

Decoding "Problems without Passports": any lessons for International Tax Cooperation? ()

Decodificare "Problems without Passports": qualche lezione per la cooperazione fiscale internazionale?

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Abstract

As the UN marks initial steps toward a UN Framework Convention as a new global solution to tax issues, this article seeks to distill lessons from approaches used to address other "problems without passports" under the UN system such as climate change, internet governance and cybercrime touching upon the possible introduction of global taxes and the establishment of a new international organization.

Keywords: *base erosion and profit shifting, global issues, international tax cooperation, UN Resolution, climate change, digital technologies, global taxes, multilateralism*

Abstract

Considerando che l'ONU sta compiendo i primi passi verso una Convenzione quadro ONU quale nuova soluzione globale alle problematiche fiscali, questo articolo cerca di individuare gli insegnamenti che possono trarsi dagli approcci utilizzati per affrontare altri "Problemi senza passaporto" nell'ambito del sistema delle Nazioni Unite, come il cambiamento climatico, la governance di Internet e la criminalità informatica, soffermandosi sulla possibile introduzione di imposte globali e sulla possibile creazione di una nuova organizzazione internazionale.

Parole chiave: BEPS, cooperazione fiscale internazionale, UN Resolution, cambio climatico, tecnologie digitali, *digital technologies*, imposizione globale

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1. Fifteen years ago, Kofi Annan coined the term “problems without passports” to describe global challenges that transcend geographical boundaries like climate change, migration and the impact of digital technologies. A lot has been put in place to try to solve these issues, in some cases successfully.

A decade ago, the OECD/G20 BEPS Project addressed base erosion and profit shifting through 15 comprehensive actions, culminating in the establishment of the Inclusive Framework as a forum for tackling what again has been defined as a global issue: base erosion and profit shifting.

As the UN sets up an ad hoc intergovernmental committee, marking initial steps toward a UN Framework Convention as a new global solution, this article seeks to distill lessons from approaches used to address other “problems without passports”.

By comparing solutions and approaches employed in domains such as environmental issues and internet governance, the first section delves into the institutional infrastructure underpinning international cooperation in these domains. It assesses the achievements and shortcomings of multilateralism in these areas and scrutinizes how legal pluralism is managed in these policy spheres.

In its second segment, the article explores potential transplants in the realm of taxation and innovative proposals. The article contemplates whether strategies from other areas, such as the environment and internet governance, can be adapted to taxation or whether there is the need to consider alternative proposals, such as the establishment of a new international organization, as suggested by Vito Tanzi, that could also be self-financed.

In doing so, starting from the idea that global challenges must be solved with global solutions, the overall aim is to broaden the discussion on reshaping global tax frameworks taking into consideration and examining strategies adopted in other policy areas where global challenges are on the agenda.

2. The global economy has more than doubled in size since the turn of the century, with substantial growth generating high levels of inequality, planetary damage, and other global public bads. The definition of problem without passport dates back to 2009, just after the break of the financial crisis and it was coined by Koffi Annan (ANNAN K., *Problems Without Passports*, in *Foreign Policy*, 2009, November 9).

In a special report on Foreign Policy, the previous secretary general of the UN was highlighting how in the current world we are living no individual nor country can exist in isolation as we are connected, wired and interdependent. In such a context, global issues can proliferate, and individual and domestic responses are no longer sufficient.

The examples that are referred to by Kofy Annan as problems without passport, range from pollution, to organized crime to cyber threads: problems which cannot be ringfenced to national borders.

From a macroeconomic perspective, economies have indeed become more interconnected, but systems for fostering global cooperation have not kept up and with the increased levels of political-economic and social interdependency across

the world accompanied with increased levels of mutual vulnerability, the multilateral system of governance has been put to the test.

This required seeking possible solutions to address problems without passport both at international and regional level.

In relation to international taxation, it emerged how globalized business models could challenge existing international tax rules, by eroding countries tax base through the shifting of profits. Under what is called BEPS (Base-Erosion Profit Shifting) Project, the OECD attempted to provide an answer through 15 actions to this problem that by-definition does not have a passport.

The first BEPS project and its 15 actions lead in 2016 to the setup of the OECD/G20 Inclusive Framework on BEPS (IF), which was established to ensure participation in the development, reviewing, monitoring and implementation of the OECD/G20 BEPS project beyond OECD countries.

Starting from 2016, the BEPS project has been evolving and leading to what is known now as a two-pillar approach or so-called BEPS 2.0 which looks at addressing the challenges arising from the taxation of the digital economy as well as introducing a Global Minimum Tax on multinationals group. Parallely, the work of the UN Committee of Experts in International Tax Cooperation, has largely expanded beyond the update of the UN Model on Double Convention offering guidance to developing countries through different reports, handbooks, and capacity building efforts. Within the years, the work of the UN Committee spanned from environmental taxation, to transfer pricing, dispute resolution and more recently wealth taxation and indirect taxation.

3. In December 2024, in what has been described as an historical moment in international taxation the UN General Assembly has approved by majority a resolution that initiated a new process for establishing a UN Framework Convention to strengthen international cooperation. However, the process that led to this moment started longer than a year ago.

3.1. During the third Financing for Development Conference that took place in Addis Ababa in 2015, there have already been negotiations to replace the UN Tax Committee of Experts with an intergovernmental tax body within the United Nations. While the negotiations at that time did not lead to the establishment of such a body, the interest for a UN-led international tax cooperation initiative remained high for certain developing countries, finally resulting in Nigeria tabling a resolution in autumn 2022 that would change the course of action.

The resolution tabled initially by Nigeria on behalf of the African group and titled “Promotion of inclusive and effective international tax cooperation at the United Nations” was approved first by the second committee of the UN General Assembly in November 2022 by consensus and then confirmed by adoption of the UN General Assembly in December 2022.

Resolution 77/244, called for:

- 1) the beginning of intergovernmental discussions in New York on ways to strengthen the inclusiveness and effectiveness of international tax cooperation taking into full consideration existing international and multilateral arrangements.
- 2) The preparation of a report by the Secretary-General analyzing all relevant international legal instruments, other documents and recommendations that address international tax cooperation, as well as outlining potential next steps, such as the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation.

On August 8th, in response to General Assembly resolution 77/244 on the “Promotion of inclusive and effective international tax cooperation at the United Nations”, the UN Secretary General has then published a report outlining the options that would have represented the basis for the intergovernmental discussions at the 78th UN General Assembly session, which opened in September 2023.

In this regard, the report identified for consideration three options, each of which would need to be developed and agreed upon through a United Nations, Member State-led process:

1. a multilateral convention on tax;
2. a framework convention on international tax cooperation; or
3. a framework for international tax cooperation.

Finally, the report outlined the next steps also in relation to the case in which the General Assembly would have not been able to reach an agreement on a way forward at its next session. In this case, the 4th suggested option was the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation.

During the negotiations conducted by the 2nd committee of the UN General Assembly in its 78th session, it emerged that positions among countries on the best approach were very diverse and at opposite extremes. The European Union presented a shared position among EU countries which was expressing a preference for option 3, while the African group and many developing countries part of the G77+ China group were in favor of a comprehensive convention. Further on in the negotiations a few countries suggested the hypothesis to set up a committee that would evaluate the three options and advice on the step forward, along the lines of option 4 as outlined in the UN Secretariat’s Report and that could have helped finding possible bridging positions. However, this option has not been further considered and a vote on option number 2 calling for a framework convention has been put forward for a vote. On 22 November 2023, after intense and difficult negotiations characterized by high levels of polarization, the UN Economic and Financial Committee (Second Committee) has adopted a resolution calling for a UN Framework Convention on international tax cooperation with 125 votes in favor, 48 against and 9 abstentions.

After intense negotiations also within the Fifth Committee of the UN General Assembly responsible for the UN budget, a budget of \$1,500,000 for 2024 has been approved in December to support the establishment of the open-ended ad hoc intergovernmental committee to be established (resolution A/78/7/Add.36).

Subsequently, the UN General Assembly endorsed the resolution 78/230, “Promotion of inclusive and effective international tax cooperation at the United Nations” on December 22nd with 111 votes in favor, 46 against, and 10 abstentions.

3.2. Under resolution 78/232 it was decided to establish a Member State-led, open-ended ad hoc intergovernmental committee for the purpose of drafting terms of reference for a United Nations framework convention on international tax cooperation.

As prescribed by the resolution, the bureau of this intergovernmental ad-hoc committee will count on the participation of 20 members, including a chair, 18 vice-chairs and a rapporteur representing the different five UN region in order to provide balanced geographical representation and taking into account gender balance.

As indicated in the resolution, the Terms of Reference must also be finalized by August 2024 and be submitted in a report to the General Assembly at its 79th session starting in September 2024.

The resolution also provides some guidelines for the work of the ad-hoc committee. It specifically refers to the need to take into account the needs, priorities and capacities of all countries, in particular developing countries as well as to take a holistic, sustainable development perspective that considers interactions with other important economic, social and environmental policy areas.

Mention is also given to the need to consider sufficient flexibility and resilience in the international tax system to ensure that it can keep up with technological developments and business models.

Moreover, in paragraph 6 (d) the resolution also refers to the need to take into consideration the work of other relevant forums, as well as potential synergies and the existing tools, strengths, expertise and complementarities available in the multiple institutions involved in tax cooperation at the international, regional and local levels.

One of the most interesting and peculiar points is, however, the possibility for the ad-hoc committee to consider simultaneously developing early protocols, while elaborating the framework convention, on specific priority issues, such as measures against tax - related illicit financial flows and the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy.

The development of protocols simultaneously to the drafting and negotiation of a framework convention is indeed very unusual within the UN system and could potentially lead to undesired asynchronies between the protocol, the framework convention and existing norms and treaties.

3.3. The work of the Ad-Hoc Committee tasked with the drafting of the Terms of Reference (TOR) of the Framework Convention has been organized into three different sessions. To start, the Committee met in New York in February for the organizational session. During the session, the Committee has been formally set up, the logistical and procedural aspects related to the working of this ad-hoc committee have been discussed as well as the decision-making modalities. With reference to this last point, it has been decided that the TOR Ad-Hoc Committee will be taking decisions striving for consensus as much as possible.

On August 16, 2024, at the end of the second substantive session of negotiations, the Terms of Reference (TOR) for a UN Framework Convention on International Tax Cooperation were approved by a majority vote within the intergovernmental ad-hoc committee.

The TOR includes both substantive and procedural elements that will guide the drafting and negotiations of the Framework Convention and its early protocols. It outlines three main objectives for the Framework Convention:

1. To establish fully inclusive and effective international tax cooperation in both substance and process.
2. To create a governance system for international tax cooperation that can address existing and future tax challenges on an ongoing basis.
3. To develop an inclusive, fair, transparent, efficient, equitable, and effective international tax system for sustainable development, aiming to enhance the legitimacy, certainty, resilience, and fairness of international tax rules while addressing challenges related to strengthening domestic resource mobilization.

To achieve these objectives, the TOR also includes a series of principles and commitments. The list of principles is listed under para. 9 of the TOR and includes the following principles: a. be universal in approach and scope and fully consider the different needs, priorities, and capacities of all countries, including developing countries, in particular countries in special situations; b. recognize that every Member State has the sovereign right to decide its tax policies and practices, while also respecting the sovereignty of other Member States in such matters; c. in the pursuit of international tax cooperation be aligned with States' obligations under international human rights law; d. take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects; e. be sufficiently flexible, resilient and agile to ensure equitable and effective results as societies, technology and business models and the international tax cooperation landscapes evolve; f. contribute to achieving sustainable development by ensuring fairness in allocation of taxing rights under the international tax system; g. provide for rules that are as simple and easy to administer as the subject matter allows; h. ensure certainty for taxpayers and governments; and i. require transparency and accountability of all taxpayers.

Both the objectives and the principles and commitments have been the subject of extensive debate during the first and second substantive sessions of negotiations.

Ultimately, the Framework Convention will focus on the following key areas:

- Fair allocation of taxing rights, including the equitable taxation of multinational enterprises.
- Addressing tax evasion and avoidance by high-net-worth individuals and ensuring their effective taxation in relevant Member States.
- International tax cooperation approaches that contribute to sustainable development across its economic, social, and environmental dimensions in a balanced and integrated manner.
- Effective mutual administrative assistance in tax matters, including transparency and the exchange of information for tax purposes.
- Addressing tax-related illicit financial flows, tax avoidance, tax evasion, and harmful tax practices.
- Effective prevention and resolution of tax disputes.

Regarding protocols, the TOR specifies that two early protocols will be developed concurrently with the Framework Convention. One of these early protocols will address the taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy. The topic for the second early protocol will be selected at a later stage from a list of topics included in the TOR. Additionally, a list has been compiled for future protocols to be developed including: a. tax cooperation on environmental challenges; b. exchange of information for tax purposes; c. mutual administrative assistance on tax matters; and d. harmful tax practices.

Although paragraph 13 indicates that the Framework Convention will address the relationship with other agreements, instruments, and domestic laws, many questions remain about how existing rules, frameworks, and current agreements will be integrated. In this regard, paragraph 22 states that the next negotiating committee will consider the work of other relevant forums, potential synergies, and the existing tools, strengths, expertise, and complementarities available in the various institutions involved in international, regional, and local tax cooperation.

Regarding procedural aspects, the TOR specifies that the intergovernmental negotiating committee will meet in 2025, 2026, and 2027 for at least three sessions per year, each lasting no more than ten working days. The committee is expected to complete its work and submit the final text of the Framework Convention and the two early protocols to the General Assembly for consideration in the first quarter of the eighty-second session, by autumn 2027.

In terms of composition, similar to the TOR negotiating committee, the bureau of the intergovernmental negotiating committee will consist of a chair, eighteen vice-chairs, and a rapporteur, elected based on equitable geographical representation.

Finally, although not present in earlier versions of the TOR document, the finalized version encourages significant contributions from stakeholders to the work of the intergovernmental negotiating committee, in accordance with established practices.

4. As previously described, the wording “problems without passport” is not limited to the tax issues deriving from an increased globalized economy but it was a

reference initially made to other types of global issues such as the one pertaining to the area of climate and internet governance. As a new UN solution is currently under discussion for international tax cooperation as mentioned above, it is valuable to see what lessons can be learned from other UN processes seeking to find solutions to problems without passport.

4.1. During the last decade, growing social sensitivity towards ecological issues has determined an ever stronger and firmer request to governments about introducing suitable instruments which can prevent harmful effects on the environment due to polluting substances. It is nowadays clear that environmental protection and global warming are a global issue and concern that must be faced through the implementation of various strategies, favouring strategies at supranational level. In other words, they are cross border problems and know no boundaries. In this context, the international community is increasingly pronouncing its willingness to tackle these problems in a cooperative fashion requiring international cooperation and coordinated solutions at all levels.

In this context, when it comes to the UN Role in the fight against Climate Change, the Declaration of the United Nations Conference on the Human Environment (hereinafter “Stockholm Declaration”- UNITED NATIONS, *Declaration of the United Nations Conference on the Human Environment, A/Conf. 48/14iRev.1*, Stockholm, 16 June 1972) can be seen as a keystone marking the beginning of modern international environmental law and fostering a global perspective of the matter. More specifically, the Stockholm Declaration contains a set of “common principles to inspire and guide the people of the world in the preservation and enhancement of the human environment”, providing a basic code of environmental conduct. Another important Declaration adopted by the United Nations was the Nairobi Declaration of 1982 which recognized that environmental problems cannot be solved within national boundaries, because there are implications that go beyond national policies, and therefore they require international action and cooperation in the field of environmental protection (UNITED NATIONS ENVIRONMENT PROGRAMME, *Nairobi Declaration on the state of worldwide environment*, UNEP/GC.10/INF.5, May 19, 1982). The creation of the World Commission on Environment and Development (hereinafter “Brundtland Commission”) in 1983 was another milestone that highlighted once again that sustainable development can be secured only through collaboration on a global scale. The report of the Brundtland Commission points out the need to consider new sources of revenue for financing international action in support of sustainable development including revenue from the use of international commons, taxes on international trade (such as a general trade tax, taxes on specific traded commodities, on invisible exports, or on surpluses in balance of trade or a consumption tax on luxury goods) and international financial measures (WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future*, 20 March 1987).

Few years later, in 1989, the UN General Assembly recognized that “climate change is a common concern of mankind” (UNITED NATIONS, *Protection of Global Climate for Present and Future Generations of Mankind*, A/Res./43/53, 1989, para. 1). Moreover, according to the Brundtland Commission Report an international Conference should have been convened to review progress made and promote follow-up arrangements that may have been necessary over time to set benchmarks and to maintain human progress within the guidelines of human needs and natural laws.

This conference was the UN Conference on Environment and Development (hereinafter UNCED), held in 1992 in Rio de Janeiro. In Rio, countries signed an international treaty: the United Nations Framework Convention on Climate Change (UNFCCC), to consider what they could do to limit average global temperature increases and climate change and recognizing that there was a problem.

By 1995, countries realized that provisions regarding emission reduction in the Convention were inadequate. Therefore, they launched negotiations to strengthen the global response to climate change, and, in 1997, the Kyoto Protocol was signed. This international agreement, which came into effect in 2005, legally binds countries to emission reduction targets remaining a historic landmark in the international fight against climate change. One important element of the Kyoto Protocol was the establishment of flexible market mechanisms, which are based on the trade of emissions permits. The Kyoto Protocol also established a rigorous monitoring, review and verification system, as well as a compliance system to ensure transparency and hold parties to account. Under the Protocol, countries' actual emissions have to be monitored and precise records have to be kept of the trades carried out. However, the Kyoto Protocol only binds developed countries.

In December 2012, after the first commitment period of the Protocol ended, parties to the Kyoto Protocol met in Doha to adopt an amendment to the original Kyoto agreement. This so-called Doha Amendment added new emission-reduction targets for the second commitment period, 2012–2020, for participating countries.

In 2015, however, countries agreed on yet another legally binding climate treaty, the Paris Agreement, which entered into force in November 2016 and effectively replaced the Kyoto Protocol. The Agreement sets long-term goals to guide all nations (and not only developed ones) to reduce their emissions and work together to adapt to the impacts of climate change and calls on countries to strengthen their commitments over time. Accordingly, every five years, each country is expected to submit an updated national climate action plan - known as Nationally Determined Contribution. The Agreement provides a pathway for developed nations to assist developing nations in their climate mitigation and adaptation efforts while creating a framework for the transparent monitoring and reporting of countries' climate goals.

The climate space has often been described in terms of prisoner's dilemma (POUNDSTONE W., *Prisoner's dilemma*, Doubleday, 1992) where, while genuine and successful global cooperation would be in every country's interest, the short-term

benefits of a single country can be conflicting with the global goal of fighting climate change.

Accordingly, what can be learned from the experience above outlined is that even if global issues cannot be solved or at least addressed without global solutions, these are not an easy task and require very complex negotiations and compromises that in order not to frustrate the overall outcome require long-term strategies. The same experience on environmental matters shows that developed countries and developing countries must work together not only to find common and coordinated solutions but also to create a level playing field. In this context, it seems clear that monitoring and reporting are key to favor international cooperation and coordinated solutions.

4.2 In 2003 and 2005, the United Nations organized the World Summit on the Information Society (WSIS) and during the 2005 World Summit on the Information Society (WSIS) it became clear the need for all stakeholders – governments, the private sector, civil society, the technical and academic communities – to engage collectively for the effective governance of the Internet, preserving its open and globally interoperable nature. Internet governance is also a critical facet in the development of international trade and economic growth since the ways in which the Internet is governed affects business activity regardless of geographic location or sector (Brousseau and Marzouki mention a 1998 ITU resolution as the first reference to Internet governance, BROUSSEAU E. - MARZOUKI M., *Internet governance: old issues, new framings, uncertain implications*, in BROUSSEAU E. - MARZOUKI M. - MÉADEL C. [eds.], *Governance, regulations and powers on the Internet*, New York: Cambridge University Press, 2012, 368-397). One of the major outcomes of the 2005 World Summit on the Information Society (WSIS) has been indeed the establishment of the Internet Governance Forum (IGF) which took place for the first time in Athens in 2006.

The Internet Governance Forum is widely recognized as one of the most significant outcomes of the World Summit on the Information Society (WSIS) (EPSTEIN D., *The Making of Institutions of Information Governance: The Case of the Internet Governance Forum*, in *Journal of Information Technology*, 28(2), 2013, 137-149). The mandate of the IGF is to be a “multi-stakeholder policy dialogue” (UN 70/125 Resolution adopted by the General Assembly on 16 December 2015) and besides the global IGF that gathers stakeholders from all over the world once a year in a different location, local and regional IGF have been steadily increasing, with events taking place throughout the year.

In fact, in terms of local presence and activities, at the moment, more than 165 countries and regions have established their own IGF National, Regional and Youth initiatives (NRIs) based on the global IGF model which also testifies the success of the IGF model and the importance and effectiveness of a multi-stakeholder space for constructive exchange. By supporting the development of the NRIs network, through organizational coordination and guidance from the IGF Secretariat, the global IGF has benefitted from vital local, national and regional-level perspectives

on digital policy and the effects of digital transformation representing a mutual ramification of the positive impacts.

Indeed, during the years participation from developing countries to the IGF has also significantly increased. As for the outputs, there are annual IGF Messages, outputs from IGF-guided intersessional workstreams (*e.g.* Policy Networks and Best Practice Forums). The IGF also continues to be a key contributor to other fora and processes and key in the preparation for the proposed UN Global Digital Compact currently under discussion.

Annual IGF Messages, as well as outputs from IGF-guided intersessional workstreams, such as Policy Networks and Best Practice Forums, and from independent Dynamic Coalitions, are for global audiences and widely distributed.

Concerning the scope, the IGF always covers a broad range of digital governance issues, from Cybersecurity and Meaningful Access to Data Privacy and Artificial Intelligence. The IGF is convened by the UN Secretary-General and the program and intersessional work of annual IGFs is guided by the Secretary-General-appointed, 40-member Multistakeholder Advisory Group (MAG). In 2022, the IGF Leadership Panel, whose multistakeholder members are also appointed by the Secretary-General, was formed to provide high-level strategic advice to the IGF, address related urgent issues, and “promote greater impact and dissemination of IGF discussions”. The Panel is led by Google Vice-President and “father of the Internet” Vint Cerf, and the 2021 Nobel Peace Prize Laureate Maria Ressa.

The MAG develops the IGF program with support from the IGF Secretariat, and on the basis of regular public consultations and selection processes to determine timely themes and formats. Focus issues change yearly based on submissions received during the IGF’s public call for thematic inputs, ensuring that the emphasis remains on what stakeholders, including governments and their constituencies, wish to discuss and ensuring the timeliness and relevance of each topic of discussion.

In the area of digital and internet policy, there has been another recent development in the area of cybercrimes.

In 2019, the UN General Assembly has passed a resolution which established an open-ended ad hoc committee (AHC) tasked with developing a ‘comprehensive international convention on countering the use of ICTs for criminal purposes’. Which compared to the UN Secretary General report on International Tax Cooperation, would be aligned to option 1 for a UN comprehensive convention in tax matters.

Negotiations relating to this convention have started in early 2022 following a roadmap which included six sessions to take place in Vienna and New York. During these sessions, different parts of the treaties have been addressed, such as chapters on criminalization, procedural measures, the role for law enforcement, international cooperation, technical assistance, preventive measures and implementation.

In terms of decision making, within this process, UN member countries are expected to negotiate by consensus and if this cannot be achieved, then two-third majority voting rules apply. Due to divisive positions on certain issues, informal working

groups were also established to facilitate discussion and a draft text of the convention has been published in June 2023 ahead of new discussion started in August 2023. The draft text is the synthesis of months of negotiations and hundreds of proposed amendments, with nine chapters and over 60 articles.

Within this initiative, multistakeholder participation has been allowed with civil society and the private sector presenting statements, participating in consultation and organizing dedicated events.

However, on this comprehensive convention severe concerns have been raised by both civil society and the private sector. The main areas of disagreement covered concern the scope of the treaty, human rights safeguards, how to address gaps in state capacity, how the treaty should harmonize with other instruments, and the relevance of gender to the treaty.

Until now, the UN member states have not reached a consensus on the scope and terminology, they only managed to agree on a few points. This implies that the final decision is likely to be reached by vote if no agreement by consensus can be reached.

However, given the critical flaws of the draft of the UN cybercrime treaty, civil society and industry representatives have jointly drafted an open letter addressed to the Convention's chair to reject the current form of the text.

Industry and civil society, which often disagree, are both concerned about the shortcomings of the current text, which include a broad scope and vague provisions such as for real-time interception of content and data, as well as the lack of protection for human rights and good-faith.

The joint letter highlights how the unclear and overly broad scope, vague criminalization provisions and definitions, lack of meaningful human rights safeguards and effective gender mainstreaming, missing protections for good-faith cybersecurity researchers and others acting in the public interest, and overly broad provisions for real-time interception of content and traffic data that go far beyond what can reasonably be justified to fight cybercrime. According to them, particularly concerning is also the fact that the draft treaty authorizes states to conduct intrusive cross-border data collection without prior judicial authorization, without oversight, and in secrecy.

Following this letter and the still many open issues emerging in the last session of the ad-hoc committee that took place until February 9, the delegate decided to reconvene later this year.

While it is yet to be seen how the negotiations on this convention will evolve, it is significant that the issues also related to a broad scope and the differences in what constitutes a crime and more broadly their criminal law systems. Victims of cybercrime range from individuals and communities to entire businesses and governments, and cyber scams, fraud, extortion and harassment are on the rise. However, because of the broad scope of what constitute a cyber-crime, the lack of a commonly shared definition, and the criminal law differences among countries

around the world, there are several challenges if cyber-crime is to be addressed through a multilateral solution.

For 15 years, the UN-mandated Internet Governance Forum (IGF) has succeeded in bringing together different stakeholder groups engaging in debate and discussion on internet governance policy issues relevant to Internet Governance. The IGF has been a champion of the multistakeholder method, which brings together governments, business actors and civil society representatives (TJAHJA N. - MEYER T. - SHAHIN J., *What is civil society and who represents civil society at the IGF? An analysis of civil society typologies in internet governance*, in *Telecommunications Policy*, 2021, vol. 45, Issue 6). This model could most certainly be replicated and represent a way for constructive dialogue also when it comes to tax matters, where issues transcend national borders and the input of other stakeholders beyond governments is essential to understand the workability and effectiveness of certain new policies and proposals. Thus, it is interesting also for tax policy makers to pay more proper attention to this initiative for possible lessons learned.

In terms of decision making, the cyber-security convention requires decisions to be taken by consensus and if not possible by qualified majority vote. This approach to decision making indeed takes into account that problems without passport because of their global nature need to have the broadest buy in as possible by countries around the world.

The cybersecurity convention process can also teach important lessons about the challenges that arise from addressing global problems in an overly broad manner and by referring to very general concepts. Because of the broad concepts also characterizing international taxation, their different meaning and implications across countries as well as the different economic interest of those, multilateral binding instrument could hardly be a one-size-fits-all solution. Thus, it is important to consider the limitations of addressing ‘problems without passport’ through the use of a comprehensive multilateral treaty instrument and it is fundamental to consider if there are alternative instruments that could be a better fit to achieve the aims and goals that drive those initiatives.

5. The discussion on global taxes started a long time ago. It was not and it is not limited to environmental taxes, but the latter have played a major role in boosting this debate. Going into further details, one of the first references to global taxes can be found in 1884 where James Lorimer in his *Ultimate problem of international jurisprudence* stated: «*The expenses of the International Government shall be defrayed by an international tax, to be levied by the government of each State upon its citizens; and the extent of such tax shall be proportioned to the number of representatives which the State sends to the International Legislature*» (FRANKMAN M.J., *International Taxation: the trajectory of an idea from Lorimer to Brandt*, in *World Development*, 1996, vol. 24, no. 5, 807-820).

Many of the most famous economists of the earlier twentieth century considered and analysed global taxes. Furthermore, in 1945, Jan Tinbergen, pointed out that

«curtailment of national sovereignty with regard to economic policy» is required «if a more stable and prosperous social system is to be realized in the world» (FRANKMAN M.J., *International Taxation: the trajectory of an idea from Lorimer to Brandt*, cit., 809).

In the 1950s and 1960s, global taxes receded from view due to the fervent opposition from the United States government. Then, in 1972, James Tobin proposed his global tax on currency transactions in order to increase financial stability and generate revenue to eradicate poverty.

Moreover, the United Nations Environment Programme published two major reports on global taxation (UNITED NATIONS, *Study on Financing the United Nations Plan of Action to Combat Desertification: report of the Secretary-General*, General Assembly document A/35/396, 1980) and, as mentioned, the report of the Brundtland Commission pointed out the need to consider new sources of revenue for financing international action in support of sustainable development.

Considering that Pillar II is somehow tightening States' sovereignty, there could be room to sustain that a new international organization could be created and that it could also be self-financed via a global tax.

A similar proposal has been advanced by the Colombian government in the context of the Platform for Taxation in Latin America and the Caribbean (PTLAC) and to be considered within the UN Framework Convention discussions.

However, such a proposal opens up questions on how such a global tax would be administered and whether taxpayers' states of residence and the countries where they operate are willing to give up their fiscal sovereignty and tax administration. Another aspect to be considered is that some governments around the world lack constitutional legitimacy to completely relinquish their fiscal sovereignty, especially if it is to use the revenues for purposes outside their domestic political priorities (*e.g.* ring fencing the purposes for which this global tax is used). Important questions of constitutionality will arise depending on the countries involved and with different intensity depending on each country's constitutional tradition. Therefore, constitutional issues must also be considered at the national level. In addition, disputes may arise from such a system. It is then important that an effective dispute settlement mechanism is also explored.

In the light of the foregoing, according to the Authors, a global tax could be a dimension to explore in the next future to solve "problems without passport".

6. Addressing what Mr. Annan defined as "problems without passports" remains an open question. Much progress has been made towards tackling these issues, yet significant challenges persist. The newly initiated process for a UN framework convention on international tax cooperation presents an opportunity to reflect on past efforts, learn from other fields, and determine the next steps for strengthening international tax cooperation.

Looking at the climate change sphere, the UN has played a key role for decades. Similarly, with the Internet Governance Forum, the UN has facilitated effective

multi-stakeholder dialogue. However, the climate experience and recent negotiations for a comprehensive convention on cybercrime highlight that addressing global issues through global solutions requires complex negotiations and compromises, which can sometimes frustrate the overall outcome. Additionally, the environmental field demonstrates that developed and developing countries must collaborate to find common solutions and create a level playing field, often necessitating long-term strategies.

One alternative solution, such as creating a new international organization responsible for tax policy and cooperation financed through a global tax (or calling for the UN to take up this role), is not entirely new. However, its viability is currently being reconsidered. This alternative would require countries to reassess the meaning of tax sovereignty in a globalized world and evaluate potential limitations imposed by their constitutional frameworks and systems, but it could be worth exploring it further.

Despite the Herculean nature of the task, effective "solutions without passports" must rely on the broadest buy-in from governments. This approach remains the only viable path forward for enhancing international tax cooperation.

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