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International Tax Cooperation in a Multipolar World

D.M. Broekhuijsen* & L.C.J. van Apeldoorn**

The recent adoption by the UN General Assembly of the resolution of 22 December 2023 calling for the development of a framework convention (A/RES/78/230 2023) to strengthen international tax cooperation aligns with the liberal promise of legitimate, fair, and stable international tax governance institutions. In this article, the authors argue that there is reason to doubt that promise. They consider the more sober neorealist view of international relations according to which the world is characterized by zero-sum competition between the major powers whose most important aim is to secure their own survival. This perspective has remained underexplored in the international tax literature and suggests that adopting the UN General Assembly Resolution is unlikely to promote the stability and fairness of international tax cooperation. It rather serves as a warning that geopolitical tensions have infiltrated international tax matters and threaten the stability of the international tax regime as it is currently known.

keywords: International tax regime, tax cooperation, tax governance, neoliberal institutionalism, realism, tax treaties, UN framework convention, stability, geopolitics, zero-sum.

I INTRODUCTION

Adopting the UN resolution establishing a committee ‘for the purpose of drafting terms of reference for a United Nations framework convention on international tax cooperation’¹ is somewhat paradoxical. While based on liberal values of procedural inclusivity and legitimacy, adopting it was principally due to the support of non-Western countries with the Western liberal world overwhelmingly voting against it.² From the neoliberal institutionalist perspective that is dominant in literature on international tax governance, the voting outcome may be criticized as a self-interested attempt by OECD states to retain influence or protect the advances made in the context of BEPS 2.0. Neoliberal institutionalism emphasizes the importance of procedural fairness and

legitimacy to achieve stable cooperative outcomes.³ Cooperation under the auspices of the UN promises to secure a more sustainable future for the international tax regime, and the OECD states voting behaviour forms the unfortunate, but hopefully temporary, resistance to improving the faltering legitimacy and stability of international tax cooperation. The challenging but encouraging outlook is that the international tax regime may be saved from itself.

A far bleaker perspective, however, is suggested by the rivalling analytical framework of neorealism.⁴ It argues that the stability of international cooperation – including in matters of international taxation – is not ensured by legitimate cooperative efforts within the comfortable confines of international conference rooms but instead

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¹ UN General Assembly, Promotion of inclusive and effective international tax cooperation at the United Nations, Resolution adopted by the General Assembly in its 78th Session 2023–2024 on 22 Dec. 2023 (A/RES/78/230 2023).

² United Nations General Assembly, Report of the Second Committee: Macroeconomic policy questions: promotion of inclusive and effective international cooperation on tax matters at the United Nations A/78/459/Add.8 (2023).

³ Example, I. J. Mosquera Valderrama, *Global Tax Governance*, in *The Oxford Handbook of International Tax Law* (F. Haase & G. Kofler eds, Oxford University Press 2023); S. Kingsma, *Inclusive Global Tax Governance in the Post-BEPS Era* (IBFD 2020); D. M. Broekhuijsen, *A Multilateral Tax Treaty: Designing an Instrument to Modernise International Tax Law* (Kluwer 2018) and C. Peters, *On the Legitimacy of International Tax Law* (IBFD 2014).

⁴ In this article, the authors draw on the modern, neorealist tradition seminal set out by K. N. Waltz, *Theory of International Politics* (McGraw-Hill 1979). In this tradition, international politics is treated as a structural arrangement – an international ‘system’ – of interacting states, allowing for a ‘structural’ analysis in which power and proximity to power is the most relevant determinant of state capacity. The authors particularly rely on the work of R. Gilpin who emphasizes the role of hegemonic power in explaining stability and conflict in international relations. In the classic realist tradition, by comparison, international politics is primarily considered through the perspective of the flawed human condition. See e.g., H. J. Morgenthau, *Politics Among Nations: Struggle for Power and Peace* (New York 1973). For an overview of the main theoretical approaches to international tax governance in political science, see M. Hearson & T. Rixen, *The Political Science of Global Tax Governance*, in *Research Handbook on International Taxation* 218–238 (Y. Brauner ed., Cheltenham: Edward Elgar 2020); D. M. Ring, *International Tax Relations: Theory and Implications*, 60 *Tax L. Rev.* 83 (2007).

through the projection of power by the hegemon, that is, the dominant state.⁵ From the neorealist perspective, the budding attempts to supersede OECD primacy in international taxation at the UN are rather indications of hegemonic decline resulting from a global redistribution of economic power in which international taxation inevitably plays a perhaps relatively minor role. For the neorealist, the developments at the UN do not herald a new frontier in international tax cooperation that is surprisingly unaffected by global economic fragmentation⁶ but rather provide a compelling illustration of how the existing Western-led world order is being challenged.

This article further explores the neorealist framework, compares it to the neoliberal institutional view, and applies it to the question of what to make of the current developments at the UN and the future of international tax cooperation more broadly. Section 2 will briefly examine the idea that the Western-led liberal world order is in decline, discuss the increasing protectionist stances of the big players, and outline some realist-infused new realities that may be of relevance to international tax matters. The objective is to also show that the implications of increasing geopolitical conflict have coherently been analysed for other areas of international economic cooperation, such as international trade. Section 3 provides an overview of the neoliberal institutionalist framework as it is used in international tax scholarship. This brief explanation of its rivalling framework functions as a prelude to section 4 that details the central tenets of neorealism, it is then applied to international taxation. It is concluded that, in a multipolar world, the United States (and the West more broadly)⁷ may no longer be willing or able to effectively secure a stable international tax regime.

From the outset, the authors would like to highlight two caveats. First, the ambition is not to provide a

comprehensive neorealist study of (the history of) international tax relations.⁸ Instead, the aim is to introduce the theory of neorealism in international tax scholarship and use it to contextualize the latest developments at the UN within the current economic and geostrategic environment. Second, the neorealist and neoliberal approaches are based on stylized assumptions about the interests and motives of states that do not easily translate into clear predictions of state practices in specific situations. For instance, a neorealist expectation could be that zero-sum thinking will lead to alliances: The West will form one, China will likely form another. However, the theoretical outlook is unable to predict whether this actually means more G7 or less G20.⁹

2 A MULTIPOLAR INTERNATIONAL WORLD ORDER

The last ten years or so have witnessed a deep and profound change to the Western liberal world order established after the fall of the Soviet Union. This is generally related to the US decline as its 'patron', the rise of China as a systemic rival, and to Russia as a destabilizing power.¹⁰ A brief sketch of current politics reveals that China and Russia are challenging the Western order.¹¹ China has experienced its wealth and power significantly increasing as a result of hyperglobalization and the Western post-Cold War policy of engagement rather than containment.¹² As Münkler notes, the country takes an anti-imperial position and considers Europe and the United States its main rivals. Moreover, it critiques the Western world order as unjust and argues that the West is upholding an order that lacks credibility and applies its norms selectively and only to advance its own

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- ⁵ R. Gilpin & R. G. Gilpin, *Global Political Economy: Understanding the International Economic Order* 99 (Princeton University Press 2001) describe the hegemon in the current system as 'a dominant power with an interest in a liberal world economy and a willingness to expend economic and political resources to achieve and maintain that goal'.
- ⁶ As W. Schön introduces a recent paper, The world of international tax policy seems to be largely unaffected by the ramifications of the unsettling developments taking place at the global stage (...) Is this too good to be true? W. Schön, *International Tax Rules for Unruly Times*, Max Planck Institute for Tax Law and Public Finance Working Paper 2023-08.
- ⁷ This article focuses on the United States as the dominant world power and refrains from a special (but relevant) discussion of the political (tax) relationship between it and other Western states. In fact, the EU may itself be seen as a challenger to US power. See e.g., R. García Antón, *The EU and US Relationship: Is the EU Legal Bridge Safe?*, in *The External Tax Strategy of the EU in a Post-BEPS Environment* (A. J. Martín Jiménez ed., IBFD 2019).
- ⁸ For such comprehensive studies, see regarding realism, e.g., L. Hakelberg, *The Hypocritical Hegemon: How the United States Shapes Global Rules Against Tax Evasion and Avoidance* (Cornell University Press 2020), in particular Ch. 2 and, e.g., regarding an interests-based approach, the work of T. Rixen, *The Political Economy of International Tax Governance* (Palgrave Macmillan 2008). See for a historic analysis of power shifts in international tax law, the work of E. Baistrocchi, *The International Tax Regime and Global Power Shifts*, 40 *Virginia Tax Rev.* 219 (2019).
- ⁹ G. J. Ikenberry, *From Talking Shop to Power Player*, 250 *Foreign Pol'y* 41–43, at 42 (2023): 'Like other multilateral venues, the G-20 has fallen victim to the often sharply divergent agendas pursued by China and Russia on the one side and the Western democracies on the other'.
- ¹⁰ There is a wealth of literature on geopolitics. The authors have, e.g., looked at the work of the Hague Centre for Strategic Studies & Clingendael Institute, e.g., 'Barsten en Blokken: Confrontatie en Samenwerking in een Wereld van Wisselende Coalities. De Strategische Monitor 2023 (Den Haag 2024) and the journal *Foreign Affairs*, see e.g., a recent paper by IMF boss K. Georgieva, *The Price of Fragmentation: Why the Global Economy Isn't Ready for the Shocks Ahead*, 102 *Foreign Aff.* 131 (2023) and a recent book of the prominent German international relations scholar H. Münkler, *Welt in Aufruhr: Die Ordnung der Mächte im 21. Jahrhundert* (Rohwolt Berlin 2023). See also J. S. Nye, *The Rise and Fall of American Hegemony: From Wilson to Trump*, 95 *Int'l Aff.* 63 (2019), doi: 10.1093/ia/iiy212; F. Zakaria, *The Self-Destruction of American Power*, (98) *Foreign Aff.* 10 (2019); D. A. Lake, L. L. Martin & T. Risse, *Challenges to the Liberal Order: Reflections on International Organization*, 75 *Int'l Org.* 225–257 (2021), doi: 10.1017/S0020818320000636; J. J. Mearsheimer, *Bound to Fail: The Rise and Fall of the Liberal International Order*, 43 *Int'l Sec.* 7–50 (2019), doi: 10.1162/isec_a_00342.
- ¹¹ The Hague Centre for Strategic Studies & Clingendael Institute, *Barsten en Blokken: Confrontatie en Samenwerking in een Wereld van Wisselende Coalities*, De Strategische Monitor 2023 (Den Haag 2024), at 8.
- ¹² Mearsheimer, *supra* n. 10, at 7–50, 42.

interests.¹³ Russia is a revisionist great power, albeit not as strong as China, with ‘imperial phantom pains’,¹⁴ that acts as a destabilizing force. Finally, the countries that make up what is referred to as the Global South – insofar as this reflects a common denominator¹⁵ – are perhaps most interested in continuing to be as neutral as possible and remaining outside of power blocs and instead have camps bid for their favours.¹⁶

Economically speaking, the decrease of US power has simultaneously been paired with augmented rivalry between it and China that is resolutely addressed with economic power and leading to increasing protectionism. As a recent Dutch strategic monitor notes, ‘the geopolitization of trade between China and the US is accompanied by zero-sum thinking, increasing protectionism, and transactional behavior’.¹⁷ Indeed, Kristalina Georgieva, managing director of the IMF, warns in a recent article that economic fragmentation begins with increasing barriers to trade and investment of which the amount has increased from approximately 1000 in 2019 to 3000 in 2022.¹⁸ The Economist further notes that foreign direct investment (FDI) has indeed been redirected; geopolitical alignment has become a factor in diverting capital flows.¹⁹

The United States considers its own commercial interests in a logic of power rivalries²⁰ by focusing on regional or bilateral agreements that boost resilient trade with specific partners and on targeted actions rather than on global trade liberalization.²¹ China, on the other hand, in response to what it considers Western policy to stop Chinese growth, focuses on becoming more self-reliant in terms of consumption, technology and regulations²²

and more selective and shrewd in its contacts with other countries, ‘boosting the dependence of other players to China so that it can use these links to increase its power and exert pressure’.²³ Indeed, it has expended efforts to bind, i.e., make reliant, many other countries to Chinese systems, norms, and standards. To achieve this, it has vigorously increased its articulations in international standard setting bodies and has used, e.g., its Global Development and Belt and Road initiatives.²⁴ Europe has finally historically relied on the juridification of international politics, on commerce, and economic power – an approach inherent in the integration project of the European Union. It has now become clear that trust in economic power alone is insufficient,²⁵ thus, the EU must employ its resources to reestablish itself as a global player by further developing a relevant military apparatus. This necessitates the Old Continent to continue its efforts involving ‘other regions’ such as Africa, Asia, and Latin America in the international order thereby ‘keeping multilateralism alive in a multipolar world’.²⁶ At the same time, it must manage its most important transatlantic relationship, most particularly regarding both the US’ support of NATO and its stance toward China.

For the purposes of this article, the above leads to two take-aways. First, the world order has become multipolar. Second, a multipolar order is a realist order. As Mearsheimer writes:

If there are two or more great powers in the world, they have little choice but to act according to realist dictates and engage in security competition with each other.

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¹³ Münkler, *supra* n. 10, at 277. Also M. Leonard, *China is Ready for a World of Disorder*, 98 *Foreign Aff.* 116 (2023).

¹⁴ Münkler, *supra* n. 10, at 172–175.

¹⁵ Example, B. Tertrais, *La Notion de « Sud Global »: Artificielle, Voire Dangereuse*, 866 *Revue Défense Nationale* 57–61 (2024), doi: 10.3917/rdna.866.0057, notes ‘La notion de Sud global n’est ni pertinente ni efficace pour caractériser l’évolution des grands rapports de forces internationaux’.

¹⁶ S. Theil, *Building Blocs: The Coalitions Shaping the World Order*, 250 *Foreign Pol’y* 39–40 (2023).

¹⁷ The Hague Centre for Strategic Studies & Clingendael Institute, *supra* n. 11, at II.

¹⁸ Georgieva, *supra* n. 10, at 131.

¹⁹ Economist, 3 May 2024, *Special Report: Worlds Apart: The Global Financial System is in Danger of Fragmenting and: The Movement of Capital Globally is in Decline: Geopolitics is Altering its Trajectory*, referring to IMF, *World Economic Outlook: A Rocky Recovery*, (Washington, IMF 2024), Ch. 4: ‘Geoeconomic Fragmentation and Foreign Direct Investment’.

²⁰ See e.g., the US adoption of the Indo-Pacific Economic Framework for Prosperity Agreement Relating to Supply Chain Resilience adopted in San Francisco on 14 Nov. 2023 which is not a trade pact that opens markets and cuts tariffs but focuses on the promotion of clean energy; fighting tax evasion and money laundering; boosting trade; and building resilient supply chains. See also the Americas Partnership for Economic Prosperity that is also said to break from the strategy of competitive liberalization and does not allow US market access. See on this J. B. Velut, *Le commerce international, nouveau théâtre des conflits géostratégiques*, (862) *Revue Défense Nationale* 58–64 (2023), doi: 10.3917/rdna.862.0058.

²¹ Velut, *supra* n. 20, at 58–64, 58–60 and P. E. Harrel, *How to China-Proof the Global Economy: America Needs a More Targeted Strategy*, (103) *Foreign Aff.* 135–149 (2024). See also the special address of Jake Sullivan, US National Security Advisor, at the World Economic Forum on 16 Jan. 2024: ‘After the fall of the Berlin wall, for about a quarter of a century, the world’s major powers seemed to be converging around a single concept of international order. We integrated former competitors in our international economic institutions (...). Today, we are in the early years of a new era. Major powers are vastly more interdependent (...) but we are also in stiff competition about the type of world we want to build’.

²² Leonard, *supra* n. 13, at 124.

²³ *Ibid.*, at 124.

²⁴ *Ibid.*, at 125.

²⁵ Germany, for instance, has attempted to integrate Russia into an interdependent relationship with the EU by means of the Nord-Stream pipelines. This was thought to help prevent Russian violence along Europe’s outer borders: *Obne Waffen Frieden schaffen*. See Münkler, *supra* n. 10, at 79.

²⁶ O. Scholz, *The Global Zeitenwende: How to Avoid a New Cold War in a Multipolar Era*, 102 *Foreign Aff.* 22, at 36 (2023). Europe will need to diversify its dependency on Russian raw materials.

Their aim is to gain power at the expense of their adversaries, but if that is not possible, to make sure that the balance of power does not shift against them.²⁷

This is why the authors wish to explore the neorealist view on cooperation in international taxation. However, before doing so, there will first be an elaboration of the implications of neoliberal institutionalism that is the dominant framework in international tax law scholarship that has thus far delivered the most influential and successful explanations of international tax cooperation.²⁸

3 NEOLIBERAL INSTITUTIONALISM

3.1 Introduction

Neoliberal institutionalism departs from the analytical assumption that international cooperation takes place in an anarchical system (i.e., there is no hierarchical structure) in which power and wealth are the most relevant factors. In this context, states engage in cooperation if and when there are possibilities to achieve gains.²⁹ A core insight is that self-interested actors may overcome collective action problems caused by individualistic, uncoordinated behaviour (e.g., arising from globalization) by 'designing' international institutions and cooperative regimes.³⁰ Cooperation is possible in positive-sum games when the interests of states overlap and there is a 'pie' to be shared. Hence, the main explanatory driver for international cooperation is the existence of *absolute* gains (in terms of welfare or GDP), that is, benefits over and above non-cooperation irrespective of the benefits received by other states.

Such cooperation is secured through institution building. Neoliberal institutionalists argue that many international cooperative issues resemble prisoners' dilemmas. States – i.e., the prisoners – fail to solve such cooperative issues because the prison's cell walls prevent them from cooperation. International institutions and regimes facilitate cooperation by improving communication and by building trust among participants.³¹ The idea is that such international institutions make the walls 'transparent' thereby permitting the prisoners to connect and enabling them to 'learn about each other's intentions and actions, agree on standards of behavior, and learn about the relationship between their actions and outcomes'.³² It allows them to make credible commitments and could ensure that they perceive long-term cooperative outcomes as more beneficial than short-term defection.³³

That is why neoliberal institutionalists emphasize the role of legitimate and fair negotiation on the terms of cooperation.³⁴ Indeed, as Buchanan and Keohane point out, an institution's ability to perform cooperative functions may depend:

on whether those to whom it addresses its rules regard them as binding and whether others within the institution's domain of operation support or at least do not interfere with its functioning. It is not sufficient that the relevant actors agree that some institution is needed; they must agree that this institution is worthy of support.³⁵

Legitimate and fair cooperation lies at the basis of such support; widespread belief that an institution is illegitimate may undermine its stability and its ability to secure what are otherwise mutually beneficial cooperative outcomes.³⁶

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²⁷ Mearsheimer, *supra* n. 10, at 7–50, 12.

²⁸ See e.g., Ring, *supra* n. 4, at 147: 'of the two dominant models of regime formation, the neoliberalist more accurately reflects the experience of the double taxation regime (...). [T]he neoliberalist model (which looks beyond power to the impact of game theory, issue type, and background factors) offers a more comprehensive understanding of the regime formation process here' and the work of Rixen, *supra* n. 8 and T. Rixen, *Bilateralism or Multilateralism? The Political Economy of Avoiding International Double Taxation*, 16 Eur. J. Int'l Relations 589 (2010), doi: 10.1177/1354066109346891. Also D. M. Broekhuijsen, *A Multilateral Tax Treaty: Designing an Instrument to Modernise International Tax Law*, (Alphen aan den Rijn 2018), Ch. 5.

²⁹ R. O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton 1984); R. Jarvis, *Realism, Neoliberalism, and Cooperation: Understanding the Debate*, 24 Int'l Sec. 42 (1999), doi: 10.1162/016228899560040. See for a quick discussion regarding international tax law: Broekhuijsen, *supra* n. 28, Ch. 5.2.

³⁰ Example, B. Koremenos, *The Continent of International Law: Explaining Agreement Design* (Cambridge University Press 2016).

³¹ Keohane, *supra* n. 29, at 68–69.

³² L. L. Martin, *The Political Economy of International Cooperation*, in *Global Public Goods: International Cooperation in the 21st Century* 55 (I. Kaul, I. Grunberg & M. A. Stern eds, Oxford University Press 1999).

³³ In international relations, this has been referred to as 'the shadow of the future'; see R. Axelrod, *The Evolution of Cooperation* (Basic Books Inc. 1984).

³⁴ Example, R. O. Keohane, *International Relations and International Law: Two Optics*, in *Power and Governance in a Partially Globalized World* 501 (R. O. Keohane ed., Routledge 2002): 'In instrumentalist language, what is essential to an institution for it to function well is that it helps to align these various types of incentives in ways that support the mission of the institution. In normative language, well-functioning institutions are those that facilitate persuasion and cooperation on the basis of widely held values. In practice, these two descriptions may amount to the same thing'. Also K. Raustiala & A. Slaughter, *International Law, International Relations and Compliance*, in *The Handbook of International Relations* 546 (T. R. Carlsnaes, T. Risse & B. Simmons eds, Sage Publications 2002).

³⁵ A. Buchanan & R. O. Keohane, *The Legitimacy of Global Governance Institutions*, in *Legitimacy, Justice and Public International Law* (L. H. Meyer ed., Cambridge University Press 2009); A. Chayes & A. H. Chayes, *The New Sovereignty: Compliance With International Regulatory Agreements* (Boston 1995).

³⁶ It is important to note that the neoliberal institutionalist cannot stretch this argument too far as state interests (and not normatively compelling ideas) are his primary means of explaining state behaviour.

3.2 Neoliberal Institutional Perspectives on Cooperation in International Tax Law

In order to explain the origins, development, and stability of the international tax regime, the neoliberal institutionalist looks at the net gains and losses for states participating in it. These are presumed to focus on *absolute* gains, agreeing to rules that provide national welfare or GDP benefits while rejecting rules that do not. On this basis, neoliberal institutionalism has been quite neatly able to describe the ‘classic’ international tax regime: Bilateral treaties best fit asymmetrical economic relations as these are customized to that specific trade relationship³⁷ in which each state voluntarily participates as it is in its own interest to do so. The relevance of the OECD Model Convention is explained by its ability as a ‘constructed focal point’³⁸ to reduce transaction costs as it disseminates information and shares common practices that enable states to avoid entering into discussions they have been in before.³⁹ The institutionalization on tax matters, first through the OEEC and later through the OECD, can be explained by the first mover advantage whereby the first mover may set the standard, and others have an incentive to follow.⁴⁰ Moreover, multilateral rules seem possible as long as there is suitable opportunity for bilateral manoeuvring or if resulting consequences are uncertain enough.⁴¹ Finally, changing rules and standards is, of course, expensive. For instance, a systematic shift that allocates taxing rights on the basis of a ‘destination-based’ proxy rather than production factors would undoubtedly involve significant economic costs in aligning domestic and international rules to that new system.

From the neoliberal institutionalist perspective, the step towards the more inclusive and legitimate forum of the UN may be judged positively as supportive of the continued stability of the international tax system. It may foster an institutional environment better suited to generating stable negotiation results in international taxation that can garner wide support.⁴² Certainly, the neoliberal institutionalist would be mindful of the costs involved.

Increasing the ‘inclusiveness’ of tax policy negotiations may bring challenges to the effectiveness of the decision-making process and the quality of the resulting rules. First, negotiations involving a broader set of participants may lead to broader-deeper trade-offs leading to shallower or less ‘tax-technical-savvy’ agreements. Second, as such a step diffuses the influence of an individual state in the cooperative effort, negotiations may become more complex, exacerbating the ‘classic’ problems of diplomacy, e.g., related to communication and language barriers, institutional constraints (e.g., tax-technical capacity), strategic behaviour, and information asymmetries.⁴³ Finally, the outlook of two parallel negotiation tables on tax policy issues might involve state representation at not one but two fora.⁴⁴

Nevertheless, it could be argued that the costs involving a step to the UN not only can but *should* be overcome as the benefits to cooperation at the UN outweigh them. Indeed, the neoliberal institutionalist could argue – shifting from a descriptive analysis to a more normative application of his theory – that the step to the UN is *necessary*. This is because it fundamentally ensures the stability of the international tax regime for the foreseeable future as the OECD is lacking the legitimacy to provide widely accepted solutions for the current fundamental issues of international tax law.⁴⁵

4 NEOREALISM

4.1 Introduction

Whereas neoliberal institutionalism explains the existence and stability of international institutions as resulting from mutually beneficial cooperation, neorealism in contrast emphasizes the explanatory role of power in a world that is essentially characterized by zero-sum trade-offs. Like neoliberal institutionalism, neorealism places states as key actors in the context of international anarchy. However, it gives a starkly divergent interpretation of states’ interests and hence derives different conclusions

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³⁷ Some aspects of power are accepted in the analysis as this explains bilateral negotiation outcomes. See Hearson & Rixen, *supra* n. 4, at 226, referring to S. D. Krasner, *Global Communications and National Power: Life on the Pareto Frontier*, 43 World Pol. 336 (1991), doi: 10.2307/2010398.

³⁸ Rixen, *supra* n. 28, at 589, 601.

³⁹ *Ibid.*, at 601.

⁴⁰ Hearson & Rixen, *supra* n. 4, at 226.

⁴¹ D. M. Broekhuijsen & H. Vording, *The Multilateral Tax Instrument: How to Avoid a Stalemate on Distributional Issues?*, [2016] Brit. Tax Rev. 39 (2016).

⁴² That the OECD-led cooperative framework suffers from legitimacy issues is widely accepted. See in particular the work of C. Peters, *The Legitimacy of the OECD’s Work on Pillar Two: An Analysis of the Overconfidence in a ‘Devilish Logic’*, 51 Intertax 554 (2023) and Peters, *supra* n. 3. A similar conclusion is reached in the Report of the Secretary-General of 26 Jul. 2023, UN General Assembly, A/78/235 and by IBFD, *Promotion of Inclusive and Effective Tax Cooperation at the United Nations* (IBFD 2023), submitted to the UN Financing for Sustainable Development Office, <https://financing.desa.un.org/input-paper-international-bureau-fiscal-documentation-ibfd> (accessed Nov. 2024), ss 1.2.4 and 1.3.5.

⁴³ See G. Blum, *Bilateralism, Multilateralism, and the Architecture of International Law*, 49 Harv. Int’l L. J. 323, at 351 (2008).

⁴⁴ See e.g., the recent reflections on the UN developments of UN Tax Committee member A. Roelofsen, ‘Ontwikkelingen in de internationale belastingarena: Verenigde Naties eist een rol op bij versterking inclusiviteit en effectiviteit van internationale samenwerking op belastinggebied’, *Weekblad Fiscaal Recht* 2024/110.

⁴⁵ See for a full analysis of this argument, Broekhuijsen, *supra* n. 28.

about the strategic environment shaping their actions. Rather than seeking increases in national welfare or GDP, states are assumed to be overwhelmingly concerned with guaranteeing their security and survival. As security interests are essentially positional, that is to say, their value is dependent on their distribution, states will prioritize *relative* gains (gains relative to their rivals) over absolute gains (gains irrespective of the gains of their rivals) in their interactions.

This dynamic primarily shapes states' actions in relation to their military capabilities. Survival is the primary goal of state action, military power is essential to survival, and the increase of a state's military power is always detrimental to that of another. However, economic wealth forms an important, secondary determinant of security. As armies are expensive, economic policies must be seen as a function of states' abilities to raise revenue for such armies through accumulating wealth (e.g., through industrial power and entrepreneurship) and through taxes.⁴⁶ Hence, what appears from the perspective of neoliberal institutionalism to be a positive sum game in which mutual (economic) gains may be achieved through cooperation, it appears as a zero-sum trade-off from the perspective of neorealism where the gains of one imply a corresponding loss for the other.⁴⁷ States do not focus on achieving 'pareto-optimal' outcomes but on improving their relative positions by doing better than their rivals.

4.2 Power and the Hegemon in Decline

What would then explain the evident existence of international institutions – those facilitating international trade and investment first among them – that appear to secure mutual (economic) gains for cooperating states? One influential – and again increasingly relevant – answer is provided in Gilpin's *War and Change in World Politics* originally published in 1981.⁴⁸ Gilpin is one of the primary proponents of what has become known as the Hegemonic Stability Theory⁴⁹ which accords a central role to a 'hegemon' in the explanation of stability and

conflict in international affairs. Central is the idea that the stability of the international order is premised on the existence of a hegemon being (or appearing)⁵⁰ powerful enough to maintain it. Gilpin applies it to the modern international order, which principally consists of the world market economy and its related institutions and rules. Exerting control over the central institutions that shape the world economy has become the primary means by which states secure their wealth and hence security.⁵¹ Although most states tend to benefit in absolute terms from participation in global markets, the more technologically advanced economies tend to benefit relatively more. They can request more favourable terms of trade and enjoy higher rates of profit.⁵² Gilpin suggests that the current international economic order is primarily in the interest of the most powerful – and technologically and economically most advanced – state. It entrenches its position as the preeminent power because it disproportionately benefits from those institutions (by securing relative gains). Weaker states are conversely confronted with relative losses that they would wish to avoid yet are forced to accept. More specifically, the United States in particular has had an incentive to maintain a period of deep global economic integration,⁵³ and it has been remarkably successful in doing so. This is partially because others benefited and accepted this form of leadership and partially because other (powerful) states were coerced to conform.⁵⁴

The core of Gilpin's analysis, however, lies in the implications of what he sees as the inevitable decline of hegemonic power. Maintaining the stability of an international regime is expensive, and Gilpin surmises that the drivers of hegemonic power contain the seeds of their own destruction. He draws on economic stagnation theories to suggest that societies inevitably reach a point in their development at which further growth becomes difficult or impossible.⁵⁵ The economic costs to secure the status quo rise faster than states' economic capacity. This may be due to shortages of population, territory, or other production inputs as well as the rising economic costs of counterbalancing political rivals and catering to increasingly 'spoiled' domestic consumers.⁵⁶ At this stage, challengers

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⁴⁶ D. Beach, *Analyzing Foreign Policy* 247 (2d ed., London 2020).

⁴⁷ Ring, *supra* n. 4, at 102.

⁴⁸ R. Gilpin, *War and Change in World Politics* (Cambridge University Press 1981).

⁴⁹ It has also been attributed to C. P. Kindleberger, *The World in Depression: 1929–1939* (Berkeley, CA: University of California Press 1973).

⁵⁰ Gilpin, *supra* n. 48, at 31–33 emphasizes prestige which relates to others' perceptions of a state's power and stems from the idea that it is not necessary to actually use military or economic might when others recognize its existence. As T. Hobbes, *Leviathan* 132 (Oxford University Press [1651] 2012), memorably stated it, 'Reputation of power, is Power; because it draweth with it the adherence of those that need protection'.

⁵¹ Gilpin, *supra* n. 48, at 24.

⁵² *Ibid.*, at 138–139.

⁵³ This follows from, *ibid.*, at 129–139. See also S. D. Krasner, *State Power and the Structure of International Trade*, 28 *World Pol.* 317, at 318 (1976), doi: 10.2307/2009974: 'The most important conclusion of this theoretical analysis is that a hegemonic distribution of potential economic power is likely to result in an open trading structure'.

⁵⁴ Gilpin, *supra* n. 48, at 144.

⁵⁵ See *ibid.*, Ch. 4, an argument that states have an incentive to expand, e.g., increase control over the international order in Ch. 3.

⁵⁶ *Ibid.*, Chs 4 and 5.

will attempt to take the place of the declining hegemon and reshape the international order to their own primary advantage.⁵⁷ That does not mean that norms and institutions established by the hegemon will disappear overnight. Rather, the process of international economic integration established by it may slowly reverse thereby leading to fragmentation and eventually disintegration. The developments as presented in section 2 of this article suggest that there may currently be existing aspects of this process with the United States in particular and the West more broadly appearing to be increasingly hesitant to fully support the extant global economic order. What this means for international tax cooperation may depend on exactly how they choose to respond going forward.

4.3 Responses of the Hegemon in Decline

Gilpin identifies, broadly speaking, three possible strategies afforded to the hegemon to manage a process of decline of which the authors focus on two.⁵⁸ The first strategy – appeasement – is to concede to claims of the challenging power. It is also the most difficult path as this requires concessions that the hegemon must balance with the possibility of losing its prestige and international standing which only risks accelerating its decline. Challenging states could press for more and allies could switch sides, which could consequently lead to additional loss of standing and prestige.⁵⁹ Stated differently, the United States and the West in a broader sense could accept the reality of their decline and seek to restrict losing the status quo by restructuring the global governance architecture in a more inclusive and consensual way.

Second, the hegemon in decline may pursue a strategy of retrenchment by reducing its foreign policy commitments by abandoning international commitments and increasing its reliance on its domestic economy. Campanella – further developing Gilpin's work to investigate the future of the international trade regime – theorizes what could happen next:

Markets suddenly become inaccessible as the hegemon uses protectionism to suppress the rise of the challenger, protect its power status, and reduce its international commitments. In response, the challenger undermines the international system by questioning

its legitimacy. Then nations turn inward to safeguard their economies through self-reliance strategies, and regional economic blocs emerge (...) The declining influence of the leading power sets in motion a process of economic closure that eventually impairs both the legitimacy and the viability of the economic order itself.⁶⁰

Campanella points to the United States frustrating the WTO, the tariffs imposed by President Trump, and the Inflation Reduction Act that is effectively a protectionist policy aimed at supporting depressed areas and rebuilding capabilities in the green and tech sector. Connected to such economic fragmentation and economic self-help is, otherwise stated, institutional fragmentation and regionalization.⁶¹

4.4 Neorealist Perspectives on Cooperation in International Taxation

4.4.1 Introduction

These distinct strategies to manage hegemonic decline may affect what may be expected to be seen in international tax cooperation going forward. However, before exploring the implications of neorealism for assessing the current developments at the UN and the future of international tax cooperation (section 4.4.3), the authors will briefly indicate how neorealism would explain the extant international tax regime (section 4.4.2).

4.4.2 Neorealist Perspectives on the Extant International Tax Regime

Crucially, neorealism predicts that international tax cooperation predominantly benefits the hegemon.⁶² A hegemon, as the most technologically and economically advanced state, has an incentive to establish an international tax regime that facilitates international capital mobility if and when it is able to use its power to secure relative gains.⁶³ This realist hypothesis, for instance, explains why the United States, the United Kingdom, and their allies could, as stated by Hearson and Rixen, 'delegate the development of technical concepts and

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⁵⁷ *Ibid.*, at 9–10. Another consequence of this reasoning is that the order will remain stable if no state believes it is profitable to change the status quo.

⁵⁸ The third strategy – engaging in military conflict – has, as *ibid.*, at 197–209 notes, historically been the primary means of resolving the disequilibrium between the structure of the international system and the redistribution of power. However, this option falls beyond the scope of this article as developments in international taxation will be unlikely to directly incite war. See also A. Cooley & D. H. Nexon, *Exit from Hegemony: The Unravelling of the American Global Order* 55 (Oxford University Press 2020).

⁵⁹ Gilpin, *supra* n. 48, at 194.

⁶⁰ E. Campanella, *Economic Self-Reliance in a Leaderless World*, 46 *The Wash. Q.* 103–126, at 107–108 (2023), doi: 10.1080/01636660X.2023.2259256.

⁶¹ *Ibid.*, at 111.

⁶² See more on this in Hearson & Rixen, *supra* n. 4.

⁶³ Note that, at this point, the authors take a step away from the generally accepted point of departure (see Rixen, *supra* n. 8) that international tax law is a coordination game with distributive conflicts characterized by prisoner's dilemmas on some issues.

model conventions to expert committees outside the universal United Nations framework. (...) Treating it as a depoliticized and technical issue, they wielded their superior economic power to make rules favorable to them'.⁶⁴ The result was that the OECD Model Treaty (and the UN Model largely based on it) came to function as the template on which bilateral tax treaties are based thereby effectively diffusing such favourable rules worldwide.⁶⁵

The realist hypothesis also explains what is otherwise one of the most puzzling features of the double tax treaty network that has grown over the last half century.⁶⁶ Dagan's point is well known that it is difficult to understand why capital importing (generally low-income) states have signed tax treaties based on the OECD Model Treaty.⁶⁷ They essentially limit source taxation and hence prevent or limit capital importing states from taxing outflowing capital. Under the assumption that foreign source taxes are creditable under residence tax rules, tax treaties enable reducing tax levied at source which reduces the cost of relief for the residence state.⁶⁸ Yet, relief for double taxation could have been provided unilaterally by the capital exporting state and, moreover, it has an interest in doing so given that it may benefit from facilitating its residents investing abroad (as after-tax returns to foreign capital investments would be expected to be higher than returns to domestic investment). Why then have capital importing states nevertheless *en masse* relinquished their source tax rights? The neorealist perspective suggests that this is due to the projection of hegemonic power which secures an international economic order for the United States and the West more generally that predominantly benefits them and to which weaker states have acquiesced even if it was contrary to their economic interests.⁶⁹ Distribution is an inherent component of the

international tax treaty. Given the structural asymmetry within the international economic system,⁷⁰ the (often economically weaker) source state has to forego some share of tax pie to the (often economically stronger) residence state that is, befittingly, the hegemon.

A related observation can be made regarding some more recent developments in the context of rising concerns regarding base erosion and profit shifting. It has surprised observers that many (former) tax havens have given up bank secrecy legislation in the previous decade that they had guarded so zealously up until then. These countries could not be expected to benefit nor were there any 'side payments' to make the changes palatable. Why then would they have voluntarily pursued such a significant policy shift that was detrimental to their interests? As Hakelberg has argued, the answer must be sought in the coercive power of the US Government that wished to curb tax evasion by US taxpayers. It threatened to prevent these tax havens having access to its capital markets if they would not acquiesce to information exchange provisions: 'The end of bank secrecy (...) ultimately results from a credible threat of sanctions issued by the United States'.⁷¹ Hakelberg sees this episode as evidence for the capacity of the United States as a hegemon to impose its will on the international tax regime to secure its own interests irrespective of the interests of the 'cooperating' states.

4.4.3 The Future of Cooperation in International Taxation

These brief observations must suffice to indicate the viability of the neorealist framework for analysing international tax cooperation. It is now time to consider the

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⁶⁴ Hearson & Rixen, *supra* n. 4, at 227.

⁶⁵ Y. Brauner, *Tax Treaty Negotiations: Myth and Reality*, 4 Int'l Tax Stud. 8 (2021), doi: 10.59403/3gjhtq, makes a very interesting reconstruction of tax treaty negotiations, pointing at the central function of the OECD Model in negotiators' training and preparation. Regarding questions relating to 'training', he, e.g., notes (para. III): 'The answers are clear that one cannot view the U.N. Model as "the" model for non-OECD jurisdictions, but rather as a supplement to the OECD Model, at least in terms of priority during training'. See also Brauner's discussion of the OECD in his Klaus Vogel Lecture: Y. Brauner, *The True Nature of Tax Treaties*, 74 Bull. Int'l Tax'n 28 (2020), doi: 10.59403/3qbyckw. The centrality of the OECD Model is generally accepted in literature and, e.g., follows from *The Impact of the OECD and UN Model Conventions on Bilateral Tax Treaties* (M. Lang et al. eds, Cambridge University Press 2012) and from a review of the Dutch tax treaty negotiation process. If a treaty was brought in line with the OECD Model, this reduced negotiation time. See T. M. Vergouwen & D. M. Broekhuijsen, *De duur van onderhandelingen van belastingverdragen*, 5 NL Fiscaal-Wetenschappelijk (2022).

⁶⁶ The authors note that Ring quite convincingly argues that the formation of international tax law can nevertheless be better explained by the neoliberal institutionalist perspective: Ring, *supra* n. 4, at 124–128. She argues that (economic) power alone does not fully account for the complexity of international tax rule formation in the interbellum. One of these complexities is that the two most powerful and capital exporting states, i.e., the United States and the United Kingdom, 'did not take the same expected position (favoring residence)'. Ring suggests in this regard that the former has had the broader economic risks of non-cooperation with Europe in mind. As a result, the mutual interest of the powers to prevent market failure on double taxation (i.e., the institutional perspective) provides a more coherent account. See also Hearson and Rixen (2020) and S. Jogarajan, *Double Taxation and the League of Nations 177–179* (Cambridge University Press 2018), who note that the great powers did not form an alliance on the issue due to a difference of view on principles (the United States, considering its positive balance of payments, could afford to be more generous to source countries) but also due to a game of bridge between Adams and Thompson, the US and British negotiators, that became unpleasant.

⁶⁷ T. Dagan, *The Tax Treaties Myth*, 32 N.Y. U.J. Int'l L. & Pol. 939 (2000).

⁶⁸ Note that, under exemption systems, this is not typically the case as the foreign income is fully disregarded. Dagan, *supra* n. 67, at 939. This can also be deduced from Rixen, *supra* n. 28, at 589. See also Ring, *supra* n. 4, at 129–134.

⁶⁹ See S. Leduc & G. Michielse, *Are Tax Treaties Worth It for Developing Countries?*, in *Corporate Income Taxes Under Pressure: Why Reform Is Needed and How It Could Be Designed* 169 (R. de Mooij et al. eds, IMF 2021): 'If the investment flows are largely unidirectional, as is the case for most low-income and lower-middle-income countries, the costs of forfeiting source-country taxing rights may be borne unilaterally by these countries'.

⁷⁰ Of the nearly two hundred states, only six have more than 1/10th of the GDP of the United States (China is closest) and more than three fourths of them have a GDP less than 1/100th of that of the United States. See World Bank, GDP (Current USD), 2022, data.worldbank.org (accessed 6 Jun. 2024).

⁷¹ Hakelberg, *supra* n. 8, preface, at ii.

recent adoption of the UN resolution on the drafting of a framework convention and use it to look forward.

First of all, the events leading up to voting for and adopting the UN resolution may be understood as fitting a pattern of challenges to US hegemonic power. In line with the Hegemonic Stability Theory, China (and Russia) can be seen as seeking to challenge the current modes of global tax policy making and to push for an alternative system or at least for a system that more advantageously favours their interests. From a perspective of power and hegemonic decline, the current challenge takes place in the form of an attack on the legitimacy and inclusivity of existing multilateral cooperation mechanisms.

It could indeed be the case that changing the existing governance of international taxation is advantageous for China and Russia. As Hearson and Prichard note, China takes a unique position in international tax as its interests are ‘rapidly shifting from those of a capital importer and low value-added manufacturer towards those of a capital exporter with aspirations in high value-added industries and a large consumer market’.⁷² Stated otherwise, as its own multinational enterprises grow, China may have increasing interest protecting the taxation of its multinational enterprises operating abroad. However, even if its interest for international taxation accords more with that of the West, China has no real seat of power at the OECD. Thus far, Hearson and Prichard note that the expectation has been that China can be ‘socialized’ into existing international tax institutions ‘in the hope of forestalling more aggressive Chinese efforts to exploit their country’s growing economic power on the global stage’.⁷³ Yet, their review of the West’s acceptance⁷⁴ of Chinese ‘location specific advantages’ (LSAs) – a technique that essentially modifies the OECD’s arm’s length norm and allocates more revenue to Chinese (manufacturing) subsidiaries⁷⁵ – signals a more subversive approach to international tax policy *within* the ambit of the existing international tax system. Hearson and Prichard indeed suggest that this Chinese challenge to the arm’s length norm may initiate dramatic reforms in the future that challenge existing

institutions and rules.⁷⁶ In any case, the Chinese aim to achieve increased influence in setting international tax norms, i.e., not to fundamentally *change* the architecture, but to mend it to better reflect its interests, reflects China’s support for ‘improving global governance and practicing true multilateralism’ (*true* multilateralism in contrast to its ‘old’ form practiced by the United States).⁷⁷ It is therefore of no surprise that China supported the UN resolution on tax cooperation.⁷⁸ Russia similarly also appears to challenge the extant framework. In discussing the UN resolution draft presented by the African Group, the representative of the Russian Federation, for instance, stated that current cooperative efforts within the OECD ‘are neither inclusive nor effective’. He stated that ‘it is impossible to effectively solve the problem of mobilizing domestic resources without creating a fairer and more inclusive international tax system’⁷⁹ and therefore supported the draft.

A second point is that what may be expected to be seen in the years to come may depend on whether the United States (and the West more generally) pursues a policy of appeasement or, more likely, of retrenchment. As noted, the neorealist framework suggests the possibility that a declining power will cautiously but voluntarily afford opportunities for challengers to shape international institutions to their advantage. Such a policy of appeasement would require the United States (and the West more broadly) to accept a world where power has shifted, which is an attitude that may reveal itself as the acceptance of more ‘equal’ and ‘inclusive’ tax cooperation. That change, however, may come at the cost of a loss of international prestige (challengers may ask for more) and alliance formation (alliances may shift). The negative vote by most OECD countries on the UN resolution suggests that appeasement will not be the path going forward.

It is more likely that the United States will pursue a policy of retrenchment. Cutting costs in the sphere of international taxation may mean reducing international obligations or refraining from entering into expensive

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⁷² M. Hearson & W. Prichard, *China’s Challenge to International Tax Rules and the Implications for Global Economic Governance*, 94 Int’l Aff. 1287 (2018), doi: 10.1093/ia/iiy189. In a more recent paper, R. C. Christensen & M. Hearson, *The Rise of China and Contestation in Global Tax Governance*, (28) Asia Pac. Bus. Rev. 165 (2022), doi: 10.1080/13602381.2022.2012992, note: ‘China underpins selectively and strategically engages with Western-liberal institutions and norms in order to simultaneously incentivizing and maximizing its tax take from “bringing in” foreign investment while minimizing the taxation of Chinese companies “going out” through bilateral and multilateral negotiations’.

⁷³ Hearson & Prichard, *supra* n. 72., at 1302.

⁷⁴ See Ch. I, s. D.6, and Ch. IX, OECD, *Transfer Pricing Guidelines* 2022. Hearson and Prichard write that LSAs were accepted at the OECD as a compromise. It was viewed as an acceptable price to pay to secure Chinese engagement and cooperation.

⁷⁵ J. Li & S. Ji, *Location-Specific Advantages: A Rising Disruptive Factor in Transfer Pricing*, 71 Bull. Int’l Tax’n 259, doi: 10.59403/bx6n4e.

⁷⁶ Hearson & Prichard, *supra* n. 72, at 1306.

⁷⁷ See J. Li, *China’s Rising (and America’s Declining) Influence in Global Tax Governance?*, 75 Bull. Int’l Tax’n 1, at 13 (2021), doi: 10.59403/28eedc6.

⁷⁸ UN General Assembly, Promotion of inclusive and effective international tax cooperation at the United Nations, *Resolution adopted by the General Assembly in its 78th Session 2023–2024 on 22 December 2023 (A/RES/78/230 2023)*. The voting outcome of the UN General Assembly meeting can be found here, <https://digitalibrary.un.org/record/4031002?ln=en> (accessed Nov. 2024).

⁷⁹ See UN Meetings Coverage, Second Committee Approves Nine Draft Resolutions, Including Texts on International Tax Cooperation, External Debt, Global Climate, Poverty Eradication’, 22 Nov. 2023, GA/EF/3597.

new ones. Yet, a retrenching dominant power is unlikely to easily surrender its existing favourable position. The United States, for example, noted that it 'strongly supports the political commitment made by 141 jurisdictions to reform international tax architecture and stabilize the international tax system' but that it 'began negotiations in hopes of reaching consensus on a resolution creating an ad hoc international working group to leverage the strengths of the UN to develop taxation proposals that would not undermine progress made in other fora'.

Simultaneously, the authors observe little movement in the United States concerning adopting the Pillar 2 outcomes reached within that other forum – the OECD. The country may further protect the status quo by threatening challengers with counter measures insofar as it has the (economic) power to do so. In this context, it is worth observing a recent address by a US representative at an OECD meeting regarding Pillar 2 which threatened aggressive 'tax and trade countermeasures' if states were to impose an undertaxed profits rule (UTPR) surtax.⁸⁰ Indeed, the neorealist could reason that the United States is not willingly able to permit other countries to tax its multinationals under Pillar 2 rules and hence decrease its residence firms' competitiveness when it perceives that China is able to 'manoeuvre', 'exploit', and 'abuse' the international tax system.⁸¹

That this is the strategy currently pursued by the United States (and the West more generally) may be indicated by the voting outcomes on the UN resolution. By voting against it, they wish to retain their influence on tax treaty standard setting within the OECD. Although there are some disadvantages in excluding non-OECD members from this affair as there is less multilateral cooperation on bilateral tax treaty standards, the West can selectively use 'its' rules of international tax law on (a very large portion of) the worldwide economic interaction taking place between itself.⁸² As to the prisoners' dilemmas haunting international tax cooperation, there is then, unfortunately, little reason to believe that these will be coherently resolved considering the increasingly fragmented landscape of international tax governance.

5 CONCLUSION

In this article, the authors have introduced the theory of neorealism as an alternative to neoliberalism in international tax scholarship and investigated its productiveness in explaining and interpreting the recent attempts to strengthen the role of the UN in international tax governance. With widespread recognition that the last decade has seen a shift in the global balance of power with the 'hegemonic' status of the United States (and the West more generally) being challenged, there is reason to reflect on the effects of this shift on the preconditions for stable cooperation in matters of international tax law. The dominant neoliberal theories of international tax governance emphasize legitimacy and trustworthy cooperation to commonly achieve mutually beneficial tax policy outcomes. This helps to explain states' willingness to participate in ambitious norm-setting agreements both in the form of participation in the bilateral treaty regime and the more recent multilateral efforts. There may be distributional conflicts, however, these can be satisfactorily resolved – particularly in negotiation fora that satisfy criteria of equality and inclusiveness – given the mutually beneficial (positive-sum) nature of the cooperative efforts. A UN framework convention promises to further increase the legitimacy and effectiveness of international tax policy and, with that, the future stability of the international tax regime, particularly regarding supporting lower income countries with domestic revenue generation and the implementation of the 2030 Agenda for Sustainable Development.

On the one hand, the realist analysis suggests that this perspective neglects considering the importance of hard power to secure the stability of any such agreements. It cannot be assumed that states consider international tax cooperation to result in beneficial outcomes since they are overwhelmingly concerned with securing relative, rather than absolute, (economic) gains in relation to their rivals. This suggests that the relative stability and effectiveness of international tax cooperation witnessed in the past decades – which has conferred economic benefits to participating states, albeit arguably predominantly to the economically and technologically most advanced nations – has ultimately been achieved by virtue of the

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⁸⁰ Chairman Smith (of the Republican Party) of the Ways and Means Committee. (The US Ways and Means Committee is the chief tax-writing committee of the US House of Representatives). US Ways and Means Committee, 'At OECD, Chairman Smith Warns That Congress Will Reject New Job-Killing Global Tax Surrender', <https://gop-waysandmeans.house.gov/at-oecd-chairman-smith-warns-that-congress-will-reject-new-job-killing-global-tax-surrender/> (accessed Nov. 2024): 'Unfortunately, we're concerned that the current framework flips the hinges: rather than closing the door on tax avoidance, the deal opens new opportunities for China and others to maneuver and exploit the rules. We worry that the global tax system is headed for more, not fewer, disputes among countries. And we are shocked at the extent to which the Biden Administration has been willing to surrender the US tax base'. 'We encourage the OECD to develop specific actions to address the risk of China and others abusing the system (...) If countries move forward with the UTPR surtax, we will continue to aggressively pursue tax and trade countermeasures'.

⁸¹ See the warning by Chairman Smit of the Ways and Means Committee, *ibid.* A realist analysis of Pillar 2, and particularly of the UTPR, is beyond the scope of this article as this would also require a separate discussion on the position of the EU vis-à-vis the United States. See the assumption made in footnote 7.

⁸² The authors note that others are more optimistic. W. Schön, for instance, accepts that world politics have become more fragmented and deglobalized and yet argues that the benefits of international trade and the interconnectedness of the large economies still incentivize them to engage in international tax coordination. See Schön, *supra* n. 6. The realist, however, would question whether this position would hold for long given the dominant states' focus on *relative* gains and zero-sum economic thinking. Stated differently, will the picture of international trade (see W. Schön, para. 3) turn out to run along geopolitical lines?

hegemonic power enjoyed by the United States (and the West more generally). A stable international tax regime became a reality because it was in the United States' interest to facilitate international capital mobility of which it was the primary beneficiary, and it was powerful enough to secure the cooperation of the rest of the world even if it entrenched existing power inequalities. Not mutual gains for all but relative gains for the hegemon supplies the underlying logic of current international tax cooperation.

On the other hand, the realist analysis takes into account the shifting geopolitical environment with an increasingly confident China emerging as a credible rival to the United States and with Russia further destabilizing multilateralism in international relations. These developments herald a multipolar world order where the West may no longer be capable of effectively securing stable global institutional trade and investment relations nor has an interest in doing so as its rivals capture increasing shares of the gains of such cooperation. Recent developments at the UN may be reflective of these changes. The vote to work towards a framework convention may be understood as a challenge to the 'leadership' of the West in international tax cooperation in accordance with the

central tenants of the Hegemonic Stability Theory that predicts that emerging powers aim to replace the institutions established by their predecessors. China and Russia's support for the resolution fits this analysis. The United States' response (and the West more generally) may take a number of different forms, but its vote against the resolution makes it clear that it wants to retain its influence on bilateral treaty standard setting within the OECD. How it should bring this influence in line with its declining power is open to debate. It could proceed to press for cooperation on favourable terms through bi- and multi-lateral efforts within the OECD while aiming to more forcefully exclude its rivals from the benefits of such cooperation. Alternatively, it could pursue a policy of retrenchment thereby decreasing its dependence in international trade and investment and retaliating with countermeasures when its rivals attempt to secure terms that are more favourable. From this perspective, none of the likely outcomes, however, bode well for the future of multilateralism in international taxation. Past performance does not guarantee future results and, from today's vantage point, the stability and success of international tax cooperation may appear as an historical aberration resulting from a world order that is now in the past.