

***The primary legal role of the United Nations on international Tax Cooperation and Global Tax Governance: Going on a new International Organization on Global Tax Cooperation and Governance under the UN “Family” (\*)***

***El rol legal principal de las Naciones Unidas en la Cooperación Fiscal internacional y la Gobernanza Fiscal Global: Hacia una nueva Organización Internacional sobre Cooperación y Gobernanza Fiscal Global bajo la “familia” de la ONU***

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### *The United Nations in the 21st Century:*

Drawing upon the strands of research about the United Nations role on International Cooperation, this study starts reviewing an exciting debate emerged with the occasion of the United Nations' 70th Anniversary. Researchers have long predicted an extraordinary future for the United Nations (UN) in the present century.

“Despite its intrinsic weaknesses, despite ..., despite ..., despite ... the United Nations, ... are still a useful and adequate instrument to face the interconnected challenges in the 21st century. After all, it is the framework that the international community has endowed with”<sup>1</sup>

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<sup>1</sup> PONS I RAFOLS, Xavier (director), *Las Naciones Unidas desde España. 70 Aniversario de las Naciones Unidas*, 2015, ONU, *Introduction*, p. 23 [free translation of the author].

The author continues: “A complex world with these characteristics necessarily requires, in my opinion, an institutional legal framework that facilitates intergovernmental cooperation. This is the fundamental instrumental character of the United Nations: facilitating this cooperation in all orders to achieve those great goals solemnly proclaimed in 1945...”(p. 24) [free translation of the author]. From the same author, we recommend to read the following lectures: “Los propósitos y principios de las Naciones Unidas setenta años después” (in English, “The purposes and principles of the United Nations seventy years later”), in *Naciones Unidas desde España...*, ob., cit., p. 83 et seq., and also the book chapter entitled “La necesaria coherencia del sistema de las Naciones Unidas” (in English, “The necessary coherence of the United Nations system”), in *Una nueva organización de Naciones Unidas para el siglo XXI*, José María BENEYTO; Belén BECERRIL (Org.), Biblioteca nueva. Instituto universitario de Estudios Europeos de la Universidad Ceu San Pablo, 2007, pp. 17 et seq.

The controversy about scientific evidence that some objections have been formulated regarding the role of United Nations throughout its history. The literature has been raising the necessary improvement of this International Organization, while certainly highlighting the role played by the previous Secretary General Kofi Annan regarding proposals for modification and improvement. On these topics you can see: MÜLER, J. W. (ed.) “The Reform of the United Nations”, i (Report), ii (Resolutions, Decisions and Documents), 1992; CHILDERS, EB, “The Future of the United Nations: the Challenges of the 1990s”, *Bulletins of Peace Proposals*, 21, 1990, RENNINGER, J., P., (ed.), *The Future Role of the United Nations in an Interdependent World*, 1989, V. ANTONIO BLANC (ed.), *El proceso de reforma de las Naciones Unidas*, Madrid, Tecnos, 2009; HELENA TORROJA, ¿“La reforma de las Naciones Unidas?. Un problema de lenguaje”, en J.M. Beneyto y B. Becerril (Dir.), *Una nueva Organización de las Naciones Unidas para el Siglo XXI*, Madrid, ed. Biblioteca Nueva, 2007, pp. 239-280, among others.

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(\*) I should like to express my thanks and gratitude to **Professor Jeffrey Owens** (Ph.D. Economics, Cambridge University, UK) and director of the prestigious research Center: the WU Global Tax Policy Center at the Institute of Austrian and International Tax Law. Prof. Owens was the head of the Fiscal Affairs Division, OECD, Paris (1991-01) and the director of the Centre for Tax Policy and Administration, OECD, Paris (2001-2012). He has been the most influential international tax person of the year by Tax Notes (2012), the fourth one in the tax world, Tax Business (2009), one of the 21st biggest according to International Tax Review (2010)... He also belongs to one's of the United Nations Tax Subcommittee, among many others. Nowadays, probably the best world's critical figure on global taxation (<https://www.wu.ac.at/en/taxlaw/institute/staff/professors/prof-dr-jeffrey-owens>).

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Note: This article was concluded on February 28, 2020.

**Abstract:** This study will prove useful in expanding our understanding of the United Nations as the body with capacity, suitability, and competence to assume the role of governing and carrying out a global design of the Global Tax Governance architecture, as well as to establish the bases, principles and areas of international tax cooperation. Public International Law rules and general "Principles and Purposes" of the Global Legal Order have been extrapolated to international tax law to achieve this conclusion. Furthermore, we propose the creation of an international organization on International Fiscal Cooperation and Global Fiscal Governance within the UN family itself.

International tax cooperation is a crucial instrument to enhance domestic public resources and to avoid international tax fraud fighting against the flow of illicit capital, as stated in the Addis Ababa Action Agenda, in accordance with the provisions of the 2030 Agenda of United Nations, Monterrey Consensus and Doha Declaration. Nowadays, after the covid-19 pandemic, it is an unquestionable necessity.

**Keywords:** International Tax Cooperation, Global Tax Governance, United Nations, Global Legal Order, Digital Economy, Addis Ababa Action Agenda, 2030 UN Agenda, Principles of international tax cooperation, International Tax Fraud.

Observers have already drawn attention considering that the United Nations “is the only Organization with a global perspective and agenda. The UN is the main forum of the international community.”<sup>2</sup> “The United Nations is an institutional expression of a governing process at the international level at a given time in the world historical process -a process of communicating, coordinating, regulating, and organizing among international actors on issues of common concern or interest in a decentralized state system.”<sup>3</sup>

This study constitutes a charter of a Scientific Treatise on International Tax Cooperation and Global Tax Governance in the Financing Framework of the Sustainable Development Goals, UN 2030 Agenda, AAAA, Doha Declaration and Consensus Monterrey.<sup>4</sup> The treatise has been structured in two books. The first one includes a *General Theory on International Tax Cooperation and Global Tax Governance*. The second book entitled *Global Tax Rule-making and Policy-making on International Tax Cooperation and Global Tax Governance*, incorporates some global Rules-making and Policies-making on International Tax Cooperation and Global Tax Governance, such as: A global Framework Treaty on International Tax Cooperation and Global Tax Governance<sup>5</sup>; a general Principle on International Tax Cooperation; an -UN dependent- International Organization on Cooperation and Global Tax Governance<sup>6</sup>; a worldwide tax

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<sup>2</sup> J.M. BENEYTO *Una nueva organización de Naciones Unidas para el siglo XXI*, Prólogo, p. 14.

<sup>3</sup> R. A. Falk, S.S. KIM and S. H. MENDLOVITZ, *The United Nations and a just World Order*, Ed. Westview Press, Boulder, San Francisco, Oxford, 1991, p. 83.

<sup>4</sup> It is developing under the supervision of Vienna’s Prof. cited.

<sup>5</sup> Under the leadership of Professor Jeffrey Owens, we created the Framework Agreement on International Tax Cooperation and Global Tax Governance. The first version (zero) was presented at UNIDROIT, ROME, in March 2019 during the Conference: Capacity Building, Policy-Making: Global Fiscal Policies on International Fiscal Cooperation and General Fiscal Governance (with the participation of international tax experts). It is awaiting its next publication in a concise time. We would also thanks to Mr. Marco Nicoli, Director of this International Conference, former World Bank Vice-Presidency and my director in the World Bank, where I was a consultant for the HCBM Project. He is currently a special adviser to the OECD (director of the HCBM)

<sup>6</sup> We highlight the article OWENS, J., A.E. GILDEMEISTER AND L. TURCAN, “Proposal for Mandatory Dispute Resolution”, *Tax Notes International*, June 6th, 2016, pp. 1006 et seq.

mathematical model: "The Global Tax Model"; a Code of Cooperation and Global Tax Governance, etc., some of which we have already published<sup>7</sup>.

This paper provides news insights by extrapolating the public international legal justifications from the general theory of the Public International Law and International Economic Law. In the pages that follow, we would attempt to defend the main legal arguments that may support a pre-eminent position of the United Nations Organization in the framework of the International Tax Cooperation and Global Tax Governance relations.

Attending the agents of the international community involving with the international tax cooperation, can be highlighted the critical role played by different agents such as the International Organizations, by the Intergovernmental groups and some associations, etc. In this framework, the role played by the UN International Tax and Development Cooperation Branch<sup>8</sup>(Committee of Experts in International Cooperation in tax matter<sup>9</sup> and others) and both, the International Monetary Fund and the World Bank (both consequence of the agreements reached in Bretton Woods and also belonging to the UN "family") highlight.

We can also emphasize the pre-eminent position adopted by the Organization for Economic Cooperation and Development (OECD) in this matter (through both the Global Forum on Transparency and Exchange of Information for Tax Purposes, and the inclusive platform of the BEPS plan, mainly). In this framework, we also significate the relevance of a few States themselves, as well as the newly created platform for international tax cooperation (constituted by the United Nations, the OECD, the World Bank, and the International Monetary Fund). Other agents as the intergovernmental forums such as the G-20, some

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<sup>7</sup> We refer to the last section of this article.

<sup>8</sup> Financing for Sustainable Development Office (<https://www.un.org/esa/ffd/overview/ffd-office.html>)

<sup>9</sup> We report on the crucial actions carried out by this committee in the following pages, defending the idea that an International Organization for global tax cooperation and governance could be created. We would like to highlight the role played by the International Tax and Development Cooperation Branch (dir. Caroline Lombardo) and the role played by the International Tax Cooperation (Chief of Unit: Michael Lennard). It can see -among others- the Resolution of the Secretary-General (E / 2011/76), in which three ways are proposed to create a new body on international tax cooperation. We go one step further, considering that it would be proposed to reconvert the current committee but into a genuine UN international Organization in international tax cooperation and global tax governance (created by a founding treaty), as one more international organization within the UN family.

associations, the Inter- American Center of Tax Administrations (CIAT), the “Intra-European Organization of Tax Administration,” The African Tax Administration Forum (ATAF)<sup>10</sup>..., and in general the stakeholders, influence on the subjects under analysis.

Notwithstanding, without denying this fact, it will down-to-earth be argued the central thesis of this study based in the primary role of the International Organization: “United Nations” on international tax cooperation and global tax governance, attending the international law rules and attending the general principles and purposes of the Global Legal Order.

**I. The UN is the most important “universal” Organism of the International Community. The UN Charter as a vertex of the international regulatory hierarchy, with a higher legal rank within the Global Legal Order.**

"The UN is the most relevant and essential organization for international community governance. It is due to the importance and breadth of its purposes, as well as for its universality because the majority of the States are included".<sup>11</sup>

The "universal" feature of the United Nations has a vital importance since that the General Assembly of the United Nations had gradually become the instance of the most greater global collective legitimation, with a new "Afro-Asian-Latin American" majority,<sup>12</sup>

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<sup>10</sup> “There are several regional groupings of tax administrators that have been playing an increasingly important role in tax administration capacity-building. These include: the African Tax Administration Forum, the Association of Tax Authorities of Islamic Countries, the Commonwealth Association of Tax Administrators, the Inter-American Center of Tax Administrations, the Centre de Rencontres et d’Études des Dirigeants des Administrations Fiscales, the Intra-European Organization of Tax Administrations, the Pacific Islands Tax Administrators Association, and the Study Group on Asian Taxation Administration and Research. The African Development Bank, the Asian Development Bank and the Asian Development Bank Institute, as well as the Inter-American Development Bank have also been involved in tax capacity-building. Among broader regional groupings, the European Union, the Southern African Development Community and the Caribbean Community have also been active on tax issues”. UNITED NATIONS: *Report of the Secretary-General. Strengthening of institutional arrangements to promote international cooperation in tax matters, including the Committee of Experts* (Resolution E/2011/76).

<sup>11</sup> CASANOVAS DE LA ROSA, O., y RODRIGO, A., *Compendio de Derecho Internacional Público*, ob., cit., p. 217.

<sup>12</sup> Paraphrasing Professor CARRILLO SALCEDO, J.A., *El Derecho Internacional en perspectiva histórica*, ed. Tecnos, 1991, p. 109.

unlike the initial situation when the Western and European democracies held the majority weight. It is a universal body constituted by all States, of a plenary and democratic character characterized by the rule "one State, one vote," as established in Article 18 of the Charter of the United Nations: "Each Member of the General Assembly shall have one vote".<sup>13</sup>

Other International Organizations of an economic nature such as the International Monetary Fund or the World Bank, despite also belong to the UN family" opted by the rule of the States' weighted vote measured in terms of their budget contributions. Therefore, even though in "number of States" these International Organizations are also composed of the vast majority of the States of the world,<sup>14</sup> however, the United Nations in addition to bringing together the most significant number of States, basically all of them, is characterized under the "one state, one vote" rule,<sup>15</sup> with which all have the opportunity to express their opinions through debates, discussions, votes, and explanations of votes through the General Assembly.<sup>16</sup>

Therefore, attending to the financing aspect, the International Monetary Fund attributes the votes of the States following their economic contributions. Each State has proportional votes according to its economic participation in the IMF. This criterion, based on the participation of the States, is also relevant to access to the financial resources of this institution.<sup>17</sup> That rule is known as the equality and unanimity rule. However, researchers

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<sup>13</sup> Without prejudice to the problem that, in your turn, has conferred the aforementioned rule that we will not address at this time. As an exception to this, the article 19 of the Charter of the United Nations, establishes that "A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member." Cf. in CARRILLO SALCEDO, JA, *Textos básicos de las Naciones Unidas*, ed. Tecnos, 1982.

<sup>14</sup> The World Bank is made up of 189 countries and the International Monetary Fund is currently also made up of 189 countries.

<sup>15</sup> Without prejudice also to the veto right of the powerful States on which we refer at another moment of the treaty.

<sup>16</sup> CARRILLO SALCEDO, J.A., *El Derecho Internacional en perspectiva histórica*, ed. Tecnos, 1991, p.153.

<sup>17</sup> LOPEZ ESCUDERO, M., "El sistema monetario internacional (II): el Fondo Monetario Internacional", en HINOJOSA MARTÍNEZ, L., ROLDÁN BAR BERO, J., *Derecho Internacional Económico*, Ed. Marcial Pons, 2010, p. 275.



consider that it, in practice, promotes the preponderance to the United States within the institution.<sup>18</sup> Regarding the International Bank for Reconstruction and Development (IBRD), if a country wishes to be a member of the World Bank, it must first adhere to the International Monetary Fund (IMF).<sup>19</sup>

Beyond the "universal" character of the United Nations, one of the main characteristics to define the United Nations Organization is the legal nature of its founding treaty: The Charter of San Francisco occupies the highest rank within the international order legal source system.

Scholars have long debated and still become discussing the legal nature of the United Nations Charter.<sup>20</sup> Some researchers consider that the Charter of the United Nations constitutes the Constitution of the International Order in a formal sense. On the contrary, some authors regard it as one more treaty and, there are other ecliptic positions that start from the point of seeing the Charter as one more international public Law treaty assigned with an almost constitutional material character due to its intrinsic characteristics. Professor Ángel Rodrigo establishes this triple distinction by citing international doctrine that has been pronounced in favor of each of these positions.<sup>21</sup>

Possibly one of the authors who most clearly summarizes the issue is Professor PASTOR RIDRUEJO, who unambiguously protects the character of the Charter Treaty although it states that it is a *Treaty with constitutional rank* (a position that supports in the following

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<sup>18</sup> LOPEZ ESCUDERO, M., "El sistema monetario internacional (II): el Fondo Monetario Internacional", en HINOJOSA MARTÍNEZ, L., ROLDÁN BAR BERO, J., *Derecho Internacional Económico*, Ed. Marcial Pons, 2010, p. 275.

<sup>19</sup> Following its Foundational Treaty <https://www.bancomundial.org/es/about/leadership/members>

<sup>20</sup> On this subject, the following sources are worth mentioning: BENDETTO CONFORTI, *Le Nazioni Unite*, quarta edizione, Ed. Cedam, Padova, 1986, p. 10; DUPUY (P.M.) *The Constitutional dimension of the Charter of the UN Revisited*, in MP YUNL, 1997, pp. 1 y ss; MacDONALD, "The United Nations Charter: Constitution or Contract?", in *Structure and Process of International Law: Essays in Legal Philosophy Doctrine and Theory*, The Hague, 1983, pp. 889 y ss; MONACO, *Lezioni di Organizzazioni Internazionali*, I, Torino, 1965, pp. 44 y ss., J. KLABBERS, A., PETERS y G. ULFSTEIN, *The Constitutionalization of International Law*, Oxford, Oxford University Press, 2009

<sup>21</sup> RODRIGO A. J. "El desarrollo sostenible como uno de los propósitos de las Naciones Unidas", en *Las Naciones Unidas desde España*, Dir. X. PONS I RAFOLS, 2015, ob. cit., pp. 267 et seq. See also ORIOL CASANOVAS y ÁNGEL RODRÍGO, *Compendio de Derecho Internacional Público*, ed. Tecnos, 2018, p. 220-222.

articles: 2, paragraph 6, 103, 108 and 109 of the Charter)<sup>22</sup>.

Debate continues today, gaining fresh prominence with the arguing that it is undeniable that we are facing an international treaty with apparent peculiarities. These specific features "do not allow us to consider that it is a Constitution with the effects of the Constitution in the internal Constitutional Law. It is a 'sui generis' treaty," because the obligations established in the article 103, are superior to any other contrary, as well as its purposes and its principles are applied to the international community. It has a constitution nature in the substantive and non- legal-formal sense of the term (DÍEZ DE VELASCO).<sup>23</sup>

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Possibly one of the arguments on which the theory of the United Nations Charter is based with more excellent solvency as an international constitution from the substantive or material point of view, is its article 103, to which the UN occupies a higher rightful place within the international legal order.

The controversy about this character has also been revealed by the International Court of Justice in the Lockerbie Case, in whose content the agreements concluded by the members and the obligations arising from the Charter prevail over their obligations under any other international agreement (ICJ, Rec. 1992, par. 39). In addition to the universal characteristic embodied in the fact that almost all sovereign States are a member of that organization, as well as the fact that the General Assembly can examine any matter of interest to the international community.<sup>24</sup>

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<sup>22</sup> Curso de Derecho Internacional Público y Organizaciones Internacionales, 2017, ed. Tecnos, pp. 735 et seq

<sup>23</sup> DÍEZ DE VELASCO, Las Organizaciones Internacionales, ed. Tecnos, 16 ed., 2016, pp. 152154. Substantive or material character is too emphasized by the authors Oriol CASANOVAS DE LA ROSA and Angel RODRÍGO, considering that "the Charter of the United Nations is not the formal constitution of the international community, but it contains some provisions and features with constitutional nature that would be part of the constitution in the material sense of the international community." See CASANOVAS DE LA ROSA y RODRÍGUEZ, A., Compendio de Derecho Internacional Público, 2018, ob., cit., p. 223.

<sup>24</sup> CASANOVAS DE LA ROSA y RODRÍGUEZ, A., Compendio de Derecho Internacional Público, 2018, ob., cit., p. 223.

**II. The United Nations as a foremost international organization of institutionalised international cooperation being the axis of the international cooperation. Thinking in the United Nations as the diametric axis of the international tax cooperation also to achieve the objectives of sustainable development (UN 2030 Agenda).**

In the history of development economics, international cooperation has been thought of as a key factor. In the framework of the new global economy, United Nations has played a crucial role enhancing the international cooperation and consolidating the institutionalised international cooperation.<sup>25</sup>

Major studies evidence that the institutionalised International Cooperation finds its apogee by recognizing the "International Cooperation" as a "Purpose" of the United States Charter of the new international legal Order established in 1945 coinciding with the end of the worst War of all times.<sup>26</sup>

Note: it has previously been observed that the institutionalised international cooperation had a crucial precedent in the League of Nations Agreement, which incorporated the "historical experience of international cooperation in economic, social, cultural and technical matters, deployed throughout the 19th century to through the different Administrative Unions...".<sup>27</sup>

The first elaboration of the Principles and the Purposes of the International Legal Order was established in the United Nations Charter, article 1, which recognizes the international cooperation as one of the purposes of the United Nations and the Member States in their relations with the UN and between themselves.<sup>28</sup>

<sup>25</sup> This feature is also a fundamental axis in the construction of our general theory on international tax cooperation and global tax governance.

<sup>26</sup> See MARIÑO MENÉNDEZ, F., *Derecho Internacional Público. Parte General*. Ed. Trotta, 2005; F. MARIÑO MENÉNDEZ y C. FERNÁNDEZ LIESA (eds.) *El desarrollo y la cooperación internacional*, Madrid, Universidad Carlos III/BOE, 1997, V; ABELLÁN HONRUBIA, "El Derecho Internacional Económico (I): La promoción del desarrollo", en DÍEZ DE VELASCO, *Instituciones de Derecho internacional público*, 15ª ed. Madrid, Tecnos, 2005; A. FERNÁNDEZ TOMÁS, *Las estructuras de cooperación para el desarrollo en Naciones Unidas*, Valencia, 1987.

<sup>27</sup> For all J. A. CARRILLO SALCEDO, *El Derecho Internacional en perspectiva histórica*, ob., cit., p. 58.

<sup>28</sup> MARIÑO MENÉNDEZ, F. *Derecho Internacional Público...*, ob., cit., pp. 77 et seq.

The principle of peaceful cooperation has been suffering a development according with the evolution of the last century. It has been clearly marked by the extraordinary importance of the Resolution 2625 (XXV) approved by consensus of the National Assembly of the United Nations.<sup>29</sup> The International Cooperation Principle included in Resolution 2625 has been considered as a significant Principle of the Global Legal Order.<sup>30</sup>

The Declaration approving Resolution 2625 was commemorated by the United Nations General Assembly through Resolution 50/6, of October 24th, 1995. Subsequent, United Nations Declarations regarding the Millennium Goals have faithfully continued to proclaim these beginnings. The following items can be cited: the Millennium Declaration approved by Resolution 55/2 in 2000; The final document of the World Summit approved by Resolution 60/1 of the United Nations General Assembly, and the 2015 General Assembly Resolution adopting the Sustainable Development Goals of the United Nations 2030 Agenda. On the other hand, the principle of international cooperation remains latent in the current Resolution 2626. A developed form of this principle was included in the Charter of Economic Rights and Duties of the States approved by Resolution 3281 (XXIV) of December 12th, 1974. However, extensive researchers have shown that it has not had the same degree of follow-up as Resolution 2625 itself, not being so favorably received by all the Member States of the United Nations.<sup>31</sup>

Since the United Nations was created, a new phase emerged characterized by the relevance that new international organizations had in the international community, where States lend part of their sovereignty in favor of general interests and commit themselves through multilateral treaties and other type instruments. It then moves on to institutionalized or permanent cooperation, which is represented by an institutional structure whose axis, due to

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<sup>29</sup> “The most authoritative formulation of the fundamental principles of the international order is found in Resolution 2625 adopted by the UN General Assembly on October 24, 1970. MARIÑO MENÉNDEZ, F. *Derecho Internacional Público...*, ob., cit., pp. 77 et seq. In this sense, Prof. REMIRO BROTÓNS, A., *Derecho Internacional*, ed. Tirant Lo Blanch, 2007, p. 72.

<sup>30</sup> See REMIRO BROTÓNS, A., *Derecho Internacional*, ob., cit., pp. 72-74; MARIÑO MENÉNDEZ, *Derecho Internacional Público*, ..., ob, cit.

<sup>31</sup> For BLANC ALTEMIR, A., “Las Naciones Unidas y la Unión Europea: ¿Una comunión de valores y principios?”, ob., Cit., P. 157, “This Resolution was intended to confer on the traditional principles an economic and social dimension that somehow already provided for the Preamble of the Charter itself”.

the importance of its function, is undoubtedly located in the United Nations.<sup>32</sup>

Previous research has established that "The United Nations is the world organization that acts as a space for dialogue and constitutes the axis of international cooperation".<sup>33</sup> Regarding the permanent international cooperation, extensive research recognizes the United Nations as a vertex and from it an institutional structure of international organizations (GONZÁLEZ CAMPOS et alter).<sup>34</sup>

In addition to this fundamental idea of placing the United Nations as a touchstone or diametral axis of international cooperation relations, the debate continues considering that the United Nations, with its multilateral facet, also constitutes the central axis and the fundamental design of the global governance.<sup>35</sup>

Starting from these global legal order considerations, the empirical findings in this study provide a new theory applied to the international tax cooperation field. The study contributes to our understanding of the international tax cooperation and global tax governance framework. This study was undertaken to consider that the UN could be the universal Organism which could assume the leadership functions regarding the international tax cooperation and global tax governance relations between international organizations and other agents of the international community that perform tasks and activities in these fields.

Taken together, these findings suggest a leading role of the United Nations promoting not only "International Cooperation" but also improving and enhancing the International Tax Cooperation and global tax governance in a new comprehensive, equity, and solidarity world stage.

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<sup>32</sup> GONZÁLEZ CAMPOS, J., SÁNCHEZ RODRÍGUEZ, L., ANDRÉS SÁENZ DE SANTAMARÍA, P., *Curso de Derecho Internacional Público*, cuarta edición revisada, ed. Civitas, 2008, GONZÁLEZ CAMPOS, J., SÁNCHEZ RODRÍGUEZ, L., ANDRÉS SÁENZ DE SANTAMARÍA, P., *Curso de Derecho Internacional Público*, cuarta edición revisada, editorial Civitas, 2008, p. 201

<sup>33</sup> PONS I RAFOLS, X. *Las Naciones Unidas desde España. 70 aniversario de las Naciones Unidas*, ob., cit., p. 24

<sup>34</sup> GONZÁLEZ CAMPOS, J., SÁNCHEZ RODRÍGUEZ, L., SÁENZ DE SANTA MARÍA, P. A., *Curso de Derecho Internacional Público*, cuarta edición revisada, 2008, p. 101.

<sup>35</sup> MAYOR ZARAGOZA, F., "El multilateralismo democrático, piedra angular de la nueva era", en PONS I RAFOLS, X. *Las Naciones Unidas desde España. 70 aniversario de las Naciones Unidas*, ob., cit., pp. 41 et seq.

These findings have significant implications for the understanding of how to achieve the financing of the sustainable development goals set out in the 2030 Agenda of the United Nations.

A great approach to tackle this issue was made by the UN Secretary-General, Antonio Guterres, who has recently made a statement affirming how the restoration of confidence in international cooperation is the key to achieve the sustainable development goals, among other factors.<sup>36</sup>

Aligned with this reasoning, one critical factor that constitutes our thesis is the ability of the international tax cooperation figures as an instrument to achieve capital flows to the developing countries. Thus, from the Addis Ababa Action Agenda or also the Monterey Conference, it is settled a particular emphasis on highlighting the role of international tax cooperation to mobilize resources. In the Addis Ababa Agenda, it is pointed out that taxes must be paid where the economic activity is carried out and where the value is created and what are the ways to achieve this goal.<sup>37</sup>

The Addis Ababa Action Agenda of the Third International Conference on Financing for Development makes special mention on international tax cooperation as a key element to obtain financing to meet the objectives of sustainable development.

The 2030 Agenda of the United Nations for Sustainable Development Goals bets on strengthening the tax systems as a priority key to mobilize resources as ways of financing the goals outlined in the 2030 UN Agenda.<sup>38</sup>

<sup>36</sup> ANTÓNIO GUTERRES, Foreword, Introduction of Financing for Sustainable Development Report, 2019, p. iii.

<sup>37</sup> United Nations. General Assembly, Resolution 69/313, Annex. Financing for Development Conference the Addis Tax Initiative – Declaration. [http://www.un.org/esa/ffd/wpcontent/uploads/2017/02/2017-ECOSOC-Tax-meeting\\_Conceptnote\\_08.03.2017.pdf](http://www.un.org/esa/ffd/wpcontent/uploads/2017/02/2017-ECOSOC-Tax-meeting_Conceptnote_08.03.2017.pdf) UN System Task Team on the Post-2015 UN Development Agenda. 2012b. Addressing inequalities: the heart of the post-2015 agenda and the future we want for all. May. At <https://www.un.org/millenniumgoals/pdf/10inequalities20July.pdf> United Nations Economic Commission for Africa (UNECA). 2012a. 'Note for the High-Level Panel Discussion on "Articulating a Post-2015 MDG Agenda."' At [www.uneca.org](http://www.uneca.org) United Nations Economic Commission for Africa (UNECA). 2012b. Report on progress in achieving the Millennium Development Goals in Africa, 2012. At [www.uneca.org](http://www.uneca.org) [Accessed on 14 August 2018]. WANDIA, M.N.D. 'Tracing the birth of and advocacy for the ratification and implementation of the AU Protocol on Women's Rights.' Solidarity for African Women's Rights (SOAR).

<sup>38</sup> ECOSOC special meeting on international cooperation in tax matters Date: 7 April 2017. <http://www.un.org/esa/ffd/events/event/ie-2017-ictm.html#>

The relevance of this thesis is supported by the Addis Ababa Action Agenda (AAAA). It contains a mandate to work to enhance the justice, transparency, efficiency, and effectiveness of tax systems.<sup>39</sup>

At the same time, the Doha Declaration corroborates the need to move forward and make efforts to improve tax collection, investment, and other sources of private financing, thinking of the developing countries.<sup>40</sup> In our post-globalized era, where transactions and finances are increasingly cross-border and where constant capital flows occur many times for deceptive purposes,<sup>41</sup> the countries cannot meet their needs for such sustainable goals their selves. That is why the Addis Ababa Agenda also emphasizes international tax cooperation to combat illicit financial flows.

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<sup>39</sup> United Nations. General Assembly, Resolution 69/313, annex

<sup>40</sup> Financing for Development Conference the Addis Tax Initiative – Declaration. [http://www.un.org/esa/ffd/wp-content/uploads/2017/02/2017-ECOSOC-Taxmeeting\\_Conceptnote\\_08.03.2017.pdf](http://www.un.org/esa/ffd/wp-content/uploads/2017/02/2017-ECOSOC-Taxmeeting_Conceptnote_08.03.2017.pdf)

<sup>41</sup> According to an estimation model presented by KAR / SPANJERS 2015, developing countries obtain losses of more than one million US dollars in illicit flows, mostly from poor application of transfer prices (Illicit financial flows from developing countries: 2004-2013, Washington, DC / Global Financial Integrity).

This paper highlights the recent post-globalization debates where the economic, chrematistic, and financial interests are leading the current global landscape. This study will prove useful in expanding our understanding of the United Nations as the body with capacity, suitability, and competence to assume the role of governing and carrying out a global design of the infrastructure to be chaired by the global tax governance, as well as the international tax cooperation relations (preferably through the creation of an international organization within the UN family itself)<sup>42</sup>.

The insights gained from this study may be of assistance to the United Nations could assume the status of the "axis of the international tax cooperation." It could play a prominent role concerning the rest of the international organizations of its "family," such as the World Bank, the International Monetary Fund, or other different ones as the World Trade Organization, or international organizations - fundamentally the OECD -, as well as intergovernmental groups as the G-20 and even against the omnibus power of some powerful States.

Note that this debate deals with another vital issue that we are discussing in the next section about the UN functions as an International Organization with the capacity to coordinate international organizations (see next section III).

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<sup>42</sup> "In that way, an enabling international environment has been developing during the last years by United Nations towards to enhancing and to improving the International Tax Cooperation, as show the following sources: a) The following resolutions of the Economic and Social Council (ECOSOC) of United Nations (UN): Resolutions 2004/69 of 11 November 2004 and 2014/12 of 13 June 2014, among several, b) The UN General Assembly Resolutions 68/1 of 20 September 2013, 69/313 of 27 July 2015 and 70/1 of 25 September 2015, etc., c) The Doha Declaration on Financing for Development: outcome document of the Follow-up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus; d) The paragraph 29 of the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, in which the Member States emphasized the importance of inclusive cooperation and dialogue among national tax authorities on international tax matters, etc. Both, the 2030 Agenda and the Addis Ababa Agenda have set as one of the priorities the strengthening regimes and fiscal policies, as well as the international tax cooperation". ANDRÉS AUCEJO, E., "The global tax model: building modernized tax systems towards the international tax cooperation and global tax governance: architectures for sustainable development and equity societies (ongoing UN 2030 And AAAA, in OWENS, J., PISTONE, P. and ANDRÉS, J., *International Administrative Cooperation in Fiscal Matter and International Tax Governance*, ed. Aranzadi, 2018, p. 124.



*Scenario of the current actors of economic globalization on tax matters:*

Nowadays is quite agreed there is a worldwide leadership of the OECD on subjects that affect to international tax cooperation and global tax governance matters<sup>43</sup>. The OECD is an international organization that has longer been exercising what we could call a “centripetal force”, acting as an attraction pole for these matters.<sup>44</sup> That should be supported by the political powers of States that run the world, sometimes under the command of international forums such as, in the case at hand, the G-20 (we can just think in some multilateral initiatives from the Global Forum on Transparency and Exchange of Tax Information, or the inclusive platform created by the OECD to the implementation of the BEPS plan, with the corresponding multilateral instruments such as the Common Report Standard or the BEPS plan).

Notice that such multilateral instruments (CRS, BEPS) created by the OECD, have led the approval of *soft law* multilateral instruments to be consolidated into *hard law* global standards, once these instruments spread, are approved and are signed by the States. That is because of the OECD, unlike the United Nations, does not have a National Assembly where the different States of the world are represented. Its number is quite symptomatic, because the UN is made up of practically all the States in the world, which gives it the character of universality already cited and in this international organization, the G-77 group of developing countries does have a significant weight. “All of them” have voice and vote and collaborate in the configuration and design of the rules.

An implication of this is the possibility to shifting the pendulum from the great power held by the OECD, tilting it towards the United Nations, Organization that, we humbly think, could assume the primary role in this matter. The United Nations is the Universal

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<sup>43</sup> Some author of the tax doctrine even goes so far as "The fiscal imperialism of the OECD". CARBAJO VASCO, D. *Manual de Fiscalidad Internacional*, IEF, Madrid, 2016, p. 1701.

<sup>44</sup> It responds to the background that we analyze in our General Theory on International Tax Cooperation cited at the beginning of this paper

Forum:

- Where the worldwide states have a voice, vote, and are governed by the formula "each State, one vote.
- Where it exists a Global Charter that plays the role of the material Constitution of the world, signed in San Francisco in 1945, being the vertex of the global legal order.
- Where there is no need for inclusive regulatory platforms of regulations that only "a few" make.
- Where there is already constituted what we metaphorically identify the "Global Parliament", that is, the General Assembly with the capacity to reach global agreements, either through the Assembly itself, either by international conferences calling.
- Where there is already extensive experience in the design of global rules through the orderly process of the Codification and the progressive development of the International Law.
- Where there is a process for the coordination between international organizations.
- Where, finally, the interests of the entire planet are represented and the States. "All", of course also the G-77, have the capacity for deliberation, negotiation, and signature through its General Assembly.

### **III. The UN as an International Organization with coordination functions among international organizations**

According to the United Nations Charter, the UN is the International Organization with the function of the center coordination of nations. It can see its article 1.4, where it is stated that it is a common purpose of the United Nations "to be a center for harmonizing the actions of nations in the attainment of these common ends."

The issue of UN coordination with its specialized agencies in the economic and social fields is regulated in some articles of the UN Charter, that we transcribe due to their importance in the subject at hand:

## ARTICLE 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63<sup>45</sup>.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

## ARTICLE 58

The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies.

## ARTICLE 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

Therefore, the UN has the task to carry out coordination actions between itself and its specialized organizations, whose responsibility of such functions is of the General Assembly, which delegates it to the Economic and Social Council (ECOSOC). To perform such coordination functions, the ECOSOC can:

- i) Coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and recommendations to the General Assembly and the Members of the United Nations (art. 63.2).
- ii) Take appropriate steps to obtain regular reports from specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its recommendations and

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<sup>45</sup> ARTICLE 63 1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly. 2. It may co-ordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

recommendations on matters falling within its competence made by the General Assembly (art. 64.1).

iii) Make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and those of the commissions established by it, and for its representatives to participate in the discussions of the specialized agencies (art. 70).

To carry out these connections, the ECOSOC requested the creation of a permanent committee of superior employees that would be called "Administrative Committee Coordination" (ACC),<sup>46</sup> and that would be responsible for ensuring that the agreements concluded between the United Nations and the specialized agencies were capable and executed correctly. Participated in this Committee, the General Secretary as chairman, and the superior employees of the specialized agencies. This body existed from its configuration in 1946 until 2001, when it was replaced by the Chief Executives Board (CEB). The CEB was formed by the Secretary-General (as President) plus the Executives Chiefs of international organizations and also other Funds, Programs, and United Nations bodies that do not properly have the status of International Organizations, such as UNDP or UNCTAD, among others.<sup>47</sup>

Note: in the UN, in addition to the specialized international organizations that constitute the bodies of the "family" (colloquially named: ILO, FAO, UNESCO, WHO, IBRD, IDA, IFC, IMF, ICAO, UPU, ITU, WMO, IMO, WIPO, IFAD and UNIDO), there are programs and funds such as UNCTAD (United Nations Conference for Trade and Development), UNDP (United Nations Development Program), UNEP (United Nations Environment Program), WFP (World Food Program), UNHCR (United Nations High Commissioner for Refugees), UNICEF, etc.<sup>48</sup>

These conclusions lead us to another important issue about the rationalization and

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<sup>46</sup> Resolution 13 (III) of September 21, 1946 from the Economic and Social Council

<sup>47</sup> About it, see: GONZÁLEZ GARCÍA, I., *Naciones Unidas y la coordinación para el desarrollo*. Madrid. Dykinson. Universidad de Cádiz, 2005; PONS I RAFOLS, X., "La necesaria coherencia del sistema de las Naciones Unidas", en J.M. BENEYTO y B. BECERRIL (Orgs.), *Una nueva organización de Naciones Unidas para el siglo XXI*, pp. 13 et seq.

<sup>48</sup> See, on these matters: JUSTE RUIZ, J., y BERMEJO, R., *Organizaciones internacionales universales de las Naciones Unidas. Convenios constitutivos*, Madrid, Tecnos, 1993; ESCOBAR, C., y TORRES N., *Código de Organizaciones internacionales*, Pamplona, Aranzadi, 1997, where the constituting treaties of these specialized agencies are located.

coordination of the United Nations itself. Extensive research has concluded critical arguments on this topic, even motivating necessary actions in favor of an amendment of the Charter itself in matters of administrative rationalization and coordination.<sup>49</sup>

There have also been critics that range from the multiplication of organizational structures of the UN itself to the severe difficulties in articulating rules and recommendations between the UN and certain specialized agencies.<sup>50</sup>

As far as we are concerned, there is a fundamental fact to start: the independence of the specialized agencies concerning the United Nations and, in particular, the autonomy of the international financial institutions of the United Nations family itself over the UN international organization. Indeed, international organizations such as the World Bank, the International Monetary Fund (which were created prior the UN itself, as they brought cause of the Bretton Woods Agreements in 1944), the World Trade Organization, the International Development Association (IDA) and the International Finance Corporation (IFC), have a high degree of independence in its operation, decision making, and goal establishment.

The United Nations cannot impose its decisions or recommendations since these agencies are fully autonomous in terms of their policies and decisions. In these cases, said organizations, as stated above, have a character that reinforces their independent nature (concerning UN), notwithstanding that all specialized Organizations are independent international Organizations (not only on financial matters), but the group of international organizations of the UN enjoys international subjectivity.<sup>51</sup>

The theoretical implications of these conclusions regarding the United Nations family are much more intensified, referring to other international organizations like the OECD,

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<sup>49</sup> Very prominent in these matters was the performance of the former UN Secretary General Kofi Annan, Vid. "Improving the effectiveness and coherence of the United Nations system: the role of the Secretariat and the Report of the Secretary General," *Revista Electrónica de Estudios Internacionales*, 2005, p. 5.; The 1997 report, "Renewal of the United Nations: a reform program" (Document A / 51/1950 of July 14, 1997), can also be seen from Koffi Annan.

<sup>50</sup> On these individuals see: GONZÁLEZ GARCÍA, I., *Naciones Unidas y la coordinación para el desarrollo*. Madrid. Dykinson. Universidad de Cádiz, 2005; PONS I RAFOLS, X., "La necesaria coherencia del sistema de las Naciones Unidas", en J.M. BENEYTO y B. BECERRIL (dirs), *Una nueva organización de Naciones Unidas para el siglo XXI*, pp. 13 et seq.

<sup>51</sup> PONS I RAFOLS, X., "La necesaria coherencia del sistema de las Naciones Unidas", ob., cit., p. 21. Vid. También sobre estos particulares: YÁÑEZ-BARNUEVO, J.A., "Setenta años de las Naciones unidas: algunas reflexiones desde una vida en la diplomacia unilateral", en *Las Naciones Unidas desde España* (PONS I RAFOLS, X., Dir.), ob., cit., pp. 51 et seq. 52

which, as we said, plays a significant role in international tax cooperation.

A great deal of previous research on this topic has focused on the cover that gap with the role of G-20 group. One author, who has had high responsibilities in the Spanish government concerning to the United Nations, understands that precisely to cover that gap the appropriate body would be the G-20, so that, in his opinion, it would be necessary to develop more the relationship and interaction between the United Nations system and its established system of organizations because the G20 currently represents as an informal and flexible forum.<sup>52</sup>

We should probably take this thesis with caution, at least on international tax cooperation matters. Notice that the G-20 continues to be an informal forum, according to the author. However, this group has, in practice, a considerable power by encompasses the most powerful countries on the planet. On the other hand their interests do not always coincide with the interests of the entire world, especially with the preferences of the less developed countries that participate in the G-77 forum and that do have a significant presence and representation in the United Nations.

In giving a brief review of the relevant academic literature, according to Professor CARRILLO SALCEDO<sup>53</sup> within the United Nations General Assembly the vast majority of states, that today make up the international community, have the possibility of expressing their opinions about the principles and legal norms that should govern the relations between States. When states agree to a specific rule of conduct and express their acceptance of this rule through the debates, deliberations, voting, and explanations of voting that take place within the General Assembly, then that rule becomes a positive rule of international law, since states are the real international legislators". It is important to emphasize that if these rules are definite rules of international law for all states, they must

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<sup>52</sup> "I think it would be necessary to further develop the relationship and interaction between the United Nations form system and its established system of organizations and what the G20 currently represents as an informal and flexible forum. In my view, the two areas need each other. The G20 may have real power, but it does not have enough representative power or symbolic power, it does not have enough legitimacy. On the other hand, the United Nations has greater formal legitimacy, because of its representativeness, but they enjoy less real power, especially in the economic sphere. Therefore, I think we should work harder to articulate these two realities, which together can contribute decisively to shaping globalization and the world of tomorrow." YÁÑEZ-BARNUEVO, J.A., "Setenta años de las Naciones unidas: algunas reflexiones desde una vida en la diplomacia unilateral", en *Las Naciones Unidas desde España* (PONS I RAFOLS, X., Dir.), ob. cit., p. 62.

<sup>53</sup> CARRILLO SALCEDO, J.A., *El Derecho Internacional en perspectiva histórica*, ed. Tecnos, 1991, p. 153.

be deliberated and voted on by all countries.<sup>54</sup> A public international law researcher pointed out that the problem of the last decades had been the "Marginalization of the UN and other organizations of the system by the hegemonic powers of the world".<sup>55</sup>

Regarding the international tax cooperation and global tax governance topic, the key could be to start with the UN empowerment through strengthening the actual Committee of international tax cooperation experts, to finish converting the current committee in a genuine UN international organization<sup>56</sup> which could bind all the UN committees and sections that are currently working on this matter.

As we have indicated in the UN Resolution E / 2011/76, three options have been identified for the purpose of strengthening institutional arrangements to promote international cooperation in tax matters:

*(a) Strengthening the existing arrangements within the United Nations while retaining the current format of the Committee of Experts;*

*(b) Converting the Committee of Experts into an intergovernmental commission serving as a subsidiary body of the Economic and Social Council;*

*(c) Creating an intergovernmental commission and retaining the current Committee of Experts as a subsidiary body of that commission.*

<sup>54</sup> About this topic can see REMIRO BROTONS, A. *Derecho Internacional*, ob. cit., pp. 72-81

<sup>55</sup> This is expressed by F. MAYOR ZARAGOZA in "El multilateralismo democrático, piedra angular de la nueva era" en *Las Naciones Unidas desde España*, 2015, P. 39, who makes use of the quote by JA CARRILLO SALCEDO: "We live, in effect, in a world in which the established disorder legitimizes the differences between riches and the poor, attributing to the powerful the faculty to perpetuate their superiority and limit in a way imperative the physical, cultural and economic horizons of the dominated". Also on page 43 it can be read: "And so, the United Nations is marginalized and replaced by groups (G 6, G7, G8 and G20) constituted by the richest and most powerful countries on Earth. How could it be pretended, and accepted by several countries, that a handful of states govern 193? The truth is that, in a short time, not only the nation-States and the United Nations were weakened, but, what is even worse, the "democratic principles" were replaced by the mercantile ones, the ethical values by the stock exchanges".

<sup>56</sup> It could think to convert the actual Committee of International Tax Cooperation in a global Tax Cooperation and Governance Organization within the UN International Organizations family

This study considers that it would be convenient to start strengthening the role of the UN tax Committee (option a), until it becomes an International Organization through the approval of a founding treaty, with a similar hierarchy to the economic organizations of the UN family such as the IMF or the BM. Among other functions, this organization would have the function of the axis of cooperation and coordination between all the organisms and forums that are working in these fields, strengthening the current initiatives in these matters inside and outside of the United Nations.<sup>57</sup>

However, we think that option b) would not be the most convenient, due to the issues and criticisms already expressed about the multiplication of organizational structures of the UN itself and the issues that this entails. Countless commissions have increased in the UN, and it creates many problems of rationalization and coordination. In the same way, we do not consider option c) as it would increase these problems even more.

Although we know that the international tax cooperation platform has been created, recent arguments against the International Tax Cooperation platform have been shown, considering it as a club of agencies that so far to be a little effective or efficient.

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<sup>57</sup> We would like to highlight the current cooperation performances. As we can read in the Resolution E / 2011/76:

"UNDP provides assistance on taxation within the framework of its programme on democratic governance, including in such areas as modernization of tax administration and in budgeting. It also addresses some gender and taxation issues. UNDP country offices work upon the request of local authorities with government partners at all levels. The work programme of the United Nations Conference on Trade and Development (UNCTAD) touches on tax issues, especially in relation to the effects of granting tax incentives on investment. The United Nations regional commissions are also increasingly working with partners, especially donor countries, on tax-related issues.

Also, the project undertaken through the South-South sharing of successful tax practices project, a partnership of the Special Unit on South-South Cooperation of the United Nations Development Programme (UNDP), the Department of Economic and Social Affairs, and two non-governmental organizations. The objective of the project is to facilitate knowledge-sharing and cooperation in tax administration and tax policy among developing countries without prejudice to North-South cooperation.

In addition, the Department of Economic and Social Affairs has developed a broader strategy on capacity development in the tax area. The objective is to strengthen the capacity of the ministries of finance and the national tax authorities in developing countries to develop more effective and efficient tax systems... . Another vehicle for implementation will be a United Nations Development Account project, entitled "Strengthening capacity of national tax administrations of developing countries in Latin America..."



The United Nations could be the ideal, necessary and competent organism to carry out the coordination between the international organizations that currently act in the area of international fiscal cooperation and whose action must go beyond the private interests of the States or companies, Governments, multinationals, civil society, etc. It should be a positive global tax policy in a globalized environment characterizing for the cross-border capital movements; characterizing because the tax evasion and tax evasion take a daily nature and characterizing too because the first world states, generally under the mantle of international organizations such as the OECD and government groups like the G20, continue to have an influential and prominent position on the global chart.

Therefore, according to the own assignments entrusted in the United Nations Charter, in particular considering the articles 1.4, 57, 58, 60, 63.2, 64 and 70, the United Nations is the International Organization that, in our humble opinion, could also arbitrate the leadership role to coordinate the relations of international tax cooperation and global tax governance.

#### **IV. The UN as a "resilient" international body in time capable of finding a solution to the global problems of international tax cooperation and global tax governance**

Previous studies of Public International Law have echoed the resistant and resilient nature of the UN throughout the years. It has mainly been stating on the occasion of the successive anniversaries of this international body (sixtieth anniversary, seventy anniversary, etc.).<sup>58</sup>

The UN has resisted the passage of the years as a benchmark of conduct, being the most important international legal milestone throughout the decades. Its principles and purposes constitute the great programmatic principles of the international community, as we studied in previous sections.

Nevertheless, several objections have also been raised against it, such as some criticisms and aspects still pending improvement through proposals for amendments to essential elements of the UN.<sup>59</sup>

<sup>58</sup> About this concept, see: PONS I RAFOLS, X. "Los propósitos y principios de las Naciones Unidas setenta años después", en *Las Naciones Unidas desde España...*, ob., cit., pp. 83 et seq

<sup>59</sup> Between others, see: *Los nuevos retos y la reforma institucional de las Naciones Unidas*, Publicaciones del Congreso de los Diputados, Madrid, 1995; RUBIO FERNÁNDEZ, Eva M., "Sombras y luces en las dos

As noted throughout these decades, the United Nations has played a leading role in creating a framework rule of conduct patterns, legal and political principles, as well as finding solutions to "global problems and international controversies".<sup>60</sup>

There are many problems regarding the field of relations overall taxation as, for example, the consequences of tax on the digital economy, taxation on extractive activities, the effective elimination of double taxation. It is important to highlight the first globalization consequent phenomenon: the non-imposition by any State, or also the difficulties to resolution of the international tax conflicts, the consequences of the transfer pricing world taxation, the issues derived from international tax fraud, the environmental taxation, etc. on most of them the United Nations International Tax Cooperation Commission has been laudably working on for years.<sup>61</sup>

These issues and others (that we develop in our General Theory on International Tax Cooperation and Global Tax Governance) can be characterized as global tax issues that inevitably exceed the private interests of the States in the current world. These issues require comprehensive solutions and a universal frame of reference that provides legal certainty, which equals the force relations between developing and developed countries. It is also essential to establish the red lines and the guides of conduct that must rule the states according to the internationally recognized legal and political principles. That is why the suitable body could be the United Nations, which – in fact - occupies the primary role in International Cooperation according to the United Nations Charter itself and correspondent rules. That is why we defend the crucial part of the UN through the institutionalized tax cooperation to deal with global solutions of global tax issues.

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dimensiones de la reforma del Consejo de Seguridad”, Una nueva Organización de Naciones Unidas para el siglo XXI, J.M. BENEYTO y B. BECERRIL (Dir.), ob., cit., pp. 35 et seq. Very important in this regard has been the Millennium Declaration (A / 55 / L.2) in which the question of the reform of the United Nations was analyzed, among which a better cooperation between the United Nations and its specialized agencies is pointed out and other multilateral organizations.

<sup>60</sup> Among the doctrine of Public International Law, it has been said that "To face common problems that not even the most powerful can solve in isolation, States need permanent and institutionalized cooperation through International Organizations". MAYOR ZARAGOZA, "El multilateralismo democrático, piedra angular de la nueva era", en Las Naciones Unidas desde España, ob., cit., p. 40. Or also, in this line of thinking we can read the following: "The United Nations should and can exercise a world leadership role in solving global problems and international disputes and, especially, in developing frameworks of reference, of behavior patterns and of legal and political principles of universal scope". PONS I RAFOLS, Xavier (director), Las Naciones Unidas desde España. 70 Aniversario de las Naciones Unidas, 2015, ONU, Introducción, p. 24. 61

<sup>61</sup> <https://www.un.org/esa/ffd/ffd-follow-up/tax-committee.html> . We would like to highlight the extraordinary work done by both the International Tax and Development Cooperation Branch and the Committee of Experts on International Tax Cooperation and its sub commissions.

**V. The UN as the referent International Organization capable of providing a Global Regulatory Framework for International Tax Cooperation Relations through the functions of codification and progressive extension of Public International Law: Towards a Treaty or Agreement on International Tax Cooperation and Global Tax Governance, and towards a global Principle on International Tax Cooperation.**

The United Nations is the body to undertake the functions of codification and progressive development of Public International Law (Article 13 of the UN Charter), whose tasks are carried out mainly through international treaties.<sup>62</sup>

Because of its trait, due to the functions that are established under its Charter, due to its competences, protocols, and procedures, we consider that the UN is the International Organization that should assume the function of the Generating International Organization of the regulatory framework of international tax cooperation relations and global tax governance.

Nowadays, it can be appreciated in the following circumstances:

- There is a vacuum about the objective delimitation of the contours of the concept of international tax cooperation. That is true that Financing for Sustainable Development Report (2019, UN) includes a concept about it but that it could be considered as not completely finished and a little biased.<sup>63</sup>
- There are many international organizations and other types of international subjects, as well as international regulations and standards, which often generate overlaps, gaps or dysfunctions problems.<sup>64</sup>

<sup>62</sup> V. CARRILLO SALCEDO, J. A., *El Derecho Internacional en perspectiva histórica*, ed. Tecnos, 1991, p. 155 where it can be read: "The codification and progressive development treaties of international law constitute a particular type of agreement, as they are general conventions within the meaning of Article 38.1.a) of the Statute of the International Court of Justice, that is, treaties that they refer to prevailing norms of international law or to matters of public interest to the international community as a whole."

<sup>63</sup> Financing for sustainable development report 2019 of the Inter-agency Task Force on Financing for Development, UNITED NATIONS, 2019. We include a general concept about in our General Theory on International Tax Cooperation and Global Tax Governance.

<sup>64</sup> V. ANDRÉS AUCEJO, E., "Towards an International Code for Administrative Cooperation in Tax Matter and International Tax Governance", *Revista de Derecho del Estado*, n. 40, p. 62, for example in connection with the different rules and standards to exchange international tax information between States and its subsequent problems (also consultable on line).

- There is no tax dispute resolution body between States with worldwide reach. In this regard, we recommend the interesting work done in Vienna, directed by Professor Jeffrey Owens, in which it proposed the creation of an International Tax Dispute Resolution Body under the auspices of the UN.<sup>65</sup>
- The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting, refers only to the application of BEPS and solely concerning certain specific matters, foreseeing the possibility of updating -a few items- of the agreements to avoid double taxation for the signatory countries (which, on the other hand, can be a source of conflicts on treaties interpretation).

However, we propose not only some pointed measures to avoid the transfer of tax bases by multinationals and a few pointed measures to update the treaties to avoid double taxation. We are defending the global cooperation in tax matters through a Global Framework Treaty on Cooperation and Global Tax Governance (which also includes the international trade), with a worldwide scope of international taxation from the subjective and objective point of view.

Nowadays, in the second globalization, to our way of thinking the main issue is NOT so much of eliminating double taxation (which is also essential and not achieved yet), but, the leading global point is THE NON-TAXATION in any State. Currently, the most pressing issue is the NON-TAXATION in A and non-taxation in B. That is why we humbly think it is not enough to establish some specific actions (to avoid tax bases transfer for multinationals basically) and it is not enough a multilateral treaty with only "a few" rules just to update the bilateral tax treaties to avoid double taxation.

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<sup>65</sup> OWENS, J., A.E. GILDEMEISTER AND L. TURCAN, "Proposal for Mandatory Dispute Resolution", *Tax Notes International*, June 6th, 2016, pp. 1006 et seq.

Overall, this study strengthens the idea that the solution must point towards the creation of a GLOBAL FRAMEWORK TREATY ON COOPERATION AND

INTERNATIONAL TAX GOVERNANCE that sets the global basis for the cooperation between all the States in the world in the areas of international tax cooperation and global tax governance (including also de International Trade) whose themes could be discussed and approved within the United Nations. The UN is the International Organization that in our opinion should undertake this action, for all the legal reasons that we have contributed in this work.

Hence, our thesis aims to displace the pendulum in favor of the United Nations, strengthening its role as an International Organization that should carry out the global fiscal policy rules in the field of international taxation. Among other great rules and global tax policies, we advocate that under the United Nations, could be possible to negotiate and to approve the creation of necessary Rule-making and Policy-making measures as the following:

I) A Framework Agreement/Treaty on International Tax Cooperation and Global Tax Governance

Coming back on our opening words, under the leadership of Professor Owens, we created the Framework Agreement on International Fiscal Cooperation and Global Fiscal Governance. The first version (zero) was presented at UNIDROIT, ROME, in March 2019 during the Conference: Capacity Building, Policy-Making: Global Fiscal Policies on International Fiscal Cooperation and General Fiscal Governance. Experts in international taxation from the European Tax Confederation, the World Bank, the OECD, the IBFD of the European Union and researchers from the University of Barcelona participated in this international seminar. The framework agreement is pending publication.

II) A new Principle on International Tax Cooperation<sup>66</sup>

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<sup>66</sup> The "General Principle on International Tax Cooperation" has been created by the author Eva Andrés Aucejo into her General Theory on International Tax Cooperation and Global Tax Governance (pending publication of the year 2020 or beginning of the year 2021). Nevertheless, the singular charter dedicated to this Principle will be imminently published.

III) Towards a new **United Nations Dependent International Organization**<sup>67</sup>, with proper Statute, secretariat, with specific functions and personnel, as a body that can channel, codify and harmonize the global regulations dispersed in this matter and, more importantly, design the architecture of new international cooperation relations in the framework of a new Global Tax Governance, as this is still to be developed.

The model would be the International Organizations already existent in the UN family and, therefore, should also be governed by the same legal frames. That is to say:

- a) By the provisions of the Charter of the United Nations, which establish the possibility of assisting International Organizations and also that such International Organizations participate in some of the UN bodies.
- b) Through the constituent instruments of the Specialized Organizations.
- c) Through the Agreements concluded with the provisions of Article 63 of the Charter and other intersectoral agreements that may exist.<sup>68</sup>

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<sup>67</sup> It constitutes a chapter of the cited General Theory on International Tax Cooperation... , which, however, is been publishing both as a charter of the General Theory and a singular article.

<sup>68</sup> Xavier PONS I RÁFOLS, "La necesaria coherencia ...", ob, cit., p. 21; Also: USTE RUIZ, M., CASTILLO DAUDÍ, M. Y BOU FRANCH, V., *Lecciones de Derecho Internacional Público*, ed. Tirant Lo Blanch, Valencia, 2011, pp. 244 et seq.

- The constitution of a **Cooperation and International Tax Governance Code** (under the articulated text format)<sup>69</sup>
- The creation of a **mathematical model of Global Taxation**, in which, from our point of view, should be developed more successfully by the International Monetary Fund. In this sense, our proposal involves making a global model based on the TADAT initiative of the IMF as a model for assessing the efficiency of domestic Tax Administrations, but we consider that this TADAT model is insufficient since it should necessarily include international and global aspects, in a manner that the model could incorporate descriptors, indicators and good practices in cooperation and global tax governance<sup>70</sup>

**GLOBAL TAX "RULES AND POLICIES" ON INTERNATIONAL TAX COOPERATION AND GLOBAL TAX GOVERNANCE**



<sup>69</sup> ANDRÉS AUCEJO, E. "Toward an International Code for administrative cooperation in tax matter and international tax governance". *Revista de Derecho del Estado*, SCOPUS, 2018, n. 40

<sup>70</sup> As has already been published by its author, EVA ANDRES AUCEJO, "The Global Tax Model" in the book edited by OWENS, J. Pistone, P., ANDRÉS AUCEJO, E., entitled *International Administrative Cooperation in Tax Matter and Global Tax Governance*, Ed. Thomson Reuters, 2018. The mathematical matrix that collects this global model with descriptors, indicators and good practices is patented through the UB's digital repository for five years.

Note: the initiative of TAX COURT FOR TAX MATTER belongs to J. OWENS, A.E. GILDEMEISTER AND L. TURCAN, "Proposal for Mandatory Dispute Resolution", Tax Notes International, June 6th, 2016, pp. 1006 et seq.

### Conclusions:

Some realities define our scenario nowadays:

- a) The States still show a high reluctance towards international tax cooperation<sup>71</sup>.
- b) Currently, the real issue of international taxation is due not so much to the topic of international double taxation (still pending). Any way, the real challenge lies in the non-international taxation, of the way that the states try to evade the taxes not to tax in any jurisdiction or to do it in minimum percentages.
- c) The institutionalized cooperation policies for developing countries (third world development aids) have not been demonstrated as an effective instrument.
- d) *"There currently exists no single entity with the global legitimacy, resources and expertise to serve as a single coordinating body for international tax cooperation. The possibility of establishing such a single norm-setting body has found little support in practice. In the absence of such an entity, organizations active in this area must work together with a view to meeting common tax and development goals in the most efficient, responsive and participatory ways"*.<sup>72</sup>

Unfortunately, tax loopholes, overlapping regulations, tax gaps, among others, are legal tender nowadays.

Facing it, International tax cooperation is a crucial instrument to enhance domestic public resources and to avoid international tax fraud fighting against the flow of illicit capital, as stated in the Addis Ababa Agenda, in accordance with the provisions of the 2030 Agenda of United Nations (and the regulations developed by the Iner-agency Task Force on Financing for Development) and also with Monterrey Consensus and Doha Declaration.

<sup>71</sup> Even with all the initiatives, we have said so far, primarily sponsored by the OECD.

<sup>72</sup> Resolution E/2011/76 General-Secretary, cited.



This study considers international tax cooperation and global fiscal governance great ways of dealing with these problems. In particular, **this work is based on the leading role of the "United Nations" on international tax cooperation and global fiscal governance.** Public International Law rules and general "Principles and Purposes" of the Global Legal Order have been extrapolated to international tax law to achieve this conclusion.

And the OECD, a self-directed body so far to occupy this space - no doubt with the countries support that exercise hegemony in the world economy-, is not the world, but the rich world, with a composition of 37 countries.

This approach will prove useful in expanding our understanding of how the United Nations should create Rule-making (binding regulations) and Policy-making (standards) on international tax cooperation and governance.

The methods able for it, could be through the UN itself, strengthening on its current infrastructure. The United Nations is perfectly competent to create these rules with its actual composition. However, the optimal formula would probably be the constitution of a new UN International Organization on International tax cooperation and global fiscal governance (within the UN "family"). The option of creating an specific UN body of international tax cooperation was also<sup>73</sup> proposed within the Addis Ababa Conference 2015, United Nations, but unfortunately, it was not finally accepted by countries such as Great Britain or the United States.

This study considers an integral dimension of the matter. It includes international tax cooperation, which refers to the institutionalized relations of international tax cooperation between States, but also the global fiscal governance relations, assuming international and institutional tax cooperation, as well as public-private regulations on domestic and international taxation, such as: the protection of the rights of taxpayers and intermediaries at the national and international levels, policies against national and international tax fraud, budget policies, tax compliance policies, new global proposals on resolution mechanisms for disputes for conventional and alternative conflicts, such as international

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<sup>73</sup> Before in the UN Resolution E/2011/76

mediation and interstate agreements (beyond MAPs), etc.<sup>74</sup>

The present article suggests our responsibility towards the centuries and generations are coming. The design of a future discipline or legal order requires drawing with architectural lines of the new tax legal order (in the same way as if we decided to create a new city). It cannot be built randomly. It cannot be inspired by chrematistic, partisan, or discretionary interests at the service of some economic policies of powerful countries (sometimes dressed under the cloak of International Organizations<sup>75</sup>) at some point in their political history.

Greater efforts are needed to ensure the global design of the International relations for tax cooperation and good governance through the United Nations: the Organization that is entrusted by the "world Charter" to carry out the pacific and institutionalized International Cooperation. This is the central thesis we are defending. It cannot be created people's rules without the peoples.<sup>76</sup>

"Global Rules require Global Parliaments." Eva Andres

And the only "Global Parliament" (metaphorically speaking) is the United Nations General Assembly. With all its limitations, but the only one. Therefore, both this study and our General Theory suggest rescuing the driving spirit that led to the United Nations Charter, which rests on the emblematic phrase: "We the peoples."

*Hoy más que nunca necesitamos rescatar el espíritu de la Carta de San Francisco, necesitamos volver sobre los posos que dejaron Declaraciones como la Declaración de St. Jame's Palace en Junio de 1941 y La Declaración de Naciones Unidas de Enero de 1942, La Carta del Atlántico de 1941 (los grandes principios que en su día firmaron los presidentes Roosevelt y Churchill), la Conferencia de Teherán y de Yalta (1943 y*

<sup>74</sup> V. ANDRÉS AUCEJO, Eva. "The global tax model...", in the book: *International Administrative Cooperation in Tax Matter*, directed by OWENS, J., PISTONE, P., and E. ANDRES., See the epigraph: "The Global Tax Governance", ed. Thomson Reuters, 2018, p. 131.

<sup>75</sup> See REMIRO BROTONS, A. *La hegemonía norteamericana, factor de crisis de la O.E.A.*, ed. Publicaciones del Real Colegio de España en Bolonia, 1972.

<sup>76</sup> Up to now, the OECD has the greatest specific weight in this area, who in fact have approved the multilateral instruments of the CRS or also BEPs, obtaining the accession of a large number of jurisdictions. However, despite the accession of other states through the inclusive platform, the new states meet regulations that they have not developed, in addition, for example, as the G-77 is known and many other states although they can attend OECD meetings have no vote or decision-making capacity.

*45 respectivamente), y la Cumbre de Dumbarton Oaks en Bretton Woods. Todos ellos firmados en el desarrollo de la guerra más sangrienta y multitudinaria de todos los tiempos y que trajeron tiempos de prosperidad, desarrollo y futuro. Y también, en Europa, necesitamos volver sobre el Concierto Europeo que reinó para la redistribución de Europa, donde se instauraría el principio de cooperación pacífica sin fisura alguna (Eva ANDRÉS AUCEJO).*

Hence, this approach promotes to move the pendulum towards the G-193 as a representation of practically all the States of the world, under the rule "One State, one vote. United Nations is the global forum where all countries do have voice and vote, where there are no need for inclusive regulatory platforms that only a few elaborate; where there is an organ: the Assembly General able to reach global agreements either through the Assembly itself, or through international conferences; where "International Law" of *ius cogens* nature is designed through the orderly process of codification and progressive development; where, in short, are collected the interests of the entire planet with capacity to negotiate and to sign.

This study enhances the role of the UN in creating rule makes and policy making standards on international tax cooperation and global tax governance, abounding in its functions the **codification and progressive development** of International Law (art. 13 Charter), in its well-known facet as a body in charge of an institutionalized and permanent **international cooperation** (art. 103 Charter), which holds sovereignty for the **coordination** of States and International Organizations as has been attributed to it under article 1.4 of the Charter of United Nations, creator of the **purposes and principles** of the global legal order (arts.

1.3 and 2 of the UN Charter) developed by General Assembly Resolution 2625 (XXV), where the "Principle of Peaceful Cooperation" is typified to all people. Principles that constitute the most authoritative formulation of the fundamental principles of International Law (Fernando MARIÑO), among other reasons. All this seasoned from the perspective of the Public Treasury with economic policies of income redistribution, equitable distribution, neutralization of inequalities, etc.

In a synoptic way, we present the table that includes these general considerations:

SUBJECT	PREVALENT POSITION	LEGAL FOUNDATION
A	<p>NORMATIVE HIERARCHY Global</p> <p>The United Nations Charter is the constitution in the material sense of the International Ordinance; therefore, it occupies the position of vertex of the world source system. The UN occupies the highest legal rank in the International Legal Order</p>	<p>Article 103 et alter</p> <p><i>United Nations Charter</i></p>
B	<p>UNIVERSALITY</p> <p>The United Nations is constituted by almost all the States of the world (G-193) and is governed by the rule “Every Country, one vote”</p>	<p>Article 3, 18</p> <p><i>United Nations Charter</i></p>
C	<p>INTERNATIONAL COOPERATION</p> <p>The UN is the International Organization that constitutes the diametral axis in permanent International Cooperation, assuming international cooperation as purpose, beginning and end.</p>	<p>Articles 103, 1 and 2</p> <p><i>United Nations Charter</i> (Art. 1.3, art. 13.1, 55, 56 Charter and Resolution 2625 UN</p>
D	<p>INTERNATIONAL COORDINATION</p> <p>The UN is the international body with responsibility for coordinating States and International Organizations.</p>	<p>Articles 1.4 58, 60, 63.2 64 and 70</p> <p><i>United Nations Charter</i></p>
E	<p>INTERNATIONAL CODING</p> <p>The UN is the International Organization with functions of codification and progressive development of International Law.</p>	<p>Article 13</p> <p><i>United Nations Charter</i></p>
F	<p>INTERNATIONAL ORDER: global principles and purposes</p> <p>The UN as an International Organization that constitutes the Principles and Purposes of the International Community.</p>	<p>ARTICLES 1 and 2</p> <p><i>United Nations Charter Resolution 2625 UN</i></p>

Eva Andrés Aucejo, UB, Barcelona, March 30<sup>th</sup>, 20200