

The UN Framework Convention on International Tax Cooperation: Enhancing the Systemic Integration of Global Tax Rules into the International Legal System?

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Abstract

With Resolution 79/235 in 2024, the General Assembly has fixed the objectives, principles, and key commitments of its forthcoming UN Framework Convention on International Tax Cooperation (FTC), an unprecedented move to enhance the UN's leadership in international tax affairs. This article focuses on the proposed amplification in the international tax system by the FTC of principles such as sustainable development, fairness and equity, and respect for human rights. The central question of this article is whether the FCT thereby contributes to the systemic integration of the international tax system as per Art. 31 (3) (c) of the Vienna Convention on the Law of Treaties, particularly in terms of the interpretation of double taxation agreements (DTAs). It does this by addressing three questions: First, are the principles proposed by the FTC legally binding or "applicable" to the parties of tax treaties? Secondly, are they relevant to tax imposition? And thirdly, how might these principles practically affect DTAs and the participants of the international tax system? The article's main contention is that the FCT may indeed strengthen the emerging relevance of community interests to the international tax system and that this may affect the interpretation of DTAs but only in certain circumstances: for example, when DTAs are silent, use generic terms, or refer to an extraneous meaning.

A. The United Nations' Framework Convention on International Tax Cooperation and its Focus on Sustainable Development, Fairness, Equity, and Human Rights

On 24 December 2024, the UN General Assembly (UNGA) adopted Resolution 79/235 (with 110 to 9 and 44 abstentions), setting out the objectives, principles, and several of the commitments of an unprecedented development in international taxation: the United Nations' Framework Convention on International Tax Cooperation (FTC). Even though the FTC will only be finalized several years from this writing, Resolution 79/235 has already locked much of the FTC's text into place. Whatever one might think of the UN's bid for enhanced leadership in international taxation, and opinions indeed vary, the FTC is certainly ambitious judging by its stated objective:

“Establish an inclusive, fair, transparent, efficient, equitable and effective international tax system for sustainable development, with a view to enhancing the legitimacy, certainty, resilience and fairness of international tax rules, while addressing challenges to strengthening domestic resource mobilization.”¹

The implication is that a new (legal) basis for the international tax system is needed, complete with governance,² aimed at cooperation, sustainable development, fairness and equity, legal certainty, and transparency. Similar concepts are recalled in the principles and commitments, again already adopted by Resolution 79/235 for the FTC, such as fairness in taxing rights³, respect for human rights,⁴ and (again) sustainable development.⁵ Indeed, aligning the international tax sys-

1 GA Res. 79/235, UN Doc. A/RES/79/235, 24 December 2024, referring to GA 79/333, UN Doc. A/RES/79/333, 5 September 2025, Annex I, para. 7(c)[TOR].

2 *Ibid.*, Art. 7(b).

tem with these core principles and goals reflects the Report by the Secretary-General that preceded an earlier pivotal vote in the UNGA,⁶ and much of the input that has been submitted by States and experts.⁷

Nevertheless, for the principal actors within the contemporary international tax regime—predominantly revenue authorities, taxpayers and their counsel, and domestic fiscal tribunals—the tangible implications of the UN Framework Convention on International Tax Cooperation (FTC) may appear elusive. The instrument seems remote from the double taxation agreements (DTAs) that constitute the operational core of their daily practice. DTAs, by design, furnish precise, mechanical directives as to the permissibility of source-state taxation or the obligation to grant relief by way of credit, thereby exhausting their normative function. Even in the context of multilateral initiatives targeting discrete challenges—such as transfer pricing, transparency, and base erosion and profit shifting (BEPS)—principles of sustainable development, fairness, and equity are occasionally invoked as rhetorical touchstones, yet they have rarely been accorded substantive normative weight in the interpretation or application of international tax norms.⁸ Against this backdrop, a legitimate enquiry arises: what concrete consequences flow from the adoption of a framework convention that elevates sustainable development, equity, and fairness to central tenets? Do these aspirational objectives not risk remaining excessively abstract to exert meaningful influence upon the routine administration of international tax law?⁹

3 TOR, *supra* note 1, Art. 9(f): “Contribute to achieving sustainable development by ensuring fairness in allocation of taxing rights under the international tax system”; see also Art. 10(a): “Fair allocation of taxing rights, including equitable taxation of multinational enterprises”.

4 TOR, *supra* note 1, Art. 9(c): “Be aligned, in the pursuit of international tax cooperation, with States’ obligations under international human rights law”.

5 TOR, *supra* note 1, Art. 9(d): “Take a holistic, sustainable development perspective that covers in a balanced and integrated manner economic, social and environmental policy aspects”; Art. 9(f); see also Art. 10(c): “International tax cooperation approaches that will contribute to the achievement of sustainable development in its three dimensions, economic, social and environmental, in a balanced and integrated manner”.

6 UNSG, *Promotion of Inclusive and Effective International tax Cooperation at the United Nations*, UN Doc. A/78/235, 26 July 2023, see for example paras 5, 11, 71.

7 Written inputs to the First Session, including an extensive report by the IBFD, are available at <https://financing.desa.un.org/un-tax-convention/inputs> (last visited 30 March 2026).

This article examines these issues through the lens of systemic integration, as embodied in Art. 31(3)(c) of the Vienna Convention on the Law of Treaties (VCLT), by elucidating its key attributes in relation to double taxation agreements (DTAs) and the broader domain of international taxation.¹⁰ This rule mandates that, in construing a treaty—here, a DTA—any relevant rules of international law applicable in the relations between the parties must be taken into account alongside the treaty’s context. Systemic integration acknowledges the foundational premise that States do not negotiate treaties in isolation from the wider corpus of international law; rather, they are presumed to intend that unre-

- 8 OECD, *Action Plan on Base Erosion and Profit Shifting* (19 July 2013), 8, 15 (referring to fairness in international taxation); OECD, *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (20 January 2022), 180, para. 4.27 (referring to fairness in imposing penalties). One finds significantly more references in materials that are not meant to have legal effects on tax imposition rules, such as in OECD, *Tax and Development at the OECD: a Retrospective 2009-2024* (28 May 2024).
- 9 R. de la Feria, ‘The Perceived (Un)Fairness of the Global Minimum Corporate Tax Rate’, in W. Haslehner et al. (eds), *The ‘Pillar Two’ Global Minimum Tax* (2024), 58; I. J. J. Burgers & I. J. M. Valderrama, ‘Fairness: A Dire International Tax Standard with No Meaning?’, 45 *Intertax* (2017) 12, 767; OECD, *Taxation and Inequality: OECD Report to G20 Finance Ministers and Central Bank Governors* (25 July 2024), 5, 13.
- 10 *Oil Platforms Case (Iran v. USA)*, Judgment, ICJ Reports 2003, 161, 182, para. 41 [*Oil Platforms*]; *Right of Passage over Indian Territory (Portugal v. India)*, Judgment, ICJ Reports 1957, 125, 142 [*Right of Passage*]; *Georges Pinson (France) v. United Mexican States*, Decision, 19 October 1928, 5 Reports of International Arbitral Awards (2006), 327, 422 [*Georges Pinson*]; *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 21 May 2024, ITLOS Reports 2024, paras 128-137 [*Advisory Opinion COSIS*]; Report of the Appellate Body, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, 12 October 1998; C. McLachlan, ‘The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention’, 54 *International and Comparative Law Quarterly* (2005) 2, 279; ILC, *Report of the Study Group of the International Law Commission to the Fifty-Eight Session, Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*, UN Doc A/61/10, 2006, para. 251, Conclusions 17-24 [ILC, *Fragmentation*].

solved matters be informed by general international legal norms and that treaty provisions be construed,¹¹ to the fullest extent feasible, in harmony with—and without derogating from—their extant international obligations.¹²

The analysis proceeds by reference to three central inquiries: (i) whether the principles enshrined in the FTC possess binding force between the parties to a given treaty (the criterion of “applicability”); (ii) whether those principles bear upon the construction of double taxation agreements (the criterion of “relevance”); and (iii) the circumstances in which such principles may concretely influence the operation of DTAs. The article concludes with a brief synthesis of its findings.

B. Are the Principles Recalled in the FTC Legally Applicable?

For a principle articulated in the FTC to satisfy the threshold of “applicability” under Art. 31(3)(c) VCLT, it must constitute a *legally binding* norm *inter partes*—i.e., binding upon all States party to the DTA in question.¹³ This requirement is met where the objectives and principles enshrined in Resolution 79/235 either instantiate or overlap with binding norms derived from treaty law or customary international law. This condition is plainly fulfilled in respect of the FTC’s principle of “respect for human rights.” The core protections enshrined in the Universal Declaration of Human Rights and the International Covenants¹⁴ indisputably impose binding obligations upon States and rank among those norms owed to the international community as a whole (*erga omnes*)¹⁵.

11 *Georges Pinson, supra* note 10, 422; Panel Report, Korea – Measures Affecting Government Procurement, WT/DS163/R, 1 May 2000, 181, para. 7.96.

12 *Right of Passage, supra* note 10, 142.

13 M. E. Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (2009), 433, para. 25.

14 *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171 [ICCPR]; *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3 [ICESCR].

Furthermore, the FTC features sustainable development among its objectives, its principles, and commitments of the FTC. More than three decades after its conceptual genesis¹⁶, sustainable development has emerged as an autonomous treaty norm, manifesting not only in multilateral environmental instruments¹⁷ but also within the Treaty on European Union (Maastricht Treaty)¹⁸, the Charter of Fundamental Rights of the European Union¹⁹, and an array of bilateral and plurilateral trade and investment agreements²⁰. Where such a norm binds the very States that are parties to a double taxation agreement (DTA), there exists no *a priori* impediment to its recognition as an “applicable” rule—distinct from a mere policy aspiration²¹—within the interpretive framework of that DTA. Nevertheless, sustainable development remains, in both treaty and customary guise, a norm of “complex and multifaceted”,²² presently lacking a universally accepted granu-

- 15 Preamble of the *Universal Declaration of Human Rights*, GA Res. 217A (III), UN Doc. A/RES/217(III), 10 December 1948; See also *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion, ICJ Reports 1951, 15, 23; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Judgment, ICJ Reports 2022, 477; *Barcelona Traction, Light and Power Company, Limited (New Application: 1962) (Belgium v. Spain)*, Judgment, ICJ Reports 1970, 3, 32, para. 33.
- 16 World Commission on Environment and Development, *Our Common Future* (1987).
- 17 *Paris Agreement*, 22 April 2016, Art. 4, 3156 UNTS 79 . For example, the *Cooperation Agreement between the European Community and the Lao People's Democratic Republic*, 29 April 1997, 2003 UNTS 3, which imposes parties to effectively implement environmental laws and regulations. See N. Schrijver, ‘The Evolution of Sustainable Development in International Law: Inception, Meaning and Status’, 329 *Recueil des Cours* (2007) 217, 288-317.
- 18 *Treaty on European Union*, 7 February 1992, 1757 UNTS 3; see sustainable development in EU law in general in S. R. W. van Hees, ‘Sustainable Development in the EU: Redefining and Operationalizing the Concept’, 10 *Utrecht Law Review* (2014) 2, 60.
- 19 *Charter of the Fundamental Rights of the European Union*, OJ 2012 C 326/02, Art. 37.
- 20 *Free Trade Agreement between the EU and the Republic of Korea*, 6 October 2010, OJ 2011 L 127/6, 62-65; *Trade and Cooperation Agreement between the EU and the United Kingdom of Great Britain and Northern Ireland*, 30 December 2020, OJ 2021 L149/10, 443-535; *Agreement between the United States of America, the United Mexican States, and Canada*, 30 November 2018 .
- 21 *Gabčíkovo-Nagymaros Project (Hungary v. Slovakia)*, Judgment, ICJ Reports 1997, 7 [Gabčíkovo-Nagymaros].
- 22 Schrijver, *supra* note 17, 366.

lar definition.²³ Scholarly discourse continues to debate its precise juridical status and applicability,²⁴ yet a discernible trajectory toward heightened normativity is evident. Brownlie's characterisation in 1998 as "problematic and nebulous" has yielded,²⁵ over two decades later, to Wolfrum's assessment that "the normative contours of the principle of sustainable development have developed clearly".²⁶ Although consensus remains incomplete,²⁷ sustainable development is increasingly regarded as encompassing²⁸—or at minimum, intimately linked to—principles that themselves constitute rules of general international law. Prominent among these are the obligation to prevent significant transboundary environmental harm and to refrain from impairing the environment of other States,²⁹ both firmly embedded in customary law.³⁰ Equally, the duty of due diligence in envi-

- 23 E. B. Weiss, 'Establishing Norms in a Kaleidoscopic World - General Course on Public International Law', 396 *Recueil des Cours* (2019), 37, 175.
- 24 As noted by U. Beyerlin, 'Sustainable Development', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (online edition, last updated October 2013), para. 15.
- 25 I. Brownlie, *Principles of Public International Law*, 5th ed. (1998), 287.
- 26 R. Wolfrum, 'Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law', 416 *Recueil des Cours* (2019), 9, 163. See also C. Voigt, *Sustainable Development as a Principle of International Law: Resolving Conflicts between Climate Measures and WTO Law* (2009), 154. See also GA Res. 70/1, UN Doc. A/RES/70/1, 25 September 2015, 1.
- 27 U. Beyerlin & T. Marauhn, *International Environmental Law* (2011), 81.
- 28 P. Birnie, A. Boyle & C. Redgwell, *International Law and the Environment*, 3rd ed. (2009), 116.
- 29 *Report of the United Nations Conference on the Human Environment*, UN Doc. A/CONF.48/14/Rev.1, 5-16 June 1972, 5, Principle 21; *Report of the United Nations Conference on Environment and Development*, UN Doc. A/Conf.151/26/Rev.1 (Vol.I), 3-14 June 1992, 3, Principle 2 [*Rio Declaration*].
- 30 *Trail Smelter Arbitration (United States v. Canada)*, Award of the Arbitral Tribunal, 16 April 1938, 3 Reports of International Arbitral Awards (2006), 1911, 1965; *The Corfu Channel*, Judgment, ICJ Reports 1949, 22; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, ICJ Reports 1996, 226, 241-142, para. 29; *Dispute over the Status and Use of the Waters of the Silala (Chile v. Bolivia)*, Judgment, ICJ Reports 2022, 614, 644, paras 83, 99.

ronmental matters, intrinsically aligned with sustainable development,³¹ enjoys customary status.³² It has further been contended that the precautionary principle³³ constitutes an integral facet of this broader due diligence obligation.³⁴

As Franck has set out comprehensively in his General Course,³⁵ fairness and equity can be found at the foundation and in applications across many of international law's important chapters and treaty regimes,³⁶ and are frequently deployed in international adjudication.³⁷ The proposition that fairness and equity ought to serve as cardinal principles in the architecture of international tax relations—long a subject of scholarly and policy discourse—lies at the very heart of the FTC.

The recognition that several principles enshrined in the FTC constitute established norms of international law reframes the significance of voting patterns in the pertinent UN resolutions—and indeed the eventual adoption of the FTC itself. Obligations such as respect for human rights or the duty of cooperation

31 See for example *Rio Declaration*, *supra* note 29, 3, Principles 2, 4, 11, 13, 17.

32 *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, ICJ Reports 2010, 14, 79, para. 197; *Advisory Opinion COSIS*, *supra* note 10, para. 235.

33 International Law Association, 'New Delhi Declaration of Principles of International Law Relating to Sustainable Development', 49 *Netherlands International Law Review* (2002) 2, 299, 303-304; Schrijver, *supra* note 17, 340.

34 *Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2017, 10, 46, para. 131.

35 T. Franck, 'Fairness in the International Legal and Institutional System - General Course on Public International Law', 240 *Recueil des Cours* (1993), 151.

36 Just few examples: *United Nations Framework Convention on Climate Change*, 4 June 1992, 1771 UNTS 107, Art. 3 (1); *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 16 March 1998, Art. 10, 2303 UNTS 162, 222 [*Kyoto Protocol*]; *General Agreement and Tariffs and Trade*, 30 October 1947, Arts XVIII, XXXVI, 1867 UNTS 190; *United Nations Convention on the Law of the Sea*, 10 December 1982, 1833 UNTS 3, Preamble and Arts 74, 83; see Franck, *supra* note 35, for a more extensive overview.

37 *Factory at Chorzów (Germany v. Poland)*, PCIJ Series A, No. 17 (1928); *Nuclear Tests (Australia v. France)*, Judgment, ICJ Reports 1974, 253, 268; *Temple of Preah Vihear (Cambodia v. Thailand)*, Judgment, ICJ Reports 1962, 6; *North Sea Continental Shelf*, Judgment, ICJ Reports 1969, 3. See also S. Rosenne, 'The Position of the International Court of Justice on the Foundation of the Principle of Equity in International Law', in A. Bloed & P. van Dijk (eds), *Forty Years International Court of Justice* (1988), 85, 88-89; R. Y. Jennings, 'Equity and Equitable Principles', 42 *Annuaire Suisse de Droit International* (1986), 27, 35.

under the UN Charter bind States irrespective of their vote on the resolution or their subsequent accession to the FTC, though such conduct may bear upon the relevance of those norms to a particular interpretive question.

An alternative lens for assessing applicability lies in the maxim *lex specialis derogat legi generali*. Might a DTA embody obligations that prevail over those arising from human rights, sustainable development, or the duty of cooperation? Such a hierarchy is conceivable, but only on a norm-specific basis—never as a blanket exemption encompassing the entirety of the DTA’s subject matter. Consider, for instance, Art. 24 of the OECD Model Convention, which establishes a narrowly tailored prohibition against discriminatory taxation, confined to less favorable treatment of nationals of the other contracting State who are comparably situated in terms of tax residence. This provision may properly be regarded as *lex specialis* with respect to that discrete form of discrimination. Yet it cannot supplant, for example, the broader national treatment obligation enshrined in investment treaties, which prohibits discrimination against foreign nationals more generally.³⁸ Crucially, even where *lex specialis* applies, the superseded norm does not lapse. As the International Court of Justice affirmed in *Military and Paramilitary Activities*, the external rule retains its validity and force, may inform interpretation, and may resurface to fill lacunae in the treaty text.³⁹

C. Are the FTC’s Principles too Vague to be Relevant to Tax Imposition?

The reluctance to link ostensibly “vague” principles—such as sustainable development, fairness, or equity—to the predominantly mechanistic and transactional domain of DTAs stems chiefly from concerns over *relevance*.

Taxation bears a direct nexus to the Sustainable Development Goals (SDGs),⁴⁰ exerting either facilitative or obstructive effects—for instance, through fiscal incentives for renewable energy, carbon pricing of fossil fuels,⁴¹ excise duties

38 The common carve-out for certain tax measures from National Treatment reflects *lex specialis*.

39 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment, ICJ Reports 1986, 14, 96, para. 179.

in tobacco control,⁴² or gender-discriminatory tax provisions.⁴³ In a wider sense, tax measures finance SDGs but this might be a rather general sense of being relevant. But just because a principle is broad in scope does not mean it is not binding, or has no real, practical normative implications. For decades, international courts and tribunals have heavily relied on the principle of good faith to do exactly that, for example, although that is also notoriously difficult to pin down.⁴⁴

Moreover, norms originating in disparate branches of international law may nonetheless prove pertinent, as the International Court of Justice affirmed in *Oil Platforms*. There, the Court invoked Art. 31(3)(c) VCLT to incorporate the customary law on the use of force in construing a commercial and economic treaty.⁴⁵ The decisive criterion is whether the external rule pertains to the subject matter of the provision under interpretation.⁴⁶ Accordingly, notwithstanding the expansive scope of sustainable development or fairness and equity, such principles may satisfy the relevance threshold of Art. 31(3)(c) VCLT. This proposition finds support in *Mutual Assistance in Criminal Matters*,⁴⁷ where the Court held that broadly framed, aspirational norms of “equality” and “cooperation” from a 1977

40 GA Res. 70/1, *supra* note 26.

41 *Kyoto Protocol*, *supra* note 36, 215, Art. 2(1) (v).

42 *WHO Framework Convention on Tobacco Control*, 16 June 2003, 2302 UNTS 166, Art. 6(2).

43 See for example the comments by the Committee created under the *Convention on the Elimination of Discrimination Against Women*, GA Res. 34/180, UN Doc. A/RES/34/180, 18 December 1979; CEDAW, *Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Switzerland*, UN Doc. CEDAW/C/CHE/CO/4-5, 18 November 2016, 15, paras 40-43; CEDAW, *Concluding Observations on the Combined Sixth and Seventh Periodic Reports of Luxembourg*, UN Doc. CEDAW/C/LUX/CO/6-7, 14 March 2018, 3, paras 10, 15, 16.

44 *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, ICJ Reports 1948, 57; *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports 1962, 151; *Nuclear Tests (Australia v France)*, Judgment, ICJ Reports 1974, 253.

45 *Oil Platforms*, *supra* note 10, 182, para. 41. See also *Oil Platforms*, *supra* note 10, Separate Opinion of Judge Higgins, 225, 237, para. 46.

46 See also the statements by G. I. Tunkin and H. Waldock in: *Summary Records of the Sixteenth Session, 11 May-24 July 1964*, *Yearbook of the International Law Commission* (1964), Vol. I, 310; R. Ago, *Second Report on State Responsibility*, *Yearbook of the International Law Commission* (1970), Vol. II, 177, 192-193.

treaty were rightly considered in interpreting a 1986 agreement on judicial cooperation in criminal proceedings.⁴⁸ As Schrijver already put it: “sustainability as a norm of international law is in principle no more abstract, not more general than other important norms of the international community such as peace and security, respect for human rights and international humanitarian law, and democracy.”⁴⁹

D. The Unlocking of the Tax System Through Systemic Integration

DTAs are mostly meant to create rights for taxpayers themselves through limitations imposed on the municipal tax laws of their parties. Accordingly, when principles such as sustainable development, fairness and equity, and respect for human rights infuse meaning into DTAs through systemic integration, they may directly, shaping the concrete rights and duties of the participants of the system.

Even though a relevant and applicable rule exists and is taken into account, this does not mean it will indeed affect the interpretation of a DTA term. It is most likely to do so only in certain circumstances. Most of the time, as the International Law Commission acknowledged,⁵⁰ the text of the treaty itself may be straightforward and offers a conclusive answer without having to resort to extraneous rules, even those that are binding upon the Parties.⁵¹ This may particularly

47 *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*, Judgment, ICJ Reports 2008, 177, 219, para. 112.

48 *Ibid.*, para. 113.

49 Schrijver, *supra* note 17, 374.

50 ILC, *Fragmentation*, *supra* note 10, para. 251, Conclusion 18.

51 Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones) – Complaint by the United States*, WT/DS26/R/USA, 18 August 1997, paras 8.157–8.158; Panel Report, *EC Measures Concerning Meat and Meat Products (Hormones) – Complaint by Canada*, WT/DS48/R/CAN, 18 August 1997, paras 8.160–8.161; *Eskosol S.p.A. in liquidazione v. Italian Republic*, Decision on Termination Request and Intra-EU Objection, 7 May 2019, ICSID Case No. ARB/15/50, para. 126; *RENERGY S.à.r.l. v. Kingdom of Spain*, Award, 6 May 2022, ICSID Case No. ARB/14/18, para. 370; *Vattenfall AB and others v. Federal Republic of Germany*, Decision on the Achmea Issue, 31 August 2018, ICSID Case No. ARB/12/12, paras 154, 205.

be the case for DTAs' utilitarian distributive rules, mandating for instance a plain exemption or a maximum percentage of source tax, leaving very little room for interpretation, let alone with the help of extraneous rules. Sustainable development, fairness, or respect for human rights cannot make a DTA say what it clearly does not say. Borrowing ideas from McLachlan,⁵² Wolfrum,⁵³ and Besson,⁵⁴ the impact of such principles may likely be most felt in the following three circumstances:

- (a) the DTA is silent or unclear on an issue;
- (b) it uses a term that is generic and meant to be infused with meaning; or
- (c) when it uses a term that itself refers to the external rule of international law.

Each one of these situations occurs in connection with DTAs. An example of situation (a) relates to the right to tax certain interests in natural resources. Under the capital gains provision of the Model DTAs, the State where 'rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources' are situated has the right to tax gains on such rights, including gains from the alienation of 'shares' deriving more than 50% of their value from such rights. Since its update in 2017, the OECD Model followed by the UN Model provide that this rule not only applies to shares *per se*, but also to 'comparable interests such as interests in a partnership or trust'.⁵⁵ Arguably, there is at least a degree of uncertainty whether comparable interests should be included in the operation of treaties still featuring the pre-2017 language. States may argue that the 2017 addition was introduced *ex abundanti cautela*. Admittedly, the alternative view that 'shares' clearly does not extend to comparable interests could also reasonably be argued. When interpret-

52 McLachlan, *supra* note 10.

53 R. Wolfrum, *Solidarity and Community Interests: Driving Forces for the Interpretation and Development of International Law* (2021), 163.

54 S. Besson, 'Community Interests in International Law: Whose Interests Are They and How Should We Best Identify Them?', in E. Benvenisti, G. Nolte & K. Yalin-Mor (eds), *Community Interests Across International Law* (2018), 36.

ing a DTA in this context without the reference to ‘comparable interests,’ various factors may be considered with the ordinary meaning, including the context, object, and purpose of the treaty, domestic laws, and the impact of anti-avoidance rules. In addition, the interpreter may rely on general principles of international law that are applicable and relevant. It is proposed in this regard that the permanent sovereignty of natural resources, which has the status of customary international law⁵⁶ and that is closely related to several SDGs referred to in the FTC, is “applicable” for all States. Furthermore, as to relevance, it seems it can validly be argued that “taxation of natural resources” and “sovereignty over natural resources” indeed relate to the same subject matter. Thus, this factor might give more weight in the crucible of interpretation in favor of the notion that a DTA State’s limitations on taxing natural resources should be interpreted with appropriate regard for the customary law on natural resources, insofar not contrary to the ordinary meaning of the treaty.⁵⁷ Accordingly, this would be an argument in support of the interpretation that a ‘share’ may include an interest in a partnership or a trust, even if the treaty does not explicitly state so.

An illustration of (b) concerns the mutual agreement procedure of a DTA. All DTAs provide that a taxpayer who considers the actions of one or both States not to be in accordance with the DTA can present his case to the State(s), which will “endeavor to resolve the case by mutual agreement”.⁵⁸ It can be argued that this provision is aimed at creating an individual (human) right for the benefit of

- 55 OECD, *Model Tax Convention on Income and on Capital* (2017), Art. 13 (4); *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting*, opened for signature on 24 November 2016, entered into force on 1 July 2018, OECD/LEGAL/0432; OECD, *Preventing the Granting of Treaty Benefits in Inappropriate Circumstances, Action 6 -2015 Final Report* (2015); UN, *Model Double Taxation Convention Between Developed and Developing Countries* (2021), UN Doc. ST/ESA/PAD/SER.E/21, Art. 13 (4).
- 56 *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, ICJ Reports 2005, 168; GA Res. 1803 (XVII), UN Doc. A/RES/1803(XVII), 14 December 1962.
- 57 E. N. Kasoko, ‘International Taxation of Offshore Indirect Transfers of Mineral Assets: Legal Analysis Considering the Principle of Fairness and Sustainable Development’, 50 *Intertax* (2022) 1, 126.
- 58 OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2017* (2017), Art. 25.

the taxpayer. What is a “genuine” endeavor and which process actually constitutes ‘resolving’ calls for the insertion of relevant and applicable meaning from outside the DTA itself. The principles of fairness and equity as well as respect for human rights, recalled in the FTC and acknowledged by the OECD Commentary on Art. 25 of the Model,⁵⁹ enhance the importance of the right to due process, akin to the customary international law concerning the protection of aliens and foreign investors. The “domestic renvoi” in art. 3 (2) of the DTA might be of assistance in this case, but as a one-way street, i.e. only if domestic law meets or exceeds relevant international protection for the taxpayer.⁶⁰ While there is no actual obligation to reach the result, the authority’s effort in the MAP must be with a genuine intention such that the purpose of the DTA to avoid double taxation is realized.⁶¹ These relevant and applicable international rules on due process, including international law rules and mechanisms impacting taxpayer rights as examined in a recent comprehensive work by Kokott and Pistone,⁶² translate into real, practical consequences for taxpayers, often in addition to corresponding rules on the tax authority per its domestic laws by weighing in on the meaning of the term “to endeavor” in Art. 25 DTA. As such, it is unlikely to permit unreasonable delays,

59 *Ibid.*, 429, para. 5.1; see also OECD, *The 2017 Update to the Model Tax Convention*, para. 191.

60 *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, Art. 27; E. Vanderbruggen, ‘Unless the Vienna Convention Otherwise Requires: Notes on the Relationship between Article 3(2) of the OECD Model Tax Convention and Articles 31 and 32 of the Vienna Convention on the Law of Treaties’, 43 *Journal of European Taxation* (2003) 5, 142.

61 *Gabčíkovo-Nagymaros*, *supra* note 21, 78, para. 142 (the principle of good faith obliges the Parties to apply it in a reasonable way and in such a manner that its purpose can be realized); *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v. United States of America)*, Judgment, ICJ Reports 1984, 246, 292, para. 87, where it is held that the parties are not only under a duty to negotiate but also ‘to do so in good faith, with a genuine intention to achieve a positive result’.

62 J. Kokott & P. Pistone, *Taxpayers in International Law: International Minimum Standards for the Protection of Taxpayers’ Rights* (2022), 7-28, 70-79; See also R. Miller, ‘Report on the ILA Study Group on International Tax Law Seminar “Public International Law and Taxation” held on 11 October 2019 in Luxembourg’, 60 *European Taxation* (2020) No. 2/3, 112.

refusing submissions by the taxpayer, refusing a taxpayer access to information that is needed, a lack of transparency, or a failure to follow proper internal procedures.⁶³

Finally, one of many examples of (c), an explicit or implied reference to external rules can be found in treaties for the exchange of information (TEI). The information exchanged under a TEI also covers criminal tax matters. Certain provisions in a TEI are perhaps not addressed to individual taxpayers but they are certainly aimed at protecting their rights,⁶⁴ such as the right to have counsel present, the right to invoke privileges, and the right to have information treated confidentially. These terms refer to the domestic laws of the State receiving the request for assistance. Logically, the tax authority of such a State cannot be expected to go against its own domestic laws. Yet, the same terms cannot be seen as isolated from related and applicable rules such as the right to a fair trial as found in the Universal Declaration and the Covenants, as well as in regional human rights instruments.⁶⁵ For example, when States conclude an agreement which covers collecting evidence for a criminal trial they need to perform this agreement in accordance with their other binding international norms between the same Parties which apply to the same subject matter. It is arguable that a TEI only refers to domestic law protections, in a vacuity of international norms.

63 *Lac Lanoux Arbitration (France v. Spain)*, Award of the Arbitral Tribunal, 16 November 1957, 12 Reports of International Arbitral Awards (1957), 281; *Occidental Exploration and Production Company v. The Republic of Ecuador*, Final Award, 1 July 2004 LCIA Case No. UN3467; *Tza Yap Shum v. The Republic of Peru*, Award, 7 July 2011, ICSID Case No ARB/07/6, 72, paras 182-195; *EnCana Corporation v. Republic of Ecuador*, Award, 3 February 2006, LCIA Case No. UN3481, 47, paras 166-168.

64 Not so, it would seem, with the Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L64/1, which was deemed to ‘not contain any rights at all for taxpayers but governs only rights and obligations of the tax authorities’: *Jiří Sabou v. Finanční ředitelství pro hlavní město Prahu*, C-276/12, Judgment of 22 October 2013, EU:C:2013:678, para. 30; *Berlioz Investment Fund SA v. Directeur de l’administration des contributions directes*, C-682/15, Judgment of 16 May 2017, EU:C:2017:373, para. 45; W. Boei & J. van Dam, ‘Legal Protection in the Context of International Exchange of Information upon Request between Tax Authorities’, *Erasmus Law Review* (2022) 2, 76.

65 ICCPR, *supra* note 14; ICESCR, *supra* note 14.

E. Some (Preliminary) Concluding Thoughts

A reassessment of certain foundational premises of the international tax order, presaged by Klaus Vogel's observations in the 1980s,⁶⁶ appears increasingly warranted. As Vella contends, "much is wrong with the international business tax system. It is economically inefficient, susceptible to profit shifting, perceived by many to be unfair, difficult to comply with and administer, and incentive incompatible".⁶⁷ The extent to which taxation—arguably the final redoubt of sovereign prerogative and voluntarist coordination—will be recalibrated by norms embodying collective interests raises the unresolved dilemma of fragmentation within international law and the global tax architecture. One vision for the international tax system is that bilateral transactional approaches to taxing rights are largely sufficient and that it does not need an influx of vague principles that are supposedly not really relevant to tax imposition rules. Such vision for the tax system, with an exclusionist view of art. 3 (2) DTA, might perhaps reflect what Judge Simma, no doubt in a different context, referred to as "the glaring value-poverty of bilateralist international law".⁶⁸

The competing paradigm embodied in the FTC remains indistinct. Prudence counsels a measured stance. As the FTC's own rationale concedes, constructing an international tax order oriented toward sustainable development and anchored in fairness and equity demands more than the systemic integration of extant norms. Yet even in this embryonic phase of a post-voluntarist tax regime, the forces of globalization, climatic exigencies, and the ascendance⁶⁹ of communitarian imperatives render untenable the continued sequestration of taxation as "the Land that Time Forgot".⁷⁰ At this juncture, taxation's omnipresence within the international legal order is manifest: it intersects with virtually every domain,

66 K. Vogel, 'Worldwide vs. Source Taxation of Income - A Review and Re-Evaluation of Arguments (Part I)', 16 *Intertax* (1988) 8/9, 216.

67 J. Vella, 'What is Wrong With the International Business Tax System?', 27 *Journal of International Economic Law* (2024) 4, 596, 603.

68 B. Simma, 'From Bilateralism to Community Interest in International Law', 250 *Recueil des Cours* (1994), 217, para. 5.

69 *Ibid.*, 234.

not merely as policy but as a transversal subject governed by myriad branches of international law. This ubiquity necessitates integration—to harmonize objectives and to reconcile inevitable normative collisions. Such tensions arise, for instance, when a renewable-energy tax credit qualifies as a prohibited subsidy under the Agreement on Subsidies and Countervailing Measures,⁷¹ yet its withdrawal risks breaching an investment treaty; when fossil fuel tax exemptions contravene the Kyoto Protocol or Paris Agreement while their imposition may infringe aviation conventions;⁷² or, more fundamentally, when States assert that deficient domestic resource mobilization (DRM)—an express FTC objective—remains juridically insulated from their duty of effective cooperation on climate change and other SDGs.⁷³ Aligning the diverse tax-related aims, entitlements, and duties with overarching community values—sustainable development, human rights, equity, and fairness—may represent not only prudent policy but the discharge of a legal obligation.⁷⁴ Effectuating such congruence, however, will require not merely systemic integration but the elaboration of novel normative instruments.

70 The classic novel of “Edgar Rice Burroughs”, published in 1918 where the protagonist finds himself stranded on a deserted island where dinosaurs have survived the test of time.

71 As was the claim by the EU, see Report of the Appellate Body, Canada — Measures Relating to the Feed-in Tariff Program, WT/DS426/AB/R, 6 May 2013.

72 *Convention on International Civil Aviation*, 7 December 1944, 15 UNTS 295; International Civil Aviation Organisation (ICAO), ‘Consolidated statement of continuing ICAO policies and practices related to environmental protection – Global Market-based Measure (MBM) scheme’, Assembly Res. A39-3 (6 October 2016) available at: https://www.icao.int/sites/default/files/environmental-protection/CORSIA/2017%20Seminar%20on%20CORSIA/Resolution_A39_3.pdf (last visited 2 April 2026); R. Abeyratne, ‘Aircraft Engine Emissions—Carbon Offsetting or Carbon Tax?’, 49 *Environmental Policy and Law* (2020)4-5, 210, 216.

73 GA Res. 69/313, UN Doc. A/RES/69/313, 27 July 2015, para. 22; P. Hongler, *The International Law of Taxation* (2021), 13-14.

74 *Climate Emergency and Human Rights*, Inter-American Court of Human Rights, Advisory Opinion AO-32/25, 29 May 2025, para. 263.