

Does International Tax Law Move? A Pessimistic Glance of the Shift From Bilateralism to Multilateralism

Increasingly, the vast majority of scholars argue that International Tax law is constantly changing, always on the move, from the traditional bilateralism to the current multilateral framework. Since 2009 onwards, the economic crisis and the struggle against the tax havens have triggered the need to strengthen the exchange of tax information between tax authorities of different States, as well as to combat the abuse and aggressive tax practices conducted by multinationals. The worldwide crackdowns on tax evasion under the recent Base Erosion and Profit Shifting (“BEPS”) project driven by the OECD proclaim the outset of a new multilateral era in international taxation. As a corollary of BEPS project, Action 15 “*provides for the development of a multilateral convention to implement the measures developed in the course of the work of BEPS*”. Likewise, in the field of mutual assistance in tax matters, the adoption of multilateral instruments becomes essential within the worldwide crackdowns on tax evasion (i.e. the multilateral Convention on mutual administrative assistance in tax matters between the OECD and the Council of Europe signed in 1988 and amended by the 2010 Protocol).

However, my contribution aims to critically assess this well-known shift in international taxation from bilateralism to multilateralism. I will make the argument that the new legal framework is doomed to failure, unless there is no a real political willingness to stamp out the global inequalities. In the 1980s, the ‘*Integration through law project*’ conducted by Mauro Cappelletti challenged the traditional and over-legalistic vision of the European Community as a remarkable legal phenomenon. Political factors rather than law were essential for the success of the European Union. Therefore, I will argue that International law, namely tax law, is a political artefact which only moves whether clear political goals to achieve emerge. Despite labelling the current phenomenon as multilateralism, legal scholars neglects the fact that the shift is purely formal. The current multilateralism driven by the OECD does not search for reducing the current asymmetries and imbalances between the developed countries and developing countries. Insofar as there is a lack of political willingness to struggle against poverty and inequality, under the “outfit” of multilateralism, the bilateralism persists. Unlike the classic institutional conceptions on multilateralism, I advocate for a strong normative meaning of multilateralism by means of solving the global 21st century challenges. That new conception of multilateralism would definitely make International Tax law move.