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Are the Imposed Principles Standard? A Review of Imposing Standards: The North-South Dimension to Global Tax Politics by Martin Hearson

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Book Review

Are the Imposed Principles Standard? A Review of *Imposing Standards: The North–South Dimension to Global Tax Politics*.

Introduction

The publication of Martin Hearson's book, *Imposing Standards: The North-South Dimension to Global Tax Politics*, coincided with heated international discussions of the most substantial policy proposals in the field of international taxation in the last century.[1] Hearson's work provides insights on how the developed countries exerted control over the negotiations of the double taxation agreement (DTA) regime, which is the basis of the current international taxation framework. It explains how the negotiations resulted in a framework that works well for the developed countries, but does not substantially address the tax revenue needs of the developing countries. The publication of the book is timely because some of the same tensions that underlie those DTA negotiations also underlie the current policy proposals on the tax consequences of the digitalized economy.

Hearson's book examines the unequal bargaining power between the developed countries (also described as capital exporting countries in this

1. Martin Hearson, *Imposing Standards: The North-South Dimension to Global Tax Politics* (London: Cornell University Press, 2021).

review) and the developing countries (also described as capital importing countries in this review) in the negotiation of tax treaties.[2] Hearson details how the developed countries were able to infuse their standards into tax treaties without considering their compatibility with the economies of their treaty partners, and the negative impacts those standards might have on tax revenue needs of those treaty partners. The analysis is supported by empirical data from selected countries, interviews with key revenue officers, analysis of official records, and review of tax treaties of the United Kingdom, Zambia, Cambodia, Vietnam, and other countries. The book can be broadly divided into two parts. The first part provides a rich literature on a variety of issues affecting the interests of the developing countries in the negotiation of tax treaties while the second part puts those issues in the context of the empirical data of the comparable countries.[3]

Hearson's work will undoubtedly facilitate critical review of the recent international policy debates around the appropriate means of ensuring taxation of profits resulting from the digitalized economy. The digitalized economy enables multinational companies to exploit gaps and mismatches in tax rules to avoid paying taxes to countries where they operate.[4] In order to address this tax avoidance strategy, which the Organisation for Economic Co-operation and Development (OECD) describes as base erosion and profit shifting (BEPS), the G20 and the OECD established a forum in 2016, known as the BEPS Inclusive Framework, for countries to negotiate another framework that will complement the existing network

2. Developed countries in this context are high-income countries while developing countries are low-income countries.

3. Chapters 1-4 constitute the first part, while the second part is in chapters 5-8. The book collectively refreshes memories and awakens thoughts on the past political dynamics between the global north and the global south.

4. It is estimated that between 100-240 billion USD revenue is lost annually to the base eroding and profit shifting activities of the multinationals. The LICs who rely on corporate income tax are likely to be hard-hit by this significant revenue loss. See OECD, "BEPS: Inclusive Framework on Base Erosion and Profit Shifting," online: *OECD* <www.oecd.org/tax/beps/>.

of bilateral tax treaties.[5] As part of its works on reforming international tax, the BEPS Inclusive Framework has proposed a two-pillar solution (Two Pillar) to address the tax challenges of the digitalized economy.[6] A significant number of developing countries are included in the BEPS Inclusive Framework, and they may be susceptible to the same issues examined by Hearson, since the DTA regime and the Two Pillar regime are products of negotiations among countries.[7]

This book review weaves the issues examined by Hearson into three distinct but related strands and examines them within the context of the ongoing negotiations of the Two Pillar. Each of these strands is examined in each of the sections that follow this introductory part. This introductory section gives background facts about Hearson's book and how the book's theme is connected to the negotiations of the Two Pillar. Section I examines the power asymmetry in international tax negotiations and its impact on the revenue needs of the developing countries. Section II focuses on the covert but influential role of multinationals in the negotiation of tax treaties between their home and host countries. Section III analyses how the developed countries use the OECD as a gateway to diffuse and impose their standards under the guise of advocating for

5. The global financial crisis in 2008 necessitated the need for the G20 to ascend from its ministerial level to leaders' level to address the financial crisis. The G20 adopted the OECD platform to carry out its leadership role in restoring financial stability. See Richard Eccleston, *The Dynamics of Global Governance: The Financial Crisis, the OECD, and the Politics of International Tax Cooperation* (Cheltenham, UK: Edward Edgar, 2014) at 49; OECD, *Addressing Base Erosion and Profit Shifting* (Paris, FR: OECD, 2013) at 14, online (pdf): <read.oecd-ilibrary.org/taxation/addressing-base-erosion-and-profit-shifting_9789264192744-en#page1> [perma.cc/7327-XM2K]; OECD, *Action Plan on Base Erosion and Profit Shifting* (Paris: OECD, 2013) at 25, online (pdf): <www.oecd.org/ctp/BEPSActionPlan.pdf> [perma.cc/TR7X-627B]. The relationship between the G20 and the OECD produced the Base Erosion and Profit Shifting (BEPS) Project in 2013. The establishment of the Inclusive Framework in 2016 was triggered by the 2015 Addis Ababa Action Agenda inclusive growth and cooperation. See *Report of the Third International Conference on Financing and Development*, UNDESA, UN Doc A/CONF.227/20 (2015) 1 at 4-42; G20 Antalya Summit, *G20 Finance Ministers and Central Bank Governors Communiqué* (Ankara: 5 September 2015), online: <www.g20.utoronto.ca/2015/150905-finance.html> [perma.cc/5Y6C-3H3X]; G20 Antalya Summit, *G20 Leaders' Communiqué* (Antalya: 16 November 2015), online: <www.g20.utoronto.ca/2015/151116-communique.html> [perma.cc/FFD4-YJSR]. The Inclusive Framework started working in June 2016 with 82 members and the membership has grown to 142 members at the time of writing this paper. It also includes 14 observer groups, which are drawn from international and regional institutions. Notable among them are the United Nations, the International Monetary Fund, the World Bank Group, and a host of others. See OECD, "What is BEPS?" online: *OECD* <www.oecd.org/tax/beps/about/>.

6. OECD, OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (8 October 2021), online (pdf): <www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [perma.cc/BXW7-6HAV].

7. See OECD, *Members of the OECD/G20 Inclusive Framework on BEPS* (2022), online (pdf): <www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf> [perma.cc/4UB2-HGYD].

compliance with international standards. The last section concludes the book review with recommendations on how the developing countries can leverage their inclusion in the BEPS Inclusive Framework to demand for a new regime that protects their tax revenue needs.

I. *The power asymmetry in international tax negotiations*

1. *The Supremacy Battle of 1946*

There is no better way to demonstrate the power asymmetry between the developed and the developing countries than the substitution of the Mexico treaty model with the London treaty model at the Somerset House, London in 1946.[8] Hearson's review of that moment reveals the influence of the developed countries at the negotiation table.[9] The majority of the capital exporting countries were absent at the previous conference held in Mexico in 1943 (which resulted in the Mexico treaty model), as they were engaged in the Second World War. The capital-importing countries, primarily Latin American countries at that time, leveraged the absence of the capital-exporting countries at the Mexico conference to design the Mexico treaty model that allocated stronger taxing rights to the source (capital importing) countries. The capital exporting countries attended the subsequent tax treaty conference in London in 1946. At that conference, they replaced the 1943 Mexico treaty model with another model (known as the London treaty model) that allocated greater taxing rights to the residence (capital exporting) countries.[10] The London treaty model became the foundation for the OECD model tax treaty, which is now commonly adopted in the existing network of bilateral tax treaties.

The negotiations around model tax treaties in the 1940s present lessons to the developing countries who find themselves in a similar position in the BEPS Inclusive Framework. The developed/capital exporting countries employed their political and economic influences to override the 1943 Mexico treaty model, just as they have leveraged their early intervention

8. Kim Brooks & Richard Krever, "The Troubling Role of Tax Treaties" in Geerten M M Michielse & Victor Thuronyi, eds, *Tax Design Issues Worldwide, Series on International Taxation*, Vol 51 (Alphen aan den Rijn: Kluwer Law International, 2015) 159 at 163. The European countries and the United States were the major capital exporting and rich nations of that time. The then political dynamics were between these nations and the capital importing nations, the majority of which were Latin American countries. The appellation of capital exporting and capital importing countries can be substituted with developed countries and the developing countries respectively. The LICs are generally capital exporting countries; the rich countries may play dual roles of capital exporting and capital importing countries.

9. Hearson, *supra* note 1 at 40. The use of LICs includes any other classification of countries other than the developed countries.

10. The pro-residence countries tax treaty is preferable to the capital exporting countries as it gives primary taxing rights to the residence countries, where the multinationals are domiciled.

in international tax (also described as the first mover advantage) to design a regime that is prejudicial to the interests of developing countries who joined the regime after it has been completed.[11] There is possibility that the developed countries will also deploy the combined strengths of their political and economic influences and the first mover advantage to determine the final outcome of the Two Pillar. The developed countries have the first mover advantage in framing the tax problems of the digitalized economy and putting those problems on the international agenda.[12] They also identified the OECD—an exclusive institution that is constituted by them—as the platform for negotiation of the identified problems (rather than a more inclusive institution, for example, the UN) for both technical and political reasons.[13] The rational and strategic choice of the OECD platform and the strength of developed countries in all strata of global economic governance are signals that there could be a repeat of the 1946 supremacy battle. The developing countries should expect this and collectively work to avoid a repeat of the supremacy battle and resist any attempt to override their interests in the Two Pillar.

11. Diane Ring, "International Tax Relations: Theory and Implications" (2007) 60:2 Tax L Rev 83 at 151. Ring argues that the first mover advantage enables the early participants in international tax cooperation to design a regime that the participants in the second generation, such as LICs, will find difficult to change. The continued use of the regime by the LICs as it is in the network of tax treaties is not a reflection of their choice, but a result of constraints embedded in the regime.

12. The digital tax challenges are a direct result of the digitalized economy. Since the digital disruption started in the developed countries, they had the first share of the challenges and their efforts to address those challenges formed the basis upon which the Two Pillar regime is formed. The United States had the first experience when companies employed digital mechanisms to undertake inter-states commercial activities without having physical presence in states where their customers resided. This affected administration of the United States sales and use tax, as the company must be physically present in the other states before its obligation to collect the tax could arise—and this development resulted in the enactment of the Internet Tax Freedom Act. See David C Powell, "Internet Taxation and U.S. Intergovernmental Relations: From *Quill* to the Present" (2000) 30:1 J Federalism 39 at 41. As the economy was becoming more globalized and digitalized, the multinationals were able to use the potentials of the new economies to design a grand scale of tax planning and profit shifting strategies. The United States and the United Kingdom separately quizzed multinationals like Apple, Starbucks, Amazon and Google, and the common conclusion from these separate investigations was that these multinationals were not paying fair taxes in jurisdictions where they were operating. These findings triggered a new phase of multilateral cooperation under the base erosion and profit shifting, which addresses the digital tax challenges, among other issues, and is coordinated by the OECD. See Ruth Mason, "The Transformation of International Tax" (2020) 114:3 AJIL 353 at 364-366.

13. The early developed countries that identified the digital tax challenges belong to the G7. The reform process was triggered through the G7 and the G20, both of which are malleable by the developed countries. The G20 plays a visible role in this reform process, but due to the fact that the G20 does not have the required structure to undertake the process, the OECD forum was chosen for the global cooperation. The choice of the OECD forum at a time when the UN had comparable resources is best explained by the theory of rational choice of international institutions, as the OECD is the only institution that can strategically realize the agenda of the developed countries. For a detailed analysis of rational choice theory see Thomas Rixen, *The Political Economy of International Tax Governance* (Basingstoke, UK: Palgrave/McMillan, 2008) at 16-19.

The negotiation around inclusion of a permanent establishment (PE) clause in tax treaties is another issue that arose from the 1946 supremacy battle. It is necessary to reflect on this issue because of its striking similarity to the Two Pillar, even though it is not discussed in Hearson's book. The PE clause is a fundamental provision in tax treaties that states the threshold of business activities that triggers the taxing right of source countries—it determines when, and the extent to which, source countries can impose tax on active business incomes of foreign entities within their jurisdictions.[14] Considering the significant impact of the PE clause in the exercise of source countries' taxing rights, the capital importing countries removed the PE clause in the 1943 Mexico treaty model. The capital exporting countries, however, re-inserted it in the 1946 London treaty model.[15] The PE threshold, thus, became one of the principles used by the developed countries to restrict taxing rights of the developing countries. Except in a few cases, the developed countries often set the PE threshold too high when negotiating tax treaties with the developing countries.[16]

I think there were probably two conflicting views around the appropriate means of treating the PE clause. First, the developing countries' position could be either removal of the PE clause or setting the PE threshold at a relatively modest level which would enable them to effectively exercise their taxing rights. Second, the developed countries' view could be either exemption of foreign incomes from tax liability in source countries or setting the PE threshold quite high in order to reduce tax exposure of their multinationals. One of the advantages of a high PE threshold to the developed countries is that it reduces their multinationals' foreign tax liabilities and, consequently, the foreign tax reliefs that are

14. The PE clause does not apply to passive incomes, which are incomes earned on passive investments, such as dividends, interests and royalties. What constitutes the PE for active business income varies from one tax treaty to another.

15. *League of Nations: Fiscal Committee: Report on the Work of the Tenth Session of the Committee (*25 April 1946) at 18, online (pdf): <deriv.nls.uk/dcn23/1903/5356/190353560.23.pdf> [perma.cc/YB9B-MQJD]. By way of comparison, Article IV(I) of the Mexico Model provides "Income from any industrial, commercial or agricultural business and from any other gainful activity shall be taxable only in the State where the business or activity is carried out." The pre-condition of permanent establishment was deliberately left out. However, Article IV of the London Model provides the opposite. It states, "Income derived from any industrial, commercial or agricultural enterprise and from any other gainful occupation shall be taxable in the State where the taxpayer has a *permanent establishment*" (emphasis added).

16. Canada's tax treaties with the LICs and its equal HICs are model examples for the differential approaches. Canada's tax treaties with LICs have a lower threshold of PE, below the OECD model, but its treaties with HICs align with the OECD model of high threshold. See Kim Brooks, "Canada's Evolving Tax Treaty Policy toward Low-Income Countries" in Arthur Cockfield, ed, *Globalization and Its Tax Discontents: Tax Policy and International Investments* (Toronto: University of Toronto Press, 2010) 189.

provided by developed countries.[17] Both the options of complete removal of the PE clause and exemption of foreign incomes from tax liability in source countries are impossible. So, the contention is reduced to what should be the appropriate PE threshold. A pro-source countries model will put the threshold at a low level to enable source countries to earn tax revenues as much as possible, while a pro-residence countries model would set it high in order to reduce residence countries' liability to provide foreign tax reliefs.

The contention on the threshold of a new PE under the Two Pillar reminds us of how the PE clause of the DTA regime was contested in the 1940s. As an alternative to the traditional PE, which is based on physical presence, Amount A of Pillar One (which is the first pillar of the Two Pillar) introduces a new yardstick to measure nexus of foreign companies in the source countries.[18] Amount A uses three conjunctive tests—global revenue, profitability and local revenue tests—to determine when source

17. The foreign tax reliefs are means of reducing the incidences of double taxation suffered by multinationals. The developed countries, for example the United States, already had their unilateral methods of relieving double taxation before the DTA regime was established. Under its domestic system, the United States provides foreign tax credits to foreign taxes paid by its resident companies. The higher the foreign tax, the higher the liability incurred by the United States to provide the tax credit. The involvement of these countries in the DTA regime was not to primarily seek how to provide relief to double taxation, but to maximize and standardize their double taxation relief systems. This purpose might be defeated if the PE clause was omitted or its threshold reduced below their standards, as that would affect how foreign incomes would be taxed in the source jurisdiction and how the foreign tax would be relieved in the residence jurisdiction. See Sunita Jogarajan, *Double Taxation and the League of Nations* (UK: Cambridge University Press, 2018) 85; Ring, *supra* note 11 at 119.

18. As the name indicates, the Two Pillar is divided into Pillar One and Pillar Two. Pillar One creates a new taxing right and allocates profit to market jurisdictions that would not have had the opportunity to tax multinationals' profit because of absence of a physical PE. Pillar One divides eligible multinationals' residual profits to Amount A and Amount B. Amount A is triggered when the three conjunctive requirements are met. Amount B relates to the eligible multinational's profit on its marketing and distribution activities in the market jurisdiction. A simplified transfer pricing rule that will allocate profits based on the quantum of the in-country marketing and distribution activities is currently consideration. Pillar Two re-allocates taxing right where eligible multinationals under pay their taxes in countries where they operate. Pillar Two works on the assumption that the eligible multinationals must have paid taxes in the market jurisdiction, but those taxes are below the minimum tax rate of 15 per cent. Unlike Pillar One, this pillar applies to multinationals with a global revenue of EUR 750 million. See OECD, OECD/G20 Base Erosion and Profit Shifting Project, *Tax Challenges Arising from the Digitalization of the Economy—Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS* (Paris: OECD, 2021), online (pdf): <read.oecd-ilibrary.org/taxation/tax-challenges-arising-from-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two_782bac33-en#page1> [perma.cc/L2FA-WM8X]. See also OECD, *Tax Challenges Arising from the Digitalization of the Economy—Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)* (Paris: OECD, 2023), online: <www.oecd.org/tax/beps/tax-challenges-arising-from-the-digitalisation-of-the-economy-global-anti-base-erosion-model-rules-pillar-two.htm>.

countries can exercise their taxing rights.[19] The global revenue test states that the global revenue of eligible multinationals must be greater than EUR 20 billion in the taxable year. The profitability test requires that the profitability ratio of the eligible multinationals must be more than ten per cent. The last test requires that revenues traceable to a potential taxing source jurisdiction must not be less than EUR 1 million or EUR 250,000 for a bigger and a smaller jurisdiction respectively.[20]

Just like how it was contested in the 1940s, the developing countries have expressed concerns that this new PE threshold might result in the loss of their substantial tax revenues.[21] The developing countries should be conscious that there may also be a repeat of the 1946 supremacy battle in this regard. It is impossible for the developing countries to demand for exclusion of the new PE in the Two Pillar. Their focus should rather be on the negotiation of an appropriate PE threshold that will not pose a threat to their tax bases. If they fail to negotiate for an acceptable PE threshold before conclusion of the deal on the Two Pillar, they will be constrained to contend with this new PE framework for another seven years. It is designed that the new PE threshold can only be reviewed seven years after the multilateral convention of the Two Pillar has come into force, and the review process is likely to be problematic.[22]

2. *Initiating negotiation of tax treaties by the developed countries*

The general view is that the developing countries initiate tax treaty negotiations with the developed countries with the hope, albeit erroneously,

19. OECD, OECD/G20 Base Erosion and Profit Shifting Project, *Progress Report on Amount A of Pillar One, Two Pillar Solution to the Tax Challenges of the Digitalization of the Economy* (Paris: OECD, 2022), online (pdf): www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf [perma.cc/GW9T-M9M2].

20. *Ibid*. A smaller jurisdiction is one with Gross Domestic Product (GDP) less than EUR 40 billion, while a jurisdiction with a GDP of EUR 40 billion and above is regarded as a bigger jurisdiction.

21. The G24 and the South Centre expressed their dissatisfaction on the progress work of Amount A of Pillar One as their members stand the risk of losing substantial tax revenue. See OECD, *Tax Challenges Arising From Digitalization: Comments Received on the Progress Report on Amount A of Pillar One* (25 August 2022) online: <www.oecd.org/tax/beps/public-comments-received-on-the-progress-report-on-amount-a-of-pillar-one.htm>. See the comments of G24, the South-Centre, Nigeria and Kenya in the comment folder. It is a great form of transparency for the OECD to publish these comments, even when some of them challenge its works. It is uncertain whether these will have any impact on further development of the works.

22. OECD, OECD/G20 Base Erosion and Profit Shifting Project, *Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy* (8 October 2021) online (pdf): <www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf> [perma.cc/3TN5-6467]. The review is contingent upon implementation of Pillar One, including tax certainty. What will amount to "successful implementation" may be subject to conflicting interpretations. It is safe to assume that the successful implementation will be when the agreement is domesticated in the national laws of the participating countries.

that the tax treaties will facilitate inward foreign investments. Hearson provides an exception to this—by showing that the developed countries, such as the United Kingdom, also lobbied strategic developing countries for tax treaties even when those developing countries neither asked for nor needed the tax treaties.[23] With the combined strength of economic and political influences, the United Kingdom prevailed, and the developing countries executed the tax treaties even when the terms of the treaties were not favourable to them. The underlying objective of the United Kingdom was neither to attract additional investments nor expand its investments in the developing countries, but to provide competitive advantages for its multinationals which might be competing with other foreign multinationals in the strategic developing countries.[24]

According to Hearson, the United Kingdom's tax treaties with Bangladesh and Thailand were initiated by the United Kingdom at a time when Bangladesh and Thailand were not interested in tax treaties with the United Kingdom.[25] The United Kingdom pursued the tax treaties when it observed that its competitors (other developed countries) had engaged Thailand and Bangladesh in tax treaty negotiations. Out of fear that its multinationals might not be able to compete favourably in Bangladesh's and Thailand's markets with other multinationals, the United Kingdom initiated tax treaty discussions with these countries to get a soft landing for its multinationals. Hearson further states that another reason for this pre-emptive move was to ensure that these strategic countries comply with the OECD standards so that treatment of incomes of the United Kingdom's multinationals in those countries would not be different from the United Kingdom's tax system.[26]

My view on this is that the United Kingdom's approach underscores the relative importance of the developing countries in the global market. It implies that the developing countries constitute an indispensable alternative market for the developed countries.[27] In what appears to be similar to the Cold War, which was fought in proxy countries after the Second World War, the developed countries jostle against one another in this alternative

23. Hearson, *supra* note 1 at 96-98.
24. *Ibid*.
25. *Ibid*.
26. *Ibid* at 99-100. In some cases, the United Kingdom effectively negotiated tax treaties to limit taxing rights of the other treaty partners, so that it could reduce the tax credit it would grant its multinationals on their foreign tax liabilities.
27. The alternative market in this context means that the developed countries can choose to invest in the developing countries rather than investing in their equal developed countries. All of the developing countries may not qualify to be part of the alternative market, but the resource-abundant ones will constitute the market.

market. This could translate into benefits and negotiation strength for the developing countries as suppliers of this alternative market.

This alternative market becomes more attractive in the digitalized economy. It is relatively easier and cheaper to penetrate foreign markets in the digitalized economy.[28] The entry barrier associated with importing capital into foreign countries has been relieved by the digitalized economy. As an example, Meta, a United States multinational technology company, can earn incomes from multiple countries without the need to have a physical presence in those countries, where the views that collectively drive its advertising revenues are generated.[29] The Two Pillar can provide an easier route for the developed countries to explore this alternative market as it takes out the administrative and political challenges of initiating negotiation of bilateral tax treaties with multiple countries. Rather than identifying and negotiating with different constituents of the alternative market, the Two Pillar weaves all interests of the developed countries into a single document. As they continue to participate in the BEPS Inclusive Framework, the developing countries should be conscious of their indispensable role as suppliers of the alternative market, and therefore, leverage that to resist any non-favourable terms in the Two Pillar.

3. *Knowledge power, and technical assistance*

One of the advantages the developed countries derive from their early intervention in international tax is the power of knowledge. Various experts from the developed countries significantly contribute to the design of the DTA regime. This put the developed countries in a stronger position when negotiating tax treaties with developing countries—to the extent that the developed countries would insist that their approaches should be adopted because they reflect best global practices. Hearson gives an example of how the proposed tax treaty between the United Kingdom and Brazil was

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28. Pinar Akman, "Competition Policy in a Globalized, Digitalized Economy" (2019) World Economic Forum White Paper at 5-6, online (pdf): <www3.weforum.org/docs/WEF_Competition_Policy_in_a_Globalized_Digitalized_Economy_Report.pdf> [perma.cc/T4HY-QNE3].

29. Meta's second quarter financial result shows how revenues from advertising continue to drive Meta's business platforms, which are carried on through Facebook, WhatsApp, Instagram, Messengers and other services. An approximate of ninety-eight per cent of Meta revenue for the second quarter came from advertising—out of a total revenue of $28,580, advertising generated $28,152; other revenue $218; and reality lab $452 (all figures in millions). The views that generate the visibility and content which Meta sells to its advertising customers are generated by users who are dispersed across countries in which Meta may not be physically present. See Meta, Press Release, "Meta Reports Second Quarter 2022 Results" (27 July 2022) online: <s21.q4cdn.com/399680738/files/doc_news/Meta-Reports-Second-Quarter-2022-Results-2022.pdf> [perma.cc/MUK2-GT76].

stalled because of the United Kingdom's position that its tax treatment of royalty income was the best practice and should be adopted.[30]

Related to the knowledge power is the assumption of the developed countries that the developing countries need technical assistance to understand and design good tax systems. Hearson's reflection on the "Shoup Mission," which was commissioned in 1949 to develop Japan's modern tax system, explains how the developed country can offer its technical assistance to develop the tax system of another country.[31] I am of the view that while it is true that the developing countries need technical assistance in designing and administering their tax systems, the assistance should be tailored to align with peculiarities of the developing countries. What accumulates as technical expertise of the developed countries is the result of their peculiar experiences that are accumulated over the years—they are borne out of their changing tax policies, revenue needs, and unique economies. All these experiences formed the bases of their domestic tax systems and, consequently, the international tax system that was built on their domestic tax systems.[32] Applying those standards to jurisidictions with no comparable indices and similar circumstances will not only result in tax policy mismatch but also coercion of those jurisdictions to adopt non-favourable policies.

Hearson examines some case studies that justify the developing countries' need for technical assistance. One of them is Zambia's lack of expertise to negotiate tax treaties—and that lack of expertise pushed it to sign tax treaties recklessly without considering the impact on its economy. Zambia acted on the erroneous belief that signing tax treaties would earn it global prestige in the international community.[33] Zambia's approach, however, changed when it acquired considerable skills through its participation in the UN programmes and engagement with tax experts, such as Charles Irish, an American lawyer who was teaching at Zambia

30. Under the Brazilian tax law, royalty payments to foreigners are taxed on gross basis, and these royalty payments are not tax deductible, contrary to the OECD standards.

31. Hearson, *supra* note 1 at 36.

32. The tax systems of some developed countries, such as the United States and the United Kingdom, predate the existence of the international tax system. Some of their perspectives about taxation shaped and influenced the international tax regime. For example, Professor Adams, one of the professors of economics engaged by the League of Nations, had at a time advised the United States on the best approach to relieving double tax. His works on international tax reflected his opinion and advice to the United States. While Adams' view on double taxation relief may be appropriate for the United States and other comparable developed countries, it may not fit well into other jurisdictions, such as the LICs that have never considered how they can unilaterally respond to tax effects of foreign operations of their local companies.

33. *Ibid* at 122-125. Zambia's negotiation of a tax treaty with the United Kingdom was done in a manner suggesting that Zambia did not have proper understanding of the treaty.

University at that time. Zambia's subsequent tax treaties with China, Mauritius, and Seychelles were defined by its investment and regional cooperation needs.[34] Hearson also examines the case study of Spain where its technical assistance was to coerce developing countries into signing tax treaties.[35]

The Two Pillar presents an opportunity to reflect on the need to offer technical assistance to the developing countries. The OECD has requested the G20 to provide assistance to the developing countries on implementation of the Two Pillar.[36] In addition to this request, the OECD, the UN, the International Monetary Fund (IMF) and the World Bank Group (WBG) created the Platform for Collaboration on Tax (PCT) to assist the developing countries on implementation of all BEPS products, including the Two Pillar.[37] I argue that provision of technical assistance to the developing countries on the Two Pillar is not a bad idea per se, but there is a need to consider some other productive means of assisting the developing countries. Hearson's analysis of how Spain improperly used its technical assistance to coerce developing countries into signing tax treaties shows another dimension of vulnerability of the developing countries to accepting non-favourable tax treaties. The possibility that the developed countries may abuse their positions while providing technical assistance justifies the need to think of an alternative way to assist the developing countries.

If the real purpose of technical assistance is to enhance the skills and the capacity of the developing countries to understand and implement the Two Pillar, simplification of the Two Pillar framework may be more productive than technical assistance. Non-simplification of the Two Pillar might be the reason why the developing countries, according to the OECD report, find it "challenging to keep pace with multiple technical workstreams, particularly where they may have only a handful technical staff responsible for all aspects of international taxation."[38] The most

34. The change in the approach was partly caused by involvement and advice of Charles Irish, an American lawyer teaching at Zambia University.

35. *Ibid* at 63-64. Relying on interviews of anonymous people, Hearson narrates that Spain had once used withdrawal of its technical assistance and aid as means of getting the other party to sign the treaty.

36. OECD, *Developing Countries and the OECD/G20 Inclusive Framework on BEPS: OECD Report for the G20 Finance Ministers and Central Bank Governors, October 2021, Italy* (Paris: OECD, 2021), online (pdf): <www.oecd.org/tax/beps/developing-countries-and-the-oecd-g20-inclusive-framework-on-beps.pdf> [perma.cc/MB4P-FQFZ] [OECD, "Report for the G20"].

37. See "Who We Are," online: *Platform for Collaboration on Tax* <www.tax-platform.org/who-we-are> [perma.cc/S6E6-AVFN]. The platform has issued three toolkits as guidance to assist countries on their treaty negotiation skills and domestic resource mobilization. The three toolkits are on: tax treaty negotiations; transfer pricing documentation and taxation of offshore indirect transfers.

38. OECD, "Report for the G20," *supra* note 36 at 44.

effective way to achieve simplification might be involvement of experts from the developing countries in designing the framework. Drawing from their unique administrative challenges and experiences, the developing countries' experts will be able to address in advance the technical issues that might affect administrability of the framework in the developing countries.

The present situation where the OECD Secretariat, which is dominated by experts from the developed countries, has significant inputs in the Two Pillar is a barrier to achieving simplification.[39] The Secretariat's input would greatly reflect the Secretariat staff's experiences in the OECD countries where they had worked before joining the OECD, and those experiences may be incompatible with peculiarities of the developing countries. The relatively simplified approach of UN Article 12B, which also addresses the same digital tax problem as the Two Pillar, is proof that simplification can be achieved by allowing experts from developing countries to have input in designing the framework.[40] Article 12B does not use the problematic approach to determine a new PE and taxability of foreign companies like the Two Pillar, likely because the UN Tax Committee that drafted it has a significant number of representatives

39. For further reading on how the OECD Secretariat is constituted by experts from its member states and the impact of this composition on their work, see Allison Christians, "Networks, Norms and National Tax Policy" (2010) 9:1 Wash U Global Studies L Rev 1 at 19-20, online (pdf): <openscholarship.wustl.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1039&context=law_globalstudies> [perma.cc/VS76-7FWG]. They did not only find it challenging for administrative concerns, but also could not contribute to the discussions and deliberations on the Two Pillar and other BEPS products. See Rasmus Corlin Christensen, Martin Hearson & Tovony Randriamanalinay, "At the Table, Off the Menu? Assessing the Participation of Lower-income Countries in Global Tax Negotiations" (2020) International Centre for Tax and Development Working Paper No 115, DOI: <10.19088/ICTD.2020.004>.

40. Committee of Experts on International Cooperation in Tax Matters, *Tax Consequences of the Digitalized Economy: Proposed Changes to the UN Model Including the Commentaries thereon as a Consequence of the Proposed Inclusion of Article 12B on Automated Digital Services*, UNECOSOCOR, 22nd Sess, UN Doc E/C.18/2021/CRP.15 (2022), online (pdf): <www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2021-04/CRP15_Article%2012B%20Consequential%20Changes%20final%201804.pdf> [perma.cc/437C-JG9K].

from the developing countries.[41] Article 12B may not be perfect, but its simplified approach shows preferences of the developing countries.

4. *Leveraging economic relationships as "quid pro quo" to negotiate tax treaties*

The developed countries can also use their economic relations to coerce strategic developing countries into signing tax treaties. Hearson examines various instances where the developed countries had leveraged their economic relationship with the developing countries to negotiate tax treaties. Japan insisted on signing a tax treaty before it would consider Colombia's request for a free trade agreement. The United States insisted on a full tax treaty rather than a tax information exchange agreement (TIEA) requested by Argentina.[42] Kenya had a similar experience when it requested TIEA from Singapore.[43] Donations or similar intervention reliefs may be used by developed countries as quid pro quo to push the developing countries to sign tax treaties, regardless of their expertise and exposure. The "quid pro quo" approach may be the reason why the developing countries continue to participate in the negotiations of the Two Pillar when they are much aware that the framework may not protect their interests.[44]

II. *The Multinationals' influential role in tax treaties negotiation*

Hearson gives an account of the covert but influential role of the United Kingdom business community in influencing tax treaties with developing countries. The tax treaty between the United Kingdom and Egypt was initiated by the United Kingdom business community operating in Egypt

41. United Nations Secretary General, News Statement, "UN Tax Committee—25 Members Appointed" (21 July 2021), online: <www.un.org/sg/en/content/sg/personnel-appointments/2021-07-21/un-tax-committee-25-members-appointed> [perma.cc/7FT7-RLUM]. Out of 25 members of the UN Tax Committee, 15 are non-OECD countries. The significant number of representatives and the enabling environment of the UN enhance participation of the non-OECD countries. Rasmus Corlin Christensen and his colleagues narrate the experience of non-OECD countries in the UN Tax Committee while working on Article 12A. The sub-committee was headed by an OECD country, but the chair of the committee had the interest of developing countries at heart. The disposition of the chairman influenced an outcome that was beneficial to developing countries. See Christensen, Martin & Randriamanalina, *supra* note 39 at 45.

42. The TIEA does not guarantee the tax advantages the developed countries would expect from a tax treaty. The TIEA allows contracting states to exchange information about their respective national earning incomes in both states. It does not delineate taxable incomes and permanent establishment which the developed countries often use to limit the taxing rights of the LICs.

43. Singapore insisted on a full tax treaty, like the United States. See Hearson, *supra* note 1 at 64.

44. The G24 response to the progress work on Amount A of Pillar One captures the contention and dissatisfaction of the LICs with the proposed framework. The question is why they are still participating in the regime.

to limit their tax exposures in Egypt.[45] The treaty was eventually signed in 1977 and Egypt ratified it in 1979, even though Egypt believed that the tax treaty benefited the United Kingdom's business community more than its domestic business community.[46] The United States business community plays an influential role similar to that of the United Kingdom. Hearson narrates that most of the requests by developing countries for tax treaties with the United States between 2004 and 2010 were not considered by the United States on the advice of its business community.[47] Even where the United States was inclined to consider some requests for tax treaties, the United States deferred to its business community—allowing the business sector to have input in the draft tax treaties, as it was in the case study of the draft tax treaty between the United States and Macedonia.[48]

Hearson's analysis of the above case studies reminds us of the significant role of the business actors in negotiation of tax treaties. It also explains how state and business actors work together in international tax even though competing interests may exist between them with respect to domestic tax.[49] They are both interested in achieving tax advantages for the multinationals operating in their treaty partners' jurisdictions. Since the multinationals cannot play visible roles in negotiating tax treaties with other sovereign nations, the home countries become their agents in negotiating for favourable tax regimes. The home governments are willing to undertake this task because they get a fair share of the ultimate tax treaty benefits as part of their national gains and entitlements—as reduction in multinationals' foreign tax liabilities will consequently result in a reduction in the tax credits the home governments will grant to the multinationals.[50]

My take on this point is that the multinationals' influence in international tax could be explaned in two ways. First, as argued by Sol

45. Hearson, *supra* note 1 at 106-108. See also Hearson, *supra* note 1 at 61-62, where the author also gives an account of how a French multinational operating in Kenya was instrumental to the tax treaty between France and Kenya.
46. *Ibid* at 106-108.
47. *Ibid* at 58. Most of the tax treaties requests to the United States between 2004 and 2010 by countries like Vietnam, Hungary, Jordan, and Malaysia were not considered because they were not supported by the United States business community.
48. *Ibid* at 58-59.
49. The competing interest in the domestic tax is that governments are interested in collecting as much tax as possible while the business owners seek legal means to reduce their tax liabilities.
50. For further readings on how residence countries obtain benefits from their multinationals' foreign businesses see Richard A Musgrave & Peggy B Musgrave, "Inter-Nation Equity" in Richard M Bird & John G Head, eds, *Modern Fiscal Issues: Essays in Honour of Carl S. Shoup* (Toronto, ON: University of Toronto Press, 1972) 72; Kim Brooks, "Inter-Nation Equity: The Development of an Important but Underappreciated International Tax Value" in John G Head & Richard Krever, eds, *Tax Reforms in the 21st Century: A Volume in Memory of Richard Musgrave* (Alphen aan den Rijn, NL: Kluwer Law International, 2009) 471 at 493.

Picciotto, the multinationals understand the cross-border businesses better than the state actors who seek to regulate taxation of incomes arising from these businesses.[51] They have leveraged the understanding of this terrain to design their business activities in a manner that reduces their tax liabilities before the formation of the international tax regime through the League of Nations in the 1920s.[52] The state actors will certainly need to work with the business actors to evaluate economic potentials and pitfalls of any tax treaty for effective negotiations and meaningful decisions. Since the state actors might not have sufficient knowledge about the nitty-gritty of the international business environment—as much as the business actors do—consultation with the multinationals for this purpose is certainly a good idea.

Second, the multinationals provided significant contributions to the works of the League of Nations on the design of tax treaty models through their organized International Chamber of Commerce.[53] They participated in the meeting sessions at which issues that constitute the present international tax framework were discussed. Participation in the work of the League of Nations is enough to give these business actors a considerable level of knowledge which they can use to advise their home governments on tax treaty negotiations. The business community continues to sustain its stake in international tax negotiations by contributing to

51. Sol Picciotto, "Technocracy in the Era of Twitter: Between Intergovernmentalism and Supranational Technocratic Politics in Global Tax Governance" (2022) 16 Regulation & Governance 634 at 639.

52. *Ibid*. For example, the Vestley Brother's multinational company structured its food business in the UK and Argentina between 1919 and 1921 to minimize its tax liabilities in both countries. It was able to do this by creating an international structure that grants ownership of assets to intermediary entities.

53. Jogarajan, *supra* note 17 at 85. The intervention of the business community further extended to the OECD's works after exit of the League of Nations. The business community also facilitated the advocacy for inclusion of mandatory arbitration clause in tax treaties.

the ongoing debates and negotiations of the Two Pillar.[54] Combining the participation in international tax negotiation with knowledge of international business makes the business actors strategic reference points in tax treaty negotiations.

The presumed superior knowledge of the business community might be the reason why the OECD assigns to multinationals an important role of sourcing and tracing revenues to market jurisdictions for the purpose of determining when source countries can exercise their taxing rights under the Two Pillar. As part of the criteria to determine a new PE, it must be established that revenues accruing to the multinational in a source country are EUR 1,000,000 (for a bigger jurisdiction) or EUR 250,000 (for a smaller jurisdiction). The financial reports of multinationals determine how much revenue can be traced to source countries and, consequently, eligibility of source countries to tax the revenues. In the event that some revenues cannot be traced to specific jurisdictions or regions, the multinationals have the power to deem that those revenues, which are described as "Tail End Revenues," arise in low-income jurisdictions or use the "Knock-out Rule" to claim that no revenues are traceable to the low-income jurisdictions.[55] The developing countries may stand the risk of losing their taxing rights if, in the estimation of the multinationals, the revenues traceable to them

54. For example, the UK Chamber of Shipping proposes that residuary profit on international shipping income should be split into two, and twenty-five per cent of the profit should be allocated to source countries while the remaining seventy-five per cent to the residence countries. See UK Chamber of Shipping, "Submission by UK Chamber of Shipping to the OECD Public Consultation Document Pillar One Amount A: Draft Model Rules for Nexus and Revenue Sharing," Comment (18 February 2022), online (pdf): <www.dropbox.com/s/d8dhcp3c3xkzgms/public-comments-pillar-one-amount-a-nexus-revenue-sourcing.zip?dl=0.&file_subpath=%2FUK+Chamber+of+Shipping.pdf> [perma.cc/T67X-BHZN]. The Swiss Shipowners Associations' views are like the UK Chamber of Shipping. The Swiss contends that the Pillar One: "a" is inconsistent with the practice in the international shipping industry as stated in Article 8; "b" runs contrary to the tonnage tax system, a special regime that uses tonnage of vessel, rather than profit, as tax base; "c" should reflect that the incomes are not earned in any jurisdiction, but on the high sea. See Swiss Shipowners Association, "Pillar One—Amount A: Draft Model Rules for Nexus and Revenue Sourcing (4 February 2022 – 18 February 2022)," Comment (18 February 2022), online (pdf): <www.dropbox.com/s/d8dhcp3c3xkzgms/public-comments-pillar-one-amount-a-nexus-revenue-sourcing.zip?dl=0.&file_subpath=%2FSwiss+Shipowners+Association.pdf> [perma.cc/3Y2J-CN9J].

55. The power of the multinationals to determine how much revenue is traceable to LICs is invoked when revenues on the sale of finished goods, whether sold directly or through independent distributors, cannot be traced to jurisdictions of final consumers. The multinationals are permitted to treat such revenues as either traceable to a particular region, to low-income jurisdictions, or to assume that they arise globally. The revenues that cannot be traced to a particular region are described as "Tail-End Revenues" and are shared among the LICs, but the multinationals reserve the right to exclude some LICs from the Tail-End Revenue under the "Knock-Out Rule." See OECD, OECD/G20 Base Erosion and Profit Shifting Project, *Progress Report on Amount A of Pillar One, Two-Pillar Solution to the Tax Challenges of the Digitalization of the Economy*, (Paris: OECD, 2022), online (pdf): <www.oecd.org/tax/beps/progress-report-on-amount-a-of-pillar-one-july-2022.pdf> [perma.cc/94XW-L43V].

are below the new PE threshold or that no revenues are deemed to arise in those jurisdictions under the "Knock-out Rule."

In view of the influential role of the multinationals, the developing countries should undertake two things in negotiating tax treaties with the developed countries. First, they should identify and address tax treaty effects that may result in unhealthy competition for their domestic business communities. The reason for this is that foreign multinationals may lobby for one-sided tax regimes while they are advising their home governments or reviewing draft tax treaties.[56] Second, the developing countries should involve their domestic business communities in the negotiation of tax treaties. The developing countries should create domestic policy communities where their business communities can play effective roles in carrying out economic impact assessments of tax treaties before and after they are signed. International tax negotiation is beyond contributions of state actors and their revenue officers; the duty to evaluate suitability of a proposed international tax agreement should be delegated to the business community, as it is being done by the developed countries.

Negotiation of the Two Pillar is another framework that could be susceptible to the influence of multinationals just like the previous international tax agreements. The developing countries should be conscious that the developed countries' contributions to the Two Pillar are likely to be reflections and opinions of their own business communities. The contention of some United States' senators about the Two Pillar indicates how developed countries can rise in defence of their business communities in international tax agreements. Some United States' Republican senators contend that the second pillar of the Two Pillar offers less protection to the United States' business community and request the United State government to negotiate for favourable tax regimes.[57] The developing countries should adopt the same approach by identifying unhealthy competition effects of the Two Pillar and allowing their business communities to make inputs

56. For further readings on how the global and digital market may lead to oligopolist market and its effects on consumer welfare, such as price fixing, see Irma Mosquera Valderrama & Frederick Heitmüller, "Competition Policy in a Globalized, Digitalized Economy" (2019) World Economic Forum White Paper, online (pdf): <www3.weforum.org/docs/WEF_Corporate_Tax_Digitalization_and_Globalization.pdf> [perma.cc/HQ99-Z5DE].

57. "Finance Republicans Say OECD Agreement Threatens U.S. Tax Base," (16 February 2022), online: *TaxNotes* <www.taxnotes.com/research/federal/legislative-documents/congressional-tax-correspondence/finance-republicans-say-oecd-agreement-threatens-u.s.-tax-base/7d6jq> [perma.cc/QA4A-T4JU]. See also Lee A Sheppard, "Pillar 2 and QMDTT," *TaxNotes International* (14 February 2022) 759-764.

in the draft.[58] The developing countries and their business communities should jointly evaluate economic impact assessment of the Two Pillar before completion of the negotiation process.

III. *OECD as a gateway to diffuse tax standards of the developed countries*

Hearson examines the case study of the tax treaty between the United Kingdom and Brazil as an example of how the developed countries adopt the OECD as an avenue to spread their standards to other countries. The United Kingdom insisted that the OECD's approach to tax treatment of royalty should be included in the tax treaty despite Brazil's resistance to that approach.[59] Hearson's interview of the United Kingdom revenue officers affirms that one of the underlying objectives of the United Kingdom when negotiating tax treaties is to ensure that its treaty partners comply with the OECD standards. Among other things the United Kingdom seeks to achieve with its insistence on compliance with the OECD standards is to prevent fiscal discrimination against its multinationals—so that multinationals' incomes arising in both the home and the host states are subject to similar tax treatment.

Hearson's analysis of this case study explains why the OECD standards are often projected as best international practices that should be accepted even when the standards do not provide optimal results for developing countries. The near-monopoly status enjoyed by the OECD in international tax enables its members and proponents to advocate for acceptance of the OECD standards as the best practices. Unfortunately, the UN that should provide a competitive forum is not matching up with the OECD in terms of structures and public acceptance. Unlike the UN, the OECD prides itself in having a robust and dedicated epistemic community—constituted by its Secretariat and several working groups that are committed and specialized in various aspects of international tax—that serves as its engine room. The OECD model also enjoys more public acceptance than the UN model as majority of network of bilateral tax treaties in force are modelled on the OECD standards.[60]

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58. The contention of the United States' Senators can be used as a guide. The contention focuses on how the United States companies and workers can be competitive in the global market. The senators make a comparison between the United Kingdom and the United States and conclude that the United Kingdom's tax is more protected than the United States. The LICs have no excuse not to carry out the same economic impact assessment if countries that are far ahead of them in many respects continue to prioritise economic effects of international tax agreements.

59. Hearson, *supra* note 1 at 36.

60. Arthur J Cockfield, "Shaping International Tax Law and Policy in Challenging Times" (2018) 54:2 Stan J Intl L 223 at 227.

I think dilution of the near-monopoly status of the OECD by setting up a parallel institution to compete with the OECD may be counterproductive. Hearson rehashes the historical account of how the Community of Andean Nations (CAN) proposed a tax treaty model for its members in 1971 to replace the OECD model.[61] The CAN model, which gives stronger taxing rights to the CAN countries than the OECD model, was designed to guide CAN members when negotiating tax treaties with non-CAN countries. The model was, however, short-lived and the CAN community members abandoned it because their treaty partners preferred the OECD model. The arguments of Vinto Tanzi and others for the establishment of an international tax organization to rival or perhaps take over from the OECD did not yield any positive results.[62] These efforts did not materialize because they had no required political support from the developed countries. Attempts to create similar institutions in the future may not be supported by the developed countries because it will amount to having developed countries working against their interests, which are already embedded in the OECD.

Rather than considering how to dilute the OECD's dominance, we should focus on how the existing relevant institutions—especially the OECD and the UN—can work together. The OECD BEPS Inclusive Framework attempted to realize this objective, but it purposively reduces the participatory level of other institutions that are co-opted in the Inclusive Framework to observatory roles.[63] The observatory role assigned to the UN and other institutions limits their interventions and contributions. The UN might not have commenced its negotiations on Article 12B if it was given more than an observatory role in the BEPS Inclusive Framework.[64]

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61. Hearson, *supra* note 1

62. See Vito Tanzi, *Taxation in an Integrating World* (Washington: Brookings Institution Press, 1995) 140. For other proposals on the International Tax Organizations and how those proposals failed, see Tarcísio Diniz Maghalhães, "What Is Really Wrong with Global Tax Governance and How to Properly Fix It" (2018) 10:4 World Tax J 499 at 512-523

63. The UN, the IMF, the WBG, the African Tax Administration Forum ("ATAF"), the *Centre de recontres et detudes des dirigeants des administrations fiscales* (CREDAF), and the *Centro Interamericano de Administraciones Tributarias* (CIAT) are among the institutions that are enlisted as observes. Regional development banks like African Development Bank (AFDB), the Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD) are part of the observers. See "Frequently Asked Questions," online: *OECD* <www.oecd.org/tax/beps/faq/>.

64. The UN intervention started at its 15th session in 2017, where the digital challenges were put on the agenda as a priory debate. Its report encapsulates the challenges of the digital economy and issues to delegate to special committee. The inaugural report shows its deep understanding of the problem and the need to adopt a cooperative approach toward find enduring solutions. See *Committee of Experts on International Cooperation in Tax Matters: Tax Consequences of the Digitalized Economy*, UNECOSOCOR, 15th Sess, Annex, Agenda Item 5(c)(ix), UN Doc E/C.18/2017/CRP.22 (2017), online: <www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-04/15STM_CRP22_-Digital-Economy.pdf> [perma.cc/AT8T-2PX5].

The perspectives of the developing countries, which the UN has because of its broad inclusive forum, would have been incorporated in the Two Pillar through the UN's participation. To make it worse, the PCT, which was jointly created by the OECD, the UN, the IMF and the WBG on international tax matters, does not encourage the desirable collaborative works among its members.[65] By allowing its members to pursue their different mandates, which are contrary to one another due to the different interests they represent, the PCT technically becomes a mere meeting point of the founding partners.[66]

Conclusion

A careful reading of this interesting book from its overture puts no one in doubt that Hearson's objective is to explain how the developed countries imposed their taxation standards, which were developed through the League of Nations and later the OECD, on the developing countries. Those standards may be acceptable to and fit for the developed countries, but certainly not for the developing countries. I think the word "standard" in the context of international taxation should mean the common or average views, preferences and perspectives of members who participate in the process that set those standards. Since the developing countries did not participate in that process, those standards may be incompatible and unfit for their revenue needs.

The developing countries should, therefore, resist any narrative that describes the developed countries' approaches to taxation as international standards. The era when those approaches were designed as international taxation standards is gone. The world view then was limited to the Global North because the majority of countries in the Global South were still under the imperial governments of the Global North. There should have been a paradigm shift after independence of these colonies, but the new independent countries still combat other dimensions of power asymmetry. In reality, it may be hard to change a policy that has long been in existence

65. See "Who We Are," *supra* note 37.

66. The regular disclaimer in all three toolkits is "this toolkit should not be regarded as the officially endorsed views of those organizations, their member countries, or the donors of the PCT Secretariat." See e.g. The Platform for Collaboration on Tax, "The Taxation of Offshore Indirect Transfers—a Toolkit" (2020) at 1, online (pdf): <www.tax-platform.org/sites/pct/files/publications/PCT_Toolkit_The_Taxation_of_Offshore_Indirect_Transfers.pdf> [perma.cc/perma.cc/U8JK-PD4V]; The Platform for Collaboration on Tax, "Transfer Pricing Documentation" (2021) at 2, online (pdf): <tax-platform.org> [perma.cc/S3QK-EN7L]; The Platform for Collaboration on Tax, "Toolkit on Tax Treaty Negotiation" (2021) at 2, online: <www.tax-platform.org/publications/PCT_Toolkit_Tax_Treaty_Negotiations_Online_Version> [perma.cc/SWU7-TA78]; The Platform for Collaboration on Tax, "PCT Progress Report 2021" (2021) at 3, online (pdf): www.tax-platform.org/sites/pct/files/publications/PCT%20Progress%20Report%202021.pdf> [perma.cc/PR3D-SQ93].

and is protecting the interests of colonial masters. Times have now changed, and the Two Pillar presents an opportunity to redefine the standards. The developing countries are not only independent now, but they have also acquired considerable expertise to participate in the international tax policy and epistemic communities.

The developing countries should take advantage of their inclusion in the BEPS Inclusive Framework to demand for true reforms. The outcome of the Two Pillar should incorporate their inputs and reflect peculiarities of their domestic economies. They should consult with their business communities to carry out an economic impact assessment of any political compromise required to implement the Two Pillar. They should not hesitate to take this bold step because of likely stiff resistance and diplomatic pressures from the developed countries. There may be a change of approach from the developed countries that will appreciate the need to re-define the international taxation standards both in content and process.

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