Historical and Contemporary North-South Dynamics in International Tax Governance

MA Thesis in International Relations | Tije Smeijsters | s4480805 | s4480805@vuw.leidenuniv.nl

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Supervisor: Dr. S.A. Nelson

Abstract

In December 2023, the United Nations (UN) General Assembly adopted a landmark resolution launching intergovernmental negotiations toward a new Framework Convention on International Tax Cooperation. The resolution, initiated by Nigeria on behalf of the Group of African states and adopted with broad support from the Global South, brings the UN into an international governance area where the high-income country dominated Organisation for Economic Cooperation and Development (OECD) until recently enjoyed unrivalled authority. International tax governance addresses the challenges that arise as states want to tax multinational enterprises (MNEs) in a coordinated way that avoids both double-taxation and under-taxation. The division of taxing rights over MNEs represents a distributive conflict that has historically been decided in favour of high-income countries. In order to place the current institutional dynamic in their proper historical context this thesis asks: *To what extent have Global South actors historically been able to influence institutional dynamics within the international tax regime complex and under what conditions have contemporary forms of Global South contestation emerged?* Regime complex theory allows us to conceptualize the dynamics between multiple intergovernmental organizations (IGOs) that occupy a single governance space and the ways in which state actors shape and behave strategically within this structure. This thesis will show that Global South actors have historically been largely excluded from meaningful participation in global tax governance institutions and as a result international tax governance has been characterised by a remarkable continuity of regressive governance principles. Due to inherent deficiencies in the existing structure and structural changes in the global economy however, the existing structure is no longer satisfactory even to its former beneficiaries. Now that the old settlement has been disturbed, the OECD risks losing its legacy focal position within the regime complex as it struggles to gather consensus around the shape of reforms. This has created the incentive and opportunity for Global South actors to seek an alternative forum for inclusive reforms.

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1 | Introduction

At its 78th session in December 2023, the United Nations (UN) General Assembly adopted a landmark resolution launching intergovernmental negotiations toward a new Framework Convention on International Tax Cooperation (hereafter 'UN Framework Convention'). The resolution was proposed by Nigeria on behalf of the Group of African States and adopted by a majority vote of 125 to 48 and 9 abstentions and displayed a clear split between Global South and Global North countries (United Nations General Assembly, 2023b). The resolution establishes the UN as a new intergovernmental forum for all UN member states to negotiate a comprehensive multilateral agreement international taxation. At its core, international tax cooperation revolves around the question of how to govern the taxation of multinational enterprises (MNEs) in the global economy. The Group of African States' resolution comes at a particular moment in time when the Organisation for Economic Co-operation and Development (OECD) is also actively seeking to reform the way international taxation is governed through its Base Erosion and Profit Shifting project which started in 2013 and has since opened up to include over 145 non-OECD countries (Valderrama, 2025). The resolution reflects an attempt from a large group of countries from the Global South, to shift key negotiations on international taxation from the OECD towards the UN.

The OECD, an organisation comprising of 38 of some the world's largest economies, has held a focal position in the policy domain of international tax governance since the 1960s (Rixen, 2011). At the heart of the established international tax governance structure lies the OECD Model Tax Convention on Income and on Capital (hereafter 'OECD Model Convention') on which a great number of countries have modelled their bilateral tax treaties (BTTs) that on a basic level govern how two contracting countries divide the taxing rights on the income of cooperations and individuals who generate their income in one county (the source country), and reside in another (the residence country) (Avi-Yonah, 2009). BTTs thus encompass both the income of individuals and the corporate income of MNEs This thesis will focus primarily on the latter. The treaties in the vast international network of over 3000 BTTs are markedly similar to each other and reflect, according to some authors, an international convergence of actors on the standards and norms laid down by the OECD (Avi-Yonah, 2009). As will be further explained in section 4.1, BTTs have important redistributive consequences when they are singed between lower-income developing countries and higher-income developed countries. Generally, taxation at source

benefit the former, while taxation at residence benefit the latter. The OECD Model Conventions limit source based taxing rights in various ways (see section 4.1). A small UN Expert Committee has published its own UN Model Conventions since 1980, which include more favourable provisions for developing countries relative to the OECD Model Convention. Commentators disagree about the extent to which the existing UN Model Convention has represented a competitive alternative to and significant departure from the OECD Model Convention with some arguing it has been instrumental in putting developing country concerns on the agenda and bolstering their position in BTT negotiations (Michel, 2025), while others stress its core similarities to the OECD Model Convention (Ahmed, 2023).

The OECD BEPS project and the UN Framework Convention represent a new stage in this dynamic between the UN and the OECD in international tax matters and the relationship between Global North and Global South actors. A useful perspective to understand these current events is through the lens of regime complex theory. Regime complex theory allows us to conceptualize the dynamics between multiple intergovernmental organizations (IGOs) that occupy a single governance space and the ways in which state actors shape and behave strategically within this structure. Kuhn et al. (2024) argue that the prevailing conceptualisation of international taxation as being governed by a coherent regime by scholars such as Avi-Yonah (2009) is flawed as international actors no longer converge on the norms, rules, and crucially, the decision-making procedures that govern this issue area. And that “one should not consider the momentum for a new UN body as a break with a pre-existing unified regime, but rather as a demand for a reconfiguration of relations within an existing regime complex” (Kuhn et al., 2024, p.8).

I adopt this view of Kuhn et al. (2024) that the current negotiations on international tax governance at the UN are a prime example of how regime complexes are in motion. This idea of motion raises questions about how both continuity and change as well as structure and agency operates within regime complexes. It brings into question how these current dynamics are embedded in the long-term evolution of the international tax regime complex and to what extend current dynamics mark a departure from this historical trajectory. And under what conditions and through what mechanisms state actors have been able to shape and enact change in the international tax regime complex in the past and today. This thesis seeks to answer these questions. In particular, it will focus on those actors who operate from a position of a

relative lack of institutional and material power and with an interest in contesting the status quo. In the case of the international tax regime these are state actors from the Global South. This is a group of actors who have moreover long remained out of the purview of mainstream international relations literature, but whose actions demand more attention in an increasingly multi-polar world. This thesis examines these dynamics through the following research question: *To what extent have Global South actors historically been able to influence institutional dynamics within the international tax regime complex and under what conditions have contemporary forms of Global South contestation emerged?* In doing so, it contributes to the broader literature on regime complexes, contestation, and Global South agency in the international political economy.

The following section will review existing regime complex literature. The section thereafter will shortly discuss the methodology. Chapter 4 will trace the historical development of the international tax regime complex. Chapter 5 will explain contemporary dynamics and mobilization of Global South actors to rebalance authority within the international tax regime complex today. Conclusions will be drawn in the final chapter.

2 | Regime Complex Theory

Global governance is messy. Take almost any international policy area and one soon discovers that a multitude of institutions simultaneously seek to govern that policy domain, often without a clear hierarchy and in overlapping and contradicting ways. This phenomenon has been described by various authors in terms of the 'regime complex'. A regime complex is a set of "partially overlapping and nonhierarchical institutions that includes more than one international agreement or authority" (Alter & Raustiala, 2018, p.329). Generally, as is the case in this thesis, *international regime complexes* are primarily considered in state-centric terms and considered to consist of various intergovernmental organizations (IGOs) and agreements. Regime complex theory allows conceptualize the dynamics between multiple intergovernmental organizations and agreements that occupy a single governance space and the ways in which state actors behave within and shape this structure. Regime complex theory has been applied by various authors to describe different areas of international governance, including, but not limited to; trade (Davis, 2009), intellectual property rights (Dreyling, 2021), and environmental governance (Orsini, 2023). The literature on international regime complexes can be divided in three main themes which will be discussed below; about the driving forces behind regime complexes, about the effects of regime complexes on global governance, and about the power and political behaviour of actors within regime complexes.

The rise of regime complexes has in part to do with the fact that the international arena has become increasingly densely institutionalised. Pevehouse et al. (2020) show that the number of IGOs has grown exponentially in the post-World War era between 1945 and 1989, reflecting both the large number of new states that entered the international system in that period and the post-World War II (WWII) dynamics that spurred the establishment of parallel Western-oriented and Soviet-led institutions. From a very thinly institutionalized world in the 1800s, the number of IGOs has since grown to over 300 in the 2000s (Pevehouse et al., 2020). Importantly however, these figures only count the number of formal IGOs with multiple members and a permanent secretariat. Adopting a slightly broader scope, Drezner (2013) shows that the number of formal IGOs and subsidiary organisations, multilateral treaties, and autonomous international conferences together has grown from a total of 2906 in 1981, to 4916 in 2003.

This rise in institutional density makes institutional overlap increasingly likely, but in itself does not necessarily explain when and why overlap occurs. Often, regime complexity is consciously driven by state action (Alter & Raustiala, 2018). One particular perspective that dominates the literature contents that regime complexity is driven by what has been termed 'contested multilateralism' (Morse & Keohane, 2014). In the case of contested multilateralism, states or coalitions of states that are dissatisfied with existing rules or institutional arrangements of an IGO and are unable to effect change from within, attempt to shift the governance of a certain topic from one existing IGO to another (forum-shifting) or create an entirely new IGO to challenge the standards or reduce the authority of established focal institutions (Morse & Keohane, 2014). One reason why states might become dissatisfied with existing institutional arrangements is because of changing international preferences as a result of domestic political shifts (Urpelainen & Van De Graaf, 2014). Another reason why states might become dissatisfied with existing institutional arrangements is because of global power shifts. Institutions tend to entrench institutional advantages that reflect power structures from when they were created, but which do not reflect contemporary power dynamics in the global political economy. As such, rising powers face incentives to engage in forum shifting and competitive regime creation when other actors prevent institutional change (Dal & Dipama, 2022; Faude & Parizek, 2021). In this regard regime complexity has been associated with increasing multipolarity in world politics (Murray-Evans, 2020). These arguments suggests that an underlying cause of regime complexity is a certain inertia within existing IGOs. States are incentivised to shift negotiations over to another or a new IGO when they perceive the current focal institution as insufficiently flexible and/or difficult to transform in order to deal adequately with new issues, changing preferences, or shifting power dynamics.

Authors have diverging views about the implications of regime complexes on international governance. On the one hand, those who stress the downsides of regime complexes argue that because the operation of one institution in a regime complex can be undermined by decisions taken in another, the existence of regime complexes frustrates effective governance (Alter & Raustiala, 2018). According to Drezner (2013) opportunistic behaviour in regime complexes will furthermore result in non-compliance with sets of rules for which perpetrators will be difficult to hold to account by the international community in the absence of clear international norms or authority. As such the proliferation of international institutions may perhaps paradoxically

lead to the erosion of a rule-based order (Drezner, 2013). On the other hand, those who stress the advantages of regime complexes for global governance argue that regime complexes create opportunities for overcoming gridlock and lead to institutional innovation. The world of international cooperation is rife with examples of gridlocked negation processes that impede progress and effective governance (Vabulas, 2024). Shifting negotiations to another venue with similar competencies but a somewhat different membership composition or institutional layout (e.g. agenda setting and voting rules) can represent opportunities to overcome gridlocked negotiation processes and as such advance global governance (Panke & Friedrichs, 2023). Similarly, competition for legitimacy or authority within regime complexes might spur productivity, innovation and responsiveness on the part of IGOs (Gehring & Faude, 2013).

Moreover, some authors argue that despite the absence of a formally established hierarchy between institutions that occupy the same governance area, regime complexes do not necessarily need to be in a perpetual state of ambiguity and conflict. The literature distinguishes between two axes along which an implicit order can emerge within a regime complex. Firstly, over time competing IGOs might be driven toward specialization of their functions and activities in order to differentiate themselves from others and as such engage in a process of mutual accommodation, eventually producing an certain division of labour between the various institutions in a regime complex (Gehring & Faude, 2013; Henning & Pratt, 2023). This has also been referred to as functional or *horizontal differentiation*(Eilstrup-Sangiovanni & Westerwinter, 2022). Secondly, although regime complexes lack formal hierarchy, an implicit hierarchy might emerge between (a subset of) IGOs in a regime complex as "some institutions accept as authoritative the rules crafted in other institutions" and shape their of actions accordingly (Eilstrup-Sangiovanni & Westerwinter, 2022, p.244). This has also been referred to as *vertical differentiation* (Eilstrup-Sangiovanni & Westerwinter, 2022).

Much of the literature on the drivers of regime complexes place established and rising powers at the centre of their explanation. In response to this bias toward powerful states in the regime complex literature, a debate on the role of weak states and the distribution of power within the context of regime complexes emerged. As mentioned, Drezner (2013) has argued that regime complexes contribute to the erosion of a rule-based international order and moves world politics in a more realist direction in which materially powerful actors stand to dominate the weak. According to the author, materially powerful states have greater capacity to cope with

increasing institutional density and to engage with cross-institutional strategies which can require significant resources, in particular the creation of alternative institutions (Drezner, 2013). Moreover, as certain IGOs lose legitimacy or authority within a regime complex, materially powerful states may opt for unilateral or bilateral action which too disadvantages materially weak states who relative to bilateral bargains have a better bargaining position within multilateral arenas (through voting procedures and coalition building for example) and who do not have the power to effectively retaliate against unilateral coercive actions from powerful states (Beall, 2024). Other authors have highlighted examples of how weaker states too engage in and benefit from cross-institutional strategies within regime complexes. Much like powerful actors, weak actors also use forum-shifting strategies and threats of exit where credible alternatives exist (Alter & Raustiala, 2018; Snidal et al., 2024). As I mentioned before, by shifting an issue to a venue with slightly different membership or voting procedures, forum shifting strategies are potentially great ways of changing the status quo and overcoming gridlocked negotiation processes. Verdier (2022) argues from the viewpoint of institutional power that because powerful actors often benefit mostly from the institutional status quo, regime shifting is mostly attractive to those who lose in current institutional arrangements and have an interest in changing the status quo, which tend to be weaker or emerging states. Orsini (2023) argues that regime complexes favour actors' craftiness rather than their force.

3 | Methodology

This thesis is primarily a literature based, qualitative research project. In order to answer the research question this study draws extensively on literature, complimented by primary sources in the form of reports and archival documents. In particular, archival material was sourced online from the United Nations Library and Archives and United Nations Digital Library.

4 | The Historical Trajectory of International Tax Governance

This chapter will trace the evolution of international tax governance from its beginnings in the 1920s up to the 2000s. In particular, seeks to identify when the institutional structure that governs international taxation took on the characteristics of a regime complex, and trace the interaction between Global North and Global South actors in relation to international tax governance institutions. It will examine the ways in which interests have converged or diverged and what actors have been able to shape international norms and institutions in their favour. In doing so we will gain insight into the history of Global South contestation in international tax governance that has preceded the contemporary moment of contestation in the international tax regime complex.

4.1 | The pioneers of international tax governance

The first contours of an international tax regime appeared in the early twentieth century at a time when national tax systems were still being formalized and expanded in the Western world and when much of the Global South was still under colonial occupation (Hearson, 2021, p.38). As we will see, European and US experts were the main participants in the earliest deliberations on international taxation. The governing principles that were adopted and the division in taxing rights that emerged from them reflected in large a intra-European settlement between the UK as the main capital exporter of the period and other continental European countries as net importers of capital.

Until 1910, most countries' tax systems were relatively small and total tax revenue on average did not exceed 10% of national income (Besley & Persson, 2013). Between 1920-1980 however, taxation increased significantly in most countries and rose to 25% of national income on average (Besley & Persson, 2013). The continuous growth of tax revenues after the First World War was realized in large through the expansion of income taxes. Income taxes hiked in particular during and after the First and Second World War to pay for war efforts and reconstruction (Besley & Persson, 2013).

Considering business activities were already internationalized to a certain extent by the early 1900s, the issue of double taxation became more and more salient as countries started to increase their cooperate income taxes. Since countries were initially inclined to tax both the

earnings of foreign business within their borders as well as the foreign profits of their own multinationals, cooperations with international operations were facing an increasingly large double tax burden (Hearson, 2021, p. 32). In response to demands from businesses to alleviate double taxation, a few early bilateral tax treaties (BTTs) came in to being in Europe that formally divided the taxing rights over the income of international cooperations between the source and residence country (Avi-Yonah & Lempert, 2023). In the absence of a comprehensive network of international agreements however, most countries provided some form of *unilateral* double tax relief through domestic legislation for their own residents that earned their income abroad (Murray, 2001). As one of the first to do so, the U.S. for example introduced a foreign tax credit in 1918 as part of the much larger Revenue Act that otherwise expanded its fiscal revenue capacity (Murray, 2001). Such a foreign tax credit allows residents with foreign-source income to reduce the domestic tax they owe on that income by the amount they've already paid in taxes abroad. This means the residence country recognizes the primacy of the tax claim of the source country and only collects additional tax if the foreign tax burden is lower than the domestic tax otherwise due on that income (Murray, 2001). Some other countries exempted foreign-source income from taxation altogether while others, like Great Brittain, were less generous and only provided double tax relief on foreign income sourced within their empire (Murray, 2001)

In parallel to these unilateral and bilateral efforts, several international organizations were also concerning themselves with the issue of double taxation. Most notable among these were the League of Nations (the League) and the International Chamber of Commerce (ICC), an international business advocacy group (Jogarajan, 2018). The ICC appealed for multilateral action to address double taxation at the League in a 1920 resolution for a more comprehensive and uniform approach to elimination of double taxation. In that same year, the League started work on the issue of double taxation through its Financial Committee. Through multiple ad hoc subsidiary committees, the Financial Committee created a series of reports on how best to tackle the issue of double taxation which would eventually culminate in the first model tax conventions in 1928 that established the basic structure and many of the core principles of the international tax governance that largely persist today (Jogarajan, 2022).

The League at the start of its involvement in international tax matters consisted of 42 member states, including some Asian and South American countries. However, as Jogarajan's (2022)

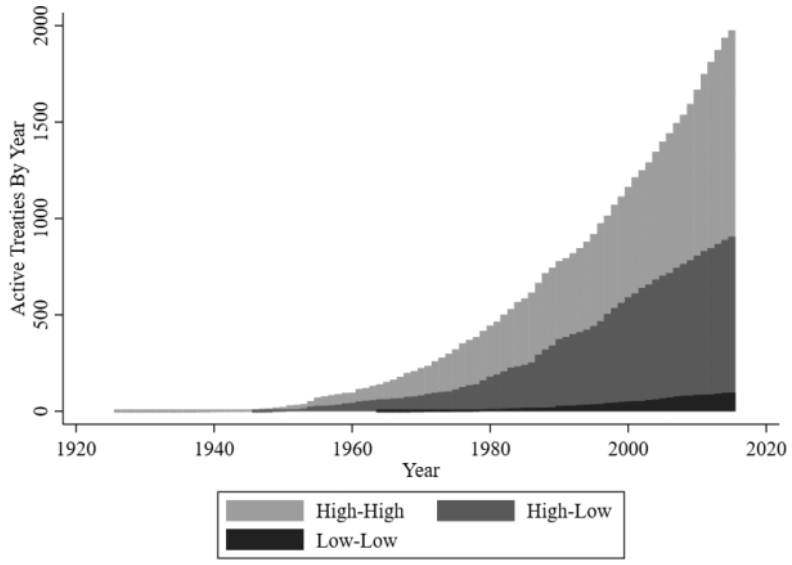
exhaustive historical analysis shows, much of the work leading up to the intergovernmental agreement on the first model convention in 1928 was influenced by a select group of experts from Europe and North America. The first group of experts commissioned to consult the League's Financial Committee on international taxation in a 1923 report were four economists from the Netherlands, Italy, Britain and the United States (US) (Jogarajan, 2022, p.18). Although the US was not officially a member of the League, it was not it was not uncommon to find US nationals working for the League's secretariat (Clavin & Wessel, 2005). The report provided four possible approaches to coordinate the division of taxing rights when two countries asserted conflicting tax claims. Wells & Lowell (2011, pp.545-546) summarize these approaches as;

> "(Option 1) Country of residence would concede all taxing jurisdiction to the source state. (Option 2) Source country would concede exclusive taxing jurisdiction to the country of residence. (Option 3) Proportional allocation of income between the country of residence and the source country; or (Option 4) Classification of income and an assignment of the primary right to tax such income to the country of residence or source depending on the type of income"

A second round of deliberations for a 1925 report involved six government representatives from continental Europe and one from Great Brittain (Jogarajan, 2018, p.26). Great Brittain and the United States were the largest capital exporting nations at the time while most of continental Europe were in need of dire capital following the economic destruction of the First World War (Jogarajan, 2018). Reflecting Britain's interests as a capital exporter, British representatives strongly favoured exclusive residence based taxation as opposed to the primacy of source based taxation that naturally resulted from unilateral double tax relief which was already widely practiced in Europe. Despite the fact that it too was a capital exporter, U.S. representatives generally recognized the primacy of source based taxation similarly to most European countries. Although most continental European countries were in favour of source-based taxation, their representatives were also keen to retain Britain's support as a big economy in the context of post-war reconstruction, and the recommendations of the 1925 report disproportionately reflected the British position that source countries should give up a portion (albeit not all) of their taxing rights using the general methods set out in option four of the 1923 report (Hearson, 2021, pp.39-40).

When negotiations opened up to other members of the League in subsequent sessions between 1926 and 1927, several countries, including Venezuela and Argentina, argued against the resolutions of the 1925 report on the basis that it disadvantaged countries who were almost exclusively capital importers. Their concerns were dismissed as the majority and in particular those who had participated in the earlier deliberations were committed to previous outcomes and insisted that the interests of debtor countries had sufficiently been catered to and did not warrant reconsideration of earlier recommendation (Jogarajan, 2018, pp.241-242). This momentum carried through to 1928 when the League's Fiscal committee adopted and published three similar model conventions that countries could use voluntarily as a basis for BTT negotiations. These were the first in a series of such model conventions and set the precedent on which future model conventions built. It also established the general structure of international tax governance that persists today with its multilateral soft-law component on the one hand (the model tax conventions), and its bilateral hard-law component on the other (the BTT network that converts international norms into binding commitments). In the first decades after the publishing of the first model conventions, the actual translation of them into BTTs remained limited (Figure 1). As we will see in the following sections however, they did set the premise on which future work on international taxation continued. Many of the governing principles they established would be carried through to the second half of the 20th century when use of BTTs based on similar model conventions grew exponentially.

Figure 1 Active Treaties by Year, by Income Level of Parties



Source: Ash, E., & Marian, O. (2020). The Making of International Tax Law: Empirical Evidence from Tax Treaties Text. *Florida Tax Review*, *24*(1).

It is important to note that countries can be (and usually are) resident and source countries at the same time in regards to different MNEs and individuals. What matters is the investment position of countries relative to one another as well as the net investment position of a country (Rixen, 2011). It is the reason why countries prefer bilateral treaties to a binding multilateral framework as it gives them leeway to assess their interest on a case to case basis with respect to the other party (Avi-Yonah & Lempert, 2023). If the flows of investment between parties are broadly equal, changes to the balance of taxing rights through a treaty will not have a significant impact on the overall distribution of taxing rights between the parties. But when a treaty is concluded between parties where investment flows are not equal, a treaty will have significant distributional consequences for the tax revenue each country will be able to raise (Dagan, 2000). Overall, net capital importers will have predominant interests in source based taxation, while net capital exporters will have predominant interests in residence based taxation (Rixen, 2011). Dagan (2000) has famously argued that since countries in their capacity as residence countries have a strong incentive and indeed empirically have been willing to provide unilateral double tax relief in the absence of a treaty, the real effect of tax treaties has not so much been to alleviate double taxation but rather to shift some of the cost of doing so from net capital exporters to net capital importers. Tax treaties restrict source based taxing rights in favour of residence based taxing rights in two main ways; first, by setting thresholds (in terms of length or extent of presence) below which a host country cannot tax a foreign company or individual at all, and second, by restricting a host county's ability to levy withholding taxes on payments going abroad in the form of royalties, pensions, dividends and capital gains either by determining a maximum rate or by denying its right to levy such taxes altogether (Hearson, 2021, pp. 9-11).

It becomes clear from the discussion above that in the early 20th century, national tax systems and international tax governance were simultaneously in flux and were co-constituted and co-developed by a select group of sovereign states and an even more select group of tax experts. As we will see later on, this is in stark contrast with the experience and interests of post-colonial nations, many of whom entered the international system only later when international tax norms were already entrenched in global institutions. The eventual balance struck between

source based and residence based taxing rights in the 1928 model convention reflected the spatial and temporal political and economic dynamics of the post-war European continent. In particular, the principles established with the 1928 model conventions reflected the British influence of the period and tipped the trajectory of international tax governance in favour of capital exporting countries to the detriment of those that rely heavily on foreign investments. The issue of international taxation represented a novel international governance issue and the League was in this initial phase operated more or less as the only inter-governmental institution within the domain.

4.2 | The Mexico Model: Contestation or Co-optation?

With the notable exception of Teo's (2023) seminal work, much of the literature on the history of international tax governance discusses the interwar period at length but skips over the WWII period and the immediate post WWII decade when the UN briefly took over the League's international tax work and picks up the story in 1961 when the OECD consolidated its position as the focal institution in global tax governance. For our purposes however, it is essential to consider the WWII period (this section) and immediate post-WWII decade (next section) in understand how regime complex dynamics and Global South actors have played a role in the evolution of international tax governance.

The first time that a group of Global South countries was absorbed into international tax governance was when the League shifted its focus to the American continent during the second World War. Apart from the two experts from Venezuela and Argentina who participated in the League's expert committee's sessions between 1926 and 1927, the League's work leading up to the 1928 model conventions had mostly been a European affair. At a regional conference in Mexico in 1943, eleven Latin American countries plus the U.S. and Canada agreed to a model convention ('the Mexico Model') that put significantly greater emphasis on sources-based taxing rights as compared to the model conventions previously agreed to in 1928 (Teo, 2023). In regards to the source-residence divide, the League's operations in this period and the provisions in the Mexico Model reflect a according to some authors a "complete reversal of the approach taken" up to that point (Wells & Lowell, 2011, p.564). Although it is alluring to consider the Mexico Model as an early victory of Global South countries in reshaping

international tax norms, a closer consideration of the conditions that gave rise to its formation reveal that the Mexico Model was not necessarily the result of Latin American agency, but rather of extraordinary wartime circumstances that stimulated US commercial interest in Latin America and determined the League's pro-American interventions in the region. There was moreover little continuity between the League's operations before and during WWII as its regional mission operated in isolation of the organisation's European members. Furthermore although the Mexico Model struck a different source-residence balance than its predecessor, it nonetheless did so largely within the contours of the framework established in 1928. The immediate influence of the 1943 Mexico Model moreover seems to have been limited as the contextual political and economic forces underpinning its existence evaporated with the end of WWII (Teo, 2023).

The successful publication of the 1928 model conventions led to the establishment of a standing Fiscal Committee within the Economic and Financial Section (EFS) of the League's secretariat in 1929. The first permanent committee specifically focussed on international taxation (Jogarajan, 2022). Many of the experts that had been part of the Financial Committee's ad-hoc international tax committees in the 1920s continued to be in volved with the Fiscal Committee in the 1930s (Jogarajan, 2022). The outbreak of WWII in 1939 greatly impacted the orientation and functioning of the Fiscal Committee and the Secretariat's Economic and Financial Section (EFS) as a whole. As the political organs of the League became defunct, the EFS moved its operations to the US in 1940, where it continued its work in the name of the League during the war. In order to ensure its institutional survival during this 'Princeton Mission', the EFS and remnants of its Fiscal Committee avidly sought to extend the relevance of their work to the America's and in particular its usefulness to its new host, the US (Clavin, 2013).

The Fiscal Committee held its last plenary session before the war in 1939 and did not reconvene for its final session until 1946 (Teo, 2023). The Fiscal Committee's work during the Princeton Mission was primarily driven by Paul Deperon, a member of the League's Secretariat, and Mitchell B. Caroll, who had been the US member on the Fiscal Committee since 1935 and its chairman since 1938 (Teo, 2023, p.82, p.274). Carroll was an American tax lawyer and business lobbyist at heart (Cui, 2024, p.14). During his membership he pushed for greater involvement of the business community in the committee's work (Jogarajan, 2022, pp.421-423). During the 1930s, the International Chamber of Commerce (ICC) became more influential in the Fiscal

Committee's work. Between 1929 and 1939, the committee worked on several issues brought before it by the ICC, collaborated with the ICC on research projects, and invited ICC representatives to sit in on its sessions (Jogarajan, 2022). The growing influence of the business community is furthermore evidenced by the fact that the Fiscal Committee received direct funding from the Rockefeller Foundation (a U.S. based private philanthropy founded by industrialist John D. Rockefeller) for its work on double taxation in the decade before and during WWII (Jogarajan, 2022; Teo, 2023).

In 1938, at Mexico's request, the Assembly had commissioned a report on the technical principles of taxation that could serve as a guide for domestic tax policy reforms for different types of economies (Teo, 2023, p.26). Various Latin American countries at the time had not yet introduced extensive income taxation and relied for a big part on consumption and trade taxes for fiscal revenue (Sokoloff & Zolt, 2006). The drop of imports and exports during the Great Depression had caused problems for Latin American governments who's principle source of revenue were external trade and had created an incentive for fiscal reform (Bulmer-Thomas, 2014). Mexico's request provided a convenient opening for the Fiscal Committee to extend the relevance of work to US by applying its double-taxation work to the inter-American context (Teo, 2023). The Fiscal Committee organised a regional conference in Mexico in 1940 where it introduced its report on the technical principles of taxation as well as a synthesised version of the 1928 Model Conventions. Both documents had been prepared by Carroll and a two person sub-committee that had met in The Hague just prior to the 1940 Mexico meeting (Teo, 2023). It was anticipated by this sub-committee that the Model Convention would be of interest to the Canadian and American representatives at the conference, but would be received with suspicion by the Latin American representatives (Deperon, 1940). Several Latin American representatives did indeed express their disinterest or disapproval regarding the Model Convention on the grounds that it was inconsistent with their domestic legislation or restricted their freedom to tax American enterprises, but despite these objections, the attendees adopted the Model Convention as a draft to be reconsidered at a future meeting with a larger representation of the region (Teo, 2023). The narrative shows that the Fiscal Committee took advantage of its study on the technical principles of taxation to forge an entry into Latin America for the promotion of its work on double taxation in line with the interests of the US.

In 1943, The Princeton Mission proceeded to organise a second regional conference in Mexico with the aim of finalizing the draft model convention. Prior to this second regional conference, Paul Deperon had gone on a tour through Latin America with the primary objective to follow up on the 1940 Mexico meeting and muster support for the second regional conference (Deperon, 1942). By the second regional conference, Latin American countries were more effective in voicing a common majority position on several key provisions (Teo, 2023). Relative to the 1940 draft, the final document that was adopted awarded significantly more taxing rights to source countries. In particular, the 1943 Mexico Model;

> "… gave the source country primary right of taxation over business income and income from invested capital (e.g. interest, dividends, royalties, annuities, and pensions), and also clarified that all business income derived by a non-resident enterprise in a source country that was not attributable to a PE and was more than 'isolated or occasional' would be taxable in that country. … On other provisions, the Mexico Model followed the 1940 Draft, including concerning exclusive residence-country taxation of ships and aircraft." (Teo, 2023, p.43).

Taking the 1928 Model Conventions as a baseline, these provisions reflect significant gains for capital importing countries. This success was however inextricably linked to extraordinary wartime conditions and temporal regional dynamics. As the war was drawing to a close, U.S. economic interest in Latin America decreased, and so did its willingness to negotiate BTTs on the terms set out in 1943 (Teo, 2023, p.82).

After the war, the League was officially dissolved and replaced by the United Nations system. While the 1944 UN Monetary and Financial Conference at Bretton Woods established the International Monetary Fund (IMF) and the World Bank (WB) as independent organisations, several of the EFS's other functions (including those of the Fiscal Committee) were transferred to the UN Economic and Social Council (ECOSOC) (Clavin, 2013; Teo, 2023). During this transition period, Carroll reconvened with members from six European countries and two representatives from Mexico and Canada for the Fiscal Committee's final session in Londen (League of Nations Fiscal Committee, 1946). This committee, which was again dominated by European voices, drew up a new model convention (the '1946 London Model') which reversed the 1943 Mexico Model's previously mentioned pro-source country provisions. Primary taxing rights on interest, dividends, royalties, and annuities were again awarded to the resident country and a higher PE

threshold was reinstated (Wells & Lowell, 2011, pp.564-565). Aware of the schism that had emerged, the committee published the two opposing models side by side in its 10th session report and proposed that when the UN took over tis work the two models should be reviewed by "a balanced group of tax administrators and experts from both capital-importing and capital-exporting countries from economically-advanced and less-advanced countries" (League of Nations Fiscal Committee, 1946, p.8).

4.3| Impasse at the UN

The UN Fiscal committee (UNFC) differed markedly from its predecessor at the League in two important ways. Firstly, its membership was geographically (and by extension also economically and ideologically) more diverse, although Asia, Africa and Latin America were still underrepresented. Across its four sessions between 1947 and 1953, North America and Western Europe together occupied 4-5 of the 15 seats (US, UK, France, Belgium, Sweden), British dominions occupied 1-2 seats (New Zealand, South Africa), the Eastern Bloc held between 2-4 seats (USSR, Czechoslovakia, Poland ,Ukraine), and Asia and Latin America together accounted for five seats (China, India, Pakistan, Lebanon, Colombia, Cuba) (Teo, 2023, pp. 377-381). A second alteration was that its members now acted as government representatives and not in their individual capacity as experts (Teo, 2023). These factors, combined with the international economic and political context in the post-WWII decade, caused the UNFC to take on a much more overtly political character than its predecessor at the League which had maintained, at least on the surface, a somewhat technocratic spirit (Teo, 2023). Within the post-WWII context of decolonization and the cold war, the negotiations became increasingly political and the committee became divided along 'first', 'second' and 'third world' lines in regards to issue of international taxation (Hearson, 2021, p.41).

In the post-WWII decade, the US was the unparalleled economic powerhouse and creditor nation of the world. Accordingly, the US adopted a policy position in favour of residence-based taxation and the elimination of double taxation through the reduction of source-based taxation (Teo, 2023, p.133). Despite their position as net-importers of capital in the post war decade (in particular in relation to the US), Western European countries continued to support residence-based taxation in practice and principle considering their historical practices, their expectation

of economic revival, their ideological alignment with the US, and their relative investment position vis-à-vis the developing world (Teo, 2023, p.135). Newly independent countries on the other hand generally sought to attract FDI, which BTTs were considered to facilitate, whilst preserving their ability to generate fiscal revenue from foreign investments (Teo, 2023, p.134). Developing countries occasionally aligned themselves with Soviet members who in general opposed to the creation of unified model convention and considered BTTs to be "designed to further the interest of foreign investors and capital-exporting countries by influencing capital-receiving states to modify their fiscal laws to the detriment of their own national interests" (Teo, 2023, p.168). Amidst such circumstances, the reconciliation between the 1943 Mexico Model and 1946 London Model as envisioned by the League's late Fiscal Committee did not come about.

As negotiations at the UN Fiscal Committee stalled, other organizations, including from within the UN's decentralized system intruded into its sphere of competence. In 1951, the International Civil Aviation Organization (ICAO) for example published a recommendation in favour of reciprocal tax exemption of foreign airlines following a 1948 US resolution that had called upon the organisation to take such action (Teo, 2023, pp.266-271). In the case of reciprocal exemption, international airlines may be taxed on profits and fuel only in their home country, and are exempt from paying these taxes in the countries they fly to and from. Bilateral agreement along these lines amount to one-sided tax concessions if only one signatory country has an established international aviation industry (Hearson, 2021, p.41). Although tax issues were not part of its initial mandate, the ICAO represented a useful forum for the US to pursue this policy as the organisation was de facto controlled by countries with an advanced aviation industry (Teo, 2023, pp.266-271). Displeased with the industry centric nature of the proposal and the ICAOs intrusion into what it considered to be the UNFCs sphere of competence, the Fiscal Division of the ECOSOC secretariat advised the ICAO against its course of action and made sure that the issue was brought before the UNFC (Teo, 2023, pp.276-293). At the Committee's 1951 session, the US and UK spearheaded an effort to fully endorse the ICAO recommendation but were outvoted by India, Pakistan, Venezuela, Cuba and the Soviet countries whom opposed. After several amendments, the resultant resolution neither clearly endorsed nor rejected the ICAO recommendation and resulted in further inaction once the issue reached the ECOSOC plenary (Hearson, 2021, p.41; Teo, 2023, p.307). This outcome served US interest as it left the

ICAO's recommendation effectively uncontested. The ICAO episode is but one example of the regulatory duplication that contributed to the erosion of the UN Fiscal Committee's central authority over international tax matters (Teo, 2023, p.117).

4.4| OECD consolidation

In 1954, the UN Fiscal Commission was dissolved when the UK, the US, other European countries and the Soviet bloc withdrew their support for its existence (Hearson, 2021 ; Teo, 2023). In that same year, the ICC called on the Organisation for European Economic Cooperation (OEEC), to take action on relieving double taxation as a barrier to trade and investment within Europe. The OEEC had been set up in 1948 to coordinate Marshall Plan relief among 18 Western European member states and was reconfigured to become the OECD in 1961 with the addition of the US, Canada, and (a few years later) Japan to its membership (Ault, 2009). The 1954 ICC proposal was picked up by OEEC members and in 1956 the organisation established a standing Fiscal Committee that operates today under the title of the Committee on Fiscal Affairs (CFA) (Ault, 2009; Avi-Yonah & Lempert, 2023). The CFA meets biannually and consists of government representatives from all member states and an executive committee that meets in-between plenary session and carries out much of the preparatory work (Ault, 2009). In 1963, the OECD published its first model tax convention which, unsurprisingly considering its exclusive and likeminded membership as well as their legacy in international tax cooperation, broadly resembled the 1946 London Model (Ash & Marian, 2019, p.165). Since then, the AFC has regularly published updated versions of the OECD Model Convention that have become increasingly sophisticated and complex but remain premised on the foundational principles and source-residence divide established in 1928 and 1946 (Hearson, 2021, p.45). Any changes to its Model Convention requires the consensus of its member countries (Oguttu, 2018).

Most pairs of OECD countries had entered into a BTT by 1980 (Hearson, 2021, p.44). Since then, the expansion of BTTs and the use of the OECD Model for that purpose has been outward. Figure 1 (section 4.1) shows the proliferation of BTTs between lower- and higher-income countries since the 1980s. Such expansion occurred as many post-colonial nations that had little experience with international tax cooperation entered the international arena as independent states.

The UN re-entered the area of international tax governance in 1968 when the ECOSOC created the Ad Hoc Group of Experts on Tax Treaties (UN Ad Hoc Group of Experts) to develop a model Convention specifically designed for negotiations between developed and developing countries (Oguttu, 2018). Notably, the UN Ad Hoc Group of Experts initially consisted of 11 experts from OECD countries, and only 7 experts from developing countries (Ahmed, 2023, p.257). This group of UN Ad Hoc Group of Experts agreed to use the 1963 OECD Model as a starting point and revise it for the development of its own Model Convention (Ahmed, 2023). The first UN Model Convention was published in 1980 and has been updated every 2-6 years since 1999. In 2004, the Ad Hoc Group of Experts was elevated to a standing UN Committee of Experts on International Tax Cooperation (UN Expert Committee), consisting of 15 members from developing countries and 10 from developed countries, all acting in their individual capacity as experts (Oguttu, 2018). Over time, various provisions in the model that constrain source-based taxing rights have been altered to limit their negative impact on developing countries. Nonetheless authors note the overwhelming core similarities between the two models (Eyitayo-Oyesode, 2020; Wells & Lowell, 2011). Ahmed (2023) argues that the UN Model Convention has in large worked to validate much of the OECD Model Convention's content vis-à-vis developing nations by republishing it with minor revisions under the UN brand. The successful diffusion of the OECD Model beyond the OECD nucleus as the global norm on which BTT negotiations are based is evidenced by the fact that the structure and clauses of the OECD Model are widely adopted in BTTs concluded between OECD and non-OECD countries and between both non-OECD countries (Pistone, 2014).

Between higher and lower income countries, it is usually the net capital exporting state that initiates BTT negotiations (Hearson, 2021, p.63). The underlying incentives for doing so might be twofold: a) to shift the burden from alleviating double taxation to the source country (Dagan, 2000), and/or b) to enhance the global competitiveness of resident firms by obtaining tax advantages for them in the source jurisdiction which competing firms from other countries may not necessarily enjoy (Hearson, 2021). Hearson argues that "business lobbying, exercised in the home country rather than the host, has been at the origin of many tax treaties between higher-income and lower-income countries" (Hearson, 2021, p.61). Authors have written extensively as to why capital importing countries have been willing to accept BTTs that restrict their taxing rights. According to Clements et al. (2015, p.185) "the chief motivation for developing countries

to negotiate tax treaties is the belief that BTTs stimulate inward investment". Policymakers in capital importing countries engage with BTT negotiations as a trade-off between inward investment on the one hand and tax revenue on the other. According to Hearson (2021, pp.16-17), "treaties tend to impose greater restrictions on lower-income countries' source taxing rights when the distribution of FDI between signatories is more one-sided, suggesting that, when lower-income countries need investment more, they are more willing to give taxing rights away". The empirical evidence that BTTs indeed stimulate inward investment is however inconclusive (Clements et al., 2015). Hearson (2021, p.131) argues in this respect that policymakers in lower-income countries are guided by bounded rationality and continue to consider BTTs to be part of an enabling framework for inward investment and as a way of signalling compliance with international best practice norms.

Through the diffusion of its norms via the widespread use of its Model Convention as a basis for BTT negotiations, the OECD has been able to consolidate its focality within the international tax regime complex. This followed after an initial period of decentralization of the regime during the immediate post-WII decade as the UN Fiscal Committee was unable maintain its central role that it had taken over from the League's Fiscal Committee. Until recently, the OECD has been remarkedly successful in preserving the existing bilateral governance structure. As we will see in the following chapter however, its authority has come under serious strain in recent decades.

5 | Understanding Contemporary Changes in the International Tax Regime Complex

5.1 | The foundations are shaking

In recent decades the stability of the existing international tax governance structure and the authority of the OECD to provide best practice norms have increasingly come under strain due in essence to the structural transformation of the global economy in the form of the dramatic acceleration of globalization and the rise of the digital economy from the 1980s onwards. The increasing volume and mobility of international and investments, the growing number and increasingly complex operational structures of MNEs, and the transformation of business models toward intangible (digital) products and services (such as intellectual property and digital platforms) have exposed ingrained shortcomings in the existing rules and principles governing the taxation of MNEs (Latulippe, 2023). And has raised questions about whether the OECD is best positioned to deal with these problems.

Due to these transformations, tax competition and tax avoidance have become increasingly problematic. Especially following the 2008 global financial crisis, discontent and public outcry over these phenomena increased (Christensen & Hearson, 2019). *Tax competition* describes an uncooperative interaction between states who compete to attract or retain mobile business and capital by providing attractive tax regimes in the form of lower tax rates, a redefined tax base, bank secrecy rules, and specific preferential tax treatment for certain investors (Dietsch, 2015, p.36). Such competition puts downward pressure on government revenue from cooperate income taxation and potentially results in a decline in public spending or more regressive and undemocratic fiscal systems as governments shift the burden of taxation to less mobile activities like consumption and labour (Avi-Yonah, 2000). It is a manifestation of the structural power of transnational businesses and capital who, by way of their territorial disembeddedness and mobility in the global economy, are able to shape the policy choices of territorial states, often without the need of explicit lobbying, as governments already anticipate cooperate preferences in fear of capital flight (Hearson, 2021, p.50). In other words, governments around the world have internalized competitiveness as a fiscal policy principle (Latulippe, 2023, p.360) On the other hand, countries also face, to different degrees, domestic constraints when competing

with each other for mobile capital, for example in the form of public budget constraints and societal pressures over fairness norms (Plümer et al., 2009). *Tax havens* are jurisdictions that are willing and able to go to extremes in undercutting other countries' tax regimes by levying (almost) no income taxes and providing a vail of secrecy to companies and individuals who buy or rent a 'residence' in the jurisdiction in order to park their income there, usually without any real economic activity or physical presence (Palan, 2002). *Tax avoidance* describes tax planning activities by MNEs who arrange their business structure and intra-firm transactions in such a way to exploit differences between national tax regimes to minimize their tax liability, for example by ingeniously shifting profits to a subsidiary located in a low tax jurisdiction (Latulippe, 2023). Tax competition and tax avoidance constitute the flipside of the problem of double taxation; namely that of "under-taxation" of multinational corporate income (Rixen, 2011, p.200).

The phenomena of tax competition and tax avoidance are inherently connected to the existing international tax governance structure. The original intent behind the bilateral structure and many of the principles that continue to govern international taxation today was to facilitate international investments by eliminating double taxation, the principle concern was never to remedy the causes of under taxation (Rixen, 2011). As we have seen, BTTs attempt to tackle double taxation by dividing the (primary or exclusive) taxing rights in regards to different parts of the income of an MNE between two contracting states. Apart from assigning *maximum* withholding tax rates on dividends, interests and royalties to source countries (Hearson, 2021, p.11), BTTs do not dictate a certain or minimum tax rate, nor obligate contracting states to tax their rightful share of the tax base. This "sovereignty-preserving" feature of the existing BTT governance structure essentially allows countries to tax their share of the tax base how they see fit and thus opens the door for downward tax competition (Rixen, 2011, p.206). The different tax regimes that emerge and the restriction of source taxation in favour of residency-based taxation allows MNEs to avoid taxation by moving their headquarters or creating intermediate holding companies in more taxpayer friendly jurisdictions (Wells & Lowell, 2011, p.543, p.603). Another common phenomenon is that of treaty shopping. MNEs not necessarily channel transactions directly from one treaty partner to the other. They can channel transactions through subsidiaries in third party "conduit" countries with useful BTT portfolios and "string together" BTTs to exploit their subtle discrepancies to minimize their tax liability

(Arel-Bundock, 2017, p.350). As such, the network of BTTs and many of the principles within BTTs that were accepted as sufficient to curb double-taxation, provided the fabric that enabled tax competition and tax avoidance to arise.

Tax evasion is not necessarily a new phenomenon, and by 1936 the Fiscal Committee of the League was certainly aware of the possibilities for MNEs to exploit the system to minimize their tax liability, but it noteless subordinated the issue of under taxation to the preservation of its solution to double taxation and maintained that the problem of under taxation lay with individual countries and not with the inherent structure of the framework it proposed (Wells & Lowell, 2011, pp.561-563). This prioritization may have reflected that at the time, MNEs were fewer and represented a smaller potential tax base as compared to today's world. In any case, the phenomenon of under-taxation has become more salient in recent decades because of the aforementioned structural changes in the global economy.

Tax competition and tax avoidance adversely affect countries across both the Global North and the Global South, albeit in different ways. Different countries compete for different types of capital and face different incentives and constraints in doing so. Deitsch (2015, pp.3-5) distinguishes between competition for the portfolio capital of wealthy individuals, competition for "paper profits" of cooperate headquarters and intermediary holding companies, and competition for foreign direct investment (FDI) in real economic activity. Typically, lower-income countries are more susceptible to competitive pressures over FDI because domestic sources of capital to invest in the real economy are limited (Abbas & Klemm, 2013). *Preferential tax regimes*, by which targeted investors enjoy special treatment compared to the standard rules, are especially widespread in developing and emerging economies and often reduce effective tax rates on foreign investments to close to zero (Abbas & Klemm, 2013). At the same time, because fewer workers and small businesses typically operate in the formal sector, developing countries tend to rely more on large (foreign) cooperations as a source of tax revenue (Hearson, 2021, p.37 ; Abbas & Klemm, 2013). Unfavourable terms in BTTs that limit source-based taxing rights are thus definitely not the only factors constraining lower-income countries from raising tax revenue, domestic factors and competitive pressures further decrease their ability to do so. On their part, higher-income countries also have incentives to address under-taxation as they face growing budget deficits while aging populations and increasing living costs make public spending cuts and regressive tax systems increasingly unpopular (Avi-Yonah, 2000).

In the area of tax avoidance and tax competition, the interests of higher-income and lower-income countries are thus less diametrically opposed as compared to the issue of double taxation. The only real winners from tax avoidance and tax competition are the MNEs that engage in tax planning and tax friendly jurisdictions who face fewer constraints in undercutting other countries' tax regimes (Hearson, 2021, p.47). In particular, states with small populations "stand to gain more from tax competition because, for them, the benefits from inflowing capital tend to outweigh the cost in terms of forgone tax revenue" (Dietsch, 2015, p.3). Notably, tax havens are often small jurisdictions with relatively strong institutions (Dharmapala & Hines, 2009), and are found across the Global North and Global South, from Luxembourg to Oman (Palan, 2002). The majority of states however, developed and developing alike, have an interest in some form of cooperation against tax competition and tax avoidance (Dietsch, 2015, p.59). Although, as we will see, in regards to *how*, their interest might still diverge. Overall, the playing field is much more diffuse in the area of under-taxation than in the area of double taxation. While the alleviation of double taxation has historically been dealt with through bilateral distributive bargains (e.g. BTT negotiations over the source-residence distribution of taxing rights), the issue of under-taxation represents a collective action problem: most states would be better off if they cooperated to prevent the erosion of their tax base, but each individual state has an incentive to deviate and undercut others to attract mobile capital. If only a number of countries cooperate, the defectors are likely to be even better off. States will therefore have to attempt to address under-taxation collectively rather than unilaterally or bilaterally. As such, Global North and Global South states are more or less forced to work to together if they want to address under-taxation.

A second transformation that has contributed to growing discontents with the existing governance structure is the rise of the digital economy. Many of the global big-tech companies are either based in the US (Apple, Microsoft, Google, Meta) or in China (TikTok) (Harpaz, 2025). These companies extract massive profits from consumers across the globe, for example through digital advertisement and the sale of user data. They operate entirely online and often have no physical presence in the location where profits are generated (the market jurisdiction). Existing BTT principles however determine that source countries are only allowed to tax business to the extent that a foreign enterprise has a permanent establishment and a physical presence. The division of taxing rights between source and residence countries based on physical presence

thus becomes entirely flawed in the digital era (Harpaz, 2025). Importantly, this drives a wedge between the interests of core OECD states. The EU (like the majority of countries) are market jurisdictions for digital MNEs but have no big tech giants of their own and would benefit from reform. The US on the other hand opposes changes that will subject its tech giants to greater taxation abroad. The digital economy thus reintroduces a redistributive conflict in which legacy capital exporting states do not see eye to eye. In the absence of an international agreement on taxing rights in the digital economy, many countries (developed and developing alike) have unilaterally enacted Digital Service Taxes (DSTs) that target revenues of large digital MNEs, to the frustration of the US (Harpaz, 2025; Van der Meulen, 2024).

This section has explained how the established governance structure has created the problem of under-taxation and the interests of various actors in resolving it. With its influential and widely used Model Convention, the OECD has enjoyed a focal position in the international tax regime complex over the past 60 years. Under its guidance however, the international tax governance structure has not kept pace with changes in the global economy. As a result of growing discontent with under-taxation, especially following the 2008 global financial crisis, the foundations on which the OECD's focality in the international tax regime complex rests are shaking. As we will see in the next section, the OECD's ability to confront this challenge by reforming the existing governance structure faces two important obstacles: firstly, intra-OECD countries' interest clash with respect to the taxation of the digital economy, and secondly, any effective solution to under-taxation has to gain support from countries outside of its exclusive membership. In respect to this second point, the OECD's interest in reform clash with their vested interests as capital exporting countries in maintaining the historically skewed division of taxing rights. As we will see, this dynamic has opened up a window of opportunity for Global South actors to upgrade the role of the UN in international tax governance and contest the historical institutional balance within the international regime complex.

5.2 | The battle for reform

The OECD first confronted the issue of under-taxation in 1998 when it published a report on 'Harmful Tax Competition' (Ault, 2009; OECD, 1998). Since this initial report, the OECD's efforts to implement reforms to address under-taxation can roughly be divided in two phases; before and after the 2008 global financial crisis.

An important aspect of the OECD's efforts in the early 2000s was that it sought to make a distinction between 'fair' and 'harmful' tax competition. The dominant view amongst its members was that tax competition as a whole need not be eliminated. According to some, 'fair' tax competition had its merits as it promotes government efficiency and limits the state to expand its functions indefinitely (Ault, 2009). In the following years the OECD focussed more narrowly on 1) eliminating a number of preferential tax regimes that it had identified as 'potentially harmful' among OECD member countries, and 2) on pressuring non-OECD countries to comply with its tax related information exchange rules (OECD, 2001). To that purpose it published a list of 35 non-OECD 'uncooperative tax havens' who were taken off the list only if they cooperated in signing the OECD's financial information exchange agreement ((Eccleston & Johnson, 2021). This 'naming and shaming' tactic seemed to have been effective as by 2009, all 35 countries eventually complied to be taken off the list (Eccleston & Johnson, 2021). Despite the fact that these reforms were narrow in scope, several OECD countries (including Switzerland, Luxembourg, Belgium, and Portugal) withdrew their support from the project although they did not veto its advancement (OECD, 1998, 2001). In 2001, the US administration publicly announced it too would no longer support the OECD's HTC project, based on the view that tax competition need not be eliminated and the project infringed to heavily on the sovereignty of states to determine their own tax regimes (Ault, 2009).

A few important observations can be made from this first phase of attempted OECD reforms. Firstly, these reforms were narrow in scope and did not transform the existing governance structure, but layered new rules on top of it. The project was designed to fight certain symptoms, rather than the root causes of tax competition and tax avoidance. Secondly, despite the narrow scope of the reforms, the OECD struggled to maintain the support of several member states, showing the divergent interests between OECD member states. Third, non-OECD countries were not significantly involved in the development of HTC project but several

were the target of reforms. The OECD's engagement with these non-OECD countries was confrontational rather than cooperative.

With renewed support from member-states after the 2008 financial crisis, the OECD took on a more ambitious reform agenda. In 2013 the OECD published its Action Plan on Base Erosion and Profit Shifting (BEPS). After nearly a decade of negotiations, the BEPS project culminated with the Two Pillar BEPS Solution in 2021. Noonan & Plekhanova (2022) provide a comprehensive overview of its many facets and legal elements which I won't be able to fully elaborate on here. I attempt to highlight in broad terms its most important aspects. In short, Pillar One tries to tackle the issue of taxing rights in the digital economy (see section 5.1). It introduces a new method for allocating taxing rights to market jurisdictions where MNEs generate profits online without a physical presence. The rule uses a formula to determine the share of an MNEs total profits that can be attributed to and then taxed at the market jurisdiction at its preferred rate. The rule is applicable above a certain revenue and profit threshold and will therefore only apply to a subset of the world's largest MNEs. When applied, only about 60-100 MNEs, most of which are US-based tech companies, will be subject to the rule (Harpaz, 2025, p.104). Pillar One is intended to replace the use of unilateral digital service taxes (DSTs) and countries are required to eliminate these upon implementation, which makes adoption controversial in some situations when DSTs are expected to yield more revenue than Pillar One, as is for example the case in Nigeria (Van der Meulen, 2024). Pillar One is implemented by updating BTTs and is only applicable between the countries that do so.

Pillar Two aims to place a bottom limit on international tax competition. It encourages countries to apply a minimum effective tax rate of 15% on the income of MNEs and, if a country fails to do so, allocates the right to levy a top-up tax to other countries in which the MNE operates via a coordinated hierarchy of rules (Azam, 2026). In theory, this mechanism disincentivises countries from setting corporate tax rates below the agreed minimum, as failure to do so allows other governments to claim those tax revenues instead (Van der Meulen, 2024). Again, the rules apply only to MNE groups above a specified revenue threshold and therefore affect only a subset of large MNEs. Pillar Two does not require amendment of BTTs and can for the most part be implemented through coordinated domestic legislation changes (Noonan & Plekhanova, 2022).

As the Two-Pillar BEPS Solution is currently in its implementation phase, it is difficult to conclusively assess its success or effectiveness, which highly depends how widely it is adopted. The project has however hit some serious roadblocks upon entering the implementation phase. Most crucially in the US. At the beginning of 2025 the Trump administration issued a memorandum denouncing its commitment to the OECD Two Pillar BEPS Solution and threatened to develop retaliatory measures toward countries that applied BEPS (or other) tax rules that disproportionately affected American companies (Azam, 2026). Considering many of the MNEs that are subject to the Two Pillar BEPS Solution are US-based, the US' hostile stance is problematic to say the least.

A notable difference from the first phase is the involvement of non-OECD and Global South actors in the policy process. As noted in the previous section, effective anti-under-taxation policy requires widespread compliance. Although its membership has slightly expanded since its inception to 38 members, the OECD has recognized it needs to ensure compliance beyond its exclusive membership and has sought to ease the diffusion of its proposed reforms by marshalling global consent and support for them. To this end, the organisation has attempted to enhance the legitimacy of its policy output by creating opportunities for non-OECD members to participate in the policy process (Valderrama, 2025). In 2016, the OECD therefore created the Inclusive Framework on BEPS (IF) by which non-OECD members are invited to participate in the OECD's decision making and technical work on the BEPS project (Harpaz, 2025; Kurian, 2022). By 2024, 145 countries opted to participate in the IF (Valderrama, 2025). Various commentators however argue that the IF does not equate to effective equal participation (Harpaz, 2025; Hearson et al., 2023). In reference to the technical working groups where much of the preparatory and technical decision making happens, Hearson et al. (2023, p.850) notes that; "non-OECD countries represent less than 25% of attendees, despite making up almost 75% of members. If G20 members are also excluded, the remaining countries comprise only 11% of attendees, yet 67% of the membership". Crucially, non-OECD countries had even more limited influence on the initial agenda setting stage of the policy process. The agenda was formed when the BEPS Action Plan was published in 2013 with the input from OECD and G20 countries, representative of the world's largest established and emerging economies (Valderrama, 2025). The IF was established later in 2016 when the discussion's confines had already been set. As a result, the final Two Pillar BEPS Solution in many ways reflect a settlement between the policy

priorities the US and Europe, while developing countries have been able to insert some clauses to protect their interests (Azam, 2026; Hearson et al., 2023). As a result, the historically skewed division of taxing rights perpetrated in the existing BTT network is not significantly addressed within the BEPS project (Oguttu, 2018). Moreover, it is projected that the overall positive impact of the BEPS reforms on government tax revenue capacity will be greatest in Europe, with only modest or even negative impacts in lower-income countries (McCarthy, 2022).

A second set of observations can be made from this second phase of OECD reforms. Firstly, in respect to the first phase and greater history of international tax governance the OECD's BEPS reforms reflect a more significant departure from some of the legacy principles of international tax governance that it until recently the OECD has sought to protect, although they do not quite equate to a complete overhaul existing system either. Secondly, persistent divergencies within the OECD bloc continue to hamper the effectiveness and legitimacy of its output. Especially in respect to US-EU rivalries and the recent withdrawal of the US from the project during its implementation phase. Third, non-OECD member states were more actively involved in the policy process but continue to face effective disadvantages within the OECD framework. As a result, many of their core concerns remain unaddressed.

It is within this context that Nigeria, on behalf of the Group of African States, proposed a resolution to the UN General Assembly in November 2023 to launch intergovernmental negotiations toward a new Framework Convention on International Tax Cooperation at the UN (United Nations General Assembly, 2023a). After rejecting a proposed amendment by the UK, the resolution was adopted with broad support from the Global South by a majority vote of 125 to 48 with 9 abstentions UN (United Nations General Assembly, 2023b). The voting pattern displays a clear split along Global North-South lines with among others the EU, UK and the US voting against the resolution. Chile and Colombia, the OECD's only South American members, are the only of the OECD's 38 member countries to vote in favour of the resolution (United Nations General Assembly, 2023b). Several of the OECD states justify their voting behaviour over fears that the UN Framework Convention would duplicate or undermine the current work being undertaken within the OECD BEPS project (United Nations, 2023). Due to its near universal membership of 193 countries, compared to the exclusive membership of the OECD of 38 countries, the UN is arguably better positioned to provide an inclusive policy process that is more likely to generate outcomes that depart from and fundamentally transform the existing

governing principles and architecture of international tax cooperation. Nonetheless, the process at the UN is ongoing and open-ended and it is as of yet unclear what type of legal instrument or multilateral commitment will result from the process. From a historical perspective, the UN initiative is unique. These negotiations represent the first truly global intergovernmental negotiations on international tax governance where all states, including Global South states, are involved from day one including in the agenda setting phase of the policy process. To be successful however, the initiative will need to gain buy-in from OECD states too.

6 | Conclusion

This thesis has sought to answer the following research question: *To what extent have Global South actors historically been able to influence institutional dynamics within the international tax regime complex and under what conditions have contemporary forms of Global South contestation emerged?*

We can conclude that historically, the participation and influence of Global South actors on international tax governance have been limited. As a result, the underlying norms and basic architecture governing international taxation which generate detrimental outcomes for developing countries have seen overwhelming continuity since their establishment in the 1920s. Global South actors, particularly from Latin America, were for the first time involved in international tax governance institutions during WWII. Section 4.2 has shown however, that they were involved primarily on the initiative of the Fiscal Committee who's agenda was motivated by US wartime commercial interest in the region. The negotiations were premised on previously established principles about the necessity and preferred ways to eliminate double-taxation and an agenda set by the partisan Fiscal Committee. After WWII, Global South actors actively resisted in the UN Fiscal Committee against unwanted reforms (such as those in regards to the reciprocal tax exemption of foreign airlines). Such efforts were however essentially in vain as the ultimately legitimacy of the committee was being undermined by other committee members that drove other IGOs to intrude on its sphere of competence.

We have seen that the international tax governance arena first took on the characteristics of a regime complex in the immediate post war decade. The regime decentralized during the post-WII decade as the UN Fiscal Committee negotiations on stalled and other organizations like the ICAO intruded into the sphere of competencies. This intrusion was in the case of the ICAO driven by state actors (the UK and US) that did not care to keep the UN Fiscal Committee alive. Before that, the UN the League's fiscal committee had enjoyed a high level of central authority since its entry into double taxation in the 1920s until 1946. Amidst this decentralization, the OECD attained focality through the dissemination of norms through the active use of its Model Convention by its members as the basis of BTT negotiations with non-member countries around the world. Vis-à-vis other IGOs, notably UN when it re-entered global tax governance through the UN Expert Committee in the 1980s, the OECD was able to establish a degree of vertical

differentiation. As the OECD Model Convention was used as the basis of UN Model Conventions, the UN implicitly recognized the primacy of previous norms established by the OECD and could only incrementally introduce alternative principles in subsequent revisions that ultimately remained within the existing contours of the existing bilateral governance structure. With the OECD at it's the top, the international tax regime complex has been characterised by a high degree of stability between 1960 and 2000.

It is only in recent decades that the structure and norms that were established in the 1920 are under serious scrutiny and the authority of the OECD in the international regime complex is no longer uncontested. The network of BTTs and many of the principles within BTTs that were accepted as sufficient to curb double-taxation, provided the fabric that enabled tax competition and tax avoidance to arise. As structural changes in the global economy have exacerbated these inherent weaknesses, the foundations on which the OECD's focality in the international tax regime complex rests are shaking. Section 5.1 has shown that structural changes in the global economy and the inability of the incumbent focal IGO (the OECD) to implement reforms can provide an important opportunity structure for previously marginalised actors to reshape international regime complexes and assert influence on global governance.

From a historical perspective, the recent UN Framework Convention initiative is unique. These negotiations represent the first truly global intergovernmental negotiations on international tax governance where all states, including Global South states, are involved from day one including in the agenda setting phase of the policy process. Only time will tell whether Global South actors will be able to fully seize this opportunity to realize transformative reforms to create a fairer international taxation governance structure .

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