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**REVIEW ARTICLE (RIEEL.COM, ISSUE N.3, 2023)****AFRICA HAS SPOKEN: [RESOLUTION A/C.2/77/L.11/REV.1](#) OF THE UNITED NATIONS GENERAL ASSEMBLY (SECOND COMMITTEE): “PROMOTING INCLUSIVE AND EFFECTIVE INTERNATIONAL TAX COOPERATION WITHIN THE UNITED NATIONS”****MACROECONOMIC POLICY ISSUES (77 SESSION, 2ND COMMISSION G.A.)**

*Replies to the amendment established by  
The United States and 55 other countries (Canada, Australia, New Zealand,  
Korea, Japan, Norway, Singapore, Liechtenstein, and the Czech Republic...)*

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## Review Article

### **Africa has spoken!. Resolution A/C.2/77/L.11/Rev.1 of the United Nations General Assembly: Promotion of inclusive and effective international tax cooperation at the United Nations. Macroeconomic Policy Issues (77th Session, 2nd Commission General Assembly, UNITED NATIONS).**

#### **Replies to the amendment formulated by the United States and countries are concurring in the vote to Resolution A/C.2/77/L.11/REV.1**

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KEYWORDS:

International tax cooperation framework or instrument; Global tax governance; sustainable development; International intergovernmental commission on international tax Cooperation

ABSTRACT:

On November 23th, 2022, the United Nations General Assembly approved -by consensus- the Resolution A/C.2/77/L.11/Rev. 1, entitled: "Promoting inclusive and effective international tax cooperation in the United Nations". On December 30th, 2022, the plenary of the United Nations approved -by consensus- the Resolution A 77/441 with the same title and the same text. Both resolutions include at least two possible proposals: a) initiate intergovernmental meetings in United Nations (UN) New York to strengthen inclusive and effective international tax cooperation, including the possibility of developing a framework or instrument on international tax cooperation in the UN (paragraph 2) and b) Consider future actions such as the establishment of an intergovernmental body for international tax cooperation within the framework of the United Nations (paragraph 3). In general, this Resolution promotes a more effective and inclusive international tax cooperation in the United Nations sphere.

Resolution A/C.2/77/L.11/Rev. 1 (presented by Commission II of General Assembly UN) was approved by consensus. United States did an emend reflect with 97 votes against, 55 in favour, and 13 abstentions.

In this paper replies to the emend made by the US and other 55 developed countries (countries with their vote against), regarding paragraph 2 (possible creation of a framework or instrument for international tax cooperation in the UN), are formulated. It also incorporates a comment about its paragraph 3, related to the construction of a government agency for international tax cooperation within the United Nations.

PALABRAS CLAVES:

Marco o Instrumento de Cooperación Fiscal Internacional, Desarrollo sostenible; Comisión intergubernamental de cooperación fiscal internacional en Naciones Unidas.

RESUMEN:

El 23 de noviembre de 2022, la Asamblea General de las Naciones Unidas aprobó la resolución de consenso A/C.2/77/L.11/Rev. 1, titulada: "Promoción de la cooperación fiscal internacional inclusiva y efectiva en las Naciones Unidas". El 30 de diciembre de 2022, el plenario de las Naciones Unidas aprobó consenso, la resolución A 77/441 con el mismo título y texto. Ambas resoluciones incorporan, al menos, dos propuestas posibles: a) iniciar reuniones intergubernamentales en las Naciones Unidas (ONU) Nueva York para fortalecer la cooperación fiscal internacional inclusiva y efectiva, incluida la posibilidad de desarrollar un marco o instrumento sobre cooperación fiscal internacional en la ONU (párrafo 2) y b) considerar acciones futuras como el establecimiento de un organismo intergubernamental para la cooperación fiscal internacional en el marco de las Naciones Unidas (párrafo 3). En general, esta resolución promueve una cooperación fiscal internacional más efectiva e inclusiva en la esfera de las Naciones Unidas.

La Resolución A/C.2/77/L.11/Rev. 1 (Presentado por la Comisión II de la Asamblea General UN) fue aprobada por consenso. Estados Unidos incluyó una enmienda que fue rechazada con 97 votos en contra, 55 a favor y 13 abstenciones.

En este artículo se ofrecen respuestas a la enmienda realizada por los Estados Unidos y otros 55 países desarrollados (países con su voto en contra), con respecto al párrafo 2 (posible creación de un marco o instrumento para la cooperación fiscal internacional en la ONU), amén de comentar su párrafo 3, relacionado con la construcción de una agencia gubernamental para la cooperación fiscal internacional dentro de las Naciones Unidas.

MOTS CLES :

CADRE OU INSTRUMENT DE COOPERATION FISCALE INTERNATIONALE, DEVELOPPEMENT DURABLE ; COMMISSION INTERGOUVERNEMENTALE DE COOPERATION FISCALE INTERNATIONALE DES NATIONS UNIES

RESUME :

Le 23 novembre 2022, l'Assemblée générale des Nations Unies a approuvé par consensus la résolution A/C.2/77/L.11/Rev. 1, intitulé : « Promouvoir une coopération fiscale internationale inclusive et efficace au sein des Nations Unies ».

Cette résolution intègre au moins deux propositions possibles : a) initier des réunions intergouvernementales à l'ONU NY pour renforcer une coopération fiscale internationale inclusive et efficace, y compris la possibilité d'élaborer un cadre ou un instrument sur la coopération fiscale internationale à l'ONU (paragraphe 2) et b) envisager de futures des actions telles que la création d'un organe intergouvernemental de coopération fiscale internationale dans le cadre des Nations unies (paragraphe 3).

Le texte a été approuvé par consensus de l'Assemblée générale des Nations Unies avec 97 voix pour, 55 contre et 13 abstentions.

L'objet de cet article de synthèse est de présenter des réponses aux réserves émises par les États-Unis et d'autres pays développés (pays ayant voté contre), concernant le paragraphe 2 (éventuelle création d'un cadre ou d'un instrument de coopération fiscale internationale à l'ONU) et certaines, moins, sur le paragraphe 3, relatif à la construction d'une agence gouvernementale de coopération fiscale internationale au sein des Nations Unies, arguant de l'origine de son adoption desdites propositions.

## Review Article:

### **Africa has spoken! Resolution A/C.2/77/L.11/Rev.1 of the United Nations General Assembly: Promotion of inclusive and effective international tax cooperation at the United Nations. Macroeconomic Policy Issues (77th Session, 2<sup>nd</sup> Commission General Assembly, UNITED NATIONS).**

Replies to the amendment made by the United States and countries agreeing in the vote.

#### 1 MATTER STATE

On November 23, 2022, the United Nations General Assembly approved by consensus Resolution A/C.2/77/L.11/Rev.1 under "Promotion of inclusive and effective international tax cooperation in The United Nations".

This resolution has been possible thanks to an initiative presented by the Second Committee of the United Nations General Assembly. Nigeria is the rapporteur country of the previous solution, representing the Group of African States. Its approval has taken place within the framework of the seventy-seventh session of the General Assembly, Agenda item 16, within the package of macroeconomic proposals: Macroeconomic Policy Issues.

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*Resolution A/C.2/77/L.11/Rev.1, presented as a proposal of the Second Committee of the United Nations General Assembly, has been approved by all States on November 23, 2022. In This same session, the US delegation presented an amendment to paragraph 2 of said text, which was rejected for failing to obtain the votes of at least 2/3 of the States necessary for this proposal to prosper.*

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Undoubtedly, we are facing a milestone of historical significance that ventures as a spearhead in designing the new global architecture of international tax cooperation relations within the framework of good global tax governance.

We congratulate the initiative of Nigeria and the group of African countries that have brought to the table of the National Assembly a decisive, inclusive, effective and sustainable proposal to promote international tax cooperation as an instrument for financing the sustainability of the planet, within the framework of a new global approach that aims to design the general bases of tax cooperation between the states in an orderly, comprehensive and effective manner, which, without a doubt, constitutes an extraordinary advance and step forward in the global state of the matter.

In December 2022, the exact text of the proposal of General Assembly Commission II, which had already been presented and approved by Resolution A/C.2/77/L.11/Rev.1, was brought to the plenary of the United Nations General Assembly. On December 30, 2022, it was approved by consensus through Resolution A 77/441 of the United Nations General Assembly plenary session.

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*On December 30, 2022, Resolution A 77/441 was approved by consensus by the Plenary of the United Nations General Assembly, with the same text and title of the Resolution A/C.2/77/L.11/Rev.1: Promotion in the United Nations of the effective and inclusive cooperation of international tax cooperation.*

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## **2 RESOLUTION A/C.2/77/L.11/REV.1: “PROMOTION OF INCLUSIVE AND EFFECTIVE INTERNATIONAL TAX COOPERATION IN THE UNITED NATIONS”.**

In session number 25, held on November 23<sup>th</sup>, 2022, the Resolution above A/C.2/77/L.11/Rev.1 was approved unanimously in the Second Committee of the United Nations General Assembly. Nigeria presented the text on behalf of the African States that are part of the UN General Assembly.

### **2.1 REGARDING THE AMENDMENT PRESENTED BY THE UNITED STATES TO THE TEXT OF RESOLUTION A/C.2/77/L.11/REV.1: “PROMOTION OF INCLUSIVE AND EFFECTIVE INTERNATIONAL TAX COOPERATION IN THE UNITED NATIONS”.**

In this same session, the delegation of the United States presented an amendment to the draft resolution, by which the United States considered that paragraph n. 2 of the Resolution should be deleted.

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*The text of the amendment proposed by the United States against to Resolution A/C.2/77/L.11/Rev.1 was not accepted. It had 97 votes against, 55 in favour and 13 abstentions (see Annex 1)*

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The United States and 55 other countries concurring in voting supported the amendment presented by North America. Said States make an initial declaration reiterating their firm position consistently favouring international tax cooperation. However, the amendment is motivated by the fear that efforts and proposals already created fundamentally under the umbrella of the OECD will be repeated, duplicated and overlapping in matters under debate relating to international tax cooperation.

In this sense, the delegation of the United States and also the delegates of another 55 countries concurring in their vote consider that with the proposal presented in paragraph 2 of Resolution Rev.1 (relative to the creation of a framework or instrument regarding international tax cooperation), there would be duplication, repetition or parallel agendas between the work of the United Nations and the work already carried out up to now by the OECD.

Probably, that duplication (repetition, parallel agendas and redundant work) is a risk that depends on how the framework or instrument is developed. If said "Framework" or "Instrument" is used to regulate partial aspects of international economic cooperation, partially reiterating the regulation of matters that have already been previously held by other International Organizations such as the OECD or others, then, logically, it will be possible to speak of duplication and overlapping work.

On the contrary, we consider that if a correct design of a framework convention or multilateral instrument is carried out that includes the general principles and main bases of international tax cooperation with a broad, inclusive and integrating scope within the framework of good global tax governance, possibly there would be no duplication or redundancy or iterations. It would not have any reason to undermine the role of the OECD.

Explanatory notes:

a) The framework agreements (framework agreements, general agreement), once the States have obtained the necessary majorities (at least 2/3 of the votes of the countries in the United Nations General Assembly) and consequently ratification, it is specified

in actual multinational treaties that must be complied with by the States as they are authentic, challenging law norms. As a general rule, general treaties, as their name indicates, include the great principles or fundamental regulations of a specific matter.

b) Framework agreements are usually developed by protocols, which must also be approved by the majority of the United Nations General Assembly states to become burdensome law regulations. However, general treaties' development protocols tend to contain rules that generate obligations or commitments for the signatory States or parties. They serve, in general, to develop the main principles contained in the framework agreements.

c) In general, we always prefer to refer to the signatory parties to these framework agreements or protocols since the participants in signing a public treaty or development protocols never coincide with the States. Still, other signatory parties may be to said agreements or protocols.

### 3 PROPOSALS INCLUDED IN RESOLUTION A/C.2/77/L.11/REV.1

Resolution A/C.2/77/L.11/Rev.1 of the United Nations General Assembly welcomes two important proposals:

1. **PARAGRAPH 2** of Resolution A/C.2/77/L.11/Rev.1, on creating a **Framework or Instrument** for International Tax Cooperation developed within the United Nations.

Decides to begin intergovernmental discussions in New York at United Nations Headquarters on ways to strengthen the inclusiveness and effectiveness of international tax cooperation through the evaluation of additional options, including the possibility of developing an international tax cooperation framework or instrument that is developed and agreed upon through a United Nations intergovernmental process, taking into full consideration existing international and multilateral arrangements.

By Resolution A/C.2/77/L.11/Rev.1 of the United Nations General Assembly, it is approved to begin intergovernmental discussions at the United Nations (New York headquarters) to strengthen inclusive and effective international tax cooperation, including the possibility of developing a "Framework" or "Instrument" for international tax cooperation, through a process within the United Nations, taking into account existing international and multilateral agreements.

2. **PARAGRAPH 3** of Resolution A/C.2/77/L.11/Rev.1, on potential next steps, such as the establishment of a member state-led, open-ended ad hoc **intergovernmental committee** on international tax cooperation under the auspices of the United Nations

Requests the Secretary-General to prepare a report analysing all relevant international legal instruments, other documents and recommendations that address international tax cooperation, considering, inter alia, avoidance of double taxation model agreements and treaties, tax transparency and exchange of information agreements, mutual administrative assistance conventions, multilateral legal instruments, the work of the Committee of Experts on International Cooperation in Tax Matters, the work of the Organisation for Economic Co-operation and Development/Group of 20 Inclusive Framework on Base Erosion and Profit Shifting and other forms of international cooperation, as well as outlining potential next steps, such as the establishment of a Member State-led, open-ended ad hoc intergovernmental committee to recommend actions on the options for strengthening the inclusiveness and effectiveness of international tax cooperation



In addition of the request to the UN Secretary General to prepare a report analysing the legal instruments and documents in these matters (taking into account the work of all the international organizations, especially the UN, OECD, G-20), the General Secretariat the establishment of an ad hoc open-ended intergovernmental Committee, led by the Member States. to recommend actions to strengthen inclusive and effective international tax cooperation.

## **4 AMENDMENT MADE BY THE UNITED STATES AND 55 OTHER COUNTRIES**

AMENDMENT: Without a doubt, paragraph 2 of the Resolution above is the one that has given rise to the most debate. In particular, the US has established an amendment that 55 countries have seconded, including Canada, Australia, the UK, Liechtenstein, Japan, Korea, New Zealand, Germany, France, the Czech Republic, Spain, etc. (see Annex I).

The formula amendment is based on a series of arguments defended by the United States delegation and seconded by those states. We group these arguments into the following thematic groups:

### **4.1 DUPLICATION OF REGULATIONS**

On the part of the countries above, it is considered that the creation of a Framework or Instrument in matters of international tax cooperation would give rise to the following:

- Duplication of existing initiatives.
- Parallel schedules.
- Necessary overlaps.
- Duplication, fragmentation, and diversion of financial and human resources.
- Repetition of regulations.

### **4.2 RISK FOR THE FINAL ACHIEVEMENT OF PILLARS I AND II OF THE BEPS PLAN AND MILI CONVENTION**

Some states consider Pillars I and II the most ambitious plan for international cooperation in the 21st century and that a framework or instrument on international cooperation could impair the work of the OECD, affecting the convention derived of Action n. 15 of the BEPS plan.

### **4.3 DANGER TO INTERNATIONAL TAX COOPERATION**

### **4.4 NON-INCLUSIVE DISCUSSION**

Because the proposals are raised at the United Nations headquarters. Lack of transparency and democracy.

## **5 REPLIES TO THE AMENDMENTS MADE BY THE UNITED STATES AND 55 OTHER COUNTRIES**

### **5.1 DUPLICATION OF REGULATIONS**

It has been the redundant and duplication, the most insistent criticism cited by all the countries that have voted to reserve against a framework or instrument for international

tax cooperation. The countries above insist that this would create repetition, parallel agendas, overlaps, fragmentation, and duplications.

We would like to stand out that, the risk above may exist if the framework or Instrument only regulates matters precisely the same as those previously held by other international organizations such as the OECD and its inclusive framework or others, and also **does not** contain regulations comprehensive, inclusive and practical information on the bases and principles of international tax cooperation.

However, to carry out the framework or instrument, for example, through a model of framework convention, the group of African States: Nigeria, Cameroon, and the rest of them, propose this measure thinking of a global model that regulates the principles and the general bases of international cooperation for the 21st century and following (not yet approved in the world today), which can be the channel to instrumentalize international tax cooperation relations as the main vector of the global tax governance.

***On the design of a FRAMEWORK or INSTRUMENT of International Fiscal Cooperation: Towards a Framework Convention or Multilateral Instrument on International Fiscal Cooperation.***

Regarding the Countries that have voted for Resolution A/C.2/77/L.11/Rev.1, positioning themselves for and against paragraph 2 (creation of a framework or instrument), perhaps a consensus solution for worldwide States, making some considerations, on the need to carry out a design of a framework or instrument, understood as a possible FRAMEWORK AGREEMENT or a MULTILATERAL INSTRUMENT (under the umbrella of the UN), but provided that said framework agreement or multilateral instrument is carried out correctly. To this end, the framework convention or multilateral instrument should be designed with the following features:

- a) Inclusive, effective, and comprehensive character.
- b) Include the principles, purposes and bases of international tax cooperation relations within a Global Tax Governance architecture framework.
- c) Take into account existing international and multilateral agreements.
- d) No duplication, redundancy, repetition and no reason to undermine the role of the OECD
- e) Following a new generation holistic model that pursues economic interests and social, humanitarian, educational, etc.
- f) Integrating into a single document or multilateral convention the set of principles, purposes and bases that should govern international tax cooperation, incorporating in an orderly, systematic and comprehensive manner the different dispersed regulations that have been created and that affect tax matters. In addition, international tax cooperation (whether complex or soft law) includes matters those that have not enjoyed as much code and that also affect international tax cooperation relations.

In line with the above:

1. Possibly, it would be considered to aspire to a framework convention on international tax cooperation, formulated as the **set of principles, purposes and broad bases** that should govern international tax cooperation within the framework of a new Global Tax Governance architecture.



2. Indeed, in the international taxation acquis, different specific or specific initiatives have already been created, which directly affect international tax cooperation (hard and soft law), such as the BEPS project (in particular, pillars I and II, but not only); the multilateral convention for mutual assistance, the model convention for the Exchange of tax information, the joint report standard for the automatic exchange of tax information of the OECD, OECD reports on compliance, tax risk management for tax administrations and digitization of administrations, and many others.
3. However, so far, **there is no a framework convention or multilateral instrument approved in the world on international tax cooperation and global tax governance**, designed as a framework convention or multilateral convention, which includes the main principles and bases that should govern international tax cooperation between States in an inclusive, effective and sustainable manner, within the framework of a new global tax governance architecture that serves as a financing instrument for global sustainability.
4. Said framework or instrument, correctly designed, could be a harmonious way of collecting all the bases of international tax cooperation, which **does not mean repetition or duplication** or overlapping, **nor could it result in undermining the margin of action of the OECD**, because **the scope** of this framework convention or multilateral instrument on international tax cooperation (according to Resolution General Assembly A/C.2/77/L.11/Rev.1), **would be much more significant in scope than partial instruments or points that up to now have already been developed on international tax cooperation matter**.

Hence, it would be difficult to think of duplications and overlaps, about this framework convention (or multilateral instrument) because:

- a) Its scope, ... would far exceed the capacity of pillars I and II of BEPS, which regulate “only” the taxation of the digital economy and “only” for multinational companies.
- b) Its scope... would also exceed the common area of the BEPS actions since the BEPS Plan is exclusively for business economic taxation, intended to prevent multinationals from diverting profits and tax bases (corporate taxation of financial activities for multinational companies). . These are fundamental aspects, but in no way, can they be understood as comparable to the set of matters included in international tax cooperation relations. These matters are only a part of international tax cooperation framework. In this sense, international tax cooperation relations related to the economic activities of multinational companies (BEPS) should be included, and the general rules of international tax cooperation generally apply to all international taxation (direct and indirect).
- c) Its scope, ... would also exceed other specific instruments that the OECD has created, such as the Common report Standard (CRS), which regulates only one of the facets of international tax cooperation in the field of administrative tax cooperation and just one of the administrative tax cooperation ways, when there are also many other forms of information exchange and also many different ways of tax administrative cooperation.

- d) Its scope, ... would also exceed the OECD model conventions, the UN model, the US model and others to avoid international double taxation since these Convention Models do not contemplate, as is logical, many of the bases that regulate the international tax cooperation relations.
- e) Its scope, ... would also exceed the model convention to exchange international tax information, although it is one of the matters included in this treaty and other model conventions, multilateral and bilateral treaties on international taxation that do not have the same purpose of last regulating the bases of international tax cooperation relations.
- f) Its scope, ... would even exceed the size of the multilateral mutual assistance convention since it would be about creating an all-encompassing framework convention that includes not only cooperation in tax management and collection matters but also the regulation of all the main bases that affect international tax cooperation from a holistic vision, in line with the latest free trade treaties (including issues of a social, environmental, educational, and humanitarian nature).
- g) Its scope,... would exceed tax cooperation relations between States, also affecting their domestic and trans-border tax relations with taxpayers, intermediaries and stakeholders in general, about protecting their rights.
- h) Its scope, therefore, should affect, not only economic issues, but also fundamental issues that affect the set of bases for international tax cooperation, such as the relationship between taxation and international trade; environmental taxation and global sustainability, tax regulation of extractive materials, tax cooperation in social, educational, cultural, humanitarian, gender matters, etc.
- i) It should finally include a holistic concept in line with the latest generation treaties, of free trade, which is currently being approved. <sup>1</sup>

A proposal of a Framework Convention of similar characteristic has been published untitled *Framework Agreement on International Tax Cooperation, Trade and Global Tax Governance*, and can be consulted in the Review of International and European Economic Law, Vol. 1, Issue 2 ([www.rieel.com](http://www.rieel.com)): <https://rieel.com/index.php/rieel/article/view/28/23>)

## 5.2 RISK FOR THE FINAL ACHIEVEMENT OF PILLARS I AND II OF THE BEPS PLAN AND MLI CONVENTION

One of the arguments that have been repeated profusely about the possible creation of an international tax cooperation framework or instrument is that said framework could

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<sup>1</sup> *Its scope, therefore, always taking into account the hard law and soft law instruments that have been created up to now, would extend to matters such as: Principles of International Tax Cooperation; Proposals of the International Tax Cooperation; Scope of International Tax Cooperation; International Administrative Cooperation in Tax Matters; International cooperation in administrative mutual assistance; Cooperation in international trade through commercial tax policies; Customs Cooperation; Cooperation in Environmental Taxation and extractive activities; Cooperation for the Resolution of Tax Disputes and Alternative Dispute Resolutions; Cooperation for Systems combating Tax Fraud; Cooperation on digital economy and global transfer pricing policies; Cooperation on taxpayers' rights in the domestic and international sphere; Cooperation on Tax education and tax compliance; Cooperation on digitization of tax administrations and cybersecurity of TTAA; Cooperation in Taxation and Gender; as well as all the aspect that could be a common denominator in international tax cooperation relations..*

entail a risk to achieving the success of Pillars I and II of BEPS and the multilateral convention. In this sense, we would like to make the following remarks:

1. Pillars I and II of BEPS regulate the taxation of the digital economy of multinationals, and that is not the complete framework of international tax cooperation matters. Besides, digital economy taxation should also include all digitized businesses (for all companies and not only multinational companies).
2. In general, the taxation of the digital economy is one of the bases that must be included in a framework convention or multilateral instrument of international tax cooperation. But, the scope of the global tax cooperation framework or instrument must be much more significant since it also includes other general bases in all the matters above.
3. Therefore, the framework convention on international tax cooperation should include among its bases, one dedicated to cooperation between states in the taxation of the digital economy, but this does not mean a risk for the achievement of pillars I and II of BEPS.

For example, in the proposal already created for the "Framework Agreement on International Tax Cooperation, trade and Global Tax Governance", a specific article is incorporated to regulate the bases of the taxation of the Digital Economy. In this line, to be assertive with the BEPS environment and its inclusive platform, the solutions proposed by PILLARS I and II of the BEPS plan are incorporated into said Framework Agreement on international tax cooperation, trade and global tax governance.

**Ex.: General Agreement on International Tax Cooperation, Trade and Global Tax Governance: A Proposal (Part I & II). Authors: Owens, J., Andrés-Aucejo, E., Akamba S., Nicoli, M. ([www.rieel.com](http://www.rieel.com), vol 1, n.2). <https://rieel.com/index.php/rieel/article/view/28/23>**

### 12.3 Cooperation in taxation of the digital economy

1. In the development of the previous point, the parties agree to **tax the profits derived from large multilateral companies and automated digital services and in general, the profits derived from digitized and highly digitized businesses.**
  - 1.1. Regarding **multinational companies**, the parties could agree to tax the income derived from cross-border operations carried out by digital companies where the value is generated and to establish compensatory tax measures for the source country in which the company operates through international consensus strategies that minimize the risk of unilateral aggressive actions. To be assertive with the new BEPS project (BEPS 2.0) and its inclusive forum for the taxation of multinationals, the parties could agree on their willingness to commit to tax the profits of multinational companies in the market country, following the criterion of the jurisdiction of use or consumption (for example, the Pillar I BEPs model) with the possibility of compensation in the country of residence of the multinationals (Pillar II BEPs), if the tax rates of the lower states are to a global minimum standard that the parties will set and that could be assessed at 15% (Globe), or agreed by consensus, which could be raised or lower.

4. In addition, the scope of the framework or instrument provided by the Resolution of the General Assembly of the UNITED NATIONS (Resolution A/C.2/77/L.11/Rev.1) would have a much greater scope than the multilateral convention of action 15 of the BEPs plan, since the framework or framework convention should include all the bases of international tax cooperation and not only the commands related to the taxation of the digital economy and concordant issues to apply BEPS plan.
5. Finally, far from causing interpretation issues of the applicable multilateral or bilateral convention or instrument, the creation of a framework convention on international tax cooperation would eliminate the issues interpretations treaties, since the framework convention should be applied in general, which would also make it possible to update the bilateral and multilaterals treaties network, not only of OECD but also from the rest of the international institutions regarding the signing parts.

**Ex.: General Agreement on International Tax Cooperation, Trade and Global Tax Governance: A Proposal (Part I & II). Authors: Owens, J., Andrés-Aucejo, E., Akamba S., Nicoli, M. ([www.rieel.com](http://www.rieel.com), vol 1, n.2). <https://rieel.com/index.php/rieel/article/view/28/23>**

**ARTICLE 12. 4 Cooperation in taxation of the digital economy**

- 6.** The signing of this *General Agreement on International Cooperation, Trade and Global Tax Governance*, by itself, would provide sufficient legal coverage so that:
- a. Consensus solutions on the taxation of digitalized businesses of multinational companies (5.1) could be applied by the signatory parties of this General Agreement, with legal coverage for the network of bilateral treaties already signed, without prejudice to the OECD regulatory acquis.
  - b. Consensus solutions on the taxation of digitized and highly digitized companies get in the present General Agreement (5.2), could be incorporated into previously signed bilateral treaties and, where appropriate, into multilateral treaties. And the same, respect to any agreements that the parties adopt based in this General Agreement or the future Protocols.
  - c. *The signing of this framework agreement and its development future protocols, in addition to providing legal coverage to adapt bilateral agreements, constitutes a legal certainty, transparency and generality source, preventing interpretation issues on the regulations applicable between multilateral conventions, multilateral instruments, domestic legislation and bilateral treaties.*

### 5.3 DANGER TO INTERNATIONAL TAX COOPERATION

We consider that the possibility of creating a framework convention on international tax cooperation, cannot be understood as a danger for international tax cooperation; on the contrary, we consider that it could be a decisive, advanced and essential step towards international tax cooperation.

It should be a remarkable historical milestone in the history of international taxation since the approval of the first global convention models to avoid international double taxation (OECD Model Convention 1963 and others), which, together with previous work of the League of Nations has been considered the most recent antecedents of international tax cooperation. From here, a series of treaties and multilateral and bilateral instruments (hard

and soft law) have succeeded in regulating matters that directly affect international tax cooperation.

Therefore, this framework or instrument would represent a historical advance and be adapted to the contemporary world's fundamental needs inherent in the second globalization. For this reason, the fact of creating a framework convention where some principles, purposes and bases of international tax cooperation are established, we humbly do not consider that it should be understood as a risk for international tax cooperation. Still, on the contrary, it would be the way and means to follow for the financing of a sustainable planet in line with what is established in all international agendas such as 2030 and others, especially in the Addis Ababa Action Agenda of 2015, in addition to other purposes already mentioned.<sup>2</sup>

Nowadays, it has not been carried out through a framework convention or instrument that regulates -with an inclusive character- the **set** of international tax cooperation principles, bases and matters.

#### 5.4 NON-INCLUSIVE DISCUSSION

Some developed country argues that the proposals can lead to a non-inclusive debate, proposed to be created and produced at the United Nations headquarters. In addition to alluding to the fact that the role of the OECD may be undermined as well as a lack of transparency, democracy and simplistic debate between developed and developing countries.

We would like to point out that it is true that the two measures proposed in Resolution A/C.2/77/L.11/Rev.1, both the framework or instrument and the possibility of creating an intergovernmental body arise in the context of the United Nations, but the following arguments can be put forward:

1. In the preamble of Resolution A/C.2/77/L.11/Rev.1, a prominent mention is made about the recognition of the work of the different organizations in the field of international tax cooperation:

Noting also the work of the Organisation for Economic Co-operation and Development/Group of 20 Inclusive Framework on Base Erosion and Profit Shifting,

Noting further the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters under a common reporting standard developed by the Organisation for Economic Co-operation and Development, as well as the role of the Global Forum on Transparency and Exchange of Information for Tax Purposes,

Recalling the work of the Platform for Collaboration on Tax, which is to intensify collaboration and coordination on tax issues between the United Nations, the International Monetary Fund, the World Bank Group and the Organisation for Economic Co-operation and Development,

Noting the Group of 20 Ministerial Tax Symposium on Taxation and Development, which was held in Nusa Dua, Bali, Indonesia, on 14 July 2022, Noting also the work of the Addis Tax Initiative in fostering collective action to strengthen the capacities of developing countries for closing recognized gaps in development finance,

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<sup>2</sup> *General Agreement on International Tax Cooperation, Trade and Global Tax Governance: A Proposal (Part I & II)*. Owens, J., Andrés-Aucejo, E., Akamba S., Nicoli, M. ([www.rieel.com](http://www.rieel.com), vol 1, n.2) <https://rieel.com/index.php/rieel/article/view/28/23>

Taking note of resolution 990 (LIV) on curbing illicit financial flows and recovery of lost assets of 17 May 2022, adopted by the Conference of African Ministers of Finance, Planning and Economic Development, ...

2. Paragraph 3 of Resolution A/C.2/77/L.11/Rev.1 establishes that the General Secretariat must prepare a report analysing all legal instruments, documents and other soft law instruments, ... considering not only the work of the United Nations Committee of Experts on International Tax Cooperation but also **“the work of the Organization for Economic Co-operation and Development/Group of 20 Inclusive Framework on Base Erosion and Profit Shifting and other forms of international cooperation.**
3. In terms of international cooperation, difficult is forget the prominent role of the United Nations Organization as a world international organization that recognizes in its Charter (signed in San Francisco in 1945) as one of its bastions, the purpose institutionalized international cooperation (developed by Resolution 2625 XXV of the United Nations). In this regard, we refer to previous works in which the main legal reasons that support the previous theses are regulated.<sup>3</sup>

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

## 6 FINAL REMARKS

- I. Based on the considerations outlined in previous pages, we would like to highlight the relevance of the recently approved Resolution A/L.11/Rev.1, which we consider a historical milestone.

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<sup>3</sup> ANDRÉS-AUCEJO, E. *The primary legal role of the United Nations on international Tax Cooperation and Global Tax Governance: Going on a new International Organization on Global Tax Cooperation and Governance under the UN “Family”*. *Revista de Educación y Derecho. Education and Law Review (JCR/emerging & SCOPUS)*, num. 21, 2020 (Open access, English and Spanish versions);



- II. By the United Nations Resolution, negotiations are opened to undertake the project of creating a framework or instrument, which we understand should be understood in the sense of working towards a framework convention or multilateral Instrument on international tax cooperation. Furthermore, within the United Nations, the possibility of moving towards creating an intergovernmental committee for international tax cooperation within the United Nations has been approved.
- III. We humbly believe that it could be seen from a cheerful, integrating and sustainable face, and could represent a golden opportunity for all worldwide States to participate in a framework convention on international tax cooperation that establishes the principles and broad bases in the matter. And to determine the guidelines governing international tax cooperation relations within a new global tax governance architecture. It could also be a *golden opportunity* to move us towards an intergovernmental body in cooperation relations and global tax governance, as we have already defended.
- IV. That is why we honestly consider these initiatives could be endorsed with the surrender of the United States and other countries that have aligned their vote with the reserves created by the United States. This would undoubtedly be in line with a cooperation policy pursued in a very decisive manner by the Biden Government, who, from here, look optimistically, with hope and sincere desire for cooperation, also in matters of international taxation, to whom from here we make a humble appeal.
- V. Hence, it is also a significant factor that, countries like the United States and its voting allies could consider the alternative of creating an international tax cooperation framework convention as a historic opportunity to reach a way of **maximums, principles and general rules** of international tax cooperation in favour of sustainable development financing that brings us closer to the objectives of the UN Agendas 2030/50, Addis Ababa Action Agenda, Monterrey Consensus, Doha Declaration, Africa Agenda 2063, among others.
- VI. Undoubtedly, the understanding, support, help and backing of the United States of America and countries such as Canada, Australia, New Zealand, Japan, Norway, Korea and many others, are critical in this new framework that the group of African States is promoting, thinking with the support and collaboration of all countries, in a global and inclusive context of all nations, with all and for all, with the hope of a better world.
- VII. Today more than ever (in the face of economic and humanitarian crises), it should be rescued the spirit that presided over the negotiations to reach institutionalized international cooperation through the United Nations and the approval of its CHARTER and other multinational treaties,<sup>4</sup> negotiations that were possible with the unconditional support of people like **Franklin D. Roosevelt (President of the United States of America)**; with the total backing

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<sup>4</sup> *Nowadays, more than ever, immersed in a post-COVID-19 economy and stunned by Russia's invasion of Ukraine, in Russia versus NATO struggle, the need to rescue the spirit of the San Francisco Charter emerges; we should go back over the residue left by Declarations such as the St. James Palace Declaration in June 1941 and the United Nations Declaration of January 1942, the Atlantic Charter of 1941 (the great principles that presidents signed in their day Roosevelt and Churchill), the Tehran and Yalta Conferences (1943 and 45 respectively), and the Dumbarton Oaks Summit in Bretton Woods, all signed in the development of the bloodiest and most massive war of all time and that brought times of prosperity, development and future. And even more, return to the European Agreement that prevailed for the redistribution of Europe where the principle of peaceful cooperation would be established without any fissure (Andrés-Aucejo, E.)*

of **Winston Churchill, John Maynard Keynes** and many other (Eva Andrés-Aucejo).

Hopefully, these words reach even one of the countries aligned with the reservations against the proposals of Nigeria and the rest of the African States.

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*Only “together” we will make international tax cooperation a reality towards constructing a fair and sustainable planet for this century, and the following ones ...*

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**ANNEX: The Committee rejected the amendment contained in A/C.2/77/CRP.2 by a recorded vot of 97 to 55, with 13 abstentions. The voting was as follows:**

In favour: Albania, Andorra, Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Guinea, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Micronesia (Federated States of), Monaco, Montenegro, Netherlands, New Zealand, North Macedonia, Panama, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Serbia, Seychelles, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America.

Against: Algeria, Angola, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belize, Benin, Bolivia (Plurinational State of), Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cameroon, Central African Republic, Chad, China, Comoros, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominican Republic, Ecuador, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Fiji, Gabon, Gambia, Ghana, Grenada, Guatemala, Guinea-Bissau, Guyana, India, Indonesia, Iran (Islamic Republic of), Iraq, Jordan, Kazakhstan, Kenya, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nepal, Nicaragua, Nigeria, Oman, Pakistan, Papua New Guinea, Paraguay, Philippines, Qatar, Russian Federation, Rwanda, Saint Kitts and Nevis, Saudi Arabia, Senegal, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Viet Nam, Yemen, Zambia, Zimbabwe. Abstaining: Argentina, Bangladesh, Bhutan, Chile, Colombia, Costa Rica, El Salvador, Mexico, Norway, Peru, Suriname, Türkiye, Uruguay.