International

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The Purpose and Current Status of the United Nations Tax Work

This article is intended to give a short introduction to the United Nations (UN) Model Tax Convention and the nature and current work programme of the UN Committee of Experts on Cooperation in International Tax Matters. It indicates changes that have occurred in the last few years in how the UN work is done and current areas of focus of the UN Committee and the UN's Financing for Development Office, under which the tax work sits.

1. Some History and Context

The United Nations (UN), as the successor body to the League of Nations, has a long lineage in dealing with international double taxation. The work of the League of Nations in this area began in 1921 and led to the drawing up in 1927 of some draft bilateral conventions for consideration at a 1928 meeting of government experts that led to a permanent Fiscal Committee of the League in 1929. A further 1935 draft led to the Model Conventions of Mexico (1943) and London (1946). The Mexico and London Models were very influential on the terms of bilateral tax treaties, but were not complete in their coverage or consistent in their approaches. The Fiscal Committee invited the UN to review the two models when it took over the League's work after the end of the second World War. It suggested this should be done in a balanced forum with expertise from both capital-importing and capital-exporting countries.

In particular, the challenge in bilateral tax treaties is that international economic law allows for taxation of profits on an investment both by the host country of an investment (source country jurisdiction) and the residence country of the investor (residence country jurisdiction). To encourage international investment by avoiding profits being taxed twice, one of the countries must yield its taxing right, and the main differences in tax treaty negotiation are in effect as to the extent that the source country yields its taxation rights.

To the extent that the source country retains its taxing rights under the tax treaty (and presuming that it exercises those rights at domestic law) the residence country will give its resident taxpayer a credit for the source country tax paid on the investment profits or an exemption so that the residence country will, in contrast, be in effect yielding the taxation rights it has at domestic law.

In the Mexico draft (with many representatives of developed countries unable to travel during the war) the source country preference predominated and there was less source country yielding of taxation rights than in the later (post-war) London Model. In modern terms, the UN Model Tax Convention is more the successor to the source country-predominant Mexico Model. The Organisation for Economic Cooperation and Development (OECD) Model is more of a successor to the London Model, in preserving less source country (and therefore more residence country) taxing rights as a means of avoiding double taxation.

The UN continued the League of Nations work after the second World War with its Fiscal Commission, but the work lapsed in the mid-1950s, and the Organisation for European Economic Cooperation (OEEC), the predecessor organization to the OECD began to take up a role in this area. The OEEC adopted its first Recommendation concerning double taxation on 25 February 1955 and in 1963 the OECD Fiscal Committee presented a final Report entitled "Draft Double Taxation Convention on Income and Capital", which was adopted as the first OECD Model. That Model has been updated with increasing regularity since 1977, with the latest version being the 2005 version.

In 1967, the UN re-entered the field on international tax issues, when its Economic and Social Council (ECOSOC) adopted a resolution requesting the Secretary-General "to set up an ad hoc working group consisting of experts and tax administrators nominated by governments, but acting in their personal capacity, ... with the task of exploring, in consultation with interested international agencies, ways and means for facilitating the conclusion of tax treaties between developed and developing countries, including the formulation, as appropriate, of possible guidelines and techniques for use in such tax treaties which would be acceptable to both groups of countries and would fully safeguard their respective revenue interests". The Resolution recognized that, as the only truly global forum, the UN had a role in encouraging investment in developing countries, but in a balanced way that allowed sufficient source country taxation rights to be preserved over activities economically connected to that country.

In accordance with that resolution, the UN Secretary-General set up the Ad Hoc Group of Experts on Tax

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Treaties between Developed and Developing Countries in 1968. The Group of Experts completed the formulation of guidelines for the negotiation of bilateral tax treaties between developed and developing countries in the course of seven meetings, from 1968 to 1977. The guidelines were contained in the *Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries* published in 1979.[1] That Manual was revised in 2003, and is currently being further revised. The Manual gives some extra background to the UN Model and its practical application.

The group of Experts then commenced work on a UN Model Double Tax Convention, based on the 1977 OECD Model Double Taxation Convention. They adopted a draft Model in late 1979 which was published in 1980 as the *United Nations Model Double Taxation Convention between Developed and Developing Countries*.[2]

In the 1990s, the renamed Ad Hoc Group of Experts on International Cooperation in Tax Matters recognized that significant changes had taken place in the international economic, financial and fiscal environment, and noted the changes made to the OECD Model since the 1980 UN Model was published. Consequently, the Group of Experts proceeded with the revision and update of the UN Model and the Manual. This led to a new version of the UN Model published in 2001[3] and the new version of the Manual published (on the Internet only) in 2003.[4]

The Group of Experts was upgraded in 2005 within the UN System by conversion into a Committee structure. Formally this means that it now directly reports to the UN Economic and Social Council (ECOSOC). In practice it means tax issues have a higher status in the UN System, and that the Committee now meets every year rather than every second year.

The work of the current Committee and the place of tax work in the UN system can only be properly understood in the context of the International Conference on Financing for Development held from 18-22 March 2002 in Monterrey, Mexico (the Monterrey Conference). This UN-hosted conference on key financial and development issues attracted 50 heads of state or government and over 200 ministers as well as leaders from the private sector, civil society and all the major intergovernmental financial, trade, economic, and monetary organizations.

As the culmination of a four-year preparatory process, the Conference adopted the "Monterrey Consensus",[5] in which developed, developing and transition economy countries pledged to undertake important actions in domestic, international and systemic policy matters. In December of 2002, the General Assembly set in motion a detailed follow-up intergovernmental process, as called for in the Consensus, to monitor implementation and carry forward the international discussion of policies for financing development. The Assembly also called on the Secretary-General to establish a standing secretariat to support the process. The Financing for Development Office was then created in the Department of Economic and Social Affairs (DESA). Because of the obvious linkages between tax cooperation, including the development and maintenance of the UN Model, and the development of country economies, a very small Secretariat for the Tax Matters Committee is stationed in New York – in the Financing for Development Office of the UN Department of Economic and Social Affairs.

A major follow-up conference will be held in Doha, Qatar from 29 November to 2 December 2008 to review the progress on financing for development since Monterrey, and that could involve further consideration as to how to improve international cooperation in tax matters to mobilize domestic resources, as well as how to ensure developing countries have sufficient input into international tax norms affecting them.

2. The Composition and Mandate of the Committee

The Committee itself is composed of 25 members nominated by governments but selected by the Secretary-General of the UN and acting in their personal capacity. The selection is made to reflect not just the individual expertise of candidates, but also an adequate equitable geographical distribution, representing different tax systems, and bearing in mind the special developing country focus of the UN tax work. The term of office for the current iteration of the Committee is four years, finishing at the end of June 2009.

At the time of writing the Committee was composed of experts from the following developing countries, Morocco, South Africa, Tanzania, Tunisia, Zambia, China, Indonesia, South Korea, Philippines, Qatar, Bahamas, Barbados, Mexico, Peru, Uruguay, and the following developed country experts, France, Ireland, Italy, Spain, the United Kingdom, Norway, Switzerland, Russia, the United States and Japan. Note that for UN purposes Mexico and South Korea are classed as developing countries and that the Experts from France, the United States and Japan have recently resigned and are currently being replaced.

The role of *non*-Members of the Committee in the UN tax work should not be underestimated, however. The Annual Session of the Committee, which is always held in Geneva (29 October to 2 November in 2007 and 20-24 October in 2008) is attended by many representatives of "observer" governments and by many representatives from academia, business and non-governmental organizations. Those representatives can participate freely in discussions and some are represented in subcommittees and working groups of the Committee. It is vital for the success of the Committee's work that it finds wide

1. United Nations 1979, E.79. XVI.3.
2. United Nations 1980, E.80. XVI.3.
3. United States 2001, E.01. XVI.2. Available at www.un.org/esa/ffd/tax/index.htm.
4. Available at www.un.org/esa/ffd/tax/index.htm.
5. Available at www.un.org/esa/ffd/overview/index.htm.

acceptance across the wider UN membership as a whole, and that it takes into account the relevant views of other "stakeholders" in the UN tax work, so this opportunity for wider participation in the Committee's work is ultimately important for the quality, relevance and acceptance of that work.

The Committee's mandate is a very broad one, covering the following:
- reviewing and updating the UN Model Double Taxation Convention and the Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries;
- providing a framework for dialogue with a view to enhancing and promoting international tax cooperation among national tax authorities;
- considering how new and emerging issues could affect international cooperation in tax matters and develop assessments, commentaries and appropriate recommendations;
- making recommendations on capacity-building and the provision of technical assistance to developing countries and countries with economies in transition; and
- giving special attention to developing countries and countries with economies in transition in dealing with all the above issues.

The Committee has only very limited dedicated resources (essentially covering its Annual Session in Geneva each year) and a very small Secretariat supporting it, despite this broad mandate, and the issue of what resources should be devoted to tax issues in the UN remains an oft-discussed and still contentious matter, with the Committee regularly calling for greater resourcing to meet its broad mandate, but with the matter still unresolved within the UN system and with no country contributions yet made to that work.

In that context, the work of the Committee has focused on updating the 2001 UN Model and (to a lesser extent) the 2003 Manual to deal with modern conditions and tax treaty developments. There is other tax work carried forward by the Secretariat as noted below, and this complements the work of the Committee, but is formally independent of it.

In view of the Committee's focus on updating the UN Model Tax Convention, it is useful to briefly note the differences between the UN Model Tax Convention and its main "rival", the OECD Model.

3. Main Differences between the UN and OECD Models

Both the UN and OECD are designed to encourage investment by preventing double taxation of profits. Such investment helps the development process in developing countries, particularly through the transfer of resources, managerial and administrative expertise and technology to the developing countries, the expansion of productive capacity and employment in those countries and the establishment of export markets. Avoiding double taxation gives an encouraging climate for such investments, and although domestic laws could achieve the same thing, international double tax treaties ensure a coordinated approach as between two countries, and also give a public stamp and a greater solemnity to the promises of a country and make any "backsliding" in investment promises an international matter, legally as well as politically.

The OECD work rests on the same general principles, and the main reason for the existence of two models is a difference, in certain cases, about where the balance of source country and residence country taxation should lie in avoiding double taxation. In international tax law, unmodified by tax treaties, both the "source country" of the investment profits (the host country of the investment) and the "residence country" of the investor may tax the profits of the investment, so to avoid double taxation, at least one of the countries must yield that taxing right, as noted above. Since, under the credit or exemption article of tax treaties, the residence country must at least give a credit for taxes paid in the other country, the residence country will only be assured of full taxing rights if the source country agrees that it will not be allowed to tax that same item of income, otherwise the residence country can only be assured of being able to tax to the extent that its tax on the profits exceeds that of the source country.

It follows that the real issue in tax treaty negotiations is generally whether, in respect of particular income profits or gains, the source country will relinquish its taxing rights. The main differences between the two Models are as to the extent of this relinquishment of taxation rights by the source country. Traditionally it has been said that the OECD is more of a "residence country" model (therefore reducing source country taxing rights and being generally preferable to capital-exporting countries) and the UN Model is a more "source country" oriented model, generally preferable to host countries of investment. That is still a fair assessment, although it has to be recognized that there is a certain "fuzziness" about this distinction, and about the interests and preferences of particular developed and developing countries. The UN Model recognizes the benefits of granting an attractive investment climate, but that source countries will often, as a matter of inter-nation equity, expect that they may tax the profits from such investments to finance infrastructure to encourage other investments, schools, hospitals and other programmes as part of the countries' chosen framework for sustained development.

The OECD Model provides for the source country to relinquish more of these taxation rights but in practical terms, the acceptance of that residence country orientation has changed over time even within the OECD, as the OECD membership has broadened to include more source-oriented countries such as Australia, New Zealand, Mexico and some Eastern European countries. Many distinct differences of approach are signaled by "alternative" provisions provided for in the OECD Commentaries, by countries making a "reservation" to indi-

Provision	UN Model – Main differences from OECD Model
Permanent Establishment (PE): Art. 5	Six-month duration test for building and construction PEs (para. 3 – as compared with OECD twelve-month test) and express coverage of supervisory activities; Services provision deemed a PE if furnished by employees or others for over six months (para. 3(b)); Delivery omitted from para.4 – not treated as ancillary; Larger scope for a dependent agent (DA) PE in UN Model – covers cases where DA regularly maintains a stock and makes deliveries from it (para. 5(b)); Insurance – deemed PE for collecting premiums or insuring risks (para. 6); and "Independent" agent actions may create a PE if devote nearly all their time with a client and not dealing on arm's length basis (para. 7).
Business Profits: Art. 7	"Limited Force of Attraction" in UN Model – extension of source country right to tax income from business activities in the country (including sales) similar to that of the permanent establishment (para. 1); Limitation of deduction of amounts paid by the permanent establishment to its head office (e.g. payments for patents, etc. or repayment of monies lent by a bank to its PE) (para. 3); and Whether mere purchase of goods for Head Office constitutes a PE is left for negotiations – footnote to Article.
International Shipping: Art. 8	UN Model's alternative "B" (limited source country taxation of international shipping that is "more than casual").
Associated Enterprises: Art. 9	Adjustment not required in UN Model if final court ruling that one of the parties has engaged in fraud (para. 3).
Dividends: Art. 10	Maximum rate applicable not specified in UN Model – left to negotiation.
Interest: Art. 11	Maximum rate applicable not specified in UN Model, and it has a modification in para. 4 to reflect the "limited force of attraction rule" in Art. 7.
Royalties: Art. 12	UN Model provides for a limited right of taxation for the country of source – para. 1 with an accompanying source rule at para. 5; NB: OECD Model provides exclusive residence country taxation of royalties, though almost half of OECD Member countries have "reserved" on this aspect of the Model; Maximum rate applicable in UN Model not specified (para. 2); UN Model retains "equipment royalties" in para. 3 rather than them being dealt with under Art. 7; and UN Model has a modification in para. 4 to reflect the "limited force of attraction rule" in Art. 7.
Capital Gains: Art. 13	Differing source taxation rights over shares in property-rich companies in UN Model – it does not include property used in running business in calculations of whether property-rich but applies to trusts, partnerships etc as compared with OECD Model – although that allows a broader provision at para. 28.5 (para. 4); and Source country taxation of shares if holding is over an agreed threshold in UN Model (para. 5).
Independent Personal Services: Art. 14	Deleted from OECD Model and independent services now treated under Art. 7 – Business Profits; and Deletion under UN Model is one option under consideration by UN Committee – see discussion in 5.2.
Directors and High Level Managers: Art. 16	UN Model covers the activities of not just directors, but also high level managers.
Pensions and Social Security Payments: Art. 18	Two alternatives. Alternative A is similar to the OECD Article (residence country taxation only) but a specific provision provides source country-only taxation for social security type payments; and Alternative B allows source country taxation also if the payment is made by a resident of that country or a permanent establishment situated in the source country. Note that the OECD Commentary acknowledges that some countries will seek source state taxation in their tax treaties.
Students: Art. 20	OECD Model explicitly refers to business trainees as well as business apprentices.
Other Income: Art. 21	Special provision in UN Model that income of a resident of a contracting state not dealt with in other articles and arising in the source country may also be taxed in that source country (para. 3).
Mutual Agreement Procedure: Art. 25	UN Model Article specifies the process in more detail in para. 4.
Exchange of Information: Art. 26:	OECD 2005 changes are currently under consideration by the UN Committee.
Mutual Assistance: (New) Art. 27	No equivalent provision in 2001 Model, but OECD-type provisions and almost identical Commentary adopted by UN Committee in 2006 for inclusion in next version of UN Model.

cate that they do not agree with the text of an article of the Model, and by "observations" where they do not object to the provision itself but disagree with the interpretation placed upon it in the Commentaries.

Many OECD Member countries for example *do* apply source taxation to royalties flowing from their country to the residence country even though the OECD Model provides for sole residence country taxation of royalties. In this respect they are now in line with the UN Model, which provides for source country taxation of royalties.

As another example in areas like taxation of work pensions, many OECD Member countries (often warmer countries to which many elderly people retire, as it happens) tend to favour *sole* residence country taxation of pensions, while about the same number of other OECD Member countries (usually colder countries) favour sole source country taxation, the source country being the country from where the pensions were sourced, that is the country where the work they relate to was done. Currently there is also debate within the OECD about the extent of source country taxation that may be allowed in the provision of services into a source country, with clear divisions evident on this point. The UN Model more strongly affirms rights to source country taxation in these cases, by contrast.

4. The Basic Differences between the UN and OECD Models – Specific Instances

While this note is not the place for a close examination of specific instances where the UN and OECD Models vary, the main differences, expressing the more source country orientation of the UN Model, as well as some areas of current convergence, can be expressed in a tabular form as shown in the Table.

5. The Current Work within the Committee

Currently, the Committee has four subcommittees, dealing with improper use of tax treaties, permanent establishments, exchange of information and dispute resolution. There are also three working groups which, while not of full subcommittee status, perform much the same role and may become subcommittees as their work progresses (as happened in 2006 with the work on dispute resolution). These working groups are currently addressing the treatment of Islamic financial instruments in tax treaties, updating of the UN Manual and general issues that arise in the updating of the UN Model Commentaries. As these subcommittees and working groups prepare papers for consideration by the Annual Session of the Committee in Geneva each October or November, the papers are made publicly available on the Financing for Development Office's website.[6] Each of the topics on the Committee agenda can therefore be examined through the work of the subcommittees and working groups and the Committee's response to that work as follows.

5.1. Improper use of tax treaties

This subcommittee has been asked to examine the issue of "improper use of tax treaties" including the concept of tax treaty abuse and tax treaty shopping, common fact patterns in abuse and the applicability or otherwise of tax treaty provisions such as "beneficial ownership". It is also addressing possible "limitation of benefits" and more general anti-avoidance provisions, as well as the applicability of domestic anti-abuse measures to tax treaty abuse cases. The subcommittee is drawing upon OECD work in this area in so far as it is relevant to the developing country focus of the committee, including the practical administration issues for such countries. A consideration on the issues will become part of the Commentary to Art. 1 of the UN Model and the work is currently well advanced – the most recent version can be seen as paper E/C.18/2007/CRP.2, amongst the papers for the Committee's Third Annual Session in October/November 2007.[7]

5.2. Permanent establishments

The work of the subcommittee on permanent establishments has comprised two phases. The first phase, which is effectively complete,[8] has, without suggesting amendments to the Article itself, updated the UN Model's Commentary to Art. 5 to clarify and update it, including dealing with the issue of electronic commerce. In many respects this subcommittee has found that the developments in the OECD Model since 1997 (the last version of that Model actually cited by the 2001 UN Model) can usefully be cited and if necessary commented on, reflecting what appears to be the Committee's general approach, that if OECD developments are found to be justified and relevant to the more developing country oriented UN Model, it is in the interests of clarity, consistency and administrative simplicity that they be drawn upon. This should, of course, also help to highlight rather than obscure the very significant differences between the two Models.

The second part of the subcommittee's work has now begun. In document E/C.18/2007/CRP.4 for the Third Annual Session[9] the subcommittee considered the issue of possible deletion of Art. 14, so that cases once dealt with by that Article would be, as under the OECD Model, brought under the protective (or otherwise) wings of Arts. 5 and 7. The subcommittee concluded that it was possible to achieve the benefits of simplification by removing Art. 14 and the fixed base concept, without sacrificing source country taxing rights. In particular, it proposed retaining the application of source taxing rights to certain provision of services – now covered by

6. Available at www.un.org/esa/ffd/tax/index.htm.
7. Available at www.un.org/esa/ffd/tax/thirdsession/EC18_2007_CRP2.pdf.
8. The Commentary changes were agreed at the Third Annual Session along the lines suggested in papers E/C.18/2007/1 and E/C.18/2007/1/Corr.1 for that Annual Session, but with some minor amendments.
9. Available at www.un.org/esa/ffd/tax/thirdsession/EC18_2007_CRP4.pdf.

Art. 14 of the UN Model (but not the OECD Model) – under the Art. 5 "services permanent establishment" provision.

The possible deletion of Art. 14 was discussed at the Committee's Third Annual Session in 2007, but there were different opinions as to whether removal of Art. 14 was a positive outcome for developing countries, neutral or a negative, and this will be a matter for further debate in the Committee. The paper also dealt with fees for technical services (coming down against a special provision providing for source country taxation of such fees) and (very briefly) with broader issues of services permanent establishments, but neither of these issues was debated at the 2007 Annual Session.

5.3. Exchange of information

The subcommittee on exchange of information has been considering developments in the area of exchange of information in the OECD and their relevance to the wider UN constituency, an issue of obvious significance for the Committee's mandate of helping to enhance international tax cooperation. The subcommittee is, in particular, considering possible revisions of Art. 26 of the UN Model and its Commentary in the light of the changes made to Art. 26 of the OECD Model. A series of documents was presented to the Third Annual Session on this topic and is available in the papers to that meeting.[10]

As always, the subcommittee and committee will evaluate those OECD changes with a special consideration of the position of developing countries – so that it will no doubt be watchful of both the importance of international exchange of information to preserving the integrity of domestic tax systems, as well as the demands that excessive, or excessively broad requests, could make on small and over-stretched administrations in many developing countries.

Under the umbrella of this subcommittee, work has also been undertaken on a possible code of conduct governing international tax cooperation in combating tax evasion (paper EC.18/2007/CRP.17[11]). This is potentially important work as the issue of the costs of tax evasion to the development of countries is gathering momentum as a significant developmental issue. There are some who see it as a high profile issue for consideration at the Doha Review Conference on Financing for Development in late 2008, and as an issue where the UN tax work may differentiate itself in an important respect from the work of the OECD, without necessarily being inconsistent with that work.

5.4. Dispute resolution

There has been some reasonably tentative work in the Committee on the possibility for improved dispute resolution of tax matters. The most recent paper presented to the Committee at its 2007 Session was a short note focusing on the possibilities for arbitration in the tax field by the coordinator of the dispute resolution working group.[12] The Committee indicated at the 2007 Annual Session, however, that future work in this area should not be overly arbitration focused, and would need also to consider other possible means of improving dispute resolution in international tax matters, including improving the operation of the mutual agreement procedure.

There appear to be some particular issues that need to be addressed in attempting to improve dispute resolution involving developing countries. These include whether the legal arguments of the developing country competent authority will be "outgunned" by a case put by the other competent authority in practice prepared or assisted by high-powered teams of advisors to the taxpayers, as well as whether there will be sufficient potential expert arbitrators or mediators who understand developing country realities and perspectives, rather than the decisive "judgment" in a tax case generally resting with an expert from a developing country who may not be conversant with these matters, however well qualified or intentioned.

Finally, an arbitration system might further the investment promotion aspect of tax treaties, but as noted above, the UN Model differs significantly from the OECD Model in its greater emphasis on retention of source country taxing rights – will the latter objective be as well served as the former by arbitration or is there a risk that a body of jurisprudence may arise that applies OECD approaches and objectives to tax treaties based upon a UN Model with distinct and important differences.

There are counter-arguments that can be made, arguing that developing countries which are often in a distinctly weaker "power position" will actually be able to enhance their position by having the matter dealt with by an independent, structurally fair, system of arbitration, rather than being subject to diplomatic and other pressures. All the arguments will need to be discussed, and great thought given to how an arbitrator is chosen when the two competent authorities cannot agree – the OECD proposal of the Head of the OECD's Centre for Tax Policy and Administration as deciding authority in such cases being obviously inappropriate in cases involving non-OECD Members.

5.5. Treatment of Islamic financial instruments

One of the Committee's working groups has been considering the nature of Islamic financial instruments and how they fit into the "Interest" Article of tax treaties.[13] While such instruments do not yield "interest" as such, most countries addressing this issue in tax treaties or domestic law try to ensure that such instruments are treated no better or worse in tax terms than similar

10. www.un.org/esa/ffd/tax/index.htm.
11. Id.
12. www.un.org/esa/ffd/tax/thirdsession/EC18_2007_CRP7.pdf.
13. The paper presented at the Third Annual Session in 2007 can be found at www.un.org/Docs/journal/asp/ws.asp?m=E/C.18/2007/9.

instruments that are interest bearing. The working group has almost completed its work, which will lead to an addition to the Commentary, and a larger section in the Manual, on such instruments consistent with that approach. This will also help promote greater understanding of the principles behind Islamic financing, which will assist the Committee in its broader role of encouraging tax cooperation internationally.

5.6. Manual on Negotiation of Bilateral Tax Treaties

A further working group is preparing an update of the UN Manual for the Negotiation of Tax Treaties between developed and developing countries.[14] This document originally preceded the UN Model, as noted above, and includes examples and practical assistance which cannot be readily put in Commentaries. There is a 2003 version of the Manual available in electronic form only on the Financing for Development Office Tax Cooperation website,[15] and it has an interesting appendix examining the extent to which certain provisions in the UN Model not shared by the OECD Model had found favour in bilateral tax treaties involving developing countries. As the work of the Committee progresses, it is more and more looking to the Manual as a repository for the background to provisions and other material that will help tax treaty negotiators and, in particular, administrators, to understand and practically implement the provisions of tax treaties.

It is often overlooked in this respect that even where the UN and OECD Models contain the same provisions, the different "constituency" of each Model may mean the UN Commentaries or the Manual may call for greater or different elaborations, examples or levels of discussion of the impact of a particular provision. As an example, the reduced administrative capabilities of most developing countries as compared with most developed countries, and the lack of the same levels of tax treaty and transfer pricing specialization may call for a UN package of publications that is more readily accessible and assumes less prior knowledge than the OECD Model might do.

5.7. General issues in the revision of Commentaries

One working group has a not very precisely defined mandate to address common issues across the various Commentary revisions that will be such a central part of the Committee's work. Much of this work will relate to consistent use of terms and the way in which differences of view are presented (an important issue in a body such as the UN with 192 members) but it may also play an important part in developing a Model that is geared to the practical needs of users, particularly but not exclusively in developing countries.

5.8. Tax treatment of donor-financed projects

Finally, one issue before the Committee has been addressed through some work of International Monetary Fund and OECD staffers, rather than through a subcommittee or working group. That work on the tax treatment of donor-financed (or aid) projects has culminated in a set of draft guidelines that will be further discussed in a process involving both donor agencies and donor recipients. This work has sought to summarize current practice in the taxation of foreign project assistance and present the reasons why donors might seek tax exemption in the recipient countries for the projects that they finance. It then argues for a reconsideration of the presumption that such projects should be tax exempt (noting, however, that such exemption might be more readily justified in emergency cases of assistance, for example), and puts forward some options for change. The main option put forward has been to "develop guidelines towards a more coordinated approach that countries would be free to adopt".

This work notes, for example, that similar exemptions might be inappropriate in cases of infrastructure development or entry into the financial markets, because of distortions that might arise and the possible impact on domestic enterprises and workers in those sectors.

The next step will be a joint meeting of donors and tax experts to discuss these draft guidelines with a view to ultimately presenting to the Committee a revised set of guidelines that could subsequently be forwarded to the Economic and Social Council with a recommendation that these guidelines be used by donors and recipient countries when dealing with the tax treatment of donor-financed projects.

The current Draft Guidelines can be found in the papers of the Committee's Third Annual Session,[16] although some slight changes will be made as a result of discussion at the Third Annual Session in 2007.

6. Other UN Tax Work

There are other aspects to the UN tax work which are related to the Tax Committee's work but distinct from it. In 2008 the UN is expected to launch a major project in identifying, sharing and developing successful tax practices in developing countries, including not just areas of tax policy (such as in the areas of transfer pricing of intangibles), but also administration including areas such as general tax administration organization issues and dealing with taxpayers as well as transfer pricing documentation and the structure and operations of specialist tax judiciaries.

Such an initiative would also help identify areas where more cooperation is possible between developing countries to ensure that developing country perspectives are fully reflected in the development of international tax norms. For various reasons developing countries tend not to coordinate their tax positions as closely as OECD Member countries, even when there are common inter-

14. A PowerPoint presentation relating to the Working Group's work may be found at www.un.org/esa/ffd/tax/thirdsession/index.htm.
15. http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN008579.pdf.
16. www.un.org/esa/ffd/tax/thirdsession/EC18_2007_CRP12.pdf.

ests, and in any case it is harder for them to inject those positions into the development of international tax norms. The UN tax work has a role in remedying both of these shortfalls.

Furthermore, the UN tax work in 2008 is likely to involve an event in the Gulf directed to issues of taxation, tax reform and aspects of tax treaties in the region, as well as possibly a regional tax cooperation event in the Asian region. The UN has not conducted a technical assistance event on taxation issues since 2002, and while there is considerable interest in the hosting of, and attendance at, regional tax events with a UN focus, funding has been lacking. It is hoped that 2008 will see that part of the UN tax mandate more fully met, and there are some positive signs emerging.

There is, in fact, a growing recognition that despite the often very useful and usually technically strong contributions of the 30-Member OECD in the tax area, the only truly global forum to discuss tax matters is the 192-Member United Nations. For those who believe in the value of competition, the vision of two differing but coexistent Models and vigorous work programmes, appropriately connected, but adequately distinct, is in fact a healthy one for the international tax system and the stakeholders in it.

It is therefore hoped that a promise for international tax cooperation which began almost 90 years ago in the League of Nations will find greater expression before the century of League of Nations/UN involvement in this area is out, and that the Monterrey/Doha process (with a recognition of vital tax and development linkages) may be an important galvanizing influence in this respect.

The central role that functioning tax systems play in country development will never have the charismatic mega-issue status of climate change and similar issues, and the question of the costs to development (and honest taxpayers) of tax avoidance and evasion is unlikely to attract the celebrity endorsements of other causes, but the UN tax work can live with being a bloody bay poison frog or a cloud rat rather than a giant panda – these issues of the interconnectedness of tax systems and the quest for development are beginning to be better articulated and their significance understood beyond the community of what we might call "us tax-nerds". Clemenceau is reputed to have said that war is too important to be left to the military and although there are risks, there would also be revelation, in recognizing developmental aspects of international tax matters as far too important to be left entirely to tax experts.