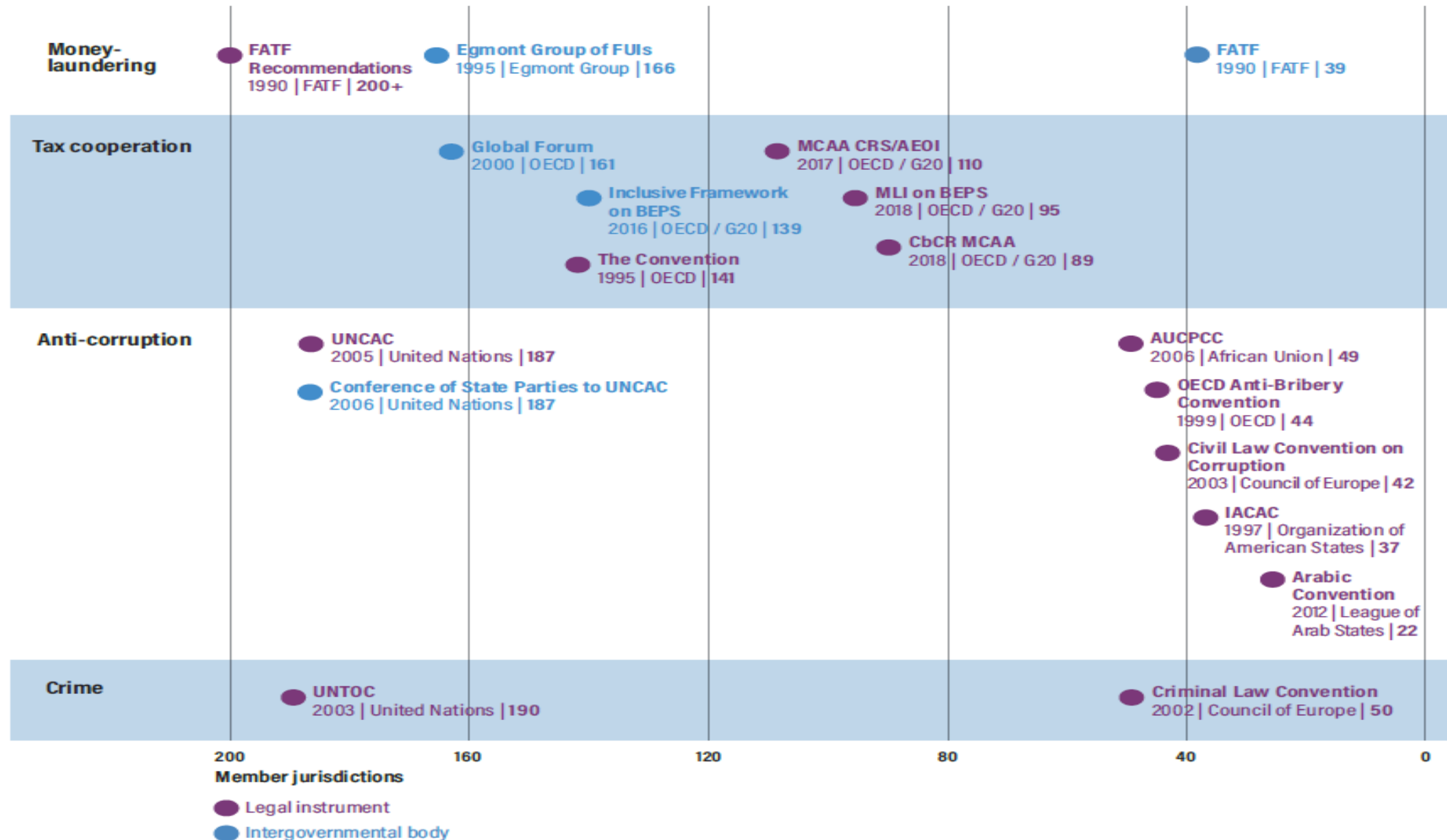
- **September 2015** - World's leaders pledged for 2030 Agenda for Sustainable Development; - envisioned extensive global transformation to end poverty and shift the world onto a sustainable and resilient path;
- **2015 Addis Ababa Action Agenda on Financing for Development** - provided the framework for aligning all financing for the implementation of the **Sustainable Development Goals** (SDGs) and targets; [**17 SDGs and 169 related targets**]
- **2020** – It is seen that the world has fallen short in achieving transformative change;
- **CoVID-19 pandemic** - A series of formidable stumbling blocks on top of pre-existing systemic challenges. Six months into the pandemic, documented cases of corruption and malfeasance across 17 countries found, involving public funds amounting to \$1.1 billion.
- **Illicit financial flows (IFFs)** – Arises from tax abuse, cross-border corruption, and transnational financial crime and drain resources from sustainable development. They worsen inequalities, fuel instability, undermine governance, and damage public trust.
- As much as **2.7 percent of the global GDP is laundered annually**, while corporations **shopping around for tax-free jurisdictions cost governments up to \$600 billion a year**;
- **2 March 2020** - The High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) was convened by the **74th President of United Nations General Assembly and the 75th President of the Economic and Social Council**;
- **Objective of the Panel** – Review current challenges and trends related to financial accountability, transparency and integrity, and to make evidence-based recommendations to close remaining gaps in the international system;

Financial Integrity for Sustainable Development

- More financing is critical for achieving SDGs
- No inter-governmentally agreed universal **definition of Illicit Financial Flows (IFFs)** – some focusing only on illegal activities such as bribery and money laundering, **to the exclusion of tax avoidance**;
- Both **tax evasion and avoidance (aggressive tax planning)** deprive country of financial resources
- Illicit Financial Flows (IFFs) problems are systemic and therefore require systemic solutions;
 - Current international instruments and institutions have grown organically
 - A systematic ecosystem is required with a single body doing global coordination
- Proposes a **Global Pact for Financial Integrity for Sustainable Development** based on countries' priorities;
- Financial rules and standards **include policies, norms and laws related to taxation, public financial management, money laundering and corruption**;
- Reform and redesign global financial systems to conform to **four values-** “**accountability**”, “**legitimacy**”, “**transparency**” and “**fairness**”

Transformation of global financial system - From “patch work” to “entire ecosystem” approach

Selected existing mechanism for financial accounting, transparency and integrity



Absence of intergovernmental form with “universal membership”

- The institutional environment is dominated by voluntary forums and bilateral tax treaties, which contain numerous imbalances.

Global Governance Arrangements

- The Global architecture is fragmented and uncoordinated. Some bodies are not universally inclusive.
- Current system is a patchwork, and a coherent ecosystem is required.
- There is no single globally inclusive intergovernmental forum for setting norms in tax matters.
- UN is an inclusive and universal body. It is uniquely positioned to address the issues. ECOSOC.
- FATF has near universal participation through its Associate Members, but these associate members do not enjoy formal equal representation when standards are set.

• RECOMMENDATIONS

- Establish an inclusive and legitimate global coordination mechanism at ECOSOC that can address illicit financial flows on a systemic level.
- Building on existing structures, create an inclusive intergovernmental body on tax matters under the United Nations. (Upgrade UN tax committee)
- Intergovernmental body such as ECOSOC to coordinate the work of agencies outside the UN such as:
 - ✓ Inclusive framework on BEPS
 - ✓ Global Forum on Exchange of Information for tax purposes
 - ✓ Financial Action Task Force
- ✓ Global Forum to become “related organization” of UN, its professional staff to migrate
- ✓ UN Convention (MLI type)

Establishing UN as a global tax norm setting agency – Ambitious set of Institutional Reforms

Transparency - Problems with current CBCR mechanism

- Out of 137 members of Inclusive Framework on 85 have signed CbCR MCAA
- CbCR MCCA limits the use of data for purposes other than risk assessment
- Due to threshold of Euro 750mn, 85 to 90 percent of MNEs escape obligations under CbCR
- **RECOMMENDATIONS**
 - International anti-money-laundering standards should require that all countries create a centralised registry for holding beneficial ownership information on all legal vehicles. The standards should encourage countries to make the information public.
 - Improve tax transparency by having all private multinational entities publish accounting and financial information on a country-by-country basis. (make CbCR data public)

Fairness in taxation

- Developing countries are systemically disadvantaged in the current international tax architecture, **rules are in favour of capital exporting countries** resulting in large revenue losses to governments.
- **Transfer pricing rules are too complex** to effectively prevent aggressive tax planning.
- Gaps in any bilateral tax treaty might enable avoidance of capital gains tax.
- Tax competition continues to undermine the tax base. Need for minimum tax rule
- Proposed new rules on digital economy taxation at the OECD are excessively complex and not adapted to developing countries' needs.
- The proposed new UN model treaty rule to tax automated digital services is seen as providing a practical approach.
- Concerns abound about mandatory binding arbitration of tax disputes.

RECOMMENDATIONS

- The UN Tax Convention should provide for **effective capital gains taxation**.
- Taxation must be equitably applied on **services delivered digitally** – multilateral approach
- This requires taxing multinational corporations based on group global profit. (**Fair formulaic approach as against TP**)
- Create fairer rules and stronger incentives to combat tax competition, tax avoidance and tax evasion, starting with an agreement on a global minimum corporate tax. – **Minimum rate of 20% to 30%**
- **Meditation and conciliation** approach to resolve tax disputes

Enablers of illicit financial flows – professionals such as lawyers, accountants and representatives of financial institutions

- Enablers of IFFs are not held to account for their activities, due to gaps in enforcement and abuse of legal privilege.
- Self-regulation does not work.
- Many governments, particularly in haven countries, refrain from setting standards for appropriate conduct of enablers, despite the social costs.

RECOMMENDATIONS

- Governments should develop and agree global standards/guidelines for financial, legal, accounting and other relevant professionals, with input of the international community.
- Governments should adapt global standards for professionals into appropriate national regulation and supervision frameworks.

*Feb 2021 OECD Report – “Ending the Shell Game: Cracking down on the Professionals who enable Tax and White-Collar Crimes”

International cooperation and information sharing

- Trade mis-invoicing, deliberate misreporting etc. Challenges related to sharing of information between:
 - Custom officials of various countries and
 - Customs officials and other agencies of the governments
- International rules restrict usage and sharing of information to various government agencies.
- There are several gaps in automatic exchange of information due to exclusion of some developing countries from data networks.

RECOMMENDATIONS

- Developed countries **should share information with developing countries without reciprocity**. Developing countries generally do not have information about citizens of developed countries.
- Enable free exchange of information at the **national level as standard practice** to combat all varieties of illicit flows.
- Promote **exchange of information internationally** among law enforcement, customs and other authorities.

Data Collection and publication

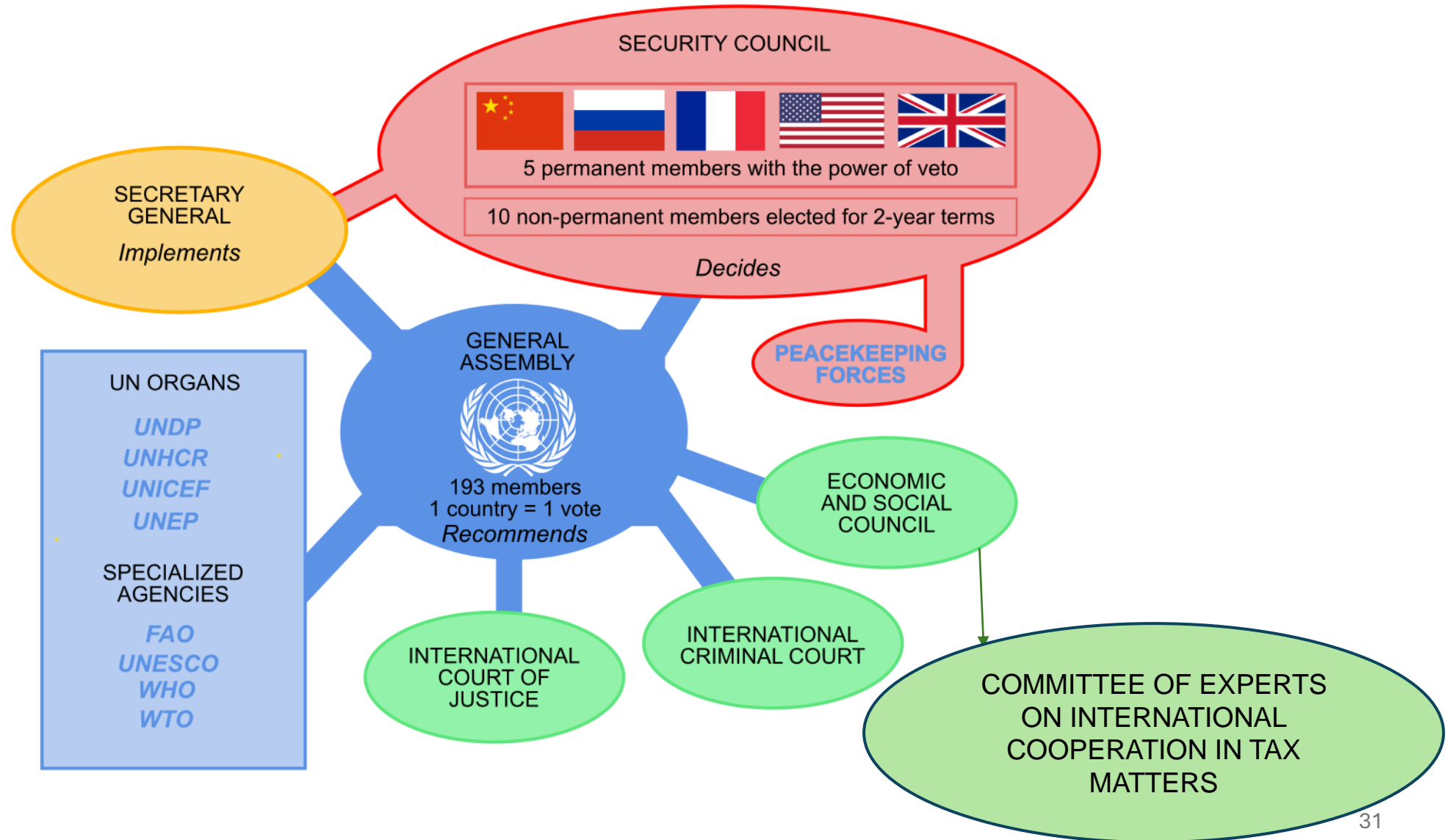
- Glaring gaps in the publication of global tax data, under CRS
- Absence of neutral body with universal membership that takes responsibility for such tasks

RECOMMENDATIONS

- Establish a Centre for Monitoring Taxing Rights to collect and disseminate national aggregate and detailed data about taxation and tax cooperation on
- A body with universal membership such as IMF

Annexure A Contains complete list

Introduction to UN Tax Committee's operations



UN Tax Committee

- How is it constituted?
- How does it operate?
- What are the problems with UNTC?

What resulted in the current developments?

- The undercurrent
- RK to put summary from FACTI report



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