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Stef van Weeghel*

Have the OECD Model and the UN Model Served Their Purpose? Are They Still Fit for Purpose?

In this contribution to the 75th anniversary issue of the *Bulletin for International Taxation*, Stef van Weeghel considers whether the OECD Model and the UN Model are still fit for purpose. He also suggests ways in which the international tax system could be improved.

1. Introduction

Asking whether the OECD Model[1] and the UN Model[2] have served their purpose is akin to asking what the world would look like without them. Of course, one could take a narrow view and look at the stated purpose of both models, which, according to their respective Preambles and Introductions, was the avoidance of double taxation and the prevention of fiscal evasion.[3] However, it is probably more productive to stand back and ask what the world has accomplished with these models. In this contribution, I will argue that both models have achieved much more than their stated objectives in that they have (i) achieved structure; (ii) focused the minds of legislators; (iii) presented a platform, first through the League of Nations and the International Chamber of Commerce and later the OECD and the United Nations; and (iv) provided for the avoidance of double taxation and the prevention of tax evasion as well as, more recently, the prevention of tax avoidance.

This contribution will be light on historical overview[4] and will mostly contain reflections only (*see* section 2.). However, it will address the difficult question of whether both models are still fit for purpose (*see* section 3.). For this reason, I will look at the current treaty network not only from a practical perspective, but also from the perspective of legitimacy and tax policy. I will also briefly address the relationship between tax treaties and bilateral investment treaties (BITs). My contribution ends with some conclusions in section 4.

2. A Brief Historical Overview

2.1. The League of Nations provided a framework

When the economists and the technical experts convened in the context of the League of Nations about 100 years ago, they set out on an exploratory venture. The world was completely different from today's globalized and digitalized world, there was relatively little economic interaction between states, many states had no income tax systems for individuals or corporations or were in a stage where those systems were developing. In fact, the early work by the League of Nations centred on basic notions of jurisdiction in respect of taxation and political and economic allegiance, and how these concepts would translate in tax legislation and the reach of the taxing powers of countries, with a focus on the prevention of the "evil effects of double taxation" and "to check tax evasion".[5] Of course, as we know, this work resulted in the Mexico and London Models. Thereafter, the work of the League of Nations was continued, first by the Organisation for European Economic Co-operation (OEEC) and then by the OECD, which issued its first model in 1963 – the OECD Draft (1963).[6]

Today's international tax framework has been greatly influenced by the work of the League of Nations. All the treaty concepts that are so familiar today – residence, the concept of a permanent establishment (PE), the arm's-length principle, etc. – all evolved from that work. Particular reference should be made to the work of Mitchell B. Carroll on the taxation of business profits.[7] In his report,

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1. Most recently, *OECD Model Tax Convention on Income and on Capital* (21 Nov. 2017), Treaties & Models IBFD.
2. At the time of writing this article, most recently, *UN Model Double Taxation Convention between Developed and Developing Countries* (1 Jan. 2017), Treaties & Models IBFD.
3. S. van Weeghel, *The Improper Use of Tax Treaties* p. 33 et seq. (Kluwer L. Intl. 1998).
4. For an overview of the role of international tax institutions, *see* R.J. Vann, *International Tax Policy and International Tax Institutions: Never the Twain?*, in *Current Tax Treaty Issues: 50th Anniversary of the International Tax Group* (G. Maisto ed., IBFD 2020), Books IBFD.
5. League of Nations, *Double Taxation and Tax Evasion, Report and Resolutions*, submitted by the Technical Experts to the Financial Committee, p. 5 (1925), which reads:
   > Our task, as we understood it, consisted in endeavouring to bring about a more equitable international assignment of taxation, to prevent the evil effects of double taxation and to check tax evasion. But we have fully recognized that no change can be made in the present condition of affairs without some modification of the domestic legislation of the various countries or without international conventions. It should therefore be understood that the recommendations on which we have agreed and which are set out in the following pages will be of no practical value unless the League of Nations adopts them, and unless the various countries themselves, in the free exercise of their sovereign powers, recognize them and obtain parliamentary approval for the laws and conventions which they will necessitate.
6. *OECD Draft Tax Convention on Income and on Capital* (30 July 1963), Treaties & Models IBFD.
7. M.B. Carroll, *Taxation of Foreign and National Enterprises* vol. IV (League of Nations 1933).

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he identified the separate enterprise approach and formulary apportionment.[8] As we know, the separate enterprise approach survived and formulary apportionment was ostracized, with the separate enterprise approach morphing into the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations that have become dominant both for the purposes of articles 7 and 9 of the OECD Model and the United Nations Practical Manual on Transfer Pricing for Developing Countries.[9]

Effectively, building on the work of the League of Nations, the OECD Model and the UN Model have achieved significant uniformity of existing bilateral tax treaties, but have also influenced the basic concepts that underpin domestic legislation. Effective management is in many states the linchpin for corporate tax residence,[10] the PE definition for domestic purposes may follow the treaty concept[11] and transfer pricing guidelines have become the de facto template for domestic profit allocation purposes.[12] In addition, tax treaties have provided for baseline provisions regarding non-discrimination, dispute resolution, exchange of information and assistance in the collection of taxes. This is not to say that everything is perfect. There is a long way to go, but, seen from this angle, one could say that starting with the work of the League of Nations, an orderly international tax system has been gradually achieved. Of course, none of this implies that the system does not face enormous challenges, the latest of which is posed by the digitalization of the economy. However, it is difficult to imagine a world without the basic framework. Imagine a world without tax treaties. What if countries had widely diverging taxpayer definitions, nexus rules, separate enterprise and formulary apportionment, net and gross basis taxation and different interpretations for the different concepts? Naturally, we do not know what the world would have looked like, but one could very well conceive of tax chaos in the absence of the models.

2.2. The OECD Model provided structure and a platform

Although in recent times the OECD has started to focus more on tax policy and also become more political, for many years it effectively provided the structure and the platform through which its member countries convened and worked on improving the OECD Model, elaborating on the Commentaries on the OECD Model,[13] issuing special reports, pushing for exchange of information, setting up peer reviews and so on. In the process, the OECD became the structure and the platform through which international standards were explored and formulated. Effectively, the OECD transformed itself into the standard-setter in the international tax world and beyond. As Vann put it: "The OECD has emerged as the premier international institution on tax rather than just the premier institution on international tax".[14]

2.3. The UN Model gave a voice to developing nations

A challenge to the OECD as the de facto standard-bearer is its constituency. Effectively, the OECD is "a club of mostly rich countries",[15] and an often-heard complaint is that the work of the OECD generally serves that constituency. This position results in a strong focus on the interests of capital-exporting countries, i.e. residence countries, and rule-making of increasing complexity, such that the rules are difficult to implement and administer for many developing countries. The UN, in particular its Committee of Experts on International Cooperation in Tax Matters (the "UN Tax Committee"), and its predecessor, the Ad Hoc Group of Experts, gave a voice to developing countries by introducing, through the UN Model, provisions that deviate from those of the OECD Model to the benefit of developing countries. Examples are a lower PE threshold, higher withholding taxes for certain payments and, most recently, the adoption of article 12B – Income from automated digital services.[16] However, the adoption of the pro-developing countries provisions has been less than comprehensive.[17] One could see the benefit of a more formal authority in respect of the UN Model and the Commentaries on the UN Model[18] than currently exists. While the OECD Model and the Commentaries on the OECD Model are from time to time in their latest

8. Id., at p. 187, which reads:
   The two underlying theories of taxing foreign enterprises with local establishments are:
   – That the local establishments should be taxed on the basis of separate accounts and treated in so far as possible as if they were independent enterprises.
   – That the enterprise is an organic unity and consequently the tax should be assessed on that part of the enterprise's total net income (computed in accordance with the law of the taxing country) which corresponds to the relative economic importance of the local establishment. This method is known as unlimited fractional apportionment.
9. Most recently, OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* p. 39 et seq. (OECD 2017), Primary Sources IBFD. The *United Nations Practical Manual on Transfer Pricing for Developing Countries* 10.1.3.3 (UN 2021) is much more nuanced about formulary apportionment, stating that:
   10.1.3.3 Another approach to transfer pricing income allocation is referred to as global formulary apportionment (GFA). However, such a system cannot operate at a global level, in a way that fully avoids double taxation, without prior global agreement on a suitable uniform formula, which has not yet been achieved.
10. I have not been able to establish if, and to what extent, this has been influenced by the models. In this context, note should also be made of the lack of agreement mentioned by Avery Jones, *infra*, even with regard to the treaty term. *See* J.F. Avery Jones, *2008 OECD Model: place of effective management - what one can learn from the history*, 63 Bull. Intl. Taxn. 5 (2009), Journal Articles & Opinion Pieces IBFD.
11. J. Sasseville & A.A. Skaar, *General Report*, in *Is there a permanent establishment?* sec. 7 (IFA Cahiers vol. 94A, 2009).
12. S.A. Rocha, *General Report*, in *The future of transfer pricing* sec. 4 (IFA Cahiers vol. 102B, 2017), Books IBFD.
13. Most recently, *OECD Model Tax Convention on Income and on Capital: Commentaries* (21 Nov. 2017), Treaties & Models IBFD.
14. Vann, *supra* n. 4, at sec. 3.4.4.
15. An expression often used by the Economist. *See* The Economist, *What is the OECD? What does "a club of mostly rich countries" actually do?*, The Economist (6 July 2017).
16. *See* https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-08/TAX%20TREATY%20PROVISION%20ON%20PAYMENTS%20FOR%20DIGITAL%20SERVICES.pdf.
17. W.F.G. Wijnen & J.J.P. de Goede, *The UN Model in Practice 1997-2013*, 68 Bull. Intl. Taxn. 3 (2014), Journal Articles & Opinion Pieces IBFD.
18. At the time of writing this article, most recently, *UN Model Double Taxation Convention between Developed and Developing Countries: Commentaries* (1 Jan. 2017), Treaties & Models IBFD.

version approved by the Council of the OECD[19] – and the OECD member countries are expected to do their utmost to follow the OECD Model[20] – the UN Model and the Commentary are adopted by the UN Tax Committee, which is a rather small committee with able members (and high-calibre support through the Financing for Development Office Secretariat) appointed in their personal capacity. However, unfortunately, the UN Tax Committee's authority is limited and effectively discounted in the Introduction to the Commentary on the UN Model itself.[21]

So, even if the existence and development of the UN Model, the Commentaries on the UN Model and the connected work on transfer pricing is laudable, and certainly has improved the bargaining position of developing countries, one can see that the world is still far removed from a model that is the result of the cooperative work of different constituencies participating on an equal footing. As a result, the pro-developed countries bias in the international treaty network has largely gone unchallenged.

3. Are the OECD Model and the UN Model Still Fit for Purpose?

3.1. From a practical perspective

3.1.1. The current treaty network is a patchwork

In total, there are over 3,000 income tax treaties in force. Some predate the OECD Draft (1963), some are based on the OECD Draft (1963) and/or later OECD Models, and some are a mix between provisions taken from the prevailing OECD Model and the UN Model. There are many tax treaties that reflect the particularities of the domestic policy and law of one or both contracting states. There are interpretation issues where one or both contracting states have placed observations in the Commentaries on the OECD Model or where the bilateral tax treaty is based on the OECD Model and the UN Model and where the Commentaries on the OECD and the UN Models regarding the relevant treaty provisions diverge. In addition, there is the perennial issue of whether contemporaneous or current OECD and UN Commentaries should be used. While none of this serves in and of itself to argue that the OECD Model and the UN Model are no longer fit for purpose, the situation is not ideal.

3.1.2. The Multilateral Convention or the MLI has made this worse

The advent of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the "Multilateral Convention" or MLI)[22] has complicated matters. With most bilateral tax treaties, it is no longer enough to interpret the tax treaty itself. Now, the first check is whether the applicable treaty provision has effectively been superseded by one or more provisions of the MLI. The existing challenges around the static versus ambulatory interpretation of an evolving commentary have also become somewhat more challenging as a result of the less than seamless connection between the MLI and the Commentaries on the OECD Model.[23]

3.1.3. Pillar One and Pillar Two will complicate matters further

And then there are Pillar One[24] and Pillar Two.[25] Inevitably, whatever the outcome of the project will be, the rule-making following completion of the OECD/G20 Inclusive Framework on BEPS (base erosion and profit shifting) (the OECD/Inclusive Framework) project "Addressing the Tax Challenges of the Digitalization of the Economy"[26] will further complicate matters.

Pillar One will mean a radical deviation from the separate taxpayer and separate enterprise approach on which the OECD Model and the UN Model rest. Not only will article 7 of the OECD Model and the UN Model have to be disarmed, but the separate entities that must be exempt or obtain a credit for the income or tax (as the case may be) resulting from Amount A will have to be identified as well. In the process, a bridge will have to be constructed between the Amount A world with formulary apportionment – a financial accounting tax base and a "consolidated" taxpayer – on the one hand, and the separate enterprise method – the single taxpayer of the existing treaty construct – on the other.

Depending on the level of ambition, Pillar Two may also require wholesale treaty changes. It is not realistic to expect that these changes could be brought about by anything else other than a multilateral convention. So, the world will be faced with the patchwork of existing bilateral tax treaties, the existing MLI, and, on top of that, a new

19. *See*, for example, *OECD Council approves the 2017 update to the OECD Model Tax Convention* (OECD 2017), available at www.oecd.org/tax/treaties/oecd-approves-2017-update-model-tax-convention.htm (accessed 15 Oct. 2021).
20. OECD, *Recommendation of the Council concerning the Model Tax Convention on Income and on Capital*, OECD/LEGAL/0292 (OECD 2021).
21. *See*, in particular, paras. 12 (last sentence) and 23 Introduction *UN Model* (2017).
22. OECD, *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (7 June 2017), Treaties & Models IBFD [hereinafter the *Multilateral Convention* or *MLI*].
23. *See* OECD, *Explanatory statement to the multilateral convention to implement tax treaty related measures to prevent base erosion and profit shifting*, para. 12 (7 June 2017), Treaties & Models IBFD [hereinafter the *Explanatory Statement*]. Here the *Explanatory Statement* reads:
    > Accordingly, the provisions contained in Articles 3 through 17 should be interpreted in accordance with the ordinary principle of treaty interpretation, which is that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose. In this regard, the object and purpose of the Convention is to implement the tax treaty-related BEPS measures. The commentary that was developed during the course of the BEPS Project and reflected in the Final BEPS Package has particular relevance in this regard.
24. OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2020), available at https://doi.org/10.1787/beba0634-en (accessed 15 Oct. 2021).
25. OECD, *Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS*, OECD/G20 Base Erosion and Profit Shifting Project (OECD 2020), available at https://doi.org/10.1787/abb4c3d1-en (accessed 15 Oct. 2021).
26. *See* https://www.oecd.org/newsroom/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm (accessed 15 Oct. 2021).

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multilateral convention that will only be relevant for a relatively small number of multinationals initially for Pillar One and perhaps many more for Pillar Two.

3.1.4. The interaction with international investment treaties

In addition to the universe of tax treaties, there is an international investment treaty universe, consisting of BITs and regional treaties that contain investment protection clauses. Although the treaties from these different treaty universes have different objectives and different scopes, the crossover between the two universes exists.[27] In particular, investment treaties may cover taxation measures, and, where these treaties contain so-called "tax carveouts", they may have profound consequences relating to taxation for the countries that are party to it for investor-to-state arbitration in ways that these countries had never anticipated. Neither the OECD Model nor the UN Model addresses the interaction with investment treaties, and, even where investment treaties do address their interaction with tax treaties, the delineation is far from precise. While, in particular, the UN has addressed the interaction between investment treaties and tax treaties, to date that has had very little effect. Ideally, investment treaties and tax treaties would cross-reference each other, and would indicate which treaty takes precedence with regard to the relevant treaty topic.

3.2. From the perspective of legitimacy and tax policy

3.2.1. Which organization is serving which constituency?

As mentioned in section 2.3., the OECD, at least historically, has served a limited constituency of developed countries. The UN, of course, has a much broader constituency, but, compared with the OECD, the tax capacity of the UN is very limited, it has very little funding and its recommendations have little institutional authority. The OECD/Inclusive Framework and the Platform for Collaboration on Tax[28] have been created, at least in part, to provide more inclusive platforms. While these platforms have been set up and are operational, to date there is very little evidence that the work of these platforms could result in a comprehensive treaty network that strikes a balance between the interests of developed and developing countries, and which incorporates the measures that are needed to make this treaty network operational in a uniform and practical manner. Of course, there will be the enormous work ahead, to be performed by the OECD/Inclusive Framework, to translate the agreed rule-making in addressing the challenges of the digitalization of the economy into law and treaty provisions. However, this effort concerns only a part of the entire treaty universe. Further, in the context of the g-forces at work, one could question how participatory the process really is.[29]

3.2.2. Is a tax treaty in a source country's interest?

There are many reasons why a country would conclude a tax treaty with another country. As observed in section 2., the models and the structure and platform provided by the OECD, and to a lesser extent the UN, have served to bring about an international tax architecture that has been remarkably stable until recently. But a legitimate question is whether it always is in a specific country's interest to enter into a tax treaty. Tax treaties result in a degree of alignment between the tax systems of the treaty states, contain distributive rules, rules for the elimination of double taxation and special provisions including non-discrimination, mutual agreement procedures (MAPs), exchange of information and the assistance in the collection of taxes. As has been observed in literature, the elimination of double taxation has been achieved already in the domestic law of many countries, and, in that respect, the tax treaty in question is often not more than an overlay confirming the existing position.[30] In those cases, the distributive rules effectively only reduce source country taxation for the benefit of the residence countries. If the tax treaty is one between two developed countries with somewhat comparable capital and goods and services inflow and outflow, there is likely a degree of reciprocity and the treaty will not necessarily favour one or the other country. However, where the tax treaty was concluded between a developed country and a developing country, in many cases the developing country as the source country will give up revenue without receiving a corresponding benefit other than its membership of the "treaty club". The question now addressed in section 3.3. is whether it is conceivable that a country does become a member of the "treaty

27. *See*, inter alia, M. Lennard, *Some Key Elements of International Investment Agreements with Potential Tax Impacts for Developing Countries* and S. van Weeghel, *Tax and Investment Treaties: A Few Observations*, both in *Thinker, Teacher, Traveler: Reimagining International Tax Essays in Honor of H. David Rosenbloom* (G.W. Kofler, R. Mason & A. Rust eds., IBFD 2021), Books IBFD. *See also* United Nations Conference on Trade and Development (UNCTAD), *International investment agreements and their implications for tax measures: what tax policymakers need to know – A guide based on UNCTAD's Investment Policy Framework for Sustainable Development 2021*, available at https://unctad.org/webflyer/international-investment-agreements-and-their-implications-tax-measures-what-tax (accessed 15 Oct. 2021).
28. *See* Platform for Collaboration on Tax at www.tax-platform.org (accessed 15 Oct. 2021).
29. Here, note should be made of the remarkable breakthrough relative to the project, *see supra* n. 26. Early in 2021, the project seemed in limbo, then the United States presented its plans to the OECD/Inclusive Framework (*see* C. Giles, J. Politi and A. Williams, *US offers new plan in global corporate tax talks*, Financial Times (8 April 2021), available at www.ft.com/content/847c5f77-f0af-4787-8c8e-070ac6a7c74f (accessed 15 Oct. 2021)), soon followed a G7 agreement (*see* Carbis Bay G7 Summit Communiqué, *Our Shared Agenda for Global Action to Build Back Better* (11-13 June 2021), available at www.g7uk.org/wp-content/uploads/2021/06/Carbis-Bay-G7-Summit-Communique-PDF-430KB-25-pages-1-2.pdf (accessed 15 Oct. 2021)), a BEPS OECD/Inclusive Framework agreement (*see* 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* (1 July 2021), available at www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (accessed 15 Oct. 2021)) and an OECD/G20 endorsement (*see* OECD/G20, *G20 finance ministers endorse reforms to the international tax system for curbing avoidance by multinational enterprises: OECD/G20 Base Erosion and Profit Shifting Project forwarded to G20 heads of state in November* (OECD 2021), available at www.oecd.org/tax/beps/g20-finance-ministers-endorse-reforms-to-the-international-tax-system-for-curbing-avoidance-by-multinational-enterprises.htm (accessed 15 Oct. 2021)).
30. *See*, inter alia, T. Dagan, *Between Competition and Cooperation* p. 72 et seq. (Cambridge U. Press 2018).

club", but without necessarily being shoehorned into one of the two models or a combination thereof.

3.3. Can there be a model that serves all?

3.3.1. In general

Even the UN Model embodies a compromise between residence states and source states.[31] The distributive rules that limit a country's taxation rights are, as noted in section 3.2.2., not always in the interest of the source country. Nevertheless, the source country may be inclined to conclude the tax treaty because of the baseline provisions, including non-discrimination, MAPs, exchange of information and the assistance in the collection of taxes. Even apart from the reduction of source country taxes, the mere existence of an income tax treaty may provide comfort to potential investors in that country. So conceivably, a model that would not shoehorn a country into a particular mould with regard to distributive rules could serve a useful purpose. It would have to contain quite a bit of optionality, optionality that would provide for uniform and sufficiently accepted choices.

3.3.2. A multilateral framework with baseline and optionality?

The MLI served as the vehicle to swiftly implement the treaty-related changes emerging from the OECD/G20 BEPS initiative. However, the MLI is also a fascinating pilot project, in that it reveals that a multilateral convention with optionality may result in uniformity and a degree of choice. This may still be a utopian idea, but it seems that the MLI has paved the way for thinking about a comprehensive multilateral tax convention that contains the baseline provisions without optionality, but in which the distributive rules are diverse and optional. The baseline provisions would then apply to all signatories to the multilateral convention; otherwise, a country could select those provisions that best serve its interests in light of the stage and nature of its economy. The advantage would be that the participating countries are then all members of the "treaty club", but that such membership would not necessarily be a quid pro quo for giving up revenue. It is also likely that such a system would be less of a burden for those countries that have limited capacity to negotiate tax treaties, as they could effectively pick and choose from a template. This new multilateral convention could then not only incorporate the existing distributive rules of the OECD Model and the UN Model, but also add new ones, incorporate the provisions of the existing MLI, cater for the implementation of the changes following the agreement on Pillar One and Pillar Two of the OECD/Inclusive Framework project, cross-reference to international investment treaties and, in general, provide for a flexible framework for future changes.[32]

An important question would be which institution or combination of institutions would act as the guardian of the multilateral convention. The guardian would not only need sufficient funding, technical staff and authority, but would also need to be a true reflection of its global constituency. Perhaps, the Platform for Collaboration on Tax[33] could be the starting point for the development of such a guardian.

3.3.3. Uniformity in interpretation?

A multilateral convention would go some way towards solving practical problems in the application of tax treaties, as a result of increased uniformity. It would be even better if this uniformity were also to encompass transfer pricing matters. As we know, today we are far removed from uniformity in treaty interpretation and application of the arm's length principle, in spite of the direction given by the commentaries on the models, the transfer pricing guidance available and the good work by the International Association of Tax Judges (IATJ)[34] and others, including the apparently increasing willingness of courts to take into account the interpretation of treaties in other countries.[35] Of course, the MAP could conceivably contribute to alignment, but the current MAP is too often a black box without meaningful taxpayer participation and transparency, and one for which it cannot be excluded that a degree of horse-trading is going on between the competent authorities. And treaty arbitration to date has remained an unfulfilled promise. Accordingly, these instruments have been of limited relevance as regards uniformity in tax treaty interpretation.

Conceptually, there are various alternatives that would help address this unsatisfactory situation, but, in practice, the options are very limited. In the light of the guarded sovereignty of states, their constitutions and the political reality, an international court that would be competent with regard to tax treaty interpretation and transfer pricing matters would be difficult to imagine. But perhaps a new multilateral convention could create a permanent body of experts that could be consulted in treaty interpretation and transfer pricing matters. One question would be how an obligation to consult this body could be construed and whether the advice from the body would be authoritative, binding and so forth. The modified article 3(2) of the OECD Model and the UN Model suggests that states accept that agreements by the competent authorities can have interpretative value, so why not an opinion from an advisory body, perhaps not dissimilar to the institute of the advocate general at the Court of Justice of the European Union (ECJ)?

31. Introduction, para. 12 *UN Model* (2017).
32. *See*, inter alia, J.F. Avery Jones & P. Baker, *The Multiple Amendment of Bilateral Double Taxation Convention*, 60 Bull. Intl. Fiscal Docn. 1 (2006), Journal Articles & Opinion Pieces IBFD; D.M. Broekhuijsen, *A Multilateral Tax Treaty: Designing an Instrument to Modernise International Tax Law* (Leiden U. L. Sch., Meijers Research Inst. & Graduate Sch. 2017); and S. van Weeghel, *The OECD Model Tax Convention and Its Commentaries: Towards a Multilateral Approach*, in *Tax Treaties After the BEPS Project: A Tribute to Jacques Sasseville* p. 297 et seq. (B. Arnold ed., Can. Tax Fund. 2018).
33. *See* Platform for Collaboration on Tax, *supra* n. 28.
34. *See* IATJ at https://iatj.net (accessed 15 Oct. 2021).
35. *See* J.F. Avery Jones & P.J. Hattingh, *Treaty Interpretation – Global Tax Treaty Commentaries* sec. 1.1.2.3., Global Topics IBFD.

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4. Conclusions

There is no reason to discount the enormous work that has been done, starting with the work of the League of Nations and the International Chamber of Commerce and continued by the OECD and the UN. The ensuing models have brought about an international tax architecture and a high degree of stability in the international tax system, even though that stability cannot be taken for granted, as recent years have shown. However, the time has come to step back, reflect on the strengths and weaknesses of the current treaty network with the MLI as overlay and, in the wake of further wholesale treaty changes, think about a multilateral framework that would serve to consolidate the existing treaty network with its recent modifications, but that would also provide for baseline treaty provisions and a significant degree of optionality with regard to the distributive rules.

The Platform for Collaboration on Tax could be the starting point for a true collaborative body in which as many constituencies as possible are effectively represented, and which could perhaps also be complemented with an advisory body that would serve to achieve uniform interpretation of tax treaties and where these are still relevant, transfer pricing guidelines. These may seem rather utopian ambitions, but the current international tax architecture is proof that ambitions can become reality.