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## **A multilateral tax treaty: designing an instrument to modernise international tax law**

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## Annex

### Draft clauses to the framework convention-protocol design and the 'agreement to scope'

In this Annex, I have drafted example clauses of a framework convention-protocol design and an 'agreement to scope' so as to illustrate the points made in Chapter 7 (see the table below). The reader may notice that the drafts below include clauses that have not been discussed in the book. I felt that a detailed explanation of every single treaty clause taken up below was unnecessary: the aim here and of Chapter 7 is to illustrate, by means of some example clauses, the book's core arguments. It has not been my aim to provide a handbook for treaty drafters of a multilateral convention, such as the UN (2012): *Treaty Handbook* (United Nations Revised ed. 2012); the UN (2003): *Final Clauses of Multilateral Treaties: Handbook* (United Nations 2003) and, applicable by analogy, the handbook on the UNFCCC: UN Climate Change Secretariat, United Nations Framework Convention on Climate Change: Handbook (UNFCCC 2006). Moreover, I have been careful in expressing thoughts on substantive tax treaty principles or rules, as they are not at the heart of this study.

For inspiration in drafting the clauses of the framework convention-protocol design, I have made use of the UN Framework Convention on Climate Change and the WHO Framework Convention on Tobacco Control.<sup>1</sup> Similarly, for the 'agreement to scope', I have looked at the UN Convention on the Law of the Non-Navigational Uses of International Watercourses and the Draft articles on the Law of Transboundary Aquifers.<sup>2</sup> Moreover, I have used the BEPS Action Plan and BEPS Final Reports for some of the language used.

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1 *United Nations Framework Convention on Climate Change* (adopted 9 May 1992), 1771 UNTS 107; *WHO Framework Convention on Tobacco Control* (adopted 21 May 2003), 2302 UNTS 166.

2 *UN Convention on the Law of the Non-Navigational Uses of International Watercourses* (adopted 21 May 1997), 36 ILM 700; Draft Articles on a Law of Transboundary Aquifers, in Official Records of the General Assembly, Sixty-third Session, Supplement No. 10 (A/63/10).

Table 1: Overview of draft articles and related sections of Chapter 7

| <i>Section</i>                                                                         | <i>Draft articles</i>                                                 |
|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------|
| 7.3 (The organisation managing the multilateral regime)                                | Annex A and B: articles 5, 6 and 7                                    |
| 7.4 (Guiding principles)                                                               | Annex A and B: articles 3 and 4; preambles.                           |
| 7.5 (Network effects: pactum de agendo)                                                | Annex A: article 8(2); Annex B: article 8(3).                         |
| 7.8 (Framework convention-protocol design)                                             | Annex A, particularly articles 3, 4 and 10.                           |
| 7.9 (Conflict clause)                                                                  | Annex A: article 6.                                                   |
| 7.10.2 (Interpretative flexibility: 'menu options' and reservations)                   | None (residual rules of the VCLT apply)                               |
| 7.10.3 (Interpretative flexibility: 'rules of the road')                               | Protocol to Annex A: articles 2, 3 and 4.                             |
| 7.11 (Dynamic decision-making procedures)                                              | Protocol to Annex A: article 5.                                       |
| 7.14.1.1 (Agreement to scope: Pactum de contrahendo)                                   | Annex B: article 8.                                                   |
| 7.14.1.2 (Agreement to scope: Monitoring and reporting requirements)                   | Annex B: article 9.                                                   |
| Other treaty provisions, e.g., right to vote; depositary; ratification (not discussed) | Annex A and B: articles 11-18.<br>Protocol to Annex A: articles 6-11. |

#### A. THE FRAMEWORK CONVENTION-PROTOCOL DESIGN

##### The Framework Convention on International Taxation

The Parties to the present Convention,

*Recognising* that globalisation has impacted countries' income tax systems;

*Recognising* that the tax treaty network is outdated, as it is for instance unable to effectively address opportunities for multinational companies to greatly minimise their tax burdens and/or issues related to the increased relevance of the digital economy;

*Desiring* to conclude a multilateral agreement to swiftly implement or incorporate in their bilateral tax treaty relationships new developments in society, business and technology;

*Recognising* that this requires a fair level playing field that ensures that all countries and jurisdictions implement their commitments equally and on an equal footing;

Recognising that this requires continuous interaction in the future;

Have agreed as follows:

#### Article 1. Scope of the present Convention

The present Convention applies to tax treaties in force or to be concluded in relation to provisions that the Conference of the Parties may adopt.

#### Article 2. Terminology

For the purposes of the present Convention:

1. 'Tax treaty' means any agreement for the avoidance of double taxation and the prevention of fiscal evasion applicable in the relations between Signatory States or between Signatory States and third states;  
(etc.)

#### Article 3. Objective

The ultimate objective of this Convention and any related instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, that the international tax treaty network is modernised and updated in accordance with the latest developments in society, business and technology. In doing so, the Parties will promote an open and transparent negotiating environment in which they cooperate on an equal footing.

#### Article 4. Principles

As determined by the Conference of the Parties, in their actions to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

[Possible principles that the Conference of the Parties could adopt, could be, for example:]

1. The Parties shall ensure that profits are taxed where value is created and economic activities take place.
2. The Parties shall endeavour to ensure that the domestic tax burdens on profits derived from cross-border business activities equals the domestic tax burden on profits derived from non-cross-border business activities, given that all other circumstances taxpayers are the same.
3. The Parties shall aim to prevent double non-taxation as well as double taxation. In seeking to achieve this aim, the Parties shall strike a fair balance between the need to eliminate obstacles to international trade on the one hand and preventing practices in which taxable income are artificially segregated from activities that generate it on the other hand.

4. The needs of designated developing countries in taxing corporate income at source shall be given full consideration.

Article 5. Development of international tax rules and exchange of information

1. The parties shall undertake to develop and promote research and research programmes at the regional and international levels in the field of international taxation with the aim of pursuing the objective of this Convention. Toward this end, Parties shall:
  - a. Initiate and cooperate, either directly or through international and regional international organisations such as the Organisation for Economic Co-operation and Development, the United Nations and the International Monetary Fund, the conduct of research and development of rules of international tax law that are identified by the Conference of the Parties.
  - b. Support and strengthen, with the support of competent international and regional international organisations such as the Organisation for Economic Co-operation and Development, the United Nations and International Monetary Fund, the training and support of tax officers or others engaged in government activities related to international tax law, including tax assessment, transfer pricing, tax treaty law and business accounting.
2. The parties shall promote and facilitate the exchange of available information on international tax law, including model tax conventions and tax laws, commentaries to the model tax conventions, and other legal and economic materials where appropriate.
3. The Parties shall make publicly available, after a reasonable period of time to be decided on by the Conference of the Parties, the records and minutes of the discussions regarding the development of model tax laws, model tax treaties and commentaries thereon, as these may be amended from time to time.

Article 6. Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first session of the Conference of the Parties shall be convened by the Organisation for Economic Co-operation and Development no later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.
3. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one third of the Parties.
4. The Conference of the Parties shall adopt by consensus its rules of procedure at its first session.

5. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
6. The Conference of the Parties shall keep under regular review the operation of the Convention. To achieve the objective of the Convention, it may adopt protocols and amendments to the Convention, in accordance with Article 9. Towards this end, it shall:
  - a. Promote and facilitate the exchange of information between Parties;
  - b. Promote and adopt, as appropriate, the development and evaluation of rules, strategies, plans, policies, model treaties, commentaries to model treaties, model legislation and other measures;
  - c. consider reports submitted by the Organisation for Economic Co-operation and Development, United Nations and International Monetary Fund in achieving the objective of the Convention;
  - d. request, where appropriate, the services and cooperation of, and information provided by, the Organisation for Economic Co-operation and Development, the United Nations and International Monetary Fund and other international and regional intergovernmental organisations as a means of achieving the objective of this Convention.
  - e. establish subsidiary bodies as are necessary to achieve the objective of the Convention;
  - f. consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its operation.
7. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.

#### Article 7. Secretariat

1. The Conference of the Parties shall designate a permanent secretariat and make arrangements for its functioning. The Conference of the Parties shall endeavour to do so at its first session.
2. Until such time as a permanent secretariat is designated and established, secretariat functions under this Convention shall be provided by the Organisation for Economic Co-operation and Development in the first year of this Convention's entry into force, and by the United Nations thereafter.
3. Secretariat functions shall be:
  - a. to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;
  - b. to transmit reports received by it pursuant to the Convention;

- c. to provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation and communication of information required;
- d. to prepare reports on its activities under the Convention under the guidance of the Conference of the Parties and submit them to the Conference of the Parties;
- e. to ensure, under the guidance of the Conference of the Parties, the necessary coordination with the competent international and regional intergovernmental organisations and other bodies;
- f. to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and
- g. to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.

#### Article 8. The relationship between this Convention and tax treaties

1. The provisions of this Convention and any related instruments that the Conference of the Parties may adopt, and of any tax treaty of a Party to this Convention, shall be interpreted and applied together as a single instrument. In the event of any incompatibility between this Convention and any tax treaty, the provisions set out in this Convention shall prevail. However, nothing in this article shall affect the rights and obligations of the Parties to non-Contracting states arising under a tax treaty.
2. The Parties shall endeavour not to conclude tax treaties with non-signatory states inconsistent with the provisions of the present Convention, as it is amended from time to time. To the extent that such tax treaties are not compatible with the obligations of the present Convention, as amended from time to time, the Parties shall try to make the necessary steps to eliminate the incompatibilities established.

#### Article 9. Amendments to this Convention

1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.
2. Amendments to the Convention shall be adopted by the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories of the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be

adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to the Convention.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

#### Article 10. Protocols

1. The Conference of the Parties may, at any ordinary session, adopt protocols to the Convention.
2. The text of any proposed protocol shall be communicated to the Parties by the secretariat at least six months before such a session.
3. The requirements for the entry into force of any protocol as well as of its amendment shall be established by that instrument.
4. Only Parties to the Convention may be Parties to a Protocol.
5. Decisions under any protocol shall be taken only by the Parties to the protocol concerned.

#### Article 11. Right to vote

Each Party to the Convention shall have one vote.

#### Article 12. Settlement of disputes

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
  - a. Submission of the dispute to the International Court of Justice; and/or

- b. Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in a protocol on arbitration.

#### Article 13. Depositary

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 10.

#### Article 14. Signature

This Convention shall be open for signature for all interested States.

#### Article 15. Ratification, acceptance, approval or accession

The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organisations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### Article 16. Withdrawal

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.

#### Article 17. Entry into force

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 18. Authentic texts

The original of this Convention, of which the Arabic, English, French, Chinese and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at XXY this ... day of .... of the year ....

PROTOCOL I

The Parties to this Protocol,

*Being* Parties to the Framework Convention on International Taxation, hereinafter referred to as 'the Convention',

*In pursuit* of the ultimate objective of the Convention as stated in its Article 3 under the principles as stated in Article 4,

*Recalling* the provisions of the Convention,

*Have* agreed as follows:

Article 1. Terminology

1. 'Party' means, unless the context otherwise requires, a Party to this Protocol.
  2. 'Convention' means the Framework Convention on International Taxation
  3. 'Source state' means the state in which income arises under a permanent establishment, in which a corporate body paying dividends, interest or royalties is a resident, or from which capital gains derive.
- (...) etc.

Article 2. On preventing the granting of treaty benefits in inappropriate circumstances

1. Each Party, in achieving the objective of the Convention, agrees not to grant tax treaty benefits in respect of an item of income or capital, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.
2. Parties who notify the secretariat of the Convention that they cannot agree on the rule set out in paragraph 1 of this Article as to a specific tax treaty relationship, may also opt for [*provisions that would deny treaty benefits to a resident of a Contracting state who is not a 'qualified person', as defined by this provision*] applicable in that relationship in which that Party acts in the capacity as a source state.

3. In applying paragraphs 1 and 2 of this article on a specific bilateral relationship between two Parties, the rule that a Party has selected acting in its capacity as a source state, applies in that relationship.

#### Article 3. Non-discrimination

Each Party shall, by means of a domestic tax rule, treat an item of income, in respect of the taxation of a resident of that Party, no less favourable or more burdensome than an item of income of a corporate body that is not a resident of that Party, having regard to all relevant factual circumstances as well as to the suitability, degree of fit, subsidiarity and proportionality of the tax rule in light of its respectful aim.

#### Article 4. (...) etc.

(...) etc.

[and other commitments in further articles].

#### Article 5. Amendments to the Protocol

1. Any Party may make proposals for amendments to this Protocol.
2. Amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement on any proposed amendment to this Protocol by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment to this Protocol shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. The adopted amendment to this Protocol shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.
4. Any amendment to one of the articles [XY: articles on technicalities and/or 'managerial' issues, if proven feasible, e.g., certain aspects of transfer pricing rules, attribution of profits to PEs, administrative measures, etc.], adopted in accordance with paragraphs 3 and 4 above, shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the Protocol, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the amendment to this Protocol. The amendment to this Protocol shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

5. Amendments to *[all other articles than those mentioned in paragraph 4]* to this Protocol shall be adopted and enter into force in accordance with the procedure set out in Article 9 of the Convention.

#### Article 6. Signature

This Convention shall be open for signature for all interested States.

#### Article 7. Ratification, acceptance, approval or accession

The Protocol shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organisations. It shall be open for accession from the day after the date on which the Protocol is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### Article 8. Withdrawal

1. At any time after three years from the date on which the Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.
3. Any Party that withdraws from the Protocol shall be considered as also having withdrawn from any protocol to which it is a Party.

#### Article 9. Entry into force

1. The Protocol shall enter into force on the ninetieth day after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts or approves the Protocol or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Protocol shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### Article 10. Authentic texts

The original of this Protocol, of which the Arabic, English, French, Chinese and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at XXY this ... day of .... of the year ....

B. THE 'AGREEMENT TO SCOPE'

The Framework Convention on International Taxation

The Parties to the present Convention,

*Recognising* that globalisation has impacted countries' income tax systems;

*Recognising* that the tax treaty network is outdated, as it is for instance unable to effectively address opportunities for multinational companies to greatly minimise their tax burdens and/or issues related to the increased relevance of the digital economy;

*Desiring* to conclude a multilateral agreement to swiftly implement or incorporate in their bilateral tax treaty relationships new developments in society, business and technology;

*Recognising* that this requires a fair level playing field that ensures that all countries and jurisdictions implement their commitments equally and on an equal footing;

*Recognising* that this requires continuous interaction in the future;

*Have agreed* as follows:

Article 1. Scope of the present Convention

The present Convention applies to tax treaties in force or to be concluded in relation to provisions that the Conference of the Parties may adopt.

Article 2. Terminology

For the purposes of the present Convention:

1. 'Tax treaty' means any agreement for the avoidance of double taxation and the prevention of fiscal evasion applicable in the relations between Signatory States or between Signatory States and third states;

(etc.)

Article 3. Objective

The ultimate objective of this Convention and any related instruments that the Conference of the Parties may adopt is to achieve, in accordance with the relevant provisions of the Convention, that the international tax treaty network is modernised and updated in accordance with the latest developments in society, business and technology. In doing so, the Parties will promote an open and transparent negotiating environment in which they cooperate on an equal footing.

#### Article 4. Principles

As determined by the Conference of the Parties, in their actions to achieve the objective of this Convention and to implement its provisions, the Parties shall be guided, *inter alia*, by the following:

[Possible principles that the Conference of the Parties could adopt, could be for example:]

1. The Parties shall ensure that profits are taxed where value is created and economic activities take place.
2. The Parties shall endeavour to ensure that the domestic tax burdens on profits derived from cross-border business activities of corporate bodies equals the domestic tax burden on profits derived from non-cross-border business activities of corporate bodies, given that all other circumstances taxpayers are the same.
3. The Parties shall aim to prevent double non-taxation as well as double taxation. In seeking to achieve this aim, the Parties shall strike a fair balance between the need to eliminate obstacles to international trade on the one hand and preventing practices in which taxable income are artificially segregated from activities that generate it on the other hand.
4. The needs of designated developing countries in taxing corporate income at source shall be given full consideration.
5. In cooperating, the Parties will promote an open and transparent negotiating environment in which Parties cooperate on an equal footing, and which aims for the gradual increase of the amount of States Parties to this Convention.

#### Article 5. Development of international tax rules and exchange of information

1. The parties shall undertake to develop and promote research and research programmes at the regional and international levels in the field of international taxation with the aim of pursuing the objective of this Convention. Toward this end, Parties shall:
  - a. Initiate and cooperate, either directly or through international and regional international organisations such as the Organisation for Economic Co-operation and Development, the United Nations and the International Monetary Fund, the conduct of research and development of rules of international tax law research that are identified by the Conference of the Parties.
  - b. Support and strengthen, with the support of competent international and regional international organisations such as the Organisation for Economic Co-operation and Development, the United Nations and International Monetary Fund, the training and support of tax officers or others engaged in government activities related to international tax law, including tax assessment, transfer pricing, tax treaty law and business accounting. The parties shall promote and facilitate the exchange of available information on international tax law, including model tax conventions and tax laws, commentaries to the model tax conventions, and other legal and economic materials where appropriate.

2. The Parties shall make publicly available, after a reasonable period of time to be decided on by the Conference of the Parties, the records and minutes of the discussions regarding the development of model tax laws, model tax treaties and commentaries thereon, as these may be amended from time to time.

#### Article 6. Conference of the Parties

1. A Conference of the Parties is hereby established.
2. The first session of the Conference of the Parties shall be convened by the Organisation for Economic Co-operation and Development no later than one year after the entry into force of this Convention. The Conference will determine the venue and timing of subsequent regular sessions at its first session.
3. Extraordinary sessions of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to them by the Secretariat of the Convention, it is supported by at least one third of the Parties.
4. The Conference of the Parties shall adopt by consensus its rules of procedure at its first session.
5. The Conference of the Parties shall by consensus adopt financial rules for itself as well as governing the funding of any subsidiary bodies it may establish as well as financial provisions governing the functioning of the Secretariat. At each ordinary session, it shall adopt a budget for the financial period until the next ordinary session.
6. The Conference of the Parties shall keep under regular review the operation of the Convention. To achieve the objective of the Convention, it may adopt protocols and amendments to the Convention, in accordance with Article 9. Towards this end, it shall:
  - a. Promote and facilitate the exchange of information between Parties;
  - b. Promote, and adopt, as appropriate, the development and evaluation of rules, strategies, plans, policies, model treaties, commentaries to model treaties, model legislation and other measures;
  - c. consider reports submitted by the Organisation for Economic Co-operation and Development, United Nations and International Monetary Fund in achieving the objective of the Convention;
  - d. request, where appropriate, the services and cooperation of, and information provided by, the Organisation for Economic Co-operation and Development, the United Nations and International Monetary Fund and other international and regional intergovernmental organisations as a means of achieving the objective of this Convention.
  - e. establish subsidiary bodies as are necessary to achieve the objective of the Convention;

- f. consider other action, as appropriate, for the achievement of the objective of the Convention in the light of experience gained in its operation.
- 7. The Conference of the Parties shall establish the criteria for the participation of observers at its proceedings.

#### Article 7. Secretariat

- 1. The Conference of the Parties shall designate a permanent secretariat and make arrangements for its functioning. The Conference of the Parties shall endeavour to do so at its first session.
- 2. Until such time as a permanent secretariat is designated and established, secretariat functions under this Convention shall be provided by the Organisation for Economic Co-operation and Development in the first year of this Convention's entry into force, and by the United Nations thereafter.
- 3. Secretariat functions shall be:
  - a. to make arrangements for sessions of the Conference of the Parties and any subsidiary bodies and to provide them with services as required;
  - b. to transmit reports received by it pursuant to the Convention;
  - c. to provide support to the Parties, particularly developing country Parties and Parties with economies in transition, on request, in the compilation and communication of information required;
  - d. to prepare reports on its activities under the Convention under the guidance of the Conference of the Parties and submit them to the Conference of the Parties;
  - e. to ensure, under the guidance of the Conference of the Parties, the necessary coordination with the competent international and regional intergovernmental organisations and other bodies;
  - f. to collect and transmit reports on the negotiation and implementation within the bilateral tax treaties of the Parties to the Convention of the principles set out in Article 3 and any other model treaty or rule that the Conference of the Parties may establish, so as to achieve the Objective of the present Convention as set out in article 2;
  - g. to enter, under the guidance of the Conference of the Parties, into such administrative or contractual arrangements as may be required for the effective discharge of its functions; and
  - h. to perform other secretariat functions specified by the Convention and by any of its protocols and such other functions as may be determined by the Conference of the Parties.

#### Article 8. The relationship between this Convention and Tax Treaties

- 1. The parties to this Convention agree to negotiate their current and future tax treaties with other Parties to this Convention on the principles set out in Article 3 of this Convention, and on any other principle, model treaty or other rule that

the Conference of the Parties may establish at its ordinary sessions, so as to achieve the Objective of the present Convention, set out in Article 2.

2. In negotiating their current and future tax treaties with other Parties to this Convention in line with this Convention's objective, the Parties shall take into consideration the basic principles set out in Article 3 of the present Convention, taking into account the specific characteristics of their bilateral relationships.
3. Any Party to this Convention shall endeavour not to conclude arrangements with non-signatory states inconsistent with the provisions of the present Convention, as it is amended from time to time. To the extent that such tax agreements are not compatible with the obligations of the present Convention, Contracting States shall try to make the necessary steps to eliminate the incompatibilities established.

#### Article 9. Implementation and monitoring requirements

1. In their fulfilment of the requirements set out in Article 6 paragraphs 1 and 2 of this Convention, the parties shall submit to the Secretariat a report on the efforts made at negotiation and implementation of the principles as set out in Article 3, or of provisions of model tax treaties or any other rule that the Conference of the Parties may establish at its ordinary sessions, in their bilateral tax treaties.
2. The frequency and format of such reports by all Parties shall be determined by the Conference of the Parties. Each party shall make its initial report within one year of the entry into force of the Convention for that Party. At a minimum, Parties agree to submit such a report before each ordinary session of the Conference of the Parties.
3. Where appropriate, the Conference of the Parties may establish deadlines for the implementation in the bilateral tax treaties of Parties to this Convention, of a principle, model tax provision, or any other rule that it may adopt.
4. After each ordinary session of the Conference of the Parties, the Secretariat shall file a general report on the negotiation and implementation requirements set forth by this Article.

#### Article 10. Amendments to this Convention

1. Any Party may propose amendments to this Convention. Such amendments will be considered by the Conference of the Parties.
2. Amendments to the Convention shall be adopted by the Conference of the Parties. The text of any proposed amendment to the Convention shall be communicated to the Parties by the Secretariat at least six months before the session at which it is proposed for adoption. The Secretariat shall also communicate proposed amendments to the signatories of the Convention and, for information, to the Depositary.
3. The Parties shall make every effort to reach agreement by consensus on any proposed amendment to the Convention. If all efforts at consensus have been

exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-quarters majority vote of the Parties present and voting at the session. For purposes of this Article, Parties present and voting means Parties present and casting an affirmative or negative vote. Any adopted amendment shall be communicated by the Secretariat to the Depositary, who shall circulate it to all Parties for acceptance.

4. Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 of this Article shall enter into force for those Parties having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance by at least two-thirds of the Parties to the Convention.
5. The amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendment.

#### Article 11. Right to vote

Each Party to the Convention shall have one vote.

#### Article 12. Settlement of disputes

1. In the event of a dispute between any two or more Parties concerning the interpretation or application of the Convention, the Parties concerned shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice, including good offices, mediation, or conciliation. Failure to reach agreement by good offices, mediation or conciliation shall not absolve parties to the dispute from the responsibility of continuing to seek to resolve it.
2. When ratifying, accepting, approving or acceding to the Convention, or at any time thereafter, a Party may declare in a written instrument submitted to the Depositary that, in respect of any dispute concerning the interpretation or application of the Convention, it recognizes as compulsory ipso facto and without special agreement, in relation to any Party accepting the same obligation:
  - a. Submission of the dispute to the International Court of Justice; and/or
  - b. Arbitration in accordance with procedures to be adopted by the Conference of the Parties as soon as practicable, in a protocol on arbitration.

#### Article 13. Depositary

The Secretary-General of the United Nations shall be the Depositary of the Convention and of protocols adopted in accordance with Article 10.

#### Article 14. Signature

This Convention shall be open for signature for all interested States.

#### Article 15. Ratification, acceptance, approval or accession

The Convention shall be subject to ratification, acceptance, approval or accession by States and by regional economic integration organisations. It shall be open for accession from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

#### Article 16. Withdrawal

1. At any time after three years from the date on which the Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.
2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

#### Article 17. Entry into force

1. The Convention shall enter into force on the ninetieth day after the date of deposit of the twentieth instrument of ratification, acceptance, approval or accession.
2. For each State that ratifies, accepts or approves the Convention or accedes thereto after the deposit of the twentieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State of its instrument of ratification, acceptance, approval or accession.

#### Article 18. Authentic texts

The original of this Convention, of which the Arabic, English, French, Chinese and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Convention.

DONE at XXY this ... day of .... of the year ....

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