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fragmentation that facilitated tax avoidance. Multilateral cooperation on minimum taxation that was commonly supported as the correct if unachievable solution came as a surprising (but certainly blissful in the eyes of many) sudden change.[3]

The new global tax deal was described in heroic terms as a 'historic',[4] 'unprecedented',[5] and a 'once-in-a-generation accomplishment for economic diplomacy'.[6] It was praised as a triumph of cooperation and compromise over fierce competition, a joint effort to resolve a destructive collective action problem, and a victory of fairness over greed.

Rishi Sunak, Britain's Chancellor of the Exchequer, announced the agreement and hailed it as a deal that would make the global tax system 'fit for the global digital age'[7] and ensure 'the right companies pay the right tax in the right places'.[8] Commissioner Paolo Gentiloni stated that 'Getting to this point has required difficult choices for many countries, both in the EU and elsewhere. A spirit of compromise and common interest, in Europe and worldwide, enabled us to get here'.[9] Janet Yellen, the US Treasury Secretary, stated that 'global minimum tax would end the race to the bottom in corporate taxation, and ensure fairness for the middle class and working people in the U.S. and around the world'.[10] Yellen was further quoted saying, 'I believe what you are seeing is a revival of multilateralism'.[11]

The aim of this grand multilateral effort was to fix the international tax system. The problem was – as stated by the OECD – 'unhealthy tax competition',[12] and the two pillars were suggested as the remedy. This article focuses on one part of the deal, i.e., Pillar 2, a cartel-like agreement whereby cooperating countries agree to a coordinated 15% tax rate[13] to be levied on the world's largest Multinational Enterprises (MNEs). The agreement is supported by a defensive device that is designed to counteract potential defection. Under it, if one country waives taxation, another participating country will impose a tax. The cooperative multilateral solution was featured as being normatively justified. MNEs will pay their 'fair share', middle class taxpayers in the United States and across the world will be treated fairly, and developing countries are not only included in the framework but are also bound to gain from the new deal. The tax imposed by the agreement is not only a cure for unhealthy tax competition but is factually 'the right tax'.[14]

these, cooperation in itself is no assurance for serving the interests of the cooperating parties.

Cooperative mechanisms may yield biases providing some actors with excessive power especially in the multilateral context. This article focuses on two features of cooperation that may tilt the playing field. One is the ability of the OECD to control the agenda, and the other is the structure of the game that induces cooperation. Both features have the power to bias the outcomes of the process in favour of one side – that of developed countries. In the negotiations towards the 2021 tax deal, G7 countries, and later the OECD took the lead on both setting the agenda and structuring the game. This, I believe, warrants caution in celebrating the agreement as inherently desirable simply because it is cooperative.

While leveraging on the collective power of the cooperating parties may have certain advantages (e.g., in enforcing tax rules on MNEs, mobile resources, and mobile taxpayers), it may also provide incentives for some actors to join the cooperative accord although they would have been in a more advantageous position under a different accord (or no cooperation at all). In fact, as will be explained below, cases when cooperation harms some of the cooperating parties are well known to international taxation.[16] Hence, the deal should be independently evaluated rather than assuming that the 2021 global tax deal benefits all signatories simply because they have signed up for it. The results of a deal could indeed be mutually beneficial and allocate increased benefits fairly (as it was advertised). It could also benefit some actors more than others (which may raise issues of global justice), or – even though consensual – it might even be harmful for some of the actors in the short or long run.

Moreover, the cooperative accord and the newly created multilateral regime may be harbouring increased risk in the future for non-core-actors. The mechanism of Pillar 2 encourages participation and discourages future defection. In the current stage of the international tax regime, this is considered a virtue. However, alongside its cooperative-enhancing qualities, the new structure risks a future lock-in and cartelistic effects that might benefit the leaders of this initiative at the expense of others. Thus, even if the regime does not currently harm any countries, by creating this new cooperative standard, it may facilitate a path that might block future – potentially superior – standards. Moreover, the current regime grants significant power to those with their hands on the steering wheel (the OECD in this case). Such power could be used to disadvantage others. In the absence of mechanisms that would curtail the monopolistic power of the former, other countries risk paying increasingly excessive prices to belong in this regime.

There is another layer for reconsideration when evaluating the 2021 tax deal, which is probably beyond the scope of the current contribution, i.e., whether the deal was a missed opportunity for a much more ambitious pact.[17] Could the combination of the current time of crisis and the existing level of political goodwill have been used to set an entirely new agenda for international taxation? This could perhaps be one that would not only serve the best interests of states (and the institutions that lead them) but also humanity in general. Such a utopic multinational tax regime would conceivably promote the basic goals of taxation on a global scale. It would seek to efficiently provide public goods – global health, food and water security, and the environment – embrace global justice. This enormous task, however, must wait for another day.

This article proceeds as follows. Section 2 briefly describes the pre-2021 international decentralized tax regime yielding competition between states and the fragmentation of the international tax landscape. It further explains why cooperation was considered an unlikely development. Section 3 describes the 2021 tax deal, the loud voices cheering for it as a miracle solution, and the somewhat more sheepish voices arguing that the deal serves the interests of developed countries but not so much those of the Developing Countries (LDCs). Section 4 puts the current deal in a broader perspective and contends that the new deal should not be an abrupt turn away from a self-interested uncoordinated international tax regime towards a cooperative all-benefiting formula. Rather, it should be considered as another step in a strategic interaction among global actors (notably OECD countries) that has been used in the past as a vehicle to promote their own interests while disregarding those of others. Similar mechanisms, specifically the promotion of an explicit standard and controlling the agenda, explain both the biased results of the past and the concerns regarding the current accord and its future. Section 5 concludes.

2 International tax – a collective action problem?

interests.[18] In the absence of any central global authority, market powers reigned, and countries engaged in competition for resources and residents with tax largely becoming the currency of such competition.

Demand for resources and competition for (some) resiprofit shifting), the new agenda aims at the core of tax sovereignty in constructing a globally coordinated and cooperatively enforced minimum tax.

In that, it leverages on the coercive powers of cooperating states that are to gain control over MNEs and subject them to an agreed-upon level of taxation.[24] The 2021 agreement thus launches a (cooperative) taxing scheme that states acting individually could not impose. This is why the 2021 compromise

The claim of the OECD is that developing countries will also benefit.[35] 'What do developing countries get out of this deal?' asks the OECD in the brochure advertising it,[36] and replies:

> The Two-Pillar Solution … provides for a global minimum tax, which will help put an end to tax havens, lessen the incentive for MNEs to shift profits out of developing countries, and reduce pressure on developing country governments to offer wasteful tax incentives and tax holidays, while providing a carve-out for low-taxed activities that have real substance. This means that developing countries could still offer effective incentives that attract genuine, substantive foreign direct investment … Developing countries will gain revenue … With a rate of 15%, the global minimum tax is expected to generate around USD 150 billion in additional global tax revenues per year. In addition to this, developing countries are expected to gain further revenues under a treaty-based subject to tax rule (STTR) which will allow countries to retain their right to tax certain payments made to related parties abroad which often pose BEPS risks, such as interest and royalties. The subject to tax rule will be made available to all developing countries.

miracle wand that would resolve the maladies of international taxation from cases of double taxation to harmful tax competition, racing tax rates to a suboptimal bottom, and tax avoidance. These efforts were always described as promoting efficiency and justice in an effort to overcome collective action problems that undermine mutually desirable goals. In fact, however, the story of international taxation has been (perhaps not surprisingly) one under which some actors (notably OECD countries) used cooperation as a vehicle to promote their own interests that was sometimes at the expense of others.

The best example for this is, in fact, the most successful cooperative mechanism in international taxation – the impressive spread of the bilateral tax treaties regime under which pairs of countries sign treaties to alleviate what is portrayed as a classic collective action problem, i.e., double taxation. Over 3,000 treaties have been signed to date with the vast majority of them adhering to not only similar patterns but to an almost identical language that is compatible with a model designed and interpreted by the OECD.[53] Thus, the tax treaties apparatus became to be seen by many as an international tax regime in crystallization.[54] Under the official story, if not for a treaty, had the host and residence countries followed their interests and each were to tax both incoming and outbound investments, double taxation would prevail. This would consequently harm the interests of residence and source countries alike by curtailing cross-border investments. Under a treaty, on the other hand, each country forfeits some of its taxing powers in order to facilitate cross border investments, thus benefiting both residence and host countries. In fact, however, while the official story claims that the reduction of tax revenues for host countries is compensated by the increase in FDI under a treaty, theoretical research,[55] and empirical evi-

However, even when all (or most) parties get a seat at the table, the results may not work to the benefit of all – as could be seen in the dissatisfaction with the cooperative accord expressed by so many, including jurisdictions that have signed up to join it.

4.1 [illegible]

Why, then, might countries that consent to such an international accord join it if it does not serve them properly, and – even more interesting – if they consent, is it not proof that the deal is beneficial to them? Countries’ [illegible]: The second reason for why the structure of the international tax game may yield results that are biased in favour of developed countries is strategic. Pillar 2 is a cooperation-enhancing mechanism for two types of countries, i.e., those where MNEs reside (home countries) and countries where they invest (host countries). Broadly speaking, developing countries tend to be host countries while developed countries are more likely than others to serve as home countries.

As mentioned earlier, Pillar 2 offers a coordination mechanism for cartelistic behaviour. The mechanism is designed to allow countries to coordinate not only the cartelistic 'price' (15% tax) but also the punishing mechanism for non-compliers (a top-up tax imposed by any cooperating country). For home countries – the initiators of this cartel – the goal was to have MNEs pay at least 15% taxes [illegible] (although, obviously, each state would presumably rather maximize its own tax revenues of other complying states and when the incentives they provide (e.g., payable credits) are recognized, no top-up taxes should be imposed. If, on the other hand, the incentives they provide or the taxes they impose are incompatible with the model, MNEs operating within their jurisdictions may face increased taxes and thus undermine their competitiveness.

The inclusive framework was promoted as an effort to provide non-OECD G20 countries a platform to participate on an equal footing with OECD countries. However, as has been seen in the bilateral context, (even) having a seat at the table is not enough to guarantee desirable results. As Hugh Ault recently stated, 'Under the mantra