The problematisation of small tax havens

An analysis of four small tax havens' responses to the OECD 2000 tax haven blacklist, within a problematisation framework

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Introduction

Small tax havens play a large role in international finance. In recent years the amount of wealth held in offshore financial accounts has grown to over an equivalent of 10% of the worldwide GDP (Alstadsæter et al, 2017, p.5). This wealth consists of money that comes mainly from citizens and businesses from developed states. The enormous amount of wealth is even more impressive when it is considered that most of these offshore financial centres can be characterised as small states or small non-sovereign territories. An example of the presence and relevance of small tax havens is the discovery that Royal Dutch Shell avoided Dutch dividend taxes via a subsidiary on Channel Island Jersey, which caused outrage under politicians (Kleinnijenhuis, 2018). Small territories however are not the only territories that have been characterised as tax havens. The policies of tax havens have frequently been criticised. The activist think tank Tax Justice Network (2018) has for example put tax policies of states and non-sovereign territories into a 'Secrecy Index'. The Network investigated 112 jurisdictions, and did not hesitate to criticise the tax policies of larger developed states as well. These larger developed states themselves, however, have a different view on how to categorise tax havens. The EU for example does not investigate its own member states in its tax haven blacklist, a practice that has been firmly criticized (Guarascio, 2018). Also, the Organisation for Economic Co-operation and Development (OECD) regularly publishes a list of non-cooperative tax havens with regards to harmful tax competition.

Remarkably, the first OECD list of 35 potential tax havens did not include any larger developed state (OECD, 2000). This too led to criticism that tax policies of large developed states were ignored. The pressure of such blacklists can be especially threatening for small states and non-sovereign territories. The economies in these territories are often limited in their diversification (Armstrong & Read, 2003, p. 108). An economic focus on financial services can be a part of a niche-seeking strategy (Prasad, 2004, p.42). Being put on a blacklist has a potentially large impact on small territories. It therefore is a relevant question how small tax havens have reacted to the pressures that larger developed states applied through the OECD. This question will be examined in this thesis within a framework of 'problematisation'.

To create clarity about the context of this thesis, first a description of several models for economic survival and development of small states and territories is given. After that I review the tax competition debate, and the role small states and territories

play. The dynamic between small tax havens on the one hand, and larger states and international organisations on the other, will be discussed in terms of compellence and problematisation. After this, the case selection of this thesis, based on political status and geography, is set out. This literature review will lead to the formulation of a research question and three expectations. In the following content analysis, Jersey, Liechtenstein, the United States Virgin Islands, and Barbados will be examined. Finally, the results are discussed in relation to the research question and expectations.

The economic development of small states

Traditionally, small states are seen as only marginal actors in the global system in general, as well as in the global economy. More recent studies, however, have found that small states should not necessarily be seen as economically weak states. Armstrong et al. (1998, p.665) show that population size has no significant effect on the overall economic development of a state. This analysis of the economic performance of small states does not imply that they do not face any risks and uncertainties in the international economy. One important characteristic of small states is that they naturally have a more open economy. This openness is amongst other things driven by their relatively small internal markets and their lack of a diversified economy (Cooper & Shaw, 2012, p.3). Dependence on the financial services sector creates uncertainty, especially when tax practices are under international pressure (Streeten, 1993, p. 200).

To explain this economic development of small states, different models can be used. Some small territories can be defined as SITE's: Small Island Tourism Economies (McElroy, 2006, p. 62). These territories rely primarily on their tourism sector for income. In this thesis, however, the emphasis is on states and territories that to a great extent rely on their financial sector. To investigate these cases some strategy models of the economy exist. The first description of economic development is the 'vulnerability' approach (Baldacchino & Bertram, 2009, p.146), which in fact does not match the findings of Armstrong, but rather shows why small states are relatively weak in economic terms. Briguglio (1995) put together a vulnerability index for small island development states (SIDS). In this index, SIDS's are considered economically weak due to their small size, remoteness, proneness to natural disasters and other environmental factors (Briguglio, 1995, pp. 1616-1617). These characteristics are also described by Streeten (1993), who argues that the solution to the problems caused by

smallness should be found in economic integration. He then concludes that this strategy of economic development also has bleak prospects, as all attempts towards this goal were unsuccessful, except in the case of European integration (Streeten, 1993, p. 201). In the vulnerability approach small states are therefore seen as inherently weak, while economic integration cannot solve this vulnerability.

The second model is more in line with the findings of Armstrong et al. (1995). The model Bertram and Watters (1985, p.497) describe shows how Migration, Remittances, Aid, and Bureaucracy (MIRAB) are the factors on which SIDS can base a more reliable economic system. An essential difference with the vulnerability model is that MIRAB focuses on alternative sources of income in a broad sense, rather than thinking in terms of economic development in an industrial Western context. This is exemplified in the United Nations Committee on Development Policy (2005), which assumes that smaller population size is equal to lower economic development (Baldacchino & Bertram, 2009). The MIRAB model thus describes some of the different structures on which small states can base their economy as a means of economic survival.

The last model presented here provides an alternative manner of economic development of small states, next to the MIRAB model (Baldacchino, 2006, p.45). This model focuses on "People considerations affecting citizenship, residence and employment rights (P); Resource management (R); Overseas engagement and ultra-national recognition (O); Finance (Fi) and Transportation (T)", forming the acronym of the PROFIT model (Baldacchino, 2006, p.54). The focus on these capacities means that small states acting according to the PROFIT model will have a special interest in luring investments by providing low or no tax regimes (idem). The PROFIT model provides an explanation for the existence of tax havens. The focus on financial services as a means of income is simply one of the bases on which the economy of small states can be built. States can in practice use combined strategies from the MIRAB and PROFIT models to pursue economic survival and development.

In an effort to examine the economic performance within the different models of economic development for small territories, Oberst & McElroy (2007, p. 164) compared 58 islands with fewer than 3 million inhabitants, and categorised the islands as either a MIRAB economy or a SITE/PROFIT economy. They concluded that islands in the SITE/PROFIT category performed significantly better, having a higher income per capita and lower unemployment (idem, p. 171).

Small tax havens and tax competition

As discussed in the previous paragraph, small states do have some strategies to protect themselves against the risks that an open, vulnerable economy poses. One of these strategies is that small states can choose to specialise their activities into niche sectors. In the case of tax havens, this strategy includes a combination of low tax rates and stringent secrecy laws (Woodward, 2006, p.686). The use of the financial sector as a niche specifically began to grow in the 1980s, when economic liberalisation "provided space for innovative small states to promote greater integration of their banking and investment services with larger economies" (Cooper & Shaw, 2012, p.5). Although the development of an offshore financial sector is "not a panacea for economic development" (Hampton, 1994, p. 248), many small states that developed their financial services sector enlarged their economic competitiveness. This lifted many small states "from the poverty of the developing world to levels of affluence few would have believed within their grasp" (Hampton & Abbott, 1999, p.1). Evidence suggests that the development of a financial services sector has a positive effect on national income growth, but that as more territories begin to develop this sector, benefits will also depend on external institutional relations of the OFC's and on their reputation (Butkiewics & Gordon, 2013, 177). However, the freedom that tax havens enjoyed in their financial activities did not persist. Regulation naturally lags behind new developments, and this too applied to the newly introduced financial policies of tax havens.

The most vocal opponents of the policies of tax havens have been larger developed states. The main effort in this critique was conducted by the Organisation for Economic Cooperation and Development (OECD, 1998). The OECD started a campaign against tax havens in 1998, when it first addressed the problems concerning harmful tax competition. This report was a response to the organisation's announcement in 1996 that it would start to 'develop measures to counter the distorting effects of harmful tax competition … and the consequences for national tax bases' (OECD, 1998, p. 3). The member states of the OECD formulated their critique on tax havens as a threat towards the acceptance of their domestic tax systems by citizens and businesses. The free tax competition in combination with low transparency and high secrecy tempts businesses and individuals to engage in tax avoidance. On the one hand, this is a problem because it decreases the tax incomes of the OECD states from which capital flows into tax havens (OECD, 1998, p.15). On

the other hand, it undermines the idea of a social contract of individuals and corporations with their home state, as the former neglect to obey the tax laws of the latter (Woodward, 2006, p.687). The 1996 announcement shows what the main goals of the OECD member states were. Tax havens had been useful in generating financial liquidity in a liberalising global economy (Palan, 1999, p.34). Liberalisation, however, had now come to a point at which the advantages that tax havens provided for OECD members no longer outweighed the costs those members had to bear (OECD, 1998, p.9). This was at least the case from the viewpoint of the OECD members, as not only corporations but also anonymous individuals avoided domestic taxation (Vlcek, 2008, p.51).

At the opposite side of the spectrum, another interpretation of the Harmful Tax Competition Initiative (OECD, 1998) was heard. A quite firm critique on the OECD measures was given by Ronald Sanders (2002), the High Commissioner of Antigua and Barbuda in London. He called the OECD plan 'fiscal colonialism' and argued that it was a system aimed to bend powerless countries to the will of developed states. First, he pointed out how the tax havens defined by the OECD were mostly small states that had diversified their limited economies towards financial services. Sanders also criticised the way the OECD had supposed that it could impose rules that changed the domestic policies of the tax havens. This assumption was seen as a violation of the sovereignty of alleged tax havens' tax policies (Sanders, 2002). Small states have increasingly used their sovereignty for commercial uses such as independent offshore finance services (Palan, 2002, p.153). The OECD has 'reinterpreted the neutral description of tax havens to the narrow understanding of harmful tax practices' (Persaud, 2001, p. 199). In addition, the OECD specifically confronted all *jurisdictions* that met the key factors for identifying tax havens. These jurisdictions also included some of the autonomous, non-sovereign territories that constitutionally are part of OECD member states, such as Jersey in the case of the United Kingdom and the U.S. Virgin Islands for the United States. This excluded some of the OECD member states from responsibility over their overseas territories, as it was the territories and not the states that were seen to carry responsibility (Sanders, 2002). To conclude, opponents of the OECD argued that the organisation generally aimed to increase competition, except when this competition had negative consequences for its own members (Persaud, 2001; Sanders, 2002).

Compellence and problematisation

In order to create clarity about which territories met the key characteristics of a tax haven, the OECD published the requirements[1] that all territories should meet, accompanied by a list of 35 states and territories that did not meet them (OECD, 2000, p.17). By August 2017, Trinidad and Tobago was the only territory that was categorised as non-compliant to the OECD guidelines (OECD, 2017). The fact that the OECD sees almost all territories as compliant, suggests the campaign of the organisation against (alleged) tax havens has been successful. This raises the question why the accused territories over time have complied with the OECD demands.

To understand the interaction between the OECD and the alleged tax havens, it is important to know in which ways states, international organisations and other political actors might change the behaviour of others. When compliance is discussed in international relations, one generally looks at the mechanism of coercion, in which "coercion is the ability to get an actor … to do something it does not want to do" (Art & Greenhill, 2018, p. 78). In the traditional rationalist approach, coercion can take the form of deterrence or compellence. Deterrence is designed to prevent certain behaviour from an actor, while compellence aims to change the target's behaviour (Schaub, 2004, p. 389). In the rationalist approach both strategies are enforced by the (threat of) military or economic sanctions (Art & Greenhill, 2018, p.81). Besides the sanctioning mechanism, others might also be compelled by inducements, such as "symbolic gratification, policy concessions and economic favours" (Nincic, 2010, p.139). A coercive strategy can also combine threatening sanctions and inducements, which is referred to as a diplomacy of 'sticks and carrots' (Art & Waltz, 2009, p. 74).

Besides the traditional rationalist approach, the coercion of others can also be viewed in a constructivist manner. Constructivist theorists have argued that not only 'sticks and carrots' can make others comply, but that compliance can also flow from persuasion (Checkel, 2001, p.557). Persuasion involves not only a change in behaviour, but also the acceptance of the norm to which "compliance is morally right" (Braithwaite & Drahos, 2000, p. 553). In order to persuade others to comply with a norm, the relevance of compliance has to be made clear. In order to do so, an actor can apply a strategy of 'problematisation'. Hülsse (2007) set out the process of problematisation by using a clear distinction between three components. First, he

[1] See conceptualisation of 'tax haven', p. 9

argues that to problematize an issue, it has to be presented as a global phenomenon, "to be encountered anywhere around the globe" (idem, p. 168). The second step is to "turn the phenomenon into a problem" (idem, p. 170). Last, others must be that "only global rules are able to solve the problem" (idem, p. 175). Expressions that consist of one or more of these components can be seen as problematising expressions. The usefulness of problematisation as a framework of analysis is based upon the notion that just the 'naming and shaming' by the OECD blacklist could already have negative economic effects on the alleged tax havens (Zaragis, 2001, p. 524; Kudrle, 2008, p. 3).

Conceptualisation

The debate of which cases exactly are identified as a tax haven has not resulted in a general agreement in scientific literature (Kudrle, 2008; Langer, 2000; Palan et al., 2009). However, in this thesis the concern for this disagreement will be less relevant, as tax havens here are defined as states and territories on the OECD blacklist (OECD, 2000, p.17). To determine if a jurisdiction meets the characteristics of a tax haven, the OECD has used four key factors, which are 1) a no or low tax on relevant income, 2) no effective exchange of information, 3) a lack of transparency and 4) tax facilities that do not require substantive local presence in the jurisdiction (idem, p. 10). This thesis focuses on this definition and the subsequent selection of jurisdictions, as the general aim of this thesis is to explain the relationship between the OECD and the jurisdictions it has defined as tax havens.

Two dimensions: political status and geographic location

The first dimension on which cases will be selected is on the basis of their political status. The distinction is made between sovereign states and non-sovereign territories. Sovereignty is typically conceptualised as having internal as well as external aspects (Branch, 2011, p. 6). In this thesis, sovereignty is described as international legal sovereignty, which "refers to the practices associated with mutual recognition, usually between territorial entities that have formal juridical independency" (Krasner, 1999, p. 3). The non-sovereign territories examined in this thesis, Jersey and the US Virgin Islands, are no subject to international law in the way sovereign states are (Bosque, 2017, pp. 524, 539). Non-sovereign territories thus lack some external aspects of sovereignty, as they often "retain the constitutional and political links with a larger

and often distant metropolitan power (Veenendaal & Oostindie, 2018, p. 26). It should however be noted that these non-sovereign territories regularly prefer their non-sovereign status, “rather than take the risk of joining the ranks of sovereign states themselves” (Baldacchino & Milne, 2006, p. 490). Nevertheless, one should keep in mind that despite their constitutional ties with a metropole state, the examined non-sovereign territories are able to practice independent tax policies (Hampton & Christensen, 2007, p. 1009). The tension between constitutional ties and independent tax jurisdiction makes political status an important dimension in this thesis. Additionally, this tension is reinforced in cases of this thesis by the fact that the OECD emphasised that “no distinction shall be made between jurisdictions that are dependencies of OECD countries and those that are not” (OECD, 2000, p. 24).

The second dimension that forms a basis for the case selection is the geographic location of the cases. This distinction is relevant as differentiated territories “both result from and influence where finance flows” (Sarre, 2007, p. 1077). As the global economy operates simultaneously on different levels, viz. local, regional and global, financial networks are closely related to their geographical scale (Dicken et al., 2001, p. 96). The fact that many financial networks cross borders, in combination with the lack of a common global regulation, causes legal arbitrage opportunities (Dörry, 2016, p. 9). The result of the importance of geography in combination with the lack of uniform regulation suggests that tax havens with different locations also differ in their tax climate and policies. Subsequently, difference in policy could cause different reaction in small tax havens. In this thesis the geographic dimension will comprise of the distinction between European and Caribbean cases.

Research question and expectations

The previous paragraphs showed that the OECD has economically challenged small sovereign states and small non-sovereign territories that apply a PROFIT model focussing on offshore financial services. These small tax havens have gained economically from this strategy (Butkiewics & Gordon, 2013; Oberst & McElroy, 2007), but are still vulnerable to changes (Briguglio, 1995). The OECD blacklist is certainly such a change, and therefore it is useful to examine the reactions of the accused territories. As ‘naming and shaming’ itself, besides possible economic sanctions, poses an economic threat to the alleged tax havens (Zagaris, 2001; Kudrle,

2008), it is useful to understand the reaction in a framework of problematisation. Therefore the research question this thesis aims to answer is the following: *How do small tax havens respond to the problematisation of offshore financial services by the OECD, and what is the influence of geographic location and political status of the territory on these reactions?*

By posing this question, this primary goal of this thesis is to contribute to the knowledge about the interaction between small territories and larger, often more developed states and actors like the OECD and its member states. The second goal is to provide a better understanding about the mechanism of problematisation. Lastly, the use of the dimensions 'political status' and 'geography' could generate insights to the possible different reactions that different types of small territories give when they are under pressure from large opponents.

Expectations

Based on the previously discussed literature, three expectations can be formulated with regard to the research question. The first expectation is that the alleged tax havens will react by arguing against one or more of the three components of problematisation (Hülsse, 2007), which are its global character, the fact that the issue is a problem, and the need for international regulation. The second expectation is based upon the political status of the examined cases, and suggests that non-sovereign territories use their constitutional and political links to a metropole to defend their tax policies, while sovereign states will emphasise their independence. Thirdly, if geographic locations of financial centres influence networks of international finance (Sarre, 2007), it is expected that these differences create a variety of reactions. The three formulated expectations will be central in the analysis of the data from the investigated cases.

Methodology and case selection

This thesis adopts a comparative case study design, as the research focuses on a small number of cases with many variables (Lijphart, 1971, p. 685). Although this type of qualitative research does not provide numerical coefficients of causal effects, it offers a means to broadly examine covariation between dependent and independent variables (Collier & Mahony, 1996, p. 65). To remedy the problems that come from an abundance of variables, the four cases are selected on the basis of a most different

systems design (MDSD), in which the research strategy is to choose cases as different as possible (Anckar, 2008, p. 390). The cases are selected on the dimensions of political status, and on the dimension of geographic location. Using the indicator of political status, the influence of the relation with a metropole state is examined. The geographic dimension could provide insights about the influence of location on the strategies of small tax havens. These two dimensions are potentially influential and create a framework for the case selection. This thesis aims to generate hypotheses about the behaviour of small states and non-sovereign territories in relation to threat from larger states and international organisations, in order to use those hypotheses among a larger set of cases (Lijphart, 1971, p. 692). As the selected cases broadly represent the population, potential outcomes could provide a strong basis for generalisation (Seawright & Gerring, 2008, p. 298). The cases that have been selected on the basis of the discussed dimensions are Jersey, the United States Virgin Islands, Liechtenstein and Barbados (see table 1). These cases each fall in their own quarter of the cross table of the chosen dimensions.

Table 1: Case selection based on political status and geographic location

	Non-sovereign territory	*Sovereign state*
Europe	Jersey	Liechtenstein
Caribbean	US Virgin Islands	Barbados

The cases in this thesis will be examined by means of a content analysis. This research method "focuses on the characteristics of language as communication, with attention to the content or contextual meaning of the text" (Hsieh & Shannon, 2005, p. 1278). The texts that have been reviewed for the content analysis in this thesis consist of official statements from governments and international organisations and statements made by representatives of governments and international organisations. In selecting the sources for a content analysis, a researcher always has to be aware of the potential of selection bias (Thies, 2002, p. 355). To avoid this bias, the statements that are analysed in the context of the actors and their intentions (idem, p. 359). Furthermore, triangulation is used to form a varied set of sources to prevent biases (Bryman, 2016, p.386). The used sources include official government statements, newspaper articles, interviews and speeches from actors in the respective cases.

Data-analysis

The data-analysis consists of five subparagraphs which each describe a case in the context of problematisation of tax havens. First, the problematisation of tax havens that is used by the OECD is discussed, to provide a basic understanding of the statements and expressions of the organisation. In this regard, the four selected small tax havens, Barbados, Liechtenstein, Jersey and the U.S. Virgin Islands, are examined, aiming to discover the differences and similarities in their response strategies. To conclude, the findings of the data analysis will be presented, linking back to the expectations that were formulated based on the literature review.

Problematisation of tax havens by the OECD

The aim of this thesis is to develop a better understanding of the strategies that small tax havens have used to withstand the OECD pressures to adjust their no or low tax regimes and the secrecy that accompanies it (OECD, 1998, p. 22). It is therefore useful to start with a brief analysis of how the OECD has problematised tax haven practices. The focus of this analysis is on the OECD's reports of 1998 and 2000 (OECD, 1998; OECD, 2000) about tax competition, as these are the primary sources that describe the interests and the strategy of the organisation.

The first substantive report on tax havens by the OECD immediately showed how the organisation wanted to posit the problem. The report is titled '*Harmful tax competition: An emerging global issue*' (OECD, 1998). In the context of the problematisation framework several things stand out in this title. It consists of two components of problematisation, because it emphasises the global character of the issue, as well as the fact that this issue is problematic. This harm is supposedly done to national tax bases of not only the OECD member states (OECD, 1998, p. 7), but is also seen as 'a particularly serious threat to the economies of developing countries' (OECD, 2000, p. 5) It is thus framed as if OECD member states as well as many other states and territories suffer from this competition. This however is misleading, as many small tax havens haven been pursuing this economic strategy as a part of the PROFIT model for economic development (Baldacchino, 2006; Oberst & McElroy, 2007), and research has suggested that developing states could gain economically from nearby offshore financial centres (Blanco & Rogers, 2014, p. 538). In the accused territories, the results of the tax competition system are economic gains as well as economic diversification.

Besides arguing that offshore financial centres are a global problem, the OECD has also emphasised the third component of problematisation, which is the need for international regulation. The main goal is to have all territories comply with the requirements of no longer meeting the four key characteristics of a tax haven any more (OECD, 2000, p. 10). To enforce this, the OECD declared that in order to restrain harmful tax practices, a common approach is more effective than unilateral measures (idem, p.24). Although is has been argued that naming and shaming by the OECD blacklist does enough damage to compel the alleged tax havens (Zaragis, 2001; Kudrle, 2008), a list of possible measure was put together in the report. These options included limiting cooperation and economic ties with non-complying territories (OECD, 2000, p. 25).

The 1998 and 2000 reports were the basis of many international talks between all parties concerned. The OECD however was not able to problematize the issue of tax havens fully, because the 'emergence of this global issue' (OECD, 1998, p. 1) was not endorsed by OECD member states Switzerland and Luxembourg (idem, p. 5). Besides the disagreement within the OECD, the alleged tax havens also criticised the OECD initiative. The responses are discuseed in the following paragraphs.

Barbados: the initiative of a vocal island state

The first small tax haven from the initial OECD blacklist to be examined in this thesis is Barbados. The small sovereign island state currently holds the 48th position on the Tax Justice Network's Secrecy Index (Tax Justice Network, 2018), and was removed from the OECD blacklist on January 31, 2002. Barbados took an active and central position in the international negotiations and discussions after the OECD published its blacklist. Almost 90% of national GDP came from its services sector, which comprises besides tourism of the recently grown financial sector (CIA, 2017a).

The OECD's report in July 2000 considered Barbados a tax haven, so it became a subject of investigation alongside several other Caribbean islands. The Caribbean Community (CARICOM), which was chaired at that time by Barbados' Prime Minister Owen Arthur, formulated a joint response to the blacklist. The member states laid emphasis on the 'continued attacks on the region's offshore sector' (CARICOM, 2000) that posed a threat to them. After this, Barbados was central in the talks between the OECD and the blacklisted territories, as it hosted the 2001 summit between the two parties (Commonwealth News and Information Service, 2000).

Again, Owen Arthur took the initiative by suggesting this summit. The blacklisted territories saw this meeting as an opportunity to confront the OECD with its allegedly 'imperial' behaviour that characterised the unilateral composition process of the tax haven blacklist (Gorringe, 2000). Calling the OECD imperial can be seen as criticism of the problematisation of tax havens, as it questions the truly global character of the issue. With the agreement that was negotiated during the summit, Arthur stated that the 'war of words had ended' (idem). During the summit, however, the threatening language increased. Once more Owen Arthur spoke out firmly against the OECD, accusing the organisation of "technocratic tyranny" (Atkinson, 2001). He added that the unfair relation could stem from the difference in power, but that the accused territories would be ready for a new fight (idem).

A year later, the Central Bank of Barbados argued that small states like Barbados should be more often invited to discuss types of regulations, as their limited resources asked for tailor-made regulation (Central Bank of Barbados, 2002). The governor of the Central Bank, Marion Williams, also stated that the "costs would not only come from the implementation, but also from the worse perception of them by the international community" (idem). One year after the summit in Barbados, the state's attitude seemed to have softened. Almost ten years later Marlene Bayne (2011), a director of the Central Bank of Barbados, argued in a speech that the threat that results from having a low or no tax regime remains the same as it was before. She talked about how financial centres remain under intense scrutiny, and that failure to meet the standards that are demanded by the OECD still results in being blacklisted.

This pressure continues to threaten 'the existence of these financial centres' (Bayne, 2011, p.4). Thus, ten years after Barbados being blacklisted, the OECD and its demands are still perceived as threats by Barbadian officials. Around the same time of Bayne's speech, the Central Bank's governor emphasised the importance of the financial services sector in Barbados as part of its economic diversification strategy, next to the economic incomes from the tourism sector (idem, p.3) Stressing the importance of the sector casts doubt on whether offshore finance and tax competition are really problematic issues. The best reaction to these threats, according to the governor, would be to participate and take initiative instead of following demands (Worrell, 2011, pp. 1-2). So although the problematic character of the issue was nuanced, the need for global regulation was accepted. This shows how Barbados keeps facing serious threats, while from the start of the tax haven blacklists it has also

asked for more influence in the formulation of regulation. Since the 2001 summit at which Barbados took initiative, the island was included in several international organisations involving taxes and regulation. It might be due to this that the tone of Barbados was milder when the EU formulated its own tax haven blacklist in 2015. The critique on this blacklist focused on the flaws in the method of selection (Cumberbatch, 2015).

From the statements analysed in the paragraph above, it can be concluded that Barbados has criticised several aspects of the problematisation of tax havens by the OECD. The problematic character of offshore finance was seen as marginal, while Barbados took an important place in international negotiations via CARICOM. This shows that Barbados' geographic location, which is the basis of its CARICOM member status, influenced the state's strategy. Additionally, Barbados has used its sovereignty to formulate criticism.

Liechtenstein: a small tax haven in the centre of Europe

Liechtenstein is a small state in the Alps with a population of around 40.000 and a GDP/capita of $168,146 (Freedom House, 2018). It currently holds the 46th place on the Tax Justice Network's Secrecy Index (Tax Justice Network, 2018). In 2017 its financial services sector provided 30% of state revenue (CIA, 2017b). Liechtenstein is a sovereign state, and has especially close ties with Switzerland. Liechtenstein uses the Swiss Franc as its currency, and therefore has no Central Bank of its own. Its monetary policy is in the hands of the Swiss Central Bank. Just like Switzerland, Liechtenstein has been famous for its strong banking secrecy laws (Eggenberger & Emmenegger, 2015; Palan et al., 2009). Therefore, it should not be surprising that the state was on the first OECD tax haven blacklist (OECD, 2000, p.17). Along with Andorra and Monaco, Liechtenstein remained on the list until all three of these last territories were removed. This was the first time since the initial blacklist that it was completely empty (OECD, 2009), although several territories, including Trinidad & Tobago, were put on the list after that (OECD, 2018).

The strategy of Liechtenstein and its representatives can be characterised as being focused on Liechtenstein's sovereignty. This suggests that in terms of problematisation, especially the global aspects of tax competition are questioned. Before the OECD blacklist was published, Bruno Gehrig, a banker of the Swiss National Bank, stated that the niche market of offshore finance fitted Liechtenstein

well (Mascolo, 1999). Also just days before June 26, 2000, when the OECD would publish its blacklist, Liechtenstein's Prime Minister Mario Frick protected Liechtenstein's tax policy stating that it "protects the privacy of customers" but "doesn't protect criminals" (James, 2000). In an early reaction to the blacklist Frick framed it as a power competition in which Liechtenstein had little possibilities: "The big countries say … that they are powerful, and that everyone must do things their way or suffer sanctions" (Ford, 2000). The threat that Frick describes concerns the possible losses as a result of non-compliance. Liechtenstein' dependence on the financial services sector was also downplayed by Hans-Martin Uehlinger, deputy-managing director of the Liechtenstein Global Trust (LGT) Bank in Liechtenstein. He called for "a strategic answer" (Ford, 2000), which fits well into the model of small states that are flexible and adaptive when it comes to their economic industries.

In 2001, Liechtenstein's monarch Hans-Adam II dedicated a large part of his annual Prince's speech to the allegations of the OECD. He addressed that Liechtenstein should fully cooperate in targeting money laundering and organised crime. However, he also warned for a 'tax cartel' (Hans-Adam II, 2001) led by the OECD, which would dictate a global tax regime. With this, Hans-Adam formulated a critique on the international regulation that has been part of the OECD's problematisation. Additionally, the most important figure in Liechtenstein implicated the sovereignty of Liechtenstein as the most important motive to oppose the OECD on tax harmonisation. Instead of focussing on the threat, there was a focus on Liechtenstein's autonomy. This again can be seen as critique on the global character of the tax competition issue. This focus on sovereignty was repeated after April 19, 2002, when the new OECD blacklist was published. The list now only consisted of six territories, with Liechtenstein among them (Olson, 2002). So, although Frick and Uehlinger framed it as a matter of strategic adjustments, Liechtenstein lagged behind in conforming to the OECD demands. Gerlinde Manz-Christ, spokesperson for Liechtenstein's Prime Minister, called Liechtenstein's renewed place on the blacklist unfair, comparing the state's tax characteristics with those of Switzerland. She argued that Switzerland was not on the blacklist only because it "is a member of the OECD" (Olson, 2002).

This critique again does not focus on the threat the OECD demands pose to the Liechtensteiner economy, but on the unequal treatment of sovereign states. This showed again how Liechtenstein's strategy revolved around the argument that, as a

sovereign state, it should have autonomy over its own tax policies. Frick's successor as Prime Minister, Otmar Hasler, gave a speech at a congress of the American Enterprise Institute, addressing the economic issues of Liechtenstein (Hasler, 2002). After mentioning Liechtenstein's sovereignty since 1806, he described how Liechtenstein had a well-diversified economy, especially in light of the small size of the state. As a reaction to the renewed OECD blacklist he added that Liechtenstein was still willing and ready to cooperate with the organisation, provided that the talks would be based on equal treatment of states. In this speech, Hasler argues for an active place of Liechtenstein in international regulation, which can be seen as a careful acceptance of the need for global regulation.

Only by 2009 was Liechtenstein finally removed from the OECD tax haven blacklist. In the official declaration to comply with the OECD standards, it is stated that global and fundamental changes of the financial system are necessary to stabilise the financial system (Government of Liechtenstein, 2009). This refers to the context of fundamental changes as a result of the financial crisis of 2007-08. The declaration stresses the need for cooperation between Liechtenstein and other states on information exchange to counter 'illicit activities' (idem). From this declaration one could derive a change in Liechtenstein's attitude towards international tax agreements. However, in 2015, in a speech by Prince Alois at the United Nations, it was once more emphasised that Liechtenstein did not want to cooperate in a system in which some large states expand their national tax legislation towards other territories, stressing the balance between effectiveness and legitimacy of international regulation (Prince Alois of Liechtenstein, 2015).

Thus, the earlier careful acceptance of international regulation thus was again reduced. Finally, it can be concluded that Liechtenstein has emphasised its sovereignty, and therefore has had largest critique on the global character that the OECD's has attributed to tax competition. This suggests that Liechtenstein's political status played a central role in its defence against the OECD pressures. Despite Liechtenstein's place at the heart of the European continent, geography seems to have played a lesser role.

Jersey: a Crown dependency defending its tax independence

The island of Jersey, officially the Bailiwick of Jersey, is a Crown dependency of the United Kingdom. The island therefore is a non-sovereign territory, but despite this it

does have its own tax jurisdiction. The island currently holds the 18th position on the Tax Justice Network's Secrecy Index (Tax Justice Network, 2018). Just as the other cases in this thesis, the territory appeared on the initial OECD tax haven blacklist (OECD, 2000, p.17). After some years of discussion with the OECD, Jersey has not been on the blacklist since February 24, 2007. Jersey's chief executive of the Policy and Resources committee John Mills stated that at the start of the millennium, financial services made up 70% of the Jersey economy (Goodman, 2001). As the importance of this sector is clear, now Jersey's reaction to it being blacklisted by the OECD can be examined.

Directly after the publication of the blacklist, Jersey government officials were unwilling to comment on the issue. Soon afterwards, Jersey and the other two Crown dependencies, Guernsey and the Isle of Man, formed a block to face the OECD, and declared that they would not bow to the OECD pressure (Ugur, 2000). Addressing the OECD, Mills criticised the OECD for its "very, very poor process in which the OECD engaged to get the names" of the tax havens on the list (Ugur, 2000). As was noted earlier in other cases, the methodology of the OECD has been a main focus point of Jersey's critique. Jersey lawyer Michael Lombarbi emphasised that the OECD "pubished the report…without proper investigation" (De Aenlle, 2000). This criticism of the OECD's methodology was, accompanied by a nuanced attitude towards the blacklist. Jersey advocate Anthony Dessain stated that while the list was wrong and unhelpful, "it has not been terribly harmful either" in terms of a negative impact on the Jersey economy (Lee, 2000). This estimate of the impact of the blacklist might also be explained when considering the subject of the negotiations between Jersey (and Guernsey and the Isle of Man) and the OECD. Jersey and Guernsey deputy Laurie Morgan stated that the islands "have always been prepared to exchange information in criminal matters" (Robinson, 2000). This narrows the demands to a size that would be less of a threat to the respective territories. Focusing on the issue of criminal funds seems to undermine the problematisation of the OECD, as it embraces an issue other than tax competition. Tax competition is consequently not seen as a problematic issue. This narrative was repeated in 2002, with a joined statement of the three Crown dependencies, stating that they were "determined to ensure the success of our financial centres in attracting honest money" (Jersey Financial Services Commission, 2002).

This however did not mean that Jersey would not take further action to counterbalance the OECD demands. In 2001 it launched 'Jersey Finance', a body aiming to "promote and defend" Jersey's financial industry (Goodman, 2001). A year later Jersey Finance's chief executive Phil Austin stated that Jersey's political and financial community had always been aiming to defend the island's economic interest and fiscal autonomy. Cooperation, he argued, could only be based on a 'level playing field' principle (Goodman, 2002).

Besides the OECD pressure, the Jersey government also received resistance from some of its own citizens concerning the international race to the bottom regarding tax rates. An anonymous member of parliament pointed out that Jersey's tax policies helped the tax avoidance industry in 'mugging' the ordinary people (Walsh, 2003). In this tax competition Jersey lowered corporate taxes from 20% to 10%, and replaced those incomes with social spending cuts and the introduction of value added tax (VAT) (Milmo, 2004). These both mainly had negative effects on the territory's ordinary citizens, rather than on its millionaires. In June 2003, protesters took to the streets to demonstrate against the tax haven practices of their government. Jersey's government responded by way of senator Terry le Sueur, who told The Observer that these tax measures were 'inevitable' (Walsh, 2003). Senator Frank even took it a step further, when he argued that without a competitive tax climate "our way of life would be threatened" (Milmo, 2004).

From the examined statements, it can be argued that the Jersey government performed an active campaign in which it focused on the way the issue of tax was defined as a problem. Criminal money instead of tax competition became the problematized issue. Jersey's relation to the United Kingdom as its metropole state seems to have had no large impact, nor had its geographic location.

The U.S. Virgin Islands: striving for fast cooperation

The US Virgin Islands (U.S.V.I.) is a non-self-governing territory of the United States. Because of this status, the U.S. constitution is only partially applicable to the territory. This has resulted in an independent tax jurisdiction for the territory. It was put on the initial OECD blacklist mainly because of its corporate tax-exempt policy (St. Croix Source, 2000). This policy concerned the exemption of taxes for foreign corporations that paid a 'franchise tax' of $1000 (idem). The Islands are on the 86th place on the Tax Justice Network's Secrecy Index (Tax Justice Network, 2018). The islands'

economy focuses mainly on tourism and the export of rum, but has also been known for its offshore financial services sector (CIA, 2017c).

A day after the OECD published the tax haven blacklist, on June 27, U.S.V.I. representatives mainly reacted in surprise. A Washington lobbyist of the territory, Peter Hiebert, responded by saying that the government of the U.S.V.I. had "not been formally notified" (St. Croix Source, 2000). A lack of transparency about which companies used this $1000 'franchise tax' was seen as the reason for the territory's place on the list, although the government's director of corporations argued that the governments does "really monitor them" (St. Croix Source, 2000), and shares information with the U.S government. From these statements, it can be derived that the first strategy of the U.S.V.I. government was to prove the OECD wrong, by emphasising that there had been sufficient transparency. This argument criticises the by the OECD proposed international regulation as unnecessary, hereby tackling the third component of problematisation. Furthermore, it casts doubt on the truthfulness of the OECD judgement. In his 'State of the Territory' address of 2001, U.S.V.I. governor Charles Turnbull did not mention the OECD blacklist, and spoke about how he wanted to create new jobs in the finance sector amongst other services, and that he'd "pledge to work with the private sector to create jobs' (St. Thomas Source, 2001). The absence of any mention of the U.S.V.I. as a tax haven shows that the government did not see the blacklist as a problem.

The U.S.V.I. were taken off the blacklist in March 2002, after the government announced its commitment to the OECD demands. The declaration stated that "[t]he U.S. Virgin Islands already satisfies the OECD requirements with respect to exchange of information" (OECD, 2002). This is in line with the statements that have been mentioned here earlier. Subsequently, this declaration established the goal to comply with all requirements before 31 December 2005 (idem). As a response to the declaration governor Turnbull emphasised how the U.S.V.I. position had always been "that the Virgin Islands should never have been on the list of so-called harmful tax havens in the first place" (St. Croix Source, 2002). With this statement Turnbull again casted doubt on the methods and choices of the OECD, and referred to the previously mentioned exchange of information with the US. Lobbyist Hiebert's reaction was one that, unusually, went into the economic aspects of the U.S.V.I. tax policy, arguing how the 'franchise tax' policy can be a useful diversification for a small territory

economy (St. Croix Source, 2002). From this it can be concluded that tax policies were seen as a matter for the jurisdiction itself, rather than for the international level.

From the aforementioned statements a general strategy of the U.S.V.I. government can be distinguished. Representatives of the territory responded mainly by downplaying the consequences of the blacklist and denying that the U.S.V.I. were carrying out illegitimate tax policies. Several of governor Turnbull's State of the Territory speeches barely mentioned its financial sector, as tourism has been the main sector of the economy of the Islands (CIA, 2017c). It can be concluded that the relation with the US, and thus its non-sovereign political status, was used to deny the need for global regulation, hereby defying two components of problematisation. Geography itself doesn't seem to have played an influential role in the U.S.V.I. responses and strategy.

Conclusion

In this thesis an answer was sought to the question: *How do small tax havens respond to the problematisation of offshore financial services by the OECD, and what is the influence of geographic location and political status of the territory on these reactions?* The answer to this question is not only relevant to understand the behaviour of small territories, but also because tax avoidance and tax evasion remain heavily debated issues (European Union, 2018; Kleinnijenhuis, 2018). When reviewing the response of the four cases under investigation, the following conclusions can be made. First, Barbados tackled the problematisation by arguing that the behaviour of tax havens was not problematic. It actively used its sovereign status as well as its geographic location, through CARICOM, to pursue its strategy against the OECD. Second, Liechtenstein's strategy has been to emphasise its sovereignty to defend its tax practices, criticising the global component of tax problematisation. Third, despite being a non-sovereign territory, Jersey spoke out actively against the OECD. They successfully changed the OECD's problematisation of tax havens from an issue of harmful tax competition into an issue of criminal funding. Finally, the U.S.V.I. attacked the need for global regulation, arguing that information was already sufficiently shared with the US. The U.S.V.I. actively used their non-sovereign status to criticise the problematisation.

When these conclusions are compared to the formulated expectations, some conclusions can be drawn. The first expectation came true, as the strategies of the four

cases all focused on one or more problematisation components. This conclusion shows the usefulness of problematisation as a framework of analysis.

Secondly, it was expected that non-sovereign territories would use their relation with their metropole state, while sovereign states would emphasize their sovereignty. Barbados and Liechtenstein both used the sovereign status as a central theme in their defence, Jersey did also use tax independency as an argument, while the U.S.V.I. contrarily used their political and constitutional link with the US to formulate their arguments. Only Jersey's strategy did not match the expectation, which suggests that the relationship between Jersey and the United Kingdom on tax policy asks for more research.

The third expectation suggested varied reactions based on geographic location. Only in the case of Barbados geography seems to have contributed to the defensive strategy, as Barbados took a leading role in CARICOM. This suggests that other variety in strategies between cases stem from other factors.

Finally, it is acknowledged that this thesis has put a focus on the speeches and statements of the case's governments and representatives. These statements should be regarded with scrutiny, as they are only the statements that governments want to publically project. Although investigating these public statements was a goal of this thesis, one should keep in mind that governments and representatives might speak and act differently in private situations. Still, the statements used in this thesis give a thorough view of the strategies that small tax havens have used to respond to the OECD tax haven blacklist.

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