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INTERNATIONAL LAW AT THE UN TAX CONVENTION

2

Legal and Procedural Lessons from International Treaties for Multilateral Tax Treaty Negotiations

Fiscal Policies

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Introduction

This is an issue of a three-part series titled International Law at the UN Tax Convention. This series illustrates technical legal insights drawn from an analysis of international law instruments to better inform the ongoing negotiations for a United Nations Framework Convention on International Tax Cooperation (UN Tax Convention) and two early protocols. The subject of the first protocol (First Protocol) is taxation of income derived from the provision of cross-border services, and the subject of the second protocol (Second Protocol) is tax dispute prevention and resolution.[1] The negotiations stem from the December 2023 UN General Assembly Resolution 78/230, which mandates the establishment of an inclusive and effective tax cooperation framework that aligns with international human rights obligations. The UN Tax Convention will introduce general commitments, governance mechanisms, and specific protocols addressing pressing tax matters such as digital taxation and dispute resolution. The objective of this series is to provide States with the legal tools and insights to help shape effective negotiation strategies by drawing on international legal precedents and past multilateral treaty experiences.

This publication focuses on extracting legal and procedural lessons from past multilateral treaties to inform the negotiation and design of the UN Framework Convention on International Tax Cooperation, while the other two iterations will delve into the design of the Second Protocol on dispute resolution and the interplay between 'taxpayers rights' and transparency in the context of international law, respectively.

The need for this legal analysis arises from the recognition that framework conventions, when accompanied by protocols, offer a structure capable of addressing contentious issues incrementally. In doing so, they must carefully balance the trade-off between broad ratifiability (often achievable through vague or general obligations) and substantive commitments (which may attract fewer States but offer stronger legal clarity). As the subject matter of the protocols under the UN Tax Convention solidified, this research shifted from asking which obligations are better placed in a convention versus a protocol, to examining what factors determine the success or failure of multilateral treaties and protocols more broadly.

To do so, we analyse several international legal instruments and precedents: the Montreal Protocol, the Helsinki and Oslo Protocols, the UN Framework Convention on Climate Change (UNFCCC), and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI). The Montreal Protocol, the Helsinki and Oslo Protocols and the UNFCCC were selected because scholarly literature frequently references these treaties when analysing factors that contribute to ratification, implementation and institutional adaptability. While their thematic content may differ at first glance from the negotiation at hand (climate vs. tax), climate-related treaties have had to grapple with core distributive questions—notably, how to allocate the costs of climate action among States and how to structure financial support for a just transition. These negotiations often centred on burden-sharing arrangements, differentiated responsibilities and commitments to financial and technological assistance—all issues that closely mirror the challenges faced in designing an equitable, inclusive and effective global tax framework. Thus, the procedural, structural, and institutional features of these negotiations are instructive for the UN Tax Convention. In turn, and despite abundant criticism, the BEPS MLI was included not merely because it relates to taxation, but because it represents a turning point in international tax law making. The BEPS MLI reflects an evolution in the legal architecture of international tax cooperation characterized by increased multilateralism, a new emphasis on procedural coordination, minimum standards, and monitoring mechanisms beyond the allocation of taxing rights according to double tax treaties, and the institutionalization of cooperation through the Inclusive Framework. Each of these case studies offers insights–both positive and cautionary–into factors that may determine the success or failure of a treaty.

The following analysis is divided into three parts. Part I provides background information on the origin, scope and current status of the UN Tax Convention negotiations, including a legal overview of the distinction between conventions and protocols under international law. It concludes that, from a legal standpoint, obligations can be effectively housed in either format, and that such distinction should not be overstated. Part II analyses the case studies mentioned above, identifying the key factors that have historically shaped the success or failure of multilateral treaty negotiations. These include (1) securing global participation, (2) the use of empirical data and research, (3) civil society participation, (4) involvement of multinational corporations, financial institutions, and experts, (5) strong enforcement mechanisms, (6) institutional flexibility, and (7) financial and technological assistance. Drawing from theoretical and case study findings, Part II also discusses the implications of these factors for structuring the UN Tax Convention. Chiefly, for a UN Tax Convention to succeed, it must secure broad and inclusive participation, both from developed nations (Global North) and developing nations (Global South), and successful negotiations should include early stakeholder engagement, robust enforcement mechanisms, civil society and private sector involvement, flexible structures and legal instruments supported by financial and technical assistance. Grounding the process in empirical data and ensuring transparency and equity can help build an effective global tax framework. A key aspect of the upcoming negotiations will also be the dispute settlement protocol, which will be central in resolving tax-related disputes between Global North and Global South States under the UN Tax Convention.

Part III concludes with policy-oriented recommendations for negotiators, emphasising the importance of broad participation and inclusivity (particularly for the Global South), institutional flexibility, robust enforcement, civil society engagement, and financial support for developing nations, while also addressing structural inequalities and integrating human rights considerations in the negotiation process.

Background

UN Tax Convention, Terms of Reference and Proposed Protocols

On 22 December 2023, the United Nations General Assembly adopted a resolution entitled "Promotion of Inclusive and Effective International Tax Cooperation at the United Nations," which kickstarted the process of negotiating a UN Framework Convention on International Tax Cooperation to create a fairer and more inclusive global tax framework.[2] Despite being a tax treaty, human rights principles are a guiding force, as tax cooperation must be aligned with States' obligations under international human rights law.[3] After two committee meetings in 2024, the UN General Assembly adopted the Terms of Reference (ToR) for the UN Tax Convention on 24 December 2024.[4] Obligations set forth in the ToR include establishing inclusive and effective international tax cooperation; a system of governance for international tax cooperation; and an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development.[5] Additionally, the ToR prescribed that the UN Tax Convention should also include commitments to achieve objectives, such as those addressing fair allocation of taxing rights, tax evasion and avoidance by high-net-worth individuals, international tax cooperation approaches to achieve sustainable development, effective mutual administrative assistance in tax matters, and tax-related illicit financial flows.[6] With respect to capacity-building, the ToR established that the Framework Convention should include provisions regarding institutional mechanisms to support member States, especially in the Global South.[7]

In addition to the foregoing obligations and commitments, the ToR includes a mandate to negotiate two early protocols alongside the UN Tax Convention.[8] One of the early protocols will address the taxation of income derived from the provision of cross-border services in an increasingly digitised and globalised economy.[9] The subject of the Second Protocol, that is the prevention and resolution of tax disputes, was recently decided at a three-day organisational meeting by the intergovernmental negotiating committee on the matter.[10] Through this Second Protocol, existing tools for cross-border tax dispute resolution could be enhanced, new ones could be tested, and measures like advance agreements, administrative assurance, joint audits, and strengthened legal frameworks—including mutual agreements, arbitration, and secure exchanges—could be implemented to prevent and resolve disputes.[11] Additional future protocols could address tax cooperation on environmental challenges, exchange of information for tax purposes, mutual administrative assistance on tax matters, and harmful tax practices.[12]

Notably, the United States withdrew from this process, stating a conflict between the potential UN Tax Convention and its ability to enact tax policies that serve its national interests, while encouraging others to join in departing from the negotiations.[13] However, no other countries have so far followed the US's proposal. For now, significant tax justice advocates believe the negotiations will go more smoothly without US involvement.[14] Moving forward, the intergovernmental negotiating committee is set to meet three times a year from 2025 to 2027 and expected to submit the final text of the UN Framework Tax Convention and two protocols to the UN General Assembly for its eighty-second session in 2027.[15]

Framework Conventions and Protocols

We now turn to a legal analysis of the distinction between framework conventions and protocols under international law. While these terms are often used in international treaty practice, their legal significance, as we shall see, lies not in their labels but in the substance and structure of the obligations that each of them entail as formal sources of international law. Understanding this distinction is critical for assessing the legal architecture of the proposed UN Tax Convention and its accompanying protocols.

Article 2.1(a) of the Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation[.]"[16] From this definition, it is clear that the specific designation used in an international agreement (e.g., "treaty," "convention," "protocol," or "agreement") does not determine whether an instrument is legally considered a treaty.[17] Rather, what matters is the nature of the agreement itself: treaties are written, concluded between States, and governed by international law.[18] Terms such as convention, pact, protocol, or memorandum of understanding can all be used to refer to binding international legal instruments, provided they meet the criteria set out in the Vienna Convention.[19]

The framework convention-protocol approach is a widely used model in international lawmaking, especially in environmental law. Both framework conventions and protocols are binding legal instruments. An important distinction lies in the depth of the obligations they impose. A framework convention sets broad, often vague objectives, principles, and institutional provisions.[20] It does not impose immediately specific, actionable legal duties but allows for flexibility, enabling parties to gradually build consensus over time.[21] Once the framework is established, more specific protocols are negotiated and adopted, which impose concrete, actionable obligations on States in elaborating on the framework convention's general principles, adding more specific duties and compliance mechanisms, and sometimes enhancing the role of non-State actors.[22] The incremental approach of this framework allows for greater participation and flexibility while ensuring that binding commitments are introduced over time.

From a strict formal analysis under international law, it makes no difference whether an obligation falls in a framework convention or a protocol. Rather, the significance lies in how detailed the provisions are and how they function in negotiations. While a framework convention may appear less specific, it can still contain important, actionable provisions. A protocol's more specific commitments might be easier to agree upon but can also be subject to more stringent implementation mechanisms. Ultimately, the success of a treaty, that is whether it gets signed and ratified, depends on the level of detail in its provisions and the strategic use of framework conventions and protocols in balancing flexibility and commitments.

Negotiating a Treaty

Case Studies and Theory

Drawing from theoretical frameworks and case studies such as the Vienna Convention and Montreal Protocol, Helsinki and Oslo Protocols, UNFCCC, and the BEPS MLI, this section identifies and analyses key factors for success and failure in multilateral negotiations. Academic articles recognise patterns of elements, including treaty design, the role of institutional organs and financial assistance, trade relationships, domestic politics and institutional support, and the maintenance of national sovereignty, that contribute to the success or failure of conventions and protocols. Meanwhile, the case studies supplement this analysis by highlighting several idiosyncratic elements of success that can nonetheless provide important lessons for the UN Tax Convention and it's First and Second Protocols, namely: (1) securing global participation, (2) use of empirical data and research, (3) civil society participation, (4) involvement of multinational corporations, financial institutions, and experts, (5) strong enforcement mechanisms, (6) institutional flexibility, and (7) financial and technological assistance.

a. The Vienna Convention and Montreal Protocol

The Montreal Protocol on Substances That Deplete the Ozone Layer, signed in 1987, was a landmark international treaty that mandated the reduction and eventual elimination of ozone-depleting substances (ODS).[23] Its enactment followed the signing of the Vienna Convention for the Protection of the Ozone Layer in 1985.[24] Although there was initial opposition and uncertainty, both diplomatically and scientifically, the protocol ultimately became one of the most effective global environmental agreements, addressing the ozone depletion crisis and protecting human health and the environment. The protocol was based on scientific predictions about ozone depletion. Despite the immediate high costs of compliance, the Montreal Protocol stands as a success story of global cooperation, empirical research, and diplomacy.[25]

The Montreal Protocol's success is due to several key elements in its design and negotiation process, which helped overcome the initial resistance from both governments and industries. The role of science was central to the treaty's success. The scientific consensus on the link between chlorofluorocarbons (CFCs) and ozone depletion, though not absolute in its early stages, provided a strong foundation for global action. Coordinating research and building consensus played a key role among nations, positioning ozone depletion as an immediate global concern.[26]

Public opinion and pressure from NGOs and environmental groups also played a role in mobilising political will. Public awareness campaigns highlighted the potential dangers of ozone depletion, and growing scientific evidence shifted the positions of many initially resistant nations.[27] The political and economic stakes of inaction were heightened as media coverage helped to create a sense of urgency.[28] This pressure proved crucial in driving reluctant governments, particularly the European Community and those in the Global North, to embrace the need for a binding international agreement.

Multilateral institutions, especially the United Nations Environment Programme (UNEP), organised the negotiation process and facilitated cooperation among different stakeholders, including governments, scientists, and industry representatives.[29] Overall, UNEP's ability to create a neutral forum in which these various parties could engage allowed for a more effective negotiation process.[30] The Vienna Agreement tasked UNEP with collecting information in collaboration with partners to constantly inform States of the developing science.[31] Against a turbulent negotiation process, with chaotic early rounds of negotiation and initial opposition by the European Community and industry lobbyists[32], UNEP's strategic efforts, along with the leadership provided by key countries, ensured that the negotiations moved forward. [33] For instance, UNEP's Executive Director proposed creating specialized working groups to address specific issues, a move that helped streamline the negotiation process and focus attention on key points of contention.[34] The private sector also played a constructive role in shaping the protocol, contributing technical expertise in the development of substitutes for CFCs, while NGOs applied pressure to ensure that governments adhered to their environmental commitments. This multilateral, horizontal and universal collaboration was crucial to the protocol's success. [35]

Diplomatically, the negotiation process was well-organised and strategic, with early negotiations setting the tone for later successes. Dividing the issue of ozone depletion into more manageable components made the problem seem less daunting and facilitated a more constructive dialogue.[36] The fact-finding missions and workshops undertaken by UNEP in the lead-up to the Montreal Protocol negotiations were instrumental in building trust and overcoming delays.[37] This approach enabled the negotiators to arrive at a comprehensive and flexible treaty.

An important structural feature of the Montreal Protocol was indeed its flexibility. Designed to adapt to evolving scientific knowledge, it included mechanisms for continuous revisions and reassessments. The creation of an Interim Protocol allowed the treaty to remain adaptable to changing scientific knowledge, ensuring that the control measures could be adjusted.[38] This flexibility, combined with the treaty's system of periodic reassessments at summits such as the Helsinki meetings, ensured that the Montreal Protocol could adapt to emerging information and maintain momentum over time. Furthermore, the inclusion of a system of qualified majority voting also made it easier to amend the protocol and ensure adaptability.[39]

Overall, structural flexibility ensured the introduction of previously non-negotiated adjustments as scientific and technological advances emerged. This flexibility, along with the possibility of adjustments binding all signatories, made the process adaptable to new information, smoothing over potential problems before they became serious.[40] The use of a convention/protocol structure, allowing for initial negotiations despite scientific uncertainty, and the process of behind-the-scenes work by UNEP and other committees further ensured the treaty's success.[41]

The Montreal Protocol's inclusivity is also noteworthy. The treaty provided significant support for Global South countries, addressing their specific needs through Article 5, which sets out measures for those with an annual consumption of ozone-depleting substances at less than 0.3 kg per capita.[42] A well-specified financial transfer mechanism was introduced to provide funding and technical assistance to these countries, enabling them to reduce or eliminate ODS use.[43] This provision has been widely adopted in subsequent environmental agreements.[44]

By January 1989, 24 States had ratified the protocol, setting the stage for global implementation. The success of the Montreal Protocol not only highlights the potential of international cooperation to address global environmental challenges but also serves as a model for future treaties, emphasising the importance of adaptable and inclusive frameworks, the integration of scientific knowledge, the involvement of various stakeholders, and broad-based consensus-building in achieving long-term environmental goals. Another significant reason for the protocol's success was States' use of domestic cost-benefit analysis to drive their support for the Protocol, demonstrating that the benefits of preventing ozone depletion outweighed the costs of compliance.[45]

b. The Vienna Convention and Montreal ProtocolHelsinki and Oslo Protocol

The Helsinki and Oslo Protocols were developed under the framework of the 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP).[46]

The Helsinki Protocol, signed in 1985, set the goal of reducing sulphur emissions by 30% by 1993. Despite its clear and measurable targets, the protocol struggled with participation and compliance. While the treaty benefited from strong scientific evidence linking sulphur emissions to the detrimental effects of acid rain, the process of creating the protocol failed to bring in all the major polluting States, such as the United Kingdom and the United States.[47] Furthermore, the protocol's lack of enforcement, financial assistance or technology transfer mechanisms for Global South countries meant that countries disregarded their obligations.[48] This voluntary nature, combined with the lack of compensation for States that would suffer economically from making emissions reductions, hindered the protocol's effectiveness.[49] Additionally, the application of a uniform 30% reduction target across all parties, regardless of their economic or historical context, created resistance from countries that would bear disproportionate costs, such as those with economies heavily reliant on coal.[50] This lack of consideration for the unique circumstances of each State led to frustration and non-compliance, undermining the treaty's overall success.

The Oslo Protocol, which succeeded the Helsinki Protocol in 1994, attempted to address some of these limitations. By introducing differentiated reduction targets, it acknowledged the diverse capacities of different countries, which made the treaty more politically viable.[51] The Oslo Protocol also placed a stronger emphasis on compliance and included provisions for joint implementation, allowing for cooperative efforts to achieve sulphur reduction goals.[52]

Despite these improvements, the Oslo Protocol continued to face significant obstacles. Many countries that had failed to participate in the Helsinki Protocol also did not ratify the Oslo Protocol, such as the United States and the United Kingdom.[53] Like its predecessor, the Oslo Protocol suffered from a lack of robust enforcement mechanisms. The treaty's reliance on self-compliance and its absence of consequences for non-compliance left it vulnerable to the free rider problem: countries that did not fully engage could still benefit from the actions of others, reducing the incentive for universal action.[54] This highlights the importance of having enforcement mechanisms to prevent countries from taking advantage of the efforts of others without contributing themselves. Furthermore, unlike the Montreal Protocol, the Oslo Protocol did not include compensation measures for countries facing disproportionate economic costs, an omission that limited its ability to secure broader participation.[55]

This case study highlights several key takeaways. First, achieving universal participation is paramount. The inability to bring major polluters to the negotiating table or secure their commitment to the treaty significantly reduced its effectiveness.[56] Second, enforcement mechanisms are vital to treaty success. Voluntary compliance, without the threat of penalties for non-compliance, creates weak incentives for countries to fulfil their obligations. Third, the issue of fairness is critical in ensuring broad participation. Treaties must account for the economic realities of different States and provide compensation for those who may face significant costs because of compliance.[57] Fourth, structural flexibility, such as differentiated targets and provisions for joint implementation, can increase the political acceptability of a treaty, especially when the participating countries have diverse capacities and economic situations.[58] The Oslo Protocol made strides toward addressing this, but without full buy-in from major polluters and adequate enforcement, the treaty fell short of its potential.

c. United Nations Framework Convention on Climate Change (UNFCCC) and Kyoto Protocol

The UNFCCC and its later protocols are an example of treaties that have faced challenges in achieving their goals on the global stage. The UNFCCC is an international treaty aimed at addressing anthropogenic climate change by limiting greenhouse gases. Signed in 1992, the Convention's objective is to stabilise greenhouse gas concentrations, prevent dangerous climate interference, and support sustainable economic development.[59] The Kyoto Protocol, adopted in 1997 and effective in 2005, extends the UNFCCC by committing countries to reduce greenhouse gas emissions, specifically targeting several gases. The Protocol operates on the principle of "common but differentiated responsibilities", where Global North nations take the lead in emissions reductions due to their historical contributions to global warming.[60] Overall, while the UNFCCC and Kyoto Protocol are ambitious in scope and were drafted with the hope that they would play a key role in curtailing climate change globally, barriers present in ratification and implementation have caused them to not fully meet their intended goals. The Kyoto Protocol has faced challenges due to limited participation and weak enforcement mechanisms. Key global greenhouse gas emitters, most notably the United States, refused to ratify the agreement.[61] The protocol also exempted nations in the Global South, including major polluters like China and India, from binding emission reduction targets, creating an imbalance that led to criticism from the Global North and undermining the

UNFCCC's broad goals.[62] Unlike the Montreal Protocol, which saw near-universal participation, the Kyoto Protocol struggled to create international cooperation, as many countries found its requirements politically and economically unfeasible due to the high cost of implementing greenhouse gas reduction targets.[63] Furthermore, the Protocol lacked strong enforcement mechanisms, which has led to inconsistent compliance.[64]

Another challenge for the Kyoto Protocol was its reliance on complex market-based mechanisms, such as carbon trading and offset programs, which proved difficult to regulate and were often manipulated.[65] Additionally, climate change, unlike ozone depletion, is a more long-term and diffuse problem, making it harder to generate the immediate political and public urgency necessary for bold action.[66] Overall, while the Montreal Protocol successfully addressed a clear and immediate environmental crisis, the Kyoto Protocol struggled against political resistance, economic concerns, and a lack of binding commitments from major emitters. As a result, the UNFCCC and the Kyoto Protocol have yet to bring about the significant reductions in global emissions that they were designed to achieve.

The UNFCCC and Kyoto Protocol reinforce the need to encourage widespread participation in treaty negotiations and ratification. Treaty drafters should also consider designing implementation to be low-cost and avoid exempting certain countries from obligations. Finally, including robust enforcement mechanisms can help to ensure that States take seriously their roles in fulfilling treaty obligations.

d. Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI)

The BEPS Project brought G20 and OECD countries together to make international tax policy that would address the exploitation of tax loopholes, havens, and general errors in the existing tax regime. Tax competition and corporate tax avoidance represented collective-action problems that no State could tackle unilaterally without negatively impacting jobs and capital.[67] An analysis of the BEPS Project and the successes and failures of the MLI allows to extract key insights on international tax reform, negotiation dynamics, and legal innovations that can inform the UN process and can allow it to progress. BEPS has been able to address certain tax avoidance methods through multilateral reforms to existing bilateral tax treaties. For example, it introduced country-by-country reporting of profits and taxes paid by the largest multinationals and an exchange of information among countries through their tax agencies. However, the transfer pricing system, which allows the major multinationals to move their profits to low-tax jurisdictions, has remained relatively untouched and, alongside limiting Global South voices, has revealed the underlying tension in this OECD-led space.[68]

After the 2008 crisis, shifts in the economic, political, and institutional landscape overcame initial barriers to cooperation. Heightened public concern over corporate tax avoidance, combined with increased revenue pressures in OECD and G20 countries, created momentum for reform. In response, the OECD and G20 launched the Base Erosion and Profit Shifting (BEPS) Project, through which tax officials from participating countries developed coordinated proposals to curb aggressive tax planning, close tax gaps and enhance inter-state monitoring through transparency measures.[69] Over the course of two years and a half, the OECD produced reports and recommendations for each of the 15 BEPS Action Items. The ability to meet ambitious timelines, coupled with mechanisms for information exchange and monitoring, played a role in maintaining the engagement of key economies throughout the process.

Some BEPS recommendations required changes to bilateral tax treaties. To implement these changes quickly without renegotiating thousands of bilateral treaties, the BEPS countries invented a new international law instrument. Signed in June 2017, the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (BEPS MLI) amends and updates the signatories' bilateral tax treaties without supplanting them. With existing signatories, this instrument has the potential to impact over 1,500 tax treaties.[70] It provides a way for participating countries to quickly implement certain BEPS minimum standards, particularly around information sharing and other BEPS recommendations. By leaving pre-existing bilateral treaties intact, while updating them, the BEPS MLI exemplifies the pragmatic innovation and accommodation of sovereignty concerns that characterised BEPS. Although it has detractors, issues in resolving source conflicts are still ongoing and the BEPS MLI represents a significant step, and a proving ground for a more ambitious multilateral tax treaty to secure certain agreed-upon benefits such as coordinated fiscal fail-safes[71], other coordinated anti-abuse rules, and disclosure and information-sharing regimes.

At the time of negotiating the MLI, the OECD had faced longstanding criticism for its limited inclusivity and for concentrating agenda-setting power within a small group of (mostly) Global North States. While the G20 informally expanded Global South participation by including Argentina, Brazil, China, India, Indonesia, Russia, Saudi Arabia, and South Africa, the core direction of the project remained firmly in the hands of both OECD and G20 member countries.[72] Despite the broader geographic representation, these States had limited influence over the substantive content of BEPS outcomes and it therefore remains unclear how the BEPS process would address the various needs of countries in the Global South.[73]

Responding to mounting demands for broader participation, the OECD launched the Inclusive Framework in 2016, which now comprises over 145 countries and jurisdictions. However, membership is conditional on implementing the BEPS minimum standards[74]–standards that were already defined in the initial 15 Action Reports developed largely without input from non-OECD countries. The Inclusive Framework's role in shaping future reforms has also remained constrained: it contains only in Action 1 (taxing the digital economy)–after consensus failed among OECD countries and some, like India, moved ahead unilaterally–that Inclusive Framework members were invited to more actively contribute to policy development–albeit in a purely consultative manner.[75]

Critics have argued that the BEPS process suffers from a lack of input legitimacy, pointing out that developing countries were indeed only given a consultative role in shaping initiatives such as the Global Forum on Transparency and Exchange of Information, the Common Reporting Standard (CRS), and the Multilateral Competent Authority Agreement (MCAA).[76] These instruments often require countries to reform their domestic legislation and tax treaties in alignment with standards that were shaped without their substantive involvement. In addition, significant disparities in administrative, financial, and technological capacity continue to disadvantage developing countries in both implementing and benefiting from these standards.

Further reinforcing these critiques, empirical research has cast doubt on the effectiveness and global reach of the BEPS MLI. Despite being promoted as a swift and inclusive mechanism for updating bilateral tax treaties, the MLI's implementation has thus far been overwhelmingly concentrated among developed, particularly European, countries. As of December 2022, nearly all European States had signed the MLI, while adoption across Africa, Oceania and Latin America has remained limited.[77] Developing countries are significantly underrepresented among signatories and ratifiers, highlighting both structural exclusion and practical difficulties these countries face in complying and implementing the MLI.[78]

Taken together, these findings paint a picture of formal inclusivity without substantive influence. While the OECD encouraged participation from developing countries, real agenda-setting, decision-making and technical design remain dominated by a small set of developed economies. The BEPS process, particularly through instruments like the MLI, risks entrenching existing inequalities in the international tax regime, rather than creating a genuinely equitable multilateral framework. That said, the BEPS Project nonetheless offers valuable lessons for future multilateral tax efforts. It demonstrates how access to critical information–such as multinational profit and tax data–can serve as a powerful incentive to bring States to the table. The creation of dedicated institutional mechanisms, like OECD research committees and the Inclusive Framework, helped sustain engagement, even if unevenly. Similarly, legal innovations like the MLI, which streamline the adoption of treaty reforms, point to the benefits of procedural efficiency. Despite its limitations and power imbalances, the BEPS Project represents a first attempt to coordinate tax governance in a multilateral scale. As momentum now shifts to developing the UN Tax Convention, the challenge will be to retain what worked, that is, effective mechanisms, informational advantages and legal adaptability, while ensuring a process that is transparent, participatory and development-sensitive, where all States–not just the most powerful–have a meaningful seat at the table to shape and benefit from international tax cooperation.

Application of Key Factors

The successes and shortcomings of these past international agreements provide valuable insights for shaping an effective and inclusive negotiation of the UN Tax Convention. Seven key factors stand out as critical: (1) securing global participation, (2) using empirical data and research, (3) civil society participation, (4) involvement of multinational corporations, financial institutions, and experts, (5) strong enforcement mechanisms, (6) institutional flexibility and (7) financial and technological assistance.

a. Securing Global Participation

A successful tax treaty must involve negotiations with all major stakeholders, including high-tax and low-tax jurisdictions and developing economies. Past failures often stemmed from the absence of key players, as seen when the US opted out of the Helsinki and Kyoto Protocols. In contrast, the Montreal Protocol succeeded by aligning both public and private stakeholders around shared goals. For a tax treaty, early engagement, incentives, strategic diplomacy and the promise of access to critical tax data and fair treatment can help keep Global North and Global South States–and the private sector–engaged in the negotiations The value of information acquired as a consequence of participation in these mechanisms cannot be underestimated, as major Global South States kept the process moving in both the case of Montreal and the BEPS Project due to their inability to acquire the depth of information on their own. It was also a major reason industry partners demanded a continuation of the process. Lessons from the successes of the Montreal Protocol suggest that effective negotiation of a UN Tax Convention requires a global champion. With the US now on the sidelines of the UN Tax Convention, new champions that can similarly work with multilateral institutions and drive negotiations and subsequent actions may emerge. It could be helpful to have a champion from one of the OECD members to get other OECD States, which are currently largely in opposition to the UN Tax Convention, on board. As with the BEPS process, this could mean new leadership from the BRICS, including a potential alliance with European nations, which have been perceiving their treatment by US multinationals as a neglected source country. There could be a strong progressive coalition of Global North and South countries driven to close tax havens and work together for a distributive international tax regime. The EU's abstentions in the UN Tax Convention negotiations can be seen as a way forward from the recent intransigence of the US. Although its calls for consensus-based decision-making have run up against Global South positions on procedure, the EU has a lot to lose as a high-tax jurisdiction from tax abuse.[79] Its recent court decisions on US tech companies' tax avoidance allow BRICS and Global South countries in these negotiations to potentially create a longer-lasting tax regime by securing the participation of most major European economies.

Securing broad participation from all stakeholders, whether through diplomatic outreach, transparent negotiations, or the promise of equitable outcomes, is crucial. Without a broad and inclusive approach, certain regions or sectors may feel excluded, resulting in weakened buy-in and a lack of compliance.

b. Use of Empirical Data and Research

Empirical data and objective research are essential to strengthen political will for comprehensive participation and tax reform, and for designing equitable and effective tax rules. Just as scientific consensus underpinned global action on ozone depletion in the Montreal Protocol, coordinated research and transparent reporting on tax avoidance and revenue losses can provide a shared factual basis to justify urgent reforms. Coordinated, data-driven decision-making enables countries to base their tax policies on clear, measurable evidence, helping to counteract global tax avoidance while fostering broader participation in the UN Tax Convention negotiations.

c. Civil Society Participation

Just as NGOs and agencies like UNEP have played a critical role in shaping environmental treaties, civil society organisations can contribute meaningfully to tax negotiations by raising awareness of tax justice issues, highlighting their links to inequality, and using media platforms to amplify the urgency of reform. In the context of a UN Tax Convention, civil society participation can support treaty negotiations by contributing data that highlights the impacts of international tax avoidance on inequality, provide oversight to ensure transparency, and advocate for stronger enforcement mechanisms. This data may include the amount of revenue lost, the methods used by multinational corporations to shift profits and exploit tax loopholes, and the economic benefits of improved international tax cooperation. It can also provide a human rights lens–especially relevant for Global South countries disproportionately impacted by the current international tax regime and tax abuse. In general, civil society's engagement helps ensure that treaties are not just technically sound but equitable, with a focus on global public welfare.

d. Involvement of Multinational Corporations, Financial Institutions, and Experts

Just as NGOs and agencies like UNEP have played a critical role Similar to how companies helped develop alternatives to CFCs in environmental treaty negotiations, multinational corporations, financial institutions, and tax experts can contribute insights into feasible tax structures in the formation of tax treaties. For example, firms could help design efficient global tax reporting systems that minimise administrative burdens while ensuring transparency. They can also help design international tax standards and compliance mechanisms, with adequate substantive and procedural oversights. One of the successes of the BEPS process was the creation of information-sharing mechanisms between jurisdictions on corporate profits and tax revenues. This is especially important in light of the challenges of the Helsinki and Oslo Protocols—such as their reliance on voluntary compliance and absence of enforcement mechanisms—which a Second Protocol could address through a strengthened dispute settlement mechanism, potentially including compensation measures and penalties for non-compliance.

Multinational corporations, financial institutions and tax experts must be involved in shaping the UN Tax Convention, as their technical expertise is vital for designing effective global tax reporting systems and standardised frameworks. To incentivise cooperation and alignment with public interests, the treaty may offer benefits such as greater tax certainty, lower litigation and compliance costs, improved market access, and protection from fragmented unilateral measures. However, their participation must be carefully managed to avoid conflicts of interests and ensure the treaty remains focused on global tax fairness, not merely corporate interests.

e. Strong Enforcement Mechanisms

Strong enforcement mechanisms are particularly important for treaty success. Tax treaties that largely depend on self-implementation by States are particularly vulnerable to non-compliance, non-participation, and free rider problems—a flaw that undermined the BEPS negotiations and the Helsinki and Oslo Protocols. Clear accountability measures and the implementation of strong enforcement mechanisms, such as penalties for non-compliance, are therefore necessary to enhance the credibility and effectiveness of a treaty. The lack of robust enforcement measures in the Helsinki and Oslo Protocols allowed countries to benefit from others' efforts without contributing themselves.

Independent verification bodies, periodic assessments, and public reporting can enhance trust and accountability in tax treaties. As such, the establishment of an oversight body can serve as a mechanism to strengthen tax treaties through enhanced international cooperation and enforcement measures. Again, however, treaty monitoring is only effective when accompanied by clear enforcement mechanisms. BEPS highlighted how voluntary commitments and peer review, while improving transparency, did not fully address non-compliance issues, which future tax treaties must account for by incorporating binding repercussions for jurisdictions that fail to meet their obligations.

In the tax context, these mechanisms of enforcement can include countermeasures such as withholding taxes, blacklisting non-compliant jurisdictions, or denying treaty benefits to parties operating in non-cooperative States to ensure accountability and prevent free-riding. Future tax treaties should similarly incorporate stronger compliance measures, such as treaty-based sanctions for non-cooperative jurisdictions or automatic application of enforcement provisions, rather than relying solely on diplomatic pressure. Ensuring that commitments are not only politically viable but also enforceable through these mechanisms will be critical in ensuring treaty success.

f. Institutional Flexibility

When looking at barriers to tax treaty negotiations, past international agreements have shown that uniform tax provisions can create resistance from States with different economic structures and fiscal policies. For example, the Helsinki Protocol's rigid 30% reduction target failed to consider the varying economic situations of its signatories, leading to pushback and non-compliance, particularly from developing economies.[80] In contrast, the Oslo and Montreal Protocols introduced differentiated targets, making them more economically and politically viable.[81] With the BEPS Project, the introduction of the MLI similarly allowed countries to update their tax treaties collectively while preserving national sovereignty by updating hundreds of bilateral treaties without revoking them—a model of flexibility that future tax agreements should emulate to facilitate widespread implementation. As such, tax treaties should adopt differentiated commitments based on economic development and institutional capacity to allow for a fairer distribution of responsibilities. A potential for disparate standards for States in the Global North and Global South could aid in achieving equity and balance through the UN Tax Convention.

Flexibility in tax treaties can be achieved through establishing technical working groups to address evolving tax challenges and by tailoring treaty obligations to the specific needs and capacities of individual countries. Working groups, similar to those led by UNEP for the Montreal Protocol, could allow for ongoing research and refinement of tax policies as new economic and technological realities emerge.

Nevertheless, one of the key challenges of the Kyoto Protocol was the imbalance it created by exempting the Global South, which led to opposition from the Global North that felt burdened by emissions reductions. A similar challenge could arise in tax negotiations if the Global South is given broad exemptions while the Global North bears the primary responsibilities. Instead, a tiered implementation process, with differentiated but progressively aligned commitments, may help balance fairness with effectiveness. Indeed, flexibility has been an element of success, while full exemption may be where Protocols go wrong. This also should be aligned with the direct participation of the Global South so its needs can be met in the process, ensuring it has ownership over decision-making, unlike in the BEPS process.

Furthermore, flexibility alone is not enough. The BEPS process revealed that even adaptable treaties that include innovative mechanisms such as its Inclusive Framework must address underlying distributive conflicts, such as the balance between source and residence taxation, or the process will be limited in scope. Just as trade relationships influenced treaty ratification in environmental agreements, international tax treaties must account for inevitable economic self-interest, ensuring that new tax allocation models align with States' long-term economic priorities. Without addressing these tensions, even well-structured agreements risk fragmentation.

With these factors in mind, the UN Tax Convention could incorporate structural flexibility by establishing a mechanism for periodic reassessments and amendments to adapt to evolving global tax challenges. The rigidity of the Helsinki Protocol in enforcing uniform reductions contributed to its limitations, whereas the Oslo Protocol's more flexible approach improved feasibility. For example, a qualified majority voting system could be adopted for updates and revisions, which would facilitate timely adjustments without requiring full renegotiation. Negotiators could also consider creating an interim protocol, like in the Montreal Protocol, to ensure that the treaty remains adaptable to the changing global tax environment. By adopting interim protocols, countries can gradually implement measures and incorporate new rules as a response to economic or political developments that change the realities of treaty compliance.

As global economic and fiscal conditions change, tax treaties must be able to adapt. Allowing for adjustments over time, as seen in the OECD's evolving tax frameworks, increases the longevity and adaptability of agreements. As such, in addition to periodic review and differentiated commitments based on each country's economic capacity, an adaptable framework requires the treaty to remain relevant and actionable in the face of shifting realities and may also mean allowing for the possibility of additional protocols that can address emerging tax issues or potentially cover some of the obligations in the ToR if stakeholders want a more gradual process. It is important, however, that flexibility is not confused with exemption.

g. Financial and Technological Assistance

Providing financial and technical assistance can also help aid successful treaty negotiations in order to lower the economic and administrative barriers to compliance. Ultimately, many countries in the Global South struggle to implement complex tax treaties due to limited institutional capacity, as exemplified by how coal-dependent economies faced severe difficulties meeting the Helsinki Protocol targets without support. The lack of financial assistance in these environmental treaties hindered broader participation, a lesson that can be applied to future tax treaties by incorporating funding mechanisms. Lastly, the UN Tax Convention could take into account the specific tax needs of the Global South while also setting forth funding and technical assistance that could aid in tax rule implementation through tax compliance and administration. A financial transfer mechanism similar to the Montreal Protocol's Article 5 could be established, providing funds to assist Global South countries with tax system modernisation, capacity building, and access to legal expertise, thus promoting accessibility and equity. The Montreal Protocol's success demonstrates how financial and technical assistance can increase treaty participation by reducing economic burdens, while the failure to offer similar assistance in tax agreements has contributed to unequal implementation of international tax rules.

However, simply including financial assistance provisions on paper, without establishing clear financial quotas, identifying specific funding sources, and ensuring compliance with enforceable mechanisms, will not be sufficient to guarantee actual participation. Given the current limitations on the financing of international organisations and the shrinking of official development assistance, it is critical that the UN Tax Convention outlines clear financial support structures. This should include a transparent funding model, accountability mechanisms to ensure that financial aid reaches the right channels, and compliance provisions to ensure that financial assistance is effectively utilised. A global tax treaty should include provisions for capacity building, modernisation of tax systems, and the provision of legal and technical support.

It must also ensure that such provisions are backed by sustainable and enforceable financial commitments. This will enable Global South economies to implement treaty provisions more effectively, reducing the risk of non-compliance and ensuring a more inclusive global tax regime.

Conclusion

The success of the UN Framework Tax Convention hinges not only on legal drafting or diplomatic compromise, but on the thoughtful integration of key structural principles. Lessons from past international agreements highlight that enduring treaties are inclusive, evidence-based, enforceable, flexible and equitable.

To be effective, future tax negotiations must secure broad participation, be grounded in empirical research, meaningfully engage civil society and the private sector, incorporate strong enforcement and dispute resolution mechanisms, allow for institutional flexibility and provide financial and technical support—especially to Global South countries.

Crafting a successful UN Tax Convention demands institutional imagination. The seven highlighted factors throughout this article, drawn from decades of treaty experience, provide a blueprint for a more inclusive, enforceable, and adaptable tax regime. If negotiators embrace both the technical complexity and the political economy of international tax, they have the opportunity not only to close loopholes but also to close global inequality gaps. This next generation of tax cooperation should aim not just for efficiency, but for fairness, sustainability, and shared ownership in shaping a just global economy.

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[22] Id. at 452.

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[23] In particular, chlorofluorocarbons (CFCs).

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[24] In the 1970s, the United Nations Environmental Programme (UNEP) emerged as the primary organization tasked with coordinating international efforts to address ozone depletion, and the organization played a central role in building consensus on the need for action. By 1981, UNEP was actively advocating for the creation of a treaty. This advocacy led to the establishment of an ad hoc group in 1982 tasked with drafting the framework for the Vienna Convention, which set the stage for the Montreal Protocol. Negotiations began in earnest with the finalization of the Vienna Convention in 1985, which involved 43 nations and established broad obligations to take "appropriate measures" to protect the ozone layer. Scott Barrett, Environment and Statecraft: The Strategy of Environmental Treaty-Making, 221, 224 (2005).

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[29] Benedick, supra note 26 at 40.

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[30] Id. at 45.

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[31] A key negotiating point occurred when the United States took unilateral action to authorize UNEP to reopen negotiations for a control protocol, which led to the drafting of the Montreal Protocol. Id. at 60.

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[37] Benedick, supra note 26 at 63.

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[38] Id. at 63.

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[39] Barrett, supra note 25 at 221.

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[40] See Benedick, supra note 26.

[41] DeSombre, supra note 39.

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[42] *Id.*

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[43] Id.

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[45] Cass R. Sunstein, Montreal versus Kyoto: A Tale of Two Protocols, Public Law & Legal Theory Working Papers No. 136, 5 (2006).

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[46] The LRTAP Convention was designed to address transboundary air pollution, primarily among Western nations, and helped to build a foundation for understanding the causes and political dynamics surrounding pollution. However, it also faced challenges in creating a truly inclusive approach, as certain nations, especially major industrialized ones, resisted full participation due to domestic concerns and economic costs. Barrett, supra note 25 at 10.

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[47] Id. In fact, the United States did not sign the protocol, arguably weakening its global impact. As a result, the reductions agreed upon were largely consistent with what these nations had already planned, rather than representing new commitments to greater action.

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[60] Kyoto Protocol to the U.N. Framework Convention on Climate Change, art. 101, Dec. 10, 1997, 2303 U.N.T.S. 162.

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[62] Id.

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[63] Id.

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[64] Id.

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[65] Id.

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[66] Id.

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[67] In the past decades numerous barriers prevented

states from working together cooperatively; these barriers included diverse state interests and monitoring problems, reluctance to surrender national tax sovereignty, lack of clear ideas about how to close even notorious tax gaps, inability to grasp the scope of the problem, interest-group capture, and views that tax competition was conventionally desirable. Due to these barriers, a project at the OECD in the late 1990s to curb tax competition made important, but only limited, progress. Likewise, a project within the EU to use state-aid enforcement to limit tax competition failed to gain support. Also, when countries undertook cooperative efforts to combat tax competition, because they were guided by their own interests in securing investment and advantages for their companies, they disagreed about what forms of competition should be prohibited. Thus, while states cooperated to eliminate tax overlaps that led to double taxation, they left tax gaps unresolved. Several states deliberately created tax gaps for multinationals to exploit. And when other states accidently created loopholes, interest groups that benefited were ready to prevent repeal. Ruth Mason, 114 The Transformation of International Tax, The Am. J. of Int'l L. 353, 360 (2020).

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[70] Mason at 374.

[71] Fail sages are mechanisms through which "failure of one state to ax automatically triggers tax by another state, thereby assuring full taxation. Although unilateral fiscal fail-safes could previously be found in domestic law, coordinated implementation of harmonized fiscal fail-safes enabled BEPS countries to more effectively achieve full-tax goals by deterring both state defection and aggressive tax planning". Mason, supra note 71 at 380.

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INTERNATIONAL LAW AT THE UN TAX CONVENTION

Second Protocol on Dispute Legal and Procedural Lessons from International Treaties for Multilateral Tax Treaty Negotiations

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