A Global E-commerce Tax to Fund Global Public Goods

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Introduction

I. First Layer: Global E-commerce Tax
   A. The Current International Tax Regime
   B. The Global E-commerce Market
   C. The Gap of E-commerce Taxation
   D. The Global E-commerce Tax
      1. Structure and Design of the Tax
      2. Structure and Design of the Global Fund
      3. Spending the Global Tax revenues to fund Global Public Goods
   E. The Global E-commerce Tax As "Good" Tax for Global E-commerce Income
      1. The Legitimacy Argument
      2. The Certainty Argument
      3. The Efficiency Argument
      4. The Fairness Argument
   F. Supranational Taxation: Global E-commerce Tax and other Global Taxes

II. Second Layer: Global Public Goods Finance
   A. The Definition of Global Public Goods
   B. The Current regime for the Provision of Global Public Goods
   C. The Current Finance of Global Public Goods
   D. New Trends and Sources of Global Public Goods Finance
   E. Global E-commerce Tax as "Good" New Source of Finance

III. Third Layer: Political Feasibility
   A. Real Theory and the political Feasibility of Global E-commerce Tax
   B. Liberal Theory and the political Feasibility of Global E-commerce Tax
   C. State Sovereignty Concerns
   D. Supporting Empirical Case Studies
      1. Global Tax on Financial Institutions and Other Global Taxes
      2. Growing Trends of International Cooperation on Global Tax Issues
      3. Supranational role of International Institutions on Global Economic Issues
      4. The Streamlined Sales Tax Project

Conclusions

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Introduction

This article argues for the imposition of a “global e-commerce tax” on global e-commerce income\(^1\) for funding global public goods\(^2\). The idea is to create an international body (the "global fund"), to vest it with the authority to impose global tax on global e-commerce income, and to use the tax revenues to fund global public goods. I wish to stress that the model rests on two pillars: global taxation and global spending. The article presents, for the first time, an outline for a concrete design and structure of a global tax system. The article’s innovation lies in its proposal for the creation of a new source for funding global public goods. In contrast to existing totally tax oriented literature, the article does not merely argue for the taxation of global e-commerce but also discusses the political feasibility of the tax. The approach is manifestly practical, global, and inter-disciplinary.

In making this innovative argument, I have taken a step by step approach, placing layer upon layer, in order to answer the questions and overcome the obstacles in the long path towards the crystallization of a comprehensive model, as follows:

First Layer, Global E-commerce Tax: On this layer, I begin with an introduction of the background of the issue, after which I present my proposal for global e-commerce tax together with its suggested structure and design. Later on, I present the normative arguments to support my proposed tax.

The current international tax regime is based on the taxation of income on a territorial basis by the source country, i.e. where the income was produced, and on a personal basis by the resident country, i.e. where the taxpayer resides\(^3\). E-commerce

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1 By “global e-commerce income” I mean income deriving from a cross border transaction taking place wholly or partially on the Internet. For example, the sale of physical or digital book through Amazon.com.

2 By "global public goods” I mean goods that are non-rival and non-excludable so that their ongoing production is subject to a market failure. For Example: Combating Global Warming; Communication and Internet Infrastructures.

on the other hand, ignores territorial borders and generates a truly global income which is far beyond the reach of the current territorially rooted international tax regime. Basic concepts and legal constructions of the regime, such as "source rules", "permanent establishment" and "transfer pricing" no longer work – leading to a serious reduction of the tax base and revenue losses. I refer to this tax shortfall as the "gap of e-commerce taxation". Significant research has been undertaken seeking to identify methods of overcoming the challenges of taxing global e-commerce income but thus far no effective conclusions have been formulated. In my view, the challenge of taxing global e-commerce income should be understood within the broader context of the challenges arising from and posed by globalization and the gradual eroding of national borders and powers. As such it is an additional and important stage in the unfolding story of the globalization of taxation. Other stages include: International Tax Competition; Tax Havens; MNC Transfer Pricing and the growing role of the OECD in promulgating international and supranational tax rules. These challenges


4 The rules that define the source of the income, in terms of place of production for territorial taxation purposes.

5 "Permanent Establishment" is the source rule for business income and it is defined in article 5 of the OECD model tax treaty as "fixed place of business through which the business of the enterprise is wholly or partly carried on".

6 "Transfer pricing" is a set of rules to determine the prices in intra-firm transactions based on the arm's length principle to reduce allocations of income to low tax jurisdictions.


10 See: RONEN PALAN, RICHARD MURPHY & CHRISTIAN CHAVAGNEUX, TAX HAVENS: HOW GLOBALIZATION REALLY WORKS (Cornell Univ. Press 2010).

11 See: GLOBAL TRANSFER PRICING SOLUTIONS (Judy Kuan, ed., World Trade Executive, 2005).

and changes create an impetus for transforming the international tax regime into a supranational tax regime.

Against this background, in the first chapter I develop my argument for imposing global e-commerce tax to fund global public goods by a global fund. I will break new ground in contemporary tax discourse by presenting a detailed program for the proposed global tax. Having established the tax base, the first priority is to levy a global tax on net income, but this priority faces the analytic and practical difficulty of attributing costs. The second priority is the determination of a tax base on gross income, but the criticism would be that this tax base does not tax real profits. The tax rate is one of the main tax design questions that I discuss in the design process, which also considers several other questions. The institutional design of the global fund is analyzed deeply as well. I consider it critical to the political feasibility of the global e-commerce tax and the success of the tax and the spending of the revenues on global public goods. In this context I rely upon the rich theoretical literature on institutional design\textsuperscript{13} to draw general conclusions and implement them in my design of the global fund. Accountability, transparency, fairness and efficiency are just some of the criteria used in order to determine institutional design of the global fund. The classical role of the OECD as well as its new role in international tax issues will also influence the global fund design. The issue of the relations between the global fund and the OECD and other institutions that handle international tax issues currently will be discussed as well.

In my opinion, a global e-commerce tax would handle the challenges of global e-commerce taxation appropriately. The challenges derive from the global nature of e-commerce and the irrelevance of territory and borders which constitute the mainstay of the current international tax regime. Global e-commerce tax targets this source of the challenges and tailors the tax regime to e-commerce by making it global. This will lead to the effective taxation of global e-commerce – one that overcomes the difficulty

and the need to identifying the territory in which the income was generated. In addition, a global e-commerce tax would advance efficiency in the sense that it is more neutral in comparison to the current situation. Furthermore, I argue that a global e-commerce tax is fair because it reduces the current gap in taxation between e-commerce income and traditional income, thus increasing inter-individual equity, and it achieves better inter-nation equity because it allocates the tax jurisdiction on global income globally rather than to one country or another. In sum, the proposed Global E-commerce Tax presents an opportunity to overcome the unsolved problem of distributing the tax base on e-commerce between the countries efficiently and fairly. It bears emphasis that any transformation of the tax jurisdiction to supranational authority is rife with difficulties and previous proposals for global tax have failed. I have attempted to derive the appropriate lessons from these failures and argue that this proposal for global e-commerce tax is different and has better chances of success, despite the dismal track record of proposals for global tax.

**Second Layer. Global Public Goods Finance:** Classical economic literature defines goods as public if they are “non-rival, in the sense that, consumption of goods by one individual does not reduce their availability for consumption by others, and “non-excludable” in the sense that the goods are accessible for general consumption and no person can be effectively excluded. Modern definitions integrate the dimension of policy choice into the definition of public good and differentiate between potential public good (non-rival and non-excludable) and de facto public good, which is a public good that has been politically considered so. As to global public goods, these are defined as public goods that benefit all countries, people, and generations. In the era of globalization, the demand for global public goods is growing rapidly currently. Global public goods are financed primarily by way of national aid and contributions. But this finance system does not meet the growing demand and the problem of under-provision and under-finance is growing steadily in

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16 *id.* at 78, 95.

In this article, I propose a new source for financing global public goods: global e-commerce tax revenues. I argue that a tax on clear global activity like e-commerce is the "natural" or the "most adequate" source for financing global public goods. I will elaborate on its advantages and disadvantages in comparison to current (global) sources of finance. In addition, I argue that this kind of global finance system is capable of overcoming the unsolved problem of distributing the tax jurisdiction or revenues between the countries. Despite the numerous efforts to date, no method or formula has yet been found or agreed upon regarding the distribution of the e-commerce tax pie between the countries. Furthermore, the expenditure of global e-commerce tax revenues on the funding of global public goods would contribute towards overcoming the political feasibility difficulties of imposing global tax and transferring tax powers from the national state to a supranational institution. It would provide countries and global corporations with incentives for cooperating and implementing the global e-commerce tax. Countries gain the ability to fund these goods, thereby reducing their direct spending and transfers. Governments benefit on the political and public relations fronts via their contribution to the global community. Global corporations gain certainty on their tax results, and reduce compliance costs by being under one tax regime. They benefit from not being taxed or exposed to taxation by each country and country. Global corporations also benefit on the public relations front from their contribution to global community. Some support and lobbying of interested NGOs might contribute to the success.

\textbf{Third Layer, Political Feasibility:} The proposed global tax raises serious political feasibility questions. I will rely on the rich theoretical framework of political
science on international cooperation\textsuperscript{18} to analyze the feasibility of the global e-commerce tax. As demonstrated by certain theories of international relations, realists identify power and interests as the primary factors affecting state behavior. States, they argue, use power to achieve their interests in the international sphere through self-help – operating in an anarchical world bereft of normative values\textsuperscript{19}. Robert Koehane, in his fascinating book \textit{After Hegemony}, argues that states cooperate when cooperation serves their interests and maximizes their benefits in comparison to non-cooperation. In this regard, international institutions play a vital role in ensuring the maximization of benefits. International institutions are also central in the \textit{Liberal Theory} which places the human being at the focus of state activity, the role of which is to maximize the welfare of its citizens\textsuperscript{20}. \textit{Neo-Liberal Institutionalism} clearly emphasizes the importance of international regimes and institutions, especially in the era of globalization, as a means of overcoming anarchy and introducing order into the international field\textsuperscript{21}.

I argue that states as egoistic actors have good reasons to cooperate intensively and compromise their sovereignty by accepting the global e-commerce tax. By accepting the global e-commerce tax governments gain a number of clear benefits: \textbf{First}, the taxation of cross border e-commerce income that was not actually taxed before; \textbf{Second}, increased neutrality between e-commerce income and traditional income. Currently there is wide gap between the two categories because traditional commerce is taxed while e-commerce is not, due to the factors mentioned above. The proposed model would levy a fair tax on e-commerce income, thus reducing the gap

\begin{thebibliography}{99}
\bibitem{19} See generally: \textsc{Tim Dunne & Brian Schmidt}, \textit{Realism in The Globalization of World Politics} 142, 142-161 (John Baylis & Steve Smith eds., Oxford, 2\textsuperscript{nd} ed. 2001); \textsc{Paul Viotti & Mark Kauppi}, \textit{International Relations Theory: Realism, Pluralism, Globalism} 35-227 (2\textsuperscript{nd} ed. 1993); \textsc{Michael Joseph Smith}, \textit{Realist Thought From Weber to Kissinger} (1986).
\bibitem{20} See generally: \textsc{Tim Dunne}, \textit{Liberalism in The Globalization of World Politics} 162, 162-181 (John Baylis & Steve Smith eds., Oxford, 2\textsuperscript{nd} ed. 2001); \textsc{Andrew Moravcsik}, \textit{Taking Preferences Seriously: A positive Liberal Theory of International Politics}, 51 \textsc{Int’l Org.} 513 (1997).
\end{thebibliography}
between e-commerce income taxation and traditional income taxation. As such it increases neutrality; Third, the supply and finance of global public goods; Fourth, the possible reduction of direct spending and financing of global public goods; Fifth, the contribution to making the world a better place as a result of spending the global e-commerce tax to provide global public goods. The spending of the funds to support global public goods gives good reasons and incentives to countries for accepting global e-commerce tax. In other words, e-commerce is a true global phenomenon rather than an international one. It is different because of its greater global reach, mobility and virtual nature. The global taxing of e-commerce provides an answer to the tax challenges. Spending revenues to fund global public goods provides an answer to the challenges of political feasibility by providing good incentives and reasons for governments to agree to participate in a global taxation scheme.

I also analyze the assumptions of the liberal theory, which places human liberty and welfare at the center of its concerns, and assumes international cooperation in arguing the feasibility of global e-commerce tax. As expected, I found strong support for a global e-commerce tax from the perspective of liberal theory. International institutions with supranational powers are well supported in liberal theory as tools of governance and order in the global world. A global fund with its supranational global e commerce tax as a means of financing global public goods is clearly welcomed from the perspective of liberal theory.

Needless to say, this proposal has numerous implications in terms of its effect on state sovereignty. More specifically, I am certainly aware of the fact that global e-commerce tax infringes state sovereignty and this infringement is one of the main political difficulties confronting my normative argument. In refuting this argument I claim that the normative scope of sovereignty has been transformed and even curtailed to meet the new world order of the 21st century. According to one of the contemporary conceptualizations, sovereignty means "... membership in good standing in regimes that make up the substance of international life." In compliance

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23 ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS 27 (Harvard Univ. Press 1995). See also: Anne Marie
with this definition of sovereignty I would ensure that the “global fund” would be designed in a way that provides membership in good standing for the different states. According to other new views of the role of sovereignty in the 21st century, global sovereignty is gradually evolving in the direction of an increasingly pivotal role in the global era of an inter-linked world24. A global e-commerce tax is part of the evolution of global sovereignty. In addition, I argue that e-commerce has already eroded the state ability to tax global e-commerce income, and that this represents a greater infringement on state sovereignty than my proposal for global e-commerce tax which restores the state’s ability to tax global e-commerce income through international cooperation and global institutions. Furthermore, the phenomenon and the nature of state sovereignty are actually the product and outgrowth of fiscal pressures, and the very same pressures are now changing the character of the nation state and notion of state sovereignty in a natural process of economic and political evolution of the world.

In support of my theoretical arguments for the political feasibility of a global e-commerce tax to fund global public goods, I rely on a set of empirical case studies: First, recent proposals of G20 countries and leaders to impose global tax on financial institutions and academic proposals by leading scholars to impose global taxes. Second, the growing trend towards cooperation on global tax issues, as exemplified by the struggle against harmful tax competition, and the growing role of the OECD in setting international tax policy and norms25. Third, the experience of existing international economic institutions such as the WTO and the IMF26 and their supranational role; Fourth, the recent development of the Streamlined Sales Tax Project in the United States in which states agreed to harmonize their sales tax laws to cope with e-commerce tax issues. These cases will be discussed, and I believe that


they enable the drawing of conclusions with respect to the political feasibility of a global e-commerce tax.

Following this introduction, Part I will discuss the first layer of global e-commerce tax. It opens with a brief description of the current international tax regime and the global market of e-commerce. I then discuss the challenges of taxing global e-commerce income, briefly presenting some of the previous proposals for handling these challenges. I will then present empirical data concerning the gap of e-commerce taxation. This is followed by the heart of this section, which presents the argument for a global e-commerce tax, based on it being a “good tax” for global e-commerce income, both on the practical and normative levels. A comparison between global e-commerce Tax and previous global tax proposals will be conducted at the end of this part. Part II of the article, analyzes the second layer: the financing of global public goods. It begins with a definition of global public goods and proceeds to the current state of affairs relating to their production, financing and the challenges involved. Against this background, I then present the arguments in favor of the global e-commerce tax as a "good" additional source for funding global public goods. In part III, I present the layer of political feasibility and address its challenges. This part begins by presenting the premises of Real Theory and Liberal Theory on International Relations. Following that, I present my main argument that Global E-commerce Tax is politically feasible according to these theories. Later on, the state sovereignty concerns are discussed and in closing this part I analyze the empirical case studies to support the feasibility of global e-commerce tax as a means of funding global public goods. At the end of this ambitious article I will present my conclusions.

I. First Layer: Global E-commerce Tax

A. The Current International Tax Regime

The international tax regime, which developed in the 1920s,27 recognizes two bases for tax jurisdiction. The first is source-based taxation, or territorial

jurisdiction. In source-based taxation, the country has jurisdiction to tax income sourced to its territory. Source rules determine the source of the income for this purpose by distinguishing between different categories of income. Hence, income classification is the first necessary step in the imposition of source-based taxation. The justification for source taxation is that the source country has contributed infrastructure and other facilities to process of income-production.

The second basis for tax jurisdiction is residency, or personal jurisdiction. In residence-based taxation, the country has jurisdiction to tax its residents on their worldwide income. In this system, the determination of residency for tax purposes is critical and is usually based on the personal, social and economic ties of the person to his country. The justification for residence-based tax jurisdiction stems from the contribution of the country of residence to the abilities of the income producer. It is alternatively justified by the notion of a social contract between the members of the country and the governing body.

These two bases of taxation occasionally lead to double taxation. The classic example of double taxation occurs when a resident of one country produces income in a different source country. In this case, he is taxed twice: by the source country and the resident country. To reduce double taxation, a network of bilateral treaties based on model tax treaties has developed over time for allocating tax jurisdiction between the countries that are party to the treaty, based on different categories of income. According to the leading model treaty of the OECD, the jurisdiction to tax business income vests in the country that hosts the "permanent establishment" of the business whereas the privilege of taxing passive income is granted to the resident country. In this framework, Article 5 of the OECD Model Tax Treaty defines "permanent

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28 See general surveys of the international tax regime: REUVEN S. AVI-YONAH ET AL., U.S. INTERNATIONAL TAXATION: CASES AND MATERIALS (2nd ed. 2005); Michael Graetz, supra note 3; Joseph Isenbergh, supra note 3; Joel D. Kuntz & Robert J. Peroni, supra note 3; Adrian Ogley, supra note 3; Sol Picciotto, supra note 3; David Gliksberg, The Effect of the Statist-Political Approach to International Jurisdiction of the Income Tax Regime—The Israeli Case, 15 MICH. J. INT’L L. 460, 460 (1994); Robert A. Green, supra note 3; Charles I. Kingson, supra note 3.


establishment” as including a “[f]ixed place of business through which the business of an enterprise is wholly or partly carried on.” Under Article 4 of the OECD Model Tax Treaty “residency” is determined, by the internal laws of the contracting states which generally use the substantive factual tests of social and economic life center.. But Article 4 adds several "break rules" to solve cases of conflict of laws.

B. The Global E-commerce Market

The term “e-commerce” has several definitions. According to the U.N. definition, it includes “[c]ommercial activities conducted through an exchange of information generated, stored, [or] communicated by electronic, optic, or analogous means.” The U.S. Department of the Treasury defines e-commerce as “the ability to perform transactions involving the exchange of goods or services between two or more parties using electronic tools and techniques.” In this article, I define “e-commerce” as any commercial transaction conducted wholly or partly by using the Internet. For this purpose, e-commerce includes both Business to Business transactions (B2B) and Business to Consumer transactions (B2C).

I distinguish between three types of e-commerce: e-commerce in tangible products, e-commerce in intangible products, and e-commerce in services. All three types of e-commerce are global, in the sense that e-commerce takes place on the globe without real meaning attaching to territorial borders between countries. E-commerce ignores or even destroys territorial borders. All types of e-commerce are virtual, in the sense that their existence is on the Internet and their physical existence outside the Internet is limited. The correct answer to the question of where e-

35 For example: buying a hard copy of a book at Amazon.com.
36 For example: downloading a song at Itunes.com.
37 For example: booking a hotel at hotels.com.
commerce occurs is “on the Internet”. Any attempt to pinpoint the location of e-commerce in terms of a geographical location outside the Internet is totally artificial. The last feature of all types of e-commerce is its anonymity, in the sense that the e-commerce transaction, its parties, and its details are at least partially anonymous or require intensive investigation to discover its parties and details. However, the three types of e-commerce differ in terms of the extent to which each of them is global, virtual, and anonymous. Generally speaking, e-commerce in tangibles is less global and less virtual than e-commerce in intangibles and e-commerce in services lies somewhere in between. This difference has tax ramifications - as the global or virtual component of the e-commerce increases, the tax challenges become more profound. Likewise, anonymity is always present to some extent but varies between the different types of e-commerce. The level of anonymity depends on the architecture of the Internet and on the available locations technologies. As the level of anonymity increases, the tax challenges become more complex.

The following data and indicators present a picture of e-commerce markets:

It seems that the beginning of e-commerce dates back to 1994 when the first Sting CD was purchased online. In 2011 global e-commerce turnover is expected to grow by 19%, to $680 Billion and to $963 Billion in 2013. The number of people who buy online is continually rising. 38% buy at least once a month. The amount of people who don't shop online at all declined to 12% in 2010 compared to 20% in 2007. Roughly, about 15% of e-commerce is cross-border e-commerce, and it amounted to about $100 Billion USD in the year 2011 and is projected at about $150 Billion USD in 2013.

Today, according to Forrester Research, e-commerce presents almost 5% of retail sales in the USA. The USA Central Bureau of Statistics gives a slighter lower figure, according to which the share of e-commerce of total retail sales is 3.7%. But the figure is higher according to the Center for Retail Research which estimates the

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share as being between 8-9%.\textsuperscript{42} In the year 2010 Americans spent around 173 billion dollars shopping online\textsuperscript{43}. 68\% of adult internet users said that they buy online, a slight increase over the 65\% reported in 2009 and the highest figure reported thus far in the Digital Future Project\textsuperscript{44}. The percentage of users who report spending 1$-100$ per month increased to 58\% of adult internet users, up from 54 percent in the previous study\textsuperscript{45}. On the average, adult users conclude about 31 purchases online per year\textsuperscript{46}. A large percentage of both light users and heavy users said that their online buying has affected their purchasing in traditional retail stores\textsuperscript{47}. While the overwhelming majority of online shoppers in the US purchase only from domestic Web Sites, more than one quarter have bought items from online retailers outside the USA and more than one third of those between the ages 18-24 have done so\textsuperscript{48}. Based on these figures, one study\textsuperscript{49} estimated that by the year 2020, e-commerce will constitute approximately 27\% of total retail sales (54\% market penetration) in the United States and will exceed 1.6 Trillion Dollars.

In the European Union the overall percentage of individuals who shopped online grew from 22\% in 2004 to 34\% in 2008\textsuperscript{50}. In some of leading EU countries this figure exceeds 50\%: such as the UK with 57\% of individuals who ordered online in 2008, Denmark (59\%), Netherland (56\%) and Germany (53\%)\textsuperscript{51}. The European e-commerce market totaled 106 Billion Euros in 2006 while 70\% of turnover is conducted in 3 key markets (The United Kingdom, Germany and France). In 2008 the total market was worth €130 Billion Euros (£102,900 Billion) and it grew to €175 Billion Euros (£145,600 Billion) in 2010 and its projected growth rate for 2011 is 18.7\%, during which it is expected to reach the sum of €202.9 Billion Euros (£171.8

\textsuperscript{43} See: id. Growth in U.S. Online Retail Sales 2008-2014.
\textsuperscript{44} Center For the Digital Future (www.digitalcenter.org) , 2011 Digital Future Project Report, 104.
\textsuperscript{45} id. at 105.
\textsuperscript{46} id. at . 108.
\textsuperscript{47} id. at . 118.
\textsuperscript{48} For more data on e-commerce in the USA visit Estats at: http://www.census.gov/econ/estats/.
\textsuperscript{49} See: Grady Maguire, E-COMMERCE: A STATISTICAL MARKET ANALYSIS AND FORECAST OF EMERGING TRENDS. Available at http://www.csustain.edu/honors/documents/journals/crossings/Maguire.pdf
\textsuperscript{51} id. Annex 1, Figure 1: Percentage of individuals who ordered goods or services over the internet for private use in the last year (2008).
The three product categories most purchased online are travel and holiday accommodation (42%); clothes, sports goods (41%) and books/magazines/e-learning material (39%). E-commerce constitutes around 5.9% of total retail sales in the EU. In some EU member states the online share of retail trade is very high, reaching 10.7% in the UK with €52 Billion Euros (£44 billion) online sales (16% growth on 2008) and is expected to make 14% growth in 2011 to reach the sum of €59.4 Billion Euro (£50.3 Billion) which constitutes 12% of retail sales in the UK in 2011; and 8% in Germany with €39.2 Billion Euros in sales, a growth of 14% in one year since 2009. In France, e-commerce grew dramatically in 2010 with 26% growth over 2009, and reaching the sum of €39.2 Billion which constitutes 6% of retail sales in France. In the EU, E-commerce is the second most commonly used retail channel after direct retail, and clearly ahead of mail order and telesales. Of even greater importance in this context is the exponential growth of e-commerce channel in comparison to other channels. While e-commerce is growing in the EU, it is still mainly national e-commerce rather than cross border e-commerce. Cross border e-commerce is quite stable and only 7% of individuals in the EU purchased online from websites based outside their country. However, the figures vary between the different EU member states and in some countries, such as Luxemburg, 38% of individuals conducted cross border e-commerce in 2008.

In China, as of December, 2010, the number of net citizens had reached 457 million - an increase of 73.3 million compared with the end of 2009. The popularity rate of internet climbed to 34.3% - an increase of 5.4% compared with the end of 2009. By December 2010, the number of online shopping users had reached 161 million; the utilization rate had increased by 7% - to 35.1%, and the increase rate of 52 See Center for Retail research, Online retailing: Britain and Europe.
53 See Supra note 50, Annexe 1, Figure 2: Goods and Services ordered over the Internet, for private use, in the last year (2008).
54 See supra note 42., Online retailing: Britain and Europe.
55 See: id.
56 See: id.
57 See: id.
58 See: Supra note 50, Annex 1, Figure 4: Year on Year growth rates of retail sales by channel.
59 See: Supra note 50, Annex 1, Table 1: Question: Please tell me if you have purchased any goods or services in the last 12 months in your country or elsewhere via the internet (multiple answers possible).
users in 2010 reached 48.6%, topping that of the other applications. It is important to add that the rate of cross border e-commerce in China is exceedingly high and reaches 48.1%. In Japan, the scale of B2B (Business to Business) e-commerce market is about 131 trillion Yen, and the B2C (Business to Consumer) market amounts to about 6.7 trillion Yen. It is important to add that the rate of cross border e-commerce in Japan is about 17.8%. In India, net commerce has evolved over the past decade in terms of magnitude. The market is estimated to be INR 31,598 Crores (about 7 billion USD) in the year 2009. The market has come a long way since 2007 when the market size was only INR 8,146 Crores (about 1.8 Billion USD). As of 2009, among Internet users, online travel leads the pack with 76% share of net commerce (INR 14,953 Crores)(about 3.3 billion USD) while eTailing takes second position with 7.82% share (INR 1,550 crores)( About 344 Million USD). In Australia, online retail accounts for 4% of total retail, which is significantly lower than the figures in the USA and Europe.

But the picture is different in other parts of the world. According to The World Internet Project (WIP) 2010 Report, which examined internet use in 10 countries, purchasing online is not yet a typical experience for internet users in most of the WIP countries and regions. In seven of the reporting countries and regions, more than 60 percent of Internet users never go online to buy. However, only 13% in the United States and 22% in Sweden report never buying online, compared to 87% in Colombia and 78% in Mexico. Even a region like Macao, which reported 61% of residents as internet users, found that 72% of them never buy online.

C. The E-commerce Taxation Gap

This brief description of the current international tax regime and of e-commerce reveals the significant gap between them: They differ in their working

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62 See: id. at 44.
67 Chile, Colombia, Cyprus, Czech Republic, Italy, Macao, Mexico, Portugal, Sweden, United States.
presumptions, their perspectives and their guiding conceptions. The lack of compatibility between the current international tax regime and the features of e-commerce presents tremendous problems in taxing global e-commerce income, as a result of which there is a serious under-taxation with respect to e-commerce income.

Different proposals have been discussed in the literature to cope with these challenges, aimed at closing the gap. I discussed these proposals in a previous article and refer the reader to my article instead of repeating the discussion in the current context. However, I will briefly mention the main proposals: Adaptation of the existing international tax regime in accordance with adaptations in other fields of cyberspace law; levying withholding tax on e-commerce income by the demand jurisdiction where the consumers of e-commerce reside; fixing a formula for e-commerce taxation; taxing e-commerce income by the residence country only.

At the positive level, countries have recognized the limits on their taxing power. I called this restrain on the taxing power of the national state "The code Restrain" because it stems from the Code of the internet which structures and designs the internet as a global virtual sphere in which people trade electronically and pay on line anonymously. To overcome this restrain, countries entered during the OECD Turku Conference in 1997 into a process of negotiation to reach an international agreement to tax global e-commerce income. In 1998, the Ottawa Taxation Framework was designed and approved by the OECD. The guiding principle...
of this framework is that the existing international tax regime and principles will be applied to e-commerce with some modifications. Following Ottawa, five Technical Advisory Groups (TAGs) continued the research and dialogue. The main outcome of this work is a modification of article 5 of the OECD Model Tax Treaty, so that it now states that a server may constitute a permanent establishment as long as it is “an essential and significant part of the business activity of the enterprise as a whole, or where other core functions of the enterprise are carried on through the computer equipment”.

Even so, at the end of the day, the gap is still wide. All the previous evolutionary and conservative proposals have failed to generate the necessary changes.. The analysis of the challenges of e-commerce taxation proves this contention, which is widely accepted in academic writing. In the future I plan, to attempt to measure the uncollected taxes on cross border e-commerce income, but the task is a formidable one. The empirical data on cross border e-commerce taxation is very limited and very difficult to obtain. For purposes of this article, I will just present the available data on the uncollected sales and use tax in the USA, as an example of tax losses that lead to a high level of cooperation between the states of the USA.

According to the Center for Business and Economic Research at the University of Tennessee, in 2003, the estimated combined state and local revenue loss due to remote sales was between $15.5 billion and $16.1 billion. For electronic commerce sales alone, the estimated revenue loss was between $8.2 billion and $8.5 billion. The report from the University of Tennessee further estimates that the revenue loss will grow and that by 2008, the revenue loss for state and local governments could be as high as $33.6 billion, of which it is estimated that $17.8 billion would be from sales over the Internet. Table 1 of their research is a detailed

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76 See: Implementing The OTTAWA Taxation Framework Conditions, supra note 7.
78 The reasons behind the uncollected sales tax on e-commerce and the proposals to close the gap were clearly presented and discussed by Professor Annette Nellen in her presentation. See: Annette Nellen, E-commerce Taxation, California Municipal Revenue & Tax Association Meeting (August 15 2008), http://www.cob.sjsu.edu/nellen_a/TaxReform/E-CommerceTax8-15-08.pdf
presentation of the losses of each state and state\textsuperscript{79}. In a more recent study the figures are clearly lower and they estimate uncollected taxes on e-commerce as equaling the sum of $7.26 billion in the year 2008 and projected to increase to $12.7 billion in 2012\textsuperscript{80}. But, Jeffrey Eisenach and Robert Litan Have criticized Fox\textsuperscript{[ who is “Fox???] [ study and have arrived at different estimates. Using a different methodology, , they estimate the uncollected sales taxes on state and local e-commerce sales in 2008 as being in the vicinity of $3.9 Billion approximately, and that it will increase to $4.7 Billion in 2012\textsuperscript{81}.

I present these figures just to show that e-commerce gives rise to real tax losses. While it may be true that as a percentage of total tax revenues these losses are low, but it nonetheless represents a significant sum of money in absolute terms and it induced the states in the USA to search for a solution to the e-commerce taxation problems. I estimate that a similar process will occur on an international level in the near future as result of the rapid growth of e-commerce. In this article, I present a revolutionary proposal in the hope of spearheading, or at least outlining the parameters of the necessary change at the international arena to tax cross border e-commerce income.

\textbf{D. The Global E-commerce Tax}

In my view, to overcome the challenges posed by global e-commerce taxation and in order to levy "good tax" on global e-commerce income, a supranational taxation is needed. This conclusion stems from the analysis of the problems and the experience of the last ten years in attempts to tax global e-commerce income. As a global income, e-commerce should be taxed globally by a supranational institution. This far reaching conclusion is imminently logical but states have difficulties in

\textsuperscript{79} I would like also to add that the IRS conducted a small study in 2000 in which it reviewed 426 commercial sites and found that 10\% of owners don’t file, 12\% of owners could not be identified, There was an estimated $1 billion tax gap for small internet businesses. See: http://www.treasury.gov/tigta/auditreports/2005reports/200530010fr.html.
accepting it at this stage, because it transfers their tax power to a supranational institution, and they are not yet ready to pay this price at this stage, when the tax losses on global e-commerce income are not so significant when compared to the total tax revenues of the states. In the long run however, if the losses become significant, countries may consent to this major change in their taxing powers.

I suggest imposing a global e-commerce tax on global e-commerce income by means of a global fund, which will spend the tax revenues to fund global public goods. The global tax should be designed, collected, and spent in compliance with the canons of "good tax". The global fund should be designed, founded so that it can function democratically. I will now proceed to elaborate on the global e-commerce tax.

1. Structure and Design of the Tax

The global e-commerce tax (GET) is global in three senses: First, the tax base is the global income, which derives from cross border e-commerce activity. Internal e-commerce activity, conducted entirely within one jurisdiction, is not a part of the GET base and will continue to be taxed by the relevant state according to its own tax laws. Second, the tax is levied by a global institute rather than by territorial states and the details of the tax is set within this institute which also runs the GET system. Third, the GET revenues would be spent to fund global public goods. I wish to emphasize, that my model does not attempt to split the revenues between the countries. Instead, it aims to spend the revenues globally for the funding of global public goods. The need to establish a new funding source for global public goods is growing rapidly in our globalizing world. Just as the modern tax system emerged in response to the need to fund public goods within territorial state, the GET represents a similar response to emerging need in the 21st globalization century to fund global public goods. This is the novel goal that GET presumes to realize.

The GET is a tax on income\(^2\). The taxpayers are the e-commerce corporations that gain income via their electronic sales and services on the global Net. Income is

\(^2\) It might be wise also to levy a global V.A.T. on cross border e-commerce but I leave this issue for further discussion in my future papers.
defined for the purposes of the GET as any income arising from cross border e-commerce transaction. The tax base is comprehensive insofar as it includes all increases in wealth without any distinction between the categories of income. These categories lost their justification in the real world and have limited, if any, justification at the virtual world. For the purposes of the GET, I don't see any reason for distinguishing between business income or services or royalties. It is all income.

The first priority is to impose the tax on net income. Net taxation is clearly more fair and efficient than gross taxation. But, the difficulty in net taxation in the GET system arises when, in addition to cross border e-commerce income, the company also receives national e-commerce income or non e-commerce income. In these circumstances, the company incurs at least two liabilities: Its national tax liability and its global liability. The costs should therefore be attributed and deducted adequately. The need to attribute and deduct costs creates loopholes and openings for tax evasion. However, in my opinion, the difficulty should not lead to taxation on gross income rather than on net income. But, instead of that, it should lead to development of methods of coping with fake attributions. Today, issues of deduction allocations and transfer pricing are part of the international tax regime and practices have been developed that confront and even limit tax evasion and abusive practices and techniques. In my opinion, despite the costs of attribution difficulty, GET on net income is better than GET on gross income, for both equitable and efficiency reasons. It also bears mention that at all events, the GET model will have to cope with attribution issues insofar as it is imposed on global e-commerce income which should be distinguished and separated from national e-commerce income and non e-commerce income. As such, the GET model will be compelled to develop attribution rules on the income side, and the same rules will be applied on the costs deduction side.

As to the tax rate, I propose a flat tax rate. The debate on progressive taxation and flat taxation is rich and interesting. However, this is neither place nor the time to

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84 See: ROBERT E. HALL & ALVIN RABUSHKA, THE FLAT TAX (2nd ed. 1995); W. BLUM & H. KALVEN, THE Uneasy Case FOR PROGRESSive TAXATION (1953); Richard L. Doernberg, A Workable Flat Rate
enter into this debate. I propose the flat rate for the GET for reasons of simplicity. Progressive taxation on the global level is difficult to implement and its justifications are not particularly clear. Flat taxation, on the other hand, is very simple to implement and intuitively, prima facie at least, appears to be justified. As to the precise taxation rate, I propose a 15% tax rate, which is close to the average current corporate tax rate and is low enough to be accepted by the countries and the industry, and the low tax rate is similarly likely to increase compliance.

To increase compliance and efficient administration of the GET, the global fund will utilize high technologies, as well as international cooperation and information exchange. Technologies to secure payment and enable transactions are an essential part of e-commerce and may be used by the global fund as a means of detecting e-commerce transactions. Intermediaries, such as credit card unions (VISA, MasterCard, Diners etc) and e-payment facilities (Paypal, Optimal Payment, etc) should be obliged by law to cooperate with the global fund in imposing the GET. In addition, countries could and should cooperate and exchange information with the global fund and provide assistance if needed and requested to enforce the tax on non compliant residents of a country. Because I don't offer enforcement powers to the global fund within the territories of countries, their assistance is needed to enforce the GET. In this regard, I also suggest that the national courts hear and decide legal disputes between the taxpayers and the Global Fund. The reason behind this offer is to give taxpayers easy and fast access to courts in order to retain their property rights and pay the fair tax according to the GET treaty. In addition, this suggestion would eliminate the need on the part of the global fund to establish its own legal processes to handle tax disputes. Furthermore, this proposal confers appropriate weight to the national sovereignty consideration, striking an optimal balance between state sovereignty and global taxation of global e-commerce income. Finally, I expect online administration of the global e-commerce tax. Taxpayers will meet the tax man online to report and pay the global e-commerce tax.

2. Structure and Design of the Global Fund

The GET will be levied and run by the global fund (GF). The GF will be the main supranational institution to run the tax on cross border e-commerce income. Countries shall establish the global fund by a treaty. The GF shall be the main administrator of the GET: crystallizing the details of the tax; administering the tax; spending the revenues and so on.

The GF that I propose is a new international institution. It should be established by the countries themselves. Countries should agree to establish the fund and to confer the GF with full responsibility in collecting the GET and the spending of its revenues. I propose establishing a new international institution instead of using existing ones for several reasons: First, there is no existing international institution that has the features and powers needed for the global e-commerce tax. The idea is unique and innovative and requires a new institution. Second, The OECD is not suited to for the task because it is not a worldwide organization but rather an organization of a limited number of developed countries (34 Countries). In addition, the OECD has other goals might be in conflict with those of the GF. These factors point to the need for a new institution. Finally, a new institution would be designed specifically in accordance with the specific parameters of a global e-commerce tax infrastructure for the funding of global public goods. The particular design of such an institution would be a critical factor in increasing the political feasibility of the model and its potential success.

Countries would design the GF and capitalize on their extensive experience in designing international institutions in the last decade. However, I will present a preliminary framework draft based on the rich literature concerning the design of international institutions. In doing so, I have relied primarily on the “rational design” of international institutions frameworks. Rational design makes the

following assumptions: First, states and other international actors, acting for self interested reasons, will design institutions purposefully to advance their joint interests; Second, repeated and intensive interaction between the countries on the relevant issues is necessary to enhance cooperation and substantially affects the institutional design and its sustainability. Third, establishing and participating in international institutions is costly. Fourth, states are risk averse and worry about possible adverse effects when creating or modifying international institutions. Based on these assumptions, rational design scholars attempt to handle the following problems: distribution problems in order to ensure that the institution does not favor one country over another; enforcement problems in order to reduce the possibilities of cheating by some countries; a large number of problems endemic to the mechanics of collective decision making and actions; and uncertainty problems. Most of their work is empirical work that analyzes existing institutions and their design and it attempt to draw general conclusions regarding optimal institutional design. I will use this work to offer a basic sketch of how the GF might best be designed to fulfill its goal. In what follows I will briefly consider five main design questions:

**Membership:** The members of GF are countries. I think that each country should be entitled to a quota of the GF according to its relative portion of the global e-commerce market. I think that under the current circumstances a quota system is fairer than an equal membership system. The quota system of the International Monetary Fund is well developed and could serve as an instructive example for building the quota system of the GF. In addition, I think it important to give membership status to a number of Non Governmental Organizations (NGO's) that are principal players in global issues of e-commerce, global warming, and development and other concerns with ramifications for global public goods. These civil society players are becoming important players in the international arena that could and should contribute to the success of the GF

**Scope:** the scope parameter addresses the question of what issues should be addressed by the GF I propose that at the first stage of creation and development the activities of GF should be limited to its function as the recipient of global e-commerce tax and its spending to fund global public goods. In the future, the Global Fund might develop capacities to confront other global issues or global public goods issues.
Centralization: The question here is whether certain cardinal institutional tasks should be performed by a single centralized entity. I propose the Global Fund to be the single entity charged with the collection and expenditure of the tax. However, I would add that the GF should be assisted by national states with respect to enforcement and legal litigation. Enforcement and legal litigation concerning the global e-commerce tax should be conducted at the national level by the national entities for reasons of simplicity and efficiency, as well as in the interests of their sovereignty concerns. In my view, this represents a workable balance and in any case can be negotiated between the countries in the process of creating the international treaty on global e-commerce tax.

Control: the control dimension is of crucial importance. Its concern is with putting in place the mechanisms for adopting collective decisions on tax collection and spending. Several factors affect the control of the Global Fund including: Governance structure, Election of Key Officials, Voting Procedures, Accountability, and Transparency of its actions.

Regarding Governance Structure, it seems that four main organs are needed in the governance system of the GF. First, a Board of Governors: The governors should be the highest body of the GF that makes the most important decisions and determines policy concerning the GET and the spending of the revenues from the tax. Second, an Executive Board: The Executive manages the system on daily basis. Third, Administration and Staff runs and performs the full range of activities needed in the Global Fund. The research team that examines the spending of the revenues is likewise a critical component of the staff. Fourth, Supervising Board: this board supervises the policies and the management of the GF and issues evaluation reports on its activities.

As to the Election of Key officials I considered the possibility of delegated professionals from the different countries as compared with the possibility of professional officials to be chosen on a global basis and reached the conclusion that latter is preferable. My aim is to design the GF as a real and independent global institution that serves the global interest exclusively. The key officials are central to
achieve this goal and the best means of ensuring their professionalism and institutional independence is by appointing them on global basis irrespective of their national affiliation and belonging.

As to Voting Procedures, the different international institutions have adopted a variety of voting procedures. In the UN General Assembly, each member has one vote; in the Security Council, a veto right is given to the permanent members; at the IMF and World Bank a weighted voting rule is implemented. I propose using the weighted voting rule in the GF according to the quota system of the fund which relies on the share of the country in the global e-commerce market. This voting system is fair under the circumstances and ensures a just balance of the competing countries, which, representing a larger proportion (and contribution) to the e-commerce income should have, greater voting rights. In this regard, I would add that in measuring the share of the country, it is important to consider its sales as well as its consumption of e-commerce. Both production and consumption are important, thus necessitating equal consideration of both aspects in the determination of tax rules. Finally, I propose granting voting rights to the NGO members of the GF especially on decisions concerning the spending of the revenues. The weight attaching to their vote should be decided according to their budget size as an indicator of their role in the field.

As to Accountability and Transparency different measures are adopted in different international organizations to assure the adequacy of these foundation stones. Similar measures should be taken in the GF. The GF should be supervised objectively by an independent Supervising Board as mentioned; the collection of the GET and the spending of the revenues should be fully transparent. These and other measures would contribute to the realization of accountability and transparency. The existence of these measures is a central factor in evaluating the political feasibility and the potential success of the model.

Flexibility: this factor considers ways of handling new circumstances and changes nationally or internationally. One wide flexibility rule is the "escape clause" which exists in some international institutions. An escape clause enables the member country to withdraw from the international institution partially or fully, permanently
or temporarily. An escape clause as all other aspects of the global fund design should be discussed and negotiated by the countries. On the one hand, an escape clause would be a good idea as a means of encouraging countries to accept the model. On the other hand, it could spell the demise of the model if a number of leading countries decided to exercise their rights there under, whether for just cause or otherwise. After hesitation, I suggest the inclusion of an escape clause in the design of the Global Fund, if indeed it contributes (this can be examined empirically) to wider participation of countries in the project.

3. Spending the Global E-commerce Tax Revenues to Fund Global Public Goods

I propose spending global e-commerce tax revenues for the funding of global public goods such as climate stability, global communication networks and internet, financial stability, and global diseases. Global needs are manifold in a global world. Without global government these needs cannot be satisfied. National states partially provide global public goods for their own selfish reasons, but the overall situation is one of under-provision. The demand for global public goods clearly exceeds their supply. This partial provision is currently financed by national contributions mainly via the channels of official development assistance programs. But new resources and methods of funding are being discussed and developed.

It is my contention that global e-commerce tax is a good resource for funding global public goods for several reasons: First, it introduces new money into the pool when compared to other resources that transfer funds from one pocket to another; Second, E-commerce is a truly global activity that uses global infrastructures and it is natural, justified, and efficient to use global tax such activities as a means of funding global public goods; Third, this usage overcomes the unsolved problem of sharing the global e-commerce tax pie and would therefore facilitate the tax on a political level. Fourth, this usage advances inter-nation equity because it involves the aspect of distributing wealth from developed countries where e-commerce is really taking place to developing countries that benefit from global public goods. Fifth, using global e-

commerce tax to finance global public goods will generate economic activities and processes that serve welfare interest. Sixth, the revenue potential of this resource of finance seems promising and more importantly, it is growing and might well become a serious global tax base for filling the needs of the global world. I will elaborate on these arguments in chapter II of this article.

I don't suggest spending the revenues on a specific global public good. My proposal is made on the level of principle and does not presume to establish any guidelines or priorities regarding the particular target of the revenues. As a matter of principle I propose that the revenues be spent on global public goods, and I would leave the decision-making authority regarding the details and specific spending of the revenues to the GF. In my view, this is the right way to do it. Guaranteeing effective and well directed spending is very much a function of the structure of the Global Fund. Therefore, the structure of the GF as a credible international institution is the key to good spending.

D. Global E-commerce Tax as "Good Tax" for Global E-commerce Income

In the following sub sections I will argue that the global e-commerce tax is a "good tax" on global e-commerce income, in accordance with Adam Smith’s canons of "good tax" which have lead tax policy discussions since 1795, subject certain modifications and additions introduced by writings on modern tax policy. I argue that global tax is legitimate because it realizes the ideal of the consent of the governed, insofar as it levies global tax on global income through global institution and spends the global tax on global public goods. I argue that this model leads to feasible and effective taxation of e-commerce by imposing a single certain and simple tax that considers the taxpayer needs and financial position. Furthermore, the tax is efficient in the sense that it simultaneously achieves both “capital export neutrality and capital import neutrality”; Finally, I think that the tax is fair and achieves inter-individual equity and international equity.

90 On efficiency considerations, see generally: PEGGY MUSGRAVE, UNITED STATES TAXATION OF FOREIGN INVESTMENT INCOME: ISSUES AND ARGUMENT (Law School of Harvard Univ. Press1969);
1. The Legitimacy Argument

The philosophical discussion of the obligation to obey the law is ancient, diverse and extremely interesting. It dates back to Socrates in ancient Athens and continues up until today. Generally speaking, liberal theory posits three components that establish state legitimacy to govern: First, the state governs a defined territory. Second, the people of the territory constitute a community. Third, this community consents to sovereign authority. However, the advent of the Internet has considerably diminished the relevance and hence the normative significance of these components, so much so that it is unclear whether the classical notion of state based rule making and taxation is really applicable to the Internet.

The concept of territory has no real meaning on the Internet. Internet traffic and by extension commerce - is a phenomenon that exists on the Net a single global (market) place where physical borders are meaningless. Given this fundamental change regarding the territorial component it is no longer clear that territorial states possess the legitimate sovereign to govern global online activity. The activity doesn't take place within their borders, and any governance by one state necessarily affects other states; the connection of one state to e-commerce income is a limited one that does not justify its ultimate taxation of the income.

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92 See: supra note 38, at 370-371.
As for the community component, it is argued that users of the Net constitute a community in its own right. In their online activity people belong to this global community and express an online identity and affiliation rather than their national identity and affiliation. Sociological research supports the notion of "Internet Community" or "Virtual Community" as being the dominant identity of users in their online activity. Sociologists have researched this issue extensively and have clearly identified the development of social interaction on the Net which has lead to the emergence of social values, norms and rules governing these interactions. They have analyzed the virtual community as consisting of a single global community which is also supplemented by a countless number of sub communities according to the unlimited sphere of specific internet interactions. In my mind, this fundamental social change has legal consequences. Law should take the new virtual community into account and adapt its basic concepts of authority to meet the needs of this new community.

Regarding the basic principle of "the consent of the governed" it is not clear whether the people’s consent to their territorial state governance includes or even implies their consent to rule and control of their online activity on the global Net. On the contrary, users conceive of the Net as a free realm, not subject to state control. Several indicators support the notion of the freedom of the Net. A particularly clear articulation of this freedom was provided by John Perry Barlow in his fascinating Declaration of the Independence of Cyberspace in these words:

"... Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions. ... We are forming our own Social Contract. This governance will arise according to the conditions of our world, not yours. Our world is different."  

For all these reasons, Cyber-Libertarians argue against the legitimacy of state attempts to regulate and govern Cyberspace. They call for self governance of Cyberspace. These arguments gain special strength in the tax field where state legitimacy and power is so fundamental. Global e-commerce income emerges as global income which does not recognize territorial borders. Downloading a book or song or computer program and paying for it online takes place on the Net as one global place and not in any particular territory. The parties to this transaction do not recognize any state affiliation in this regard and they neither expect nor consent to any state taxation over such a transaction. Domestic legislature is highly limited in the taxation of income arising from global e-commerce, in terms of both power (political) and legitimacy. The income did not emerge in "their territory" and they didn't make any unique contribution to the production of the income to justify any state taxation of the income. In my opinion, a global e-commerce tax is therefore more legitimate than state taxation on global e-commerce income. A global tax conjures with the place in which the activity is taking place. It treats all the taxpayers as one community comprising sub-communities who express their will through their national representatives (the states) by crystallizing the tax treaty and participating in the GFI I think that this congruence strengthens the legitimacy of the tax. Furthermore, the consent of the governed may be better expressed in this model of taxation rather than in a national taxation on e-commerce. There are sound reasons for assuming that sellers and buyers of e-commerce will be more ready to consent to a global tax to fund global public goods on their cross border e-commerce transactions than to a national tax. A future empirical-social research is however still required in order to fully substantiate this hypothesis.

2. The Certainty Argument

In my opinion, the national state lacks the ability to impose a certain tax on global e-commerce income. E-commerce is predicated on assumptions that are entirely different from the ones that underlie the existing international tax regime and

96 See: Rifat Azam, supra note 7.
this discrepancy poses severe problems for any attempt to apply the current regime to E-commerce. It is now abundantly clear that no one national state can apply its tax regime to global e-commerce income. I argue that global e-commerce tax could effectively impose a certain tax on global e-commerce income, thereby fulfills the canon prescribed by Adam Smith according to which "The tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person". In substantiating this argument, I will briefly survey the problems confronting the attempt to apply the current international tax regime to e-commerce and explain why global e-commerce tax neutralizes these problems and ensures certain tax on global e-commerce income.

I begin with Income-Classification Rules. The information-technology revolution has generated countless new products, services, and methods of doing business that do not belong to the classic categories of transactions. A wide range of intangible products and services are now traded via the new methods. In the age of e-commerce, for example, a book can be bought by a wide variety of methods: it is possible to subscribe to a database that includes the book or to download an electronic version of the book to the customer's desktop. One can also receive online updates of the book. These possibilities make it difficult to classify the transaction in the classical categories of “trade income” or “services income.” The classic standard categories reflected and regulated commerce in products, services, and businesses that predated e-commerce, but the Cyber-age is different; e-commerce does not easily admit of classification in accordance with the old transactional categories.

The proposed global e-commerce tax overcomes this difficulty by its intentional non-differentiation between categories of income. As described earlier, for several reasons, the global e-commerce tax abolishes the distinction between the categories of income, thus enabling appropriate treatment of difficulty of income classification.

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97 See: Adam Smith, supra note 88, at 452.
As to Source Rules, their strongly territorial base creates a problem when attempting to apply them to e-commerce which is fundamentally non-territorial. The current source rules are rooted in two premises: (1) that territorial borders separate countries and define their legal jurisdiction and (2) that each income is produced in a territory of a single country. Accordingly, source rules are designed to identify the territorial country of the income in accordance with the economic link between the income and the country. In this process, source rules rely on and use physical concepts of territory and place. All this is weakened in non-territorial e-commerce. The global character of e-commerce gives very limited meaning if any, to territorial borders between countries. Similarly, the virtual nature of e-commerce gives very limited meaning, if any, to the location of e-commerce income in a particular territorial location. All three types of e-commerce (tangibles, intangibles and services)—especially e-commerce in intangibles and services that are sometimes totally unrelated to any physical place outside the Internet—defy traditional notions of territoriality. In doing so, e-commerce likewise defies the the basic justifications and concepts behind the source rules, even on the theoretical and conceptual levels. The same is true with respect to the Permanent Establishment source rule which gained special attention in the debate on e-commerce taxation. E-commerce enterprises can sell their products or services worldwide with very limited physical presence in any particular consumer’s country and can operate without agents because they can directly, easily, and cheaply contact customers worldwide. As such, the premise of the permanent-establishment rule—that is, to conduct business in a country, you need a presence there—does not apply to e-commerce. The concept of “fixed place” is meaningless in e-commerce business because it can be located anywhere and can conduct business everywhere.


Global e-commerce tax resolves this difficulty by making the tax regime indifferent to any particular source place, or more precisely by abolishing the normative significance of any “source place”. All global e-commerce income will be taxed globally. However, the new difficulty will therefore be the problem of distinguishing between local e-commerce which is taxed by the national state according to its own tax laws and global e-commerce which is taxed globally. My argument is that GET will overcome the difficulty and develop guidelines to distinguish between local and cross-border e-commerce income through the case law of the national courts.

As to Residency, the main challenge is to determine the residency of e-commerce corporations for personal taxation purposes. These corporations usually lack fixed physical facilities. Their Web sites are usually their main storefronts, and their employees are highly mobile. The physical presence of the corporation in a “central place of management and control” is limited, and the mobility of the corporation is very high. This makes it difficult to determine the “central place of management and control” of such a corporation for purposes of establishing its residency under traditional definitions. In addition, it is easy to abuse the traditional definitions and locate an e-commerce corporation in a low tax jurisdiction to reduce or even to escape taxation all together.

Global e-commerce tax copes with this challenge successfully since all e-commerce corporations pay one tax to the Global Fund, based on their global e-commerce income and their residency is irrelevant in this regard. But to ensure this scenario, a wide range of consensus must exist. The involvement of leading e-commerce countries is therefore crucial to the success of the model. Concededly, tax havens will continue to exist regardless, and it is likely that no comprehensive consensus will be reached. But, to the extent that there is broader consensus and support of the global tax, the significance of tax havens diminishes and should not affect the basic framework and success of the model.

101 See Doernberg et al., supra note 32, at 301; LI, supra note 7 at 510.
**Regarding Enforcement**, it should come as no surprise that numerous difficulties are encountered in the attempt to enforce the current international tax regime on e-commerce. The global character of e-commerce makes it difficult for any one country to monitor and tax e-commerce income. In addition, the virtual nature of e-commerce makes it difficult to monitor and control e-commerce transactions. The limited physical presence of the transaction and the limited physical assets of an e-commerce corporation outside the Internet make it difficult to reveal the business’s transactions and income, which in turn makes it difficult to enforce the business’s tax duties even if such duties were clearly determined. Furthermore, the anonymity of e-commerce makes it hard for tax authorities to discover the existence of e-commerce transactions, the parties to the transactions, and the details of the transactions. Since tax authorities often lack such basic information, they are often unable to levy taxes on e-commerce transactions. The outcome of all these enforcement difficulties is under-enforcement of the current international tax regime on e-commerce. This is true of all three types of e-commerce but particularly of e-commerce in intangibles and services.

These enforcement problems all find their successful solution in global e-commerce tax which levies one global tax on e-commerce income. As long as e-commerce corporations are registered in a country that has signed the global e-commerce tax treaty, then that country will presumably cooperate in enforcing the treaty and the global tax. Tax havens will continue to pose a problem even for global e-commerce tax. But the detection and recognition of transactions will be better served, especially if credit card and payments companies are obliged to cooperate. Furthermore, new technologies of revealing e-commerce transactions will improve the enforcement of the tax. To be quite clear, I am not arguing that enforcement difficulties are non-existent in the proposed global e-commerce tax, but that they would decrease significantly.

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For all of the reasons mentioned above, global e-commerce tax will clearly change the current uncertain taxation of global e-commerce and ensure a certain tax on global e-commerce.

3. The Efficiency Argument

There are two separate aspects of efficiency that derive from Adam Smith's canons of taxation: economic efficiency and administrative efficiency. A tax system is considered economically efficient if it does not distort the economic decisions which are made based solely on economic considerations. Economic efficiency is sometimes referred to as fiscal neutrality, and the key idea is that taxes should, as far as possible, not interfere with the workings of the market. Two meanings of “neutrality” in the international tax regime merited extensive discussion over the years, competing for leadership. The first, Capital Export Neutrality (CEN), which means the neutrality of the international tax regime regarding the location of the investor, and his decision between investing in his home country or to exporting his capital abroad. This neutrality is achieved if the investor faces the same effective tax rate no matter where he invests. This is the case for example when the investor is taxed on a personal basis and is credited for his source taxation abroad. In a regime characterized by capital export neutrality case, the investor will invest in the most efficient location, which, in turn, maximizes the global cake and advances global welfare. The second, Capital Import Neutrality (CIN), which means the neutrality of the international tax regime regarding the import of capital into the country and the question of whether investments in the country will be made by resident or foreign investors. Capital import neutrality is actually achieved for in territorial taxation. In a territory

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characterized by CIN the investments in a given territory are made by the most efficient investor, thereby maximizing the welfare of the relevant country.

The current taxation of e-commerce income does not satisfy any of these efficiency criteria. It does not satisfy CEN because the taxation of the income varies depending on the countries relevant to the transaction and their attitudes towards the taxation of e-commerce income. It also does not satisfy CIN because the same income in one territory might be taxed differently based on connections to other countries which also claim taxation rights on that income.

In my opinion, the GET is an efficient tax according to both criteria. It fulfills Capital Export Neutrality since the same tax is imposed on e-commerce investor no matter where he bases and runs his e-commerce business. In each case the investor will make his decisions according to considerations of cost and quality of infrastructure, knowledge, technology, employees and so on. At the end if the day, he will locate his business in the most efficient location in terms of yielding the highest rates of return on his investment. At the same time, it also achieves Capital Import Neutrality because local and foreign investors in a given place who compete in running e-commerce business will face the same tax rules on their cross border e-commerce income and the most efficient of them will survive and succeed in running the business in the most efficient manner thus maximizing global welfare. Until now, no international tax regime achieved both CEN and CIN and scholars are disputed over which policy is more efficient and should be implemented by countries, given the assumption that that it is impossible to achieve both in the absence of global government. However, The GET achieves both CEN and CIN which makes it highly efficient and unique because it is a global regime with no global government (albeit with global governance) and with a Global Fund.

Additional aspects of efficiency should also be considered in evaluating the GET. One of them is neutrality with respect to traditional commerce taxation and e-commerce taxation. In this regard, the GET reduces the current gap between the various current de facto regimes in which no full taxation is imposed on e-commerce income. This reduction of the gap increases efficiency. It is also important to consider efficiency in the administration of the tax regime. It seems clear that administration of
the GET would be quite simple and cheap which makes the tax administration highly efficient.

4. The Fairness Argument

"The subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities”\textsuperscript{104}. This statement expresses the ability to pay principle as the basis of tax fairness or equity. Legal writing on tax equity distinguishes between horizontal equity, which posits that two taxpayers with the same ability to pay should pay the same tax and vertical equity, which posits that two taxpayers with different ability to pay should pay different taxes in proportion to the difference in their abilities\textsuperscript{105}. These are two mainstays of inter-individual equity. On the international scene fairness also means inter-nation equity which aspires to share the international tax pie fairly between the involved nations\textsuperscript{106}.

The current taxation of e-commerce income is not fair since it does not tax e-commerce income as classical income. This infringes inter-individual equity. Internation equity is also infringed because all countries loose their potential share of the international tax pie from e-commerce. Recent OECD efforts to institute a new sharing method to replace the existing one, which dates back to the 1920's, have failed. No wide and serious consensus was achieved in the negotiation process and the limited agreement to consider the server as the “permanent establishment” didn't really achieve fair taxation of e-commerce. The negotiations did however highlight the importance of achieving a fair sharing of the tax pie on e-commerce and the difficulties in doing so.

\textsuperscript{104} Adam Smith, \textit{supra} note 88, at 451.


The GET would reduce the current inter-individual equity gap between traditional commerce taxation and e-commerce taxation which to date has not really been taxed, but that would be taxed under the proposed arrangement. This reduction makes taxation more fair although not totally fair since differentiated tax will continue to separate income from traditional commerce and income deriving from e-commerce. In addition, the GET overcomes the difficulties of inter-nation equity by choosing a different allocation rule instead of the existing ones. Instead of attributing the revenues to countries and trying to split them fairly, the GET attributes the revenues to the global world as one unit and spends the revenues for the benefit of this unit to supply global public goods. This principle is fairer and more logical in the particular context of e-commerce. The global world, its market, infrastructure and facilities, made the main contribution to the production of this income, so it seems only fair that this global world should receive and benefit from the tax on this income. However, I must add, that the GF is a critical factor in evaluating the fairness of the model. The fairness of the model depends very much on the performance of the GF and its fair design. As long as the GF acts professionally in a democratic and transparent manner to spend the revenues on global Public Goods in the benefit of all, the model will be considered fair or at least fairer than the current case in which significant share of cross border e-commerce incomes are altogether tax-free.

Summing up this point, the proposed model is a "good tax" on global e-commerce income. The global e-commerce tax ensures effective, certain and substantial taxation on global e-commerce income; it is efficient because it simultaneously achieves capital export neutrality and capital import neutrality. It is also fair in the sense of inter-individual equity because it reduces the current gap between the tax regimes on e-commerce and traditional commerce; It is also fair in the sense of inter-nation equity because it taxes global income, and benefits the global world rather than one specific state and this could and should contribute to its political feasibility as well.
E. Supranational Taxation: Global E-commerce Tax and other Global Taxes

In my proposal, I introduce a substantial change to the existing international tax regime. I bring a supranational taxation in a world of nation states that conceive tax sovereignty as part of their DNA. However, I limit this change to a specific and unique tax base: global e-commerce income. I am aware of the fact that this is a substantial change. But I am not afraid of substantial changes. A substantial change is not "bad" as such. A just supra-national tax may even be a "good" one as I argued before. In my opinion, supra-national taxation doesn't contradict the basics of tax theory. The supranational dimension of my proposal existed to some extent in previous proposals for global taxation. But I argue that my proposed tax base is a good one that has advantages over the others. In addition, I propose my supranational tax in a different era in which supranational taxation is imperative, and the time has come to institute this change in the international tax regime and I strongly believe that the political climate will now be more responsive and accepting of such a change.

According to the basics of tax theory tax originates in the need to fund public goods. These goods cannot be supplied by the market as result of their non-rival and non-excludable features and a public authority was required to provide these goods. As a result, communities organized into groups on national bases that took the political shape of the current nation state. The nation state received the tax authority as a tool to collect revenues to fulfill its objective of providing public goods. In this scenario and understanding, nothing is 'natural' in national taxation. The nation state is not the only possible tax authority. Theoretically, communities could consolidate themselves on an alternative basis and formulate an alternative political infrastructure, which could be conferred with tax jurisdiction. From the perspective of tax theory, the national state is just one possible tax collecting framework. But the essence of taxation is the provision of public goods. In this sense, supra-national taxation does not contradict the tenets of national taxation, because it is not axiomatic that taxation must of necessity be national. On the contrary, supra-national taxation to fund global public goods goes hand by hand with the basics of tax theory. This is the natural evolvement of tax theory in the 21st global century.
In the current global world, there is a rapidly growing demand for global public goods. Global public goods are underprovided as a result of their non-rival and non-excludable features. National states free ride on each other in providing global public goods and therefore cannot function as the ideal public authority for the provision of these goods in appropriate manner. Therefore, a supranational authority is needed to provide these global public goods. This authority could be financed through several resources and supranational taxation is one of the most appropriate resources. Supranational taxation finance is needed to finance global public goods just as national taxation was needed to finance national public goods. Therefore, supranational taxation is the natural development of tax theory in global world. I find support for my argument in the writing of prominent theoretical scholars and would like to quote some of their perceptive comments in this regard:

"The growth of international e-commerce will likely spur the movement toward international coordination of tax policy—or what I call the ‘‘globalization of taxation’’—for two reasons: first, because states will not allow an ever-increasing volume of international digital commerce to escape taxation, and second, because states cannot effectively tax this new form of commerce without close cooperation with other states. The political implications of the globalization of taxation could be far-reaching ….. the modern state was able to survive and flourish because it made fiscal sense: it was a form of political organization that was particularly well-suited to taxing wealth and commerce. If new developments in the technology of commerce—including the communications revolution, the Internet, and the rise of international e-commerce—are undermining the efficiency of the state as an autonomous taxing entity, we should expect fiscal pressures once again to alter the relationship between the modern state and other political entities. This is not to suggest that the state faces a fiscal crisis similar to that which destroyed European feudalism, or that the modern state will disappear or be supplanted by rival actors. Rather, it points to a continuing shift
of taxing authority away from the exclusive domain of states and toward international forums and institutions, which are likely to play an increasingly important role in the design, and perhaps the administration, of tax policy.\textsuperscript{107}

"When there is no longer a territorial imperative, when the place of residence and the investment are no longer a given but a choice, when added value is generated in too abstract a fashion for its creation to be assigned a precise location, taxation is no longer a sovereign decision."\textsuperscript{108}

Proposals for global tax with varying levels of supranational power were raised in the past. The well known Carbon Tax is one such proposal. It is a tax imposed on carbon emissions on global bases. It was argued that carbon tax produces a double dividend because it reduces pollution and collects revenues\textsuperscript{109}. But, the international community could not reach an agreement on this taxation due to several technical and political difficulties. This was similarly the fate of the widely debated Tobin Tax proposal. This tax is levied on currency transactions worldwide. It was originally intended to achieve monetary stability and later on developed as a revenue collection tax. The Tobin Tax Version of Currency Transaction Tax (CTT) faced several technical and political obstacles. Tobin himself recognized these obstacles and suggested that the tax should be adopted by G7 countries and a few major financial centers in order for it to become an operative tax system\textsuperscript{110}. To overcome technical and political obstacles, new versions of the CTT with some modifications were

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proposed\textsuperscript{111}. Mendez proposed the establishment of a global foreign currency exchange (FXE) under the UN system, which would comprise frequent users, brokers and dealers who would be obligated to pay a licensing fee as well as a commission on each transaction\textsuperscript{112}. These fees and commissions would raise the revenues instead of the CTT. Mendez argued that FXE would generate revenues of considerable dimension but its chief advantage over CTT is that it is a market based approach and would therefore gain more political support than Tobin Tax.

More recent proposals with some level of supranational reach include the following:\textsuperscript{113} In 1996, the U.N. Secretary General Boutros Ghali, in the Cyril Foster Lecture at Oxford University, proposed the imposition of a global tax on different tax bases in order to finance the U.N. and cope with its difficult financial situation. The US however strongly opposed this taxation. Moreover, several Acts of the Congress made it quite clear that no US funds, regardless of their source, were to be transferred to the UN or to any other global use. In 1999, the United Nations Development Program proposed to implement "a small tax on the amount of data sent through Internet"\textsuperscript{114}. The US again opposed this proposal and any global taxation. In 2002, the U.N. International Conference on Financing for Development (Monterrey, Mexico) recommended the conduct of a study of "innovative sources of finance" and a High Level Panel on Financing for Development was appointed and its recommended was to "consider the potential benefits of an international tax organization" but against the US vetoed the recommendation. A similar proposal was discussed earlier by Vito Tanzi, who offered to establish a World Tax Organization for coordinating international tax policy and fulfill other roles in the global world\textsuperscript{115}. In 2009, a global tax proposal came not from direction of the UN, but from a leading industrial country,

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  \item [\textsuperscript{111}] Schmidt R., \textit{A Feasible Foreign Exchange Transaction Tax} (Ottawa, North –South Institute, 1999).
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when the UK prime minister proposed to impose global tax on financial institutions as a means of recovering from the financial crisis and ensuring future financial stability. The UK prime minister, joined by other important political leaders, actively promoted this proposal on the international arena\textsuperscript{116}.

I argue that my proposed global e-commerce tax to fund global public goods is different and has better chances of succeeding where the previous proposals failed. Above all, the tax base must obviously be a global activity which is best suited to global taxation. No one country can currently tax this global income as a result of which it escapes taxation altogether. The difference between this proposal and the previous one is enormous because international mobile activities that can't be controlled by one country are considered to be good candidates for global taxation\textsuperscript{117}. The global scope of Carbon Tax or Tobin Tax is lower in my view, and more importantly, individual countries can, at theoretically, impose these taxes on an individual basis as distinct from e-commerce tax which can't be imposed by any individual country. Global e-commerce income is therefore a good candidate for serving as the first tax base of supranational taxation. It is also important to notice, that previous proposals didn't reach the supranational level that I am proposing. They proposed international cooperation and coordination but not supranational collection of the tax. Concededly, the Carbon tax and the Tobin Tax had a genuinely global tax base but their collection was given to the national state. In addition, I propose using the tax revenues to fund global public goods. This foundation of supranational taxation was not seriously developed in previous proposals and I think that it could change the way in which countries and individuals think about supra-national taxation. I will elaborate on this point in chapter II of this article. Finally, the world has changed since previous discussions on supranational taxation and the chances of supranational taxation in the new era are better. The world need for financing of global public goods grown dramatically. The stakes are high. Politicians have had to


learn the hard way that they have no choice other than to compromise. This is the contemporary context for my supranational tax proposal and its extensive discussion of its political feasibility especially in chapter III. In any case, at the very least I propose this idea for serious discussion on the academic level, and hopefully at a political level. On the academic level following the intensive discussion of the first pillar of the model in this first chapter, the next chapter will analyze the second pillar – the utilization of global e-commerce tax revenues to finance global public goods.

II. Second Layer: Global Public Goods Finance

A. The Definition of Global Public Goods

Classical economic literature defines public goods as goods that satisfy two economic criteria: First, they are non-rival, in the sense that consumption by one consumer does not reduce the goods available for consumption by other consumers. Second, they are non-excludable, in the sense that it is impossible to exclude a free rider from consuming the goods without payment.\textsuperscript{118} The United Nations Development Program builds on this economic definition as a basis but adds two dimensions to the definition: First, it distinguishes between potential and de facto public goods. De facto public goods are those that meet the economic criteria but also satisfy a political criterion, namely the need for a political decision to consider the goods as public and supply them in that capacity. Second, it adapts the definition to the global scene, and defines global public goods as public goods with benefits that extend to all countries, people, and generations\textsuperscript{119}.


This definition involves three dimensions of publicity, which differentiate between private and public good: Publicity in consumption, in the sense of non-rival and non-excludable consumption of the good; Publicity in utility, in the sense that the public benefits from the good, but the individual utility of each consumer is different. For example, financial stability benefits the whole public, but poor people benefit less than rich people; and publicity in decision-making, in the sense that the political decision to place the good in the public domain is made by the public through its representatives. These three dimensions of publicity were developed and thoroughly analyzed by Kaul and Mendoza, who call them "Triangle of Publicness".¹²⁰

Accordingly, we could distinguish between different types of public goods according to the level of their rival and exclusive features. Pure public good is totally non-rival and non-excludable while Impure public good is partly rival, partly excludable or both. We can also distinguish between different types of global public goods according to the global reach feature. Global Natural Commons, such as the atmosphere or the high seas, are typically rival and nonexclusive; Global man-made commons, such as global networks, international regimes, norms and knowledge, are often non-rival and difficult to exclude; Global policy outcomes or conditions, such as global peace, financial stability and environmental sustainability, have indivisible benefits that form the core of the interdependencies among countries and people and they usually tend to be technically non-excludable and so de facto inclusive and public.¹²¹

B. The Current Regime for the Provision of Global Public Goods

According to the traditional theory of public goods, these goods could and should be provided by the state because private entities are unable to receive payment for providing non-excludable goods and therefore, will not sell and provide these goods.¹²² The free rider problem inherent in public goods precludes the possibility of

¹²¹ See: id., at 78, 100.  
¹²² The classical example of pure public good is the outdoor circus. No market could supply this good for payment. The public authority supplies it and finances the supply through taxes.
market forces generating the provision of public goods, thus necessitating their provision by a public authority.\footnote{See: Paul A. Samuelson, supra note 14; Paul A. Amuelson, Diagrammatic Exposition of A Theory of Public Expenditure, REVIEW OF ECONOMICS AND STATISTICS (1955); Richard Musgrave, supra note 105; J. E. Stiglitz & P. Dasgupta, Differential Taxation, Public Goods, and Economic Efficiency, 38 THE REVIEW OF ECONOMIC STUDIES 151 (1971).}

At the global level, the provision of global public goods faces additional difficulties. In the global scenario, there is no one national state capable of providing all the public goods. In the current reality the free rider problem at the global level is also a free riding of states. No one country is willing to pay for a global public good that benefits other countries that don’t pay for it. Hence, the first question in this regard is who could and should provide global public goods. The simple answer is all countries together, but a collective action problem rises in this regard, thus posing a formidable obstacle upon the provision of global public goods. The second question is what is the optimal provision of global public goods?\footnote{See: Agnar Sandmo, International Aspects of Public Goods Provision in PROVIDING GLOBAL PUBLIC GOODS: MANAGING GLOBALIZATION 112, 114 (Inge Kaul, Pedro Conceicao, Katell Goulven & Ronald Mendoza eds., (Oxford Univ. Press 2003).}

Pedro Conceicao\footnote{See: Pedro Conceicao, Assessing the Provision Status of Global Public Goods in PROVIDING GLOBAL PUBLIC GOODS: MANAGING GLOBALIZATION152, 154 (Inge Kaul, Pedro Conceicao, Katell Goulven & Ronald Mendoza eds., Oxford Univ. Press 2003).} differentiated between two main provision problems: First, \textit{Underuse}: An underused global public good exists where certain players, countries or people are unable to consume it, either in full or in part. Underuse usually results from limited accessibility or the nature of the good which limits its consumption. Second, \textit{Under-provision}: an underprovided good either does not exist or is not fully or adequately provided. \textit{Under-provision} is usually related to the following phenomena: \textit{undersupply}, in which, the good is not provided or is provided partially; \textit{Mal-provision}, in the sense that, the global public good is provided in a distorted way, which generates biases against groups of countries; \textit{Overuse}, in which excessive use of global public good causes its under-provision. For example, the overuse of the atmosphere causes pollution which results in the under-provision of the public good of climate stability.\footnote{id, at 156.}
In terms of these criteria it is clear that global public goods are underprovided. This under-provision status was examined in several studies which analyze and describe the provision profiles of several global public goods. These studies provide a more specific and clearer picture of the provision gap of each global public good and the cost of corrective actions to reduce the gap. Conceicao summarized some of these studies and presented them as clear and interesting appendices to his work. In the present context I wish to present the main findings concerning three global public goods: International Financial Stability; Global Communications network and the Internet and Climate Stability.

*International Financial Stability* is under-provided, given the prevalence of financial crises since the 1970s, and the recent global financial crisis is perhaps the best proof. During the years 1975 until 1998, 158 currency crises, 54 banking crises and 32 twin crises occurred, including the East Asian Financial Crisis (1997-1998), the Russian Federation's 1998 debt crisis, and Brazil's 1999 currency crisis. However, the recent 2007-8 global financial crisis and 2010 Euro financial crisis represent the painful and unfinished saga of under-provision of international financial stability. The cost of financial crises in the years 1975-1998 totaled 8.2 Trillion Dollars including a 15.1% drop in Indonesia GDP per capita in 1998, 6.7% in the Republic of Korea, 9.2 in Malaysia, 10.3 in Thailand; a 30% plunge of Russian Federation GDP in 1998. The 2007-8 Global financial crisis caused a decline of 8% (16 Trillion USD) in the global financial assets; the damage was extensive, with financial assets declining in

127 See: id, at 152, 162.
130 See: Pedro Conceicao, supra note 125, at 152, 163.
nearly every country; the world’s equities depreciated by almost fifty percent, in 2008, declining by $28 trillion in real terms. The 2008 stock market crash was the most severe since the Great Depression. The European crisis in 2008-2010 resulted in a severe decline in GDP in 2009, and the GDP of 27 countries fell at an average rate of 4.3%. The Ireland GDP fell by 7.6%, Lithuania (-14.7%) and Finland GDP declined -8.2% in 2009\textsuperscript{132}. The cost of corrective actions for better provision of international financial stability is significant. Countries have adopted various measures to close the gap and provide \textit{international financial stability}: The International Monetary Fund was established after the Second World War to promote international monetary cooperation and exchange rate stability which partially contributed to international financial stability. But a more important measure was taken in 1999 by the G7 Finance ministers and central bank governors in the founding of the Financial Stability Forum which was replaced in 2009 by the Financial Stability Board\textsuperscript{133} (FSB) with substantial changes in the wake of and in response to the global financial crisis. The FSB is an international institution aimed specifically at improving international financial stability. The FSB "has been established to coordinate at the international level the work of national financial authorities and international standard setting bodies and to develop and promote the implementation of effective regulatory, supervisory and other financial sector policies."\textsuperscript{134} Members of the FSB have agreed to limit their sovereignty by cooperating to improve international financial stability\textsuperscript{135}. They gave a limited mandate\textsuperscript{136} to the FSB to improve the provision of international financial stability as a global public good. Similarly, at the level of the European Union, following the European financial crisis of 2010, the European Financial

\textsuperscript{133} See: www.financialstabilityboard.org.
\textsuperscript{134} http://www.financialstabilityboard.org/about/overview.htm.
\textsuperscript{135} http://www.financialstabilityboard.org/about/mandate.htm: "members of the FSB commit to pursue the maintenance of financial stability, maintain the openness and transparency of the financial sector, implement international financial standards (including the 12 key International Standards and Codes), and agree to undergo periodic peer reviews, using among other evidence IMF/World Bank public Financial Sector Assessment Program reports".
\textsuperscript{136} http://www.financialstabilityboard.org/about/mandate.htm: The mandate of the FSB is to assess vulnerabilities affecting the financial system and identify and oversee action needed to address them; promote co-ordination and information exchange among authorities responsible for financial stability; monitor and advise on market developments and their implications for regulatory policy; advise on and monitor best practice in meeting regulatory standards; undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities, and addressing gaps; set guidelines for and support the establishment of supervisory colleges; manage contingency planning for cross-border crisis management, particularly with respect to systemically important firms; and collaborate with the IMF to conduct Early Warning Exercises.
Stability Facility\textsuperscript{137} (EFSF) was founded (by a decision from 9 May 2010) to preserve financial stability in Europe by providing financial assistance to European states in economic difficulty\textsuperscript{138}.

*The Global Communications network and the Internet* are underused\textsuperscript{139}. More than half of the world's people have never made or received a telephone call and no more than 30\% are currently connected to the Internet. Improving access could benefit all. Each new user of the internet could become a supplier or consumer of electronic commerce, which in turn would enlarge the e-commerce market. The cost of underuse is tremendous. For example, almost half of the difference between Africa's and East Asia exports is caused by Africa's weak communications infrastructure; India stands to more than $22.5 Billion and 650,000 jobs, should it fail to meet massive bandwidth requirements. To close the gap and provide access and use of telephone and internet, prohibitively expensive sums will be required. However, if innovative technologies are used and connectivity provided at a community rather than an individual level, the sums required are likely to be more reasonable and attainable. The benefits of providing this global public good would be immediate and tangible. For example, 10,000 jobs have already been created in Senegal thanks to community tele-centers, and 600,000 jobs emerged in India as a result of cyber kiosks.

*Climate Stability* is obviously under-provided and more seriously is the fact that its under-provision is worsening\textsuperscript{140}. The literature is full of descriptions, data, and analysis and policy proposals on climate change\textsuperscript{141}. The UN Intergovernmental Panel


\textsuperscript{138} The header of its home page states: “our mandate is to safeguard financial stability in the Euro Zone by raising funds in capital markets to finance loans for euro area member states”.

\textsuperscript{139} See: Pedro Conceicao, *supra* note 125, at 152, 168.

\textsuperscript{140} *id.* at 152, 175.

on Climate Change (IPCC) is rich of deep and interesting data on climate change. I would like to bring here just a few records from the IPCC Fourth Assessment Report: Climate Change 2007: "Carbon dioxide is the most important anthropogenic greenhouse gas (see Figure SPM.2). The global atmospheric concentration of carbon dioxide has increased from a pre-industrial value of about 280 PPM to 379 PPM in 2005. The atmospheric concentration of carbon dioxide in 2005 exceeds by far the natural range over the last 650,000 years (180 to 300 PPM) as determined from ice cores. The annual carbon dioxide concentration growth rate was larger during the last 10 years (1995–2005 average: 1.9 PPM per year), than it has been since the beginning of continuous direct atmospheric measurements (1960–2005 average: 1.4 PPM per year) although there is year-to-year variability in growth rates"; "Warming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level"; "Observational evidence from all continents and most oceans shows that many natural systems are being affected by regional climate changes, particularly temperature increases"; "A global assessment of data since 1970 has shown it is likely that anthropogenic warming has had a discernible influence on many physical and biological systems"; "By mid-century, annual average river runoff and water availability are projected to increase by 10-40% at high latitudes and in some wet tropical areas, and decrease by 10-30% over some dry regions at mid-latitudes and in the dry tropics, some of which are presently water-stressed areas. In some places and in particular seasons, changes differ from these annual figures"; In Africa, "By 2020, between 75 million and 250 million people are projected to be exposed to increased water stress due to climate change. If coupled with increased demand, this will adversely affect livelihoods and exacerbate water-related problems"; "Towards the end of the 21st century, projected sea-level rise will affect low-lying coastal areas with large populations. The cost of adaptation could amount to at least 5-10% of Gross Domestic Product (GDP). Mangroves and coral reefs are projected to..."
be further degraded, with additional consequences for fisheries and tourism"; In Europe, "Nearly all European regions are anticipated to be negatively affected by some future impacts of climate change, and these will pose challenges to many economic sectors. Climate change is expected to magnify regional differences in Europe’s natural resources and assets. Negative impacts will include increased risk of inland flash floods, and more frequent coastal flooding and increased erosion (due to storminess and sea-level rise). The great majority of organisms and ecosystems will have difficulty adapting to climate change. Mountainous areas will face glacier retreat, reduced snow cover and winter tourism, and extensive species losses (in some areas up to 60% under high emission scenarios by 2080"; In North America, "Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over-allocated water resources"; The cost of climate change (under-provision of climate stability) is tremendous, including: economic losses, loss of life, changes in quality of life and so on. For example, a global annual damage of 1.5%-2% of World GDP (670$-890 Billion) would result from doubling the concentration of carbon dioxide in the atmosphere in comparison to the pre-industrial level; On the other hand, the costs of corrective actions are also tremendous. For example, a 125$ Billion are required to meet the Kyoto protocol on reduction of dioxide emissions by an average of 5 percent below 1990 levels by 2008-12. This public spending would result in 670-890 Billion Dollars in benefits as a result of avoiding the damages of carbon dioxide emissions. The World Countries took several actions of adaptation to cope with climate change. Here are some examples from the IPCC 4th Annual Report: "There is growing evidence since the IPCC Third Assessment of human activity to adapt to observed and anticipated climate change. For example, climate change is considered in the design of infrastructure projects such as coastal defense in the Maldives and The Netherlands, and the Confederation Bridge in Canada. Other examples include prevention of glacial lake outburst flooding in Nepal, and policies and strategies such as water management in Australia and government responses to heat-waves in, for example, some European countries"; "A range of policies, including those on climate change, energy security, and sustainable development, have been effective in reducing GHG emissions in different sectors and many countries. The scale of such measures, however, has not yet been large enough to counteract the global growth in emissions"; But Much work remains to be done.
In sum, it is clear that global public goods are currently underprovided. While the costs of under-provision are extensive, the costs of corrective actions are likewise huge. The bottom line is that the needs are huge and there are insufficient sources to fulfill them.

C. The Current Financing of Global Public Goods

At the national level, taxes are the main tool for purposes of the allocation and provision of resources for national public goods. The national state coerces its residents or citizens to pay the taxes to fund public goods. In fact, one of the main reasons for establishing the national state is the supply of public goods through tax finance. Taxation also plays a role in distribution, which promotes fairness and social justice. But this goal is primarily realized by way of a social welfare transfer system in social countries.

However, at the global level, there is no world government to coerce countries to pay taxes and the resources needed for all global public goods are enormous. Usually, countries have no incentive to finance global public goods, and have a variety of conflicting interests with respect to the spectrum of global public goods.¹⁴³

Nevertheless, as things stand, national finance is the principal tool for allocating resources for global public goods. But this happens at the national level rather than being internationally coordinated.¹⁴⁴ Almost every country spends locally in creating and providing global public goods, among them the control of communicable diseases, the promotion of human rights, and enhancement of financial stability. Despite the difficulty of estimating precise sums, a rough estimate suggests a worldwide figure of 6$ trillion spent nationally in providing global public goods, while international spending on global public goods ranges from $7.5billion – $24billion. Thus, the ratio between national and international spending on global

public goods ranges between 1:400 and 1:200. National spending occurs when the
country benefit is higher than its cost and the costs are less than continuing inaction.
For example, countries finance research and development to acquire knowledge,
which will benefit the country and its citizen, but will also benefit the global world as
a global public good. In this case, local finance does not negatively affect global
finance incentives. But, in certain other cases, it does. For example, national spending
to reduce the damage from climate change through local adaptations and preventative
acts (building sea walls; changes in the varieties of seeds planted, etc) dulls the
incentive to provide the global public goods. This outcome is inefficient and
especially harmful to developing countries.\textsuperscript{145}

International financing of global public goods is limited and is mainly an
option for industrialized countries. As mentioned earlier, global taxes on currency
transaction (Tobin Tax) and Carbon Emissions (Carbon Tax) were proposed and
discussed in the literature but not implemented. The semi-global tax levied today
takes the form of obligatory contributions to international organizations, such as the
UN, the IMF, and the World Bank, calculated as a proportion of their national
incomes, constitutes one tool of international finance. Another tool is international
regulation which is growing rapidly to provide several global public goods.\textsuperscript{146}
However, both contributions and regulations are mainly instituted and initiated by
industrialized countries motivated by national benefit/interest considerations. It also
bears note, that international financing of global public goods is often disguised as
aid. Almost 30\% of development assistance is spent on purposes related to global
public goods.

Both national and international contributions to financing global public goods
are unable to garner sufficient resources to meet the needs. Putting it bluntly: Global
Public Finance is the most urgent and critical need of the 21\textsuperscript{st} century. It is also clear

\textsuperscript{145} See: Scott Barrett, supra note 143, at 308, 311.
that “financing global public goods requires more than just money, and certainly more than just increased public mobilization and spending at the international level. It also requires ensuring through financial and nonfinancial ways that all concerned actors, public and private, allocate adequate resources to global public goods that promise a high social return”\(^\text{147}\).

**D. New Trends and Sources of Global Public Goods Finance**

In response to the shortage of financing global public goods and the growing needs to provide global public goods, recent years have witnessed the swift development of an interesting and innovative discussion on new sources to finance global public goods. The following seven proposals for new finance to achieve the Millennium Development Goals which require a 50\$ Billion a year were discussed in depth in the book *New Sources of Development* edited by Atkinson:\(^\text{148}\)

First, Global Environmental Taxes (Carbon Tax); Second, Currency Transactions Tax (Tobin Tax); Third, Creation of new special drawing rights; Fourth, International Finance Facility; Fifth, Increased Private Donations for Development; Sixth, Global Lottery or Global Premium Bond; Seventh, Increased remittances from emigrants. In this section I will summarize these proposals in this section, and in the following section, I will add my proposal for a new tax source and compare it with these proposals and make an argument in support of my proposal as a "good" additional source for funding global public goods in general without a specific emphasize on development as did the mentioned study.

*Global Environmental Taxes* are taxes imposed on goods generating environmental externalities, with specific reference to *Carbon Tax* which is levied according to the level of carbon emissions as mentioned earlier. It is argued that this taxation achieves a double dividend because it reduces pollution and collects revenues. It is not the purpose of this article to examine the double dividend argument or all the issues raised by this proposal. Our purpose here is limited to this proposal as a proposal for global tax to collect revenues for global public goods. In this regard, several estimations were given to the expected revenues: Clunies-Ross (2003)

\(^{147}\) See: Inge Kaul, Katell Le Goulven, *supra* note 144, at 329, 335.

estimated that uniform tax at a rate of 21$ per metric ton of carbon would yield $130 billion annually.\(^{149}\) Another study by the OECD estimated the revenues from a carbon tax at $750 billion per year.\(^{150}\) From a revenue point of view, even the lower estimate, would collect 1.2-2.5 times the sum derived from official development assistance as it currently stands. As to the political prospects of the tax, it is viewed as "bleak" according to the common view among economists.\(^{151}\) A more optimistic projection was given to carbon tax in the event of its revenue being dedicated for a specific purpose, such as economic development with a redistributive dimension in favor of the poor people and countries.\(^{152}\)

\textit{Currency Transactions Tax (CTT)} is a tax levied on currency transactions and was first proposed by Tobin\(^{153}\) and is widely known therefore as the Tobin Tax, discussed above. Originally, it was intended as a fiscal tool to enhance the efficacy of national macroeconomic policy and the stability of international monetary system. But, later on, it came to be seen as a revenue raising tax which had the potential to become an important source for financing global public goods.\(^{154}\) As to the potential revenue from Currency Transaction Taxes, several studies gave varying estimations as follows: Frankel (1996) estimated that a CTT at the rate of 0.1% would yield $176 billion on the conditions of the foreign exchange market of 1995\(^{155}\); But Tobin himself gave a lower estimation of $94 billion that might decrease to 50$ billion if we take into account the fact that the tax could reduce the volume of the foreign exchange market. Felix and Sau (1996)\(^{156}\) estimated revenues at around $148 billion if the tax rate were to be set at 0.1% or revenues of $90 billion with a tax rate of 0.05%.


\(^{150}\) See: Cooper, \textit{Toward a real global warming treaty}, 77(2) FOREIGN AFFAIRS , 66-79 (1998).


According to Nissane, "CTT at 2 basis points applied to wholesale transactions would generate annual revenue of about $US 30-35 billion, while CTT at 1 basis point would produce $17-19 billion". Nissane added to his revenue estimation a pessimist perspective as to the political feasibility of the tax. He concluded that "The CTT may be regarded more as a new additional source for development finance, rather than as a possible substitute for (or alternative to) official development assistance (ODA).

Special Drawing Rights (SDR) in their basic form were described and explained clearly by Ernest Aryeetey as follows: "SDR's are promissory notes issued by the IMF to member states on the basis of a quota that is related to their relative strength in the world economy. Members that receive these notes may either hold them or exchange a part of them over time for hard currency, through the Fund itself and through central banks". The original purpose behind the creation of SDR's was to increase international liquidity. So far, only two rounds of SDR's creation have occurred. In 1970, a total SDR of 9.3 Billion was created and it was supplemented in 1981 to a cumulative total of 21.4 billion. Several discussions at the IMF concerning the creation of additional SDR's didn't yield any fruits for several reasons. Recently, prominent public finance scholars proposed and supported the creation of special SDR's for development and global public goods finance. The proponents argue that creations of SDR's would reduce the cost of developing countries in holding reserves with the IMF and would assist in increasing the supply of available funds to meet the Millennium Development Goals (MDG's). On the other hand, the same arguments invoked against regular SDR's were developed and used against special SDR's for development and global public goods. The opponents argue that SDR's might

157 See: Machiko Nissane, supra note 154.
158 id, at 83.
159 id, at 85-86.
162 For example, 18$ Billion could be raised according to Soros if the 1997 SDR's creation proposal took place (see, Soros, supra note 161).
negatively affect international liquidity as a result of flooding the financial markets with excess new liquidity. In addition, they argue that it is unlikely that developed countries will transfer their special SDR's to developing countries for development and global public goods finance. At the end of the day, even today the regular SDR's do not finance global public goods. I would also add and stress that SDR's don't really bring new and additional resources for financing global public goods as taxation. Instead, to my understanding, the S.D.R is an instrument in which developing countries allocate part of their reserves for development and developed countries transfer their reserves as aid for developing countries. According to this understanding, it does not really bring new money for global public goods but substitutes the use of existing money from reserve to finance. This point is particularly important for the purposes of our article and argument which tries to create additional resources by way of global taxation for the funding of global public goods and thus brings new money into the pool.

The International Finance Facility (IFF) was proposed in 2003 by the UK HM Treasury and the UK Department for International Development. The basic idea is to establish an international facility which will collect annual commitments donations from donor countries in addition to revenues from the issuance of bonds in financial markets. These revenues, it is claimed would double the current ODA of $50 billion and could be used for development in developing countries to meet the Millennium Development Goals164 agreed upon by all 192 United Nations Member States and at least 23 international organizations following the Millennium Summit165 in 2000. The IFF advantages and disadvantages have been discussed in the literature.166 To overcome the political difficulty of enforcing commitments to donate, an alternative option was proposed at the Pocantico Conference on Feasible Additional Sources of Finance for Development (2003). It was argued that it might be more fruitful to request the potential donors to issue the relevant volumes of bonds on an individual basis, with the proceeds still to be used under whatever ground rules the donor corporately could agree to follow. The IFF proposal was seen as "promising.
forward-looking and creative.”

With all due respect, my view is totally different. In my mind, the IFF is still substantially the same as the existing aid system, the only difference being an obligatory doubling of the aid.

*Private Donations* could be a source for funding global public goods. Philanthropy is growing and substantial funds are being given. However, the data shows that private donations are usually made for national organizations rather than international ones. The share of private donations to international organizations for global public goods is limited. The leading examples are a One Billion Dollar donation by Ted Turner for the UN Foundation; annual private donations to UN agencies such as UNICEF. To increase private donations for global public goods, several measures have been discussed, but as yet, the revenue potential is still limited in comparison to the needs and in comparison to other possible sources of funding discussed in this section.

*Global Lottery* as a source for funding development have circulated since the 1970s and discussed seriously in recent years. A global lottery could be conducted in two forms: Either by national lotteries that would run the lottery and transfer the revenues to a global entity; or by global organization that would run the global lottery and spent the revenues to fund global public goods. In the second form, The World Lottery Association could be a good global candidate to manage a global lottery. As to the revenue potential of global lottery, it was estimated in the year 2001 at the sum of $6.2 billion based on the assumption that global lottery would take 10% of the 2001 global lottery gross profits. Addion and Chowdhury proposed adding a *Global Premium Bond* modeled on the successful scheme of the UK premium bond as complementary funding source for the global lottery. They add that a global premium bond would have to be run on global level by a global institution. More importantly,

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167 *id.*


170 See: *id.* at 132, 133.


172 See: *id.* at 157, 165.

173 See *id.* This compares to 59.5$ Billion ODA in 2001 and 38.3$ Billion aid grants.

174 See: supra note 171.
they emphasize that this *Global Premium Bond* is a debt instrument because it is meant to repay. As such, the bond revenues could be used as development loans rather than grants.

*Remittances by Emigrants* contribute substantially to development in the recipient developing countries. Remittances are a growing source of foreign exchange, they increase savings and provide a source for capital formation, all of which jointly promote economic growth in the developing recipient countries. Hence, the economic effects of remittances produce development oriented scenarios. This contribution to development could be further enhanced by increasing competition in the international markets for remittances. Currently, the market is controlled by a few companies that charge very high fees, substantially above the costs, causing a excessive deadweight losses. Facilitating competition and reducing fees by just 5% could increase remittances by a few billion. In any case, "Remittances are currently the second most important source of development finance at the global level after FDI."  

Summing up, several public finance tools are being discussed to meet the needs of the global community. However, the discussion is focusing on the methods of realizing a development level that would accommodate the Millennium Development Goals rather than a promotion of a general conception concerning how to create and design finance resources for global public goods. It also bears note that that most of the existing proposals build on the existing system of development assistance and supplement it with funds gained from he same kind of assistance (The IFF; Private Donations; SDR's). Concededly, a global lottery Lottery or global premium bonds are different in this regard and they really bring new money into the game. Global Taxation on carbon emissions or currency transactions brings also new money into the pool for the global need. As mentioned my proposal is for a new global e-commerce tax to fund global public goods. I have argued in previous section, from tax perspective, why global e-commerce tax is a "good tax" that has good

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176 See: id, at 177, 197.
reasons to succeed where previous global taxes didn't. In the next section, I will argue that a global e-commerce tax is a "good" new source for financing global public goods in comparison to other sources and it could and should be added as a significant tool in financing global public goods.

**E. Global E-commerce Tax as "Good" New Source of Finance**

The argument is that global e-commerce tax is a good new source for financing global public goods. First of all, this tax introduces new money into the overall tax base. In comparison to most of the tools discussed, which transfer existing resources from one use to another, the GET adds resources and revenues (as do the other fiscal measures of Carbon Tax & Tobin Tax). More importantly, the GET revenues derive from an activity that should be taxed, just as any other income, but which currently escapes taxation as result of technical difficulties related to the structure and nature of the Internet, political obstacles related to international cooperation. Therefore, under these circumstances, the GET revenues are not coming from the budget or tax revenues of any particular country. The GET revenues originate in the e-commerce industry which is currently a tax free industry.

In addition, the tax base is a genuinely global activity which exploits global public resources such as the global communication network. It is only 'natural' that revenues of a tax on this base be allocated for the funding of global public goods. This finance allocation is justified from an equity perspective. It should be seen as a payment for using global public goods. This would also resolve the unsolved problem of distributing global e-commerce tax pie between the countries, because no one country would receive the revenues, but the global world as a whole would receive the benefit of the genuinely global commerce. To some extent, this resource for funding global public goods involves a dimension of distributive justice, because the e-commerce industry is currently located in developed countries. Therefore, using the tax revenues to fund global public goods might reduce the inter-nation gaps and advance a policy of inter-nation distributive justice. This policy would also benefit developed countries since the e-commerce industry would be enlarged as a result of funding global public goods in the developing world. In sum, this finance tool is good
because it would produce more than just a double dividend and could advance welfare in the developing world, the developed world and globally.

Furthermore, this financial tool is good because it is not just another, albeit new way of providing aid assistance. It is manifestly not a system predicted on assistance, but rather one which is based on a generally and genuine concern for global public goods finance instead of being limited to development which has thus far been the central and almost exclusive preoccupation of existing literature and finance resources. The fact that this finance tool is governed by a global institution which allocates the resources on global bases would streamline the use of the finance resources.

As to the revenue potential of global e-commerce tax, it looks promising despite the difficulties of measuring and estimating, which are the result of the limited global data on the market. Based on the existing data on e-commerce, the B2C e-commerce market in 2011 is anticipated as reaching the sum of about $700 billion, and taking into account 15% as the share of cross border e-commerce approximately, I reach a cross border e-commerce market of about $100 billion. If I take a net profit rate of 20% and a tax of 15%, I arrive at the figure of $3 billion in tax revenues. This might sound a small figure in global terms. But, if we take into account B2B e-commerce, and more importantly, if we look to the future and the long run, this sum will be much higher in the foreseeable future. Therefore, the potential of the future revenues is the issue here rather than the expected current revenues.

Based on all of the above, I argue that global e-commerce tax revenues should be reigned in as a source for funding global public goods in addition to other sources. There is no compelling reason to replace existing resources, and they can certainly coexist. Nonetheless, we would benefit from a prioritizing of these sources (including the GET) in the interests of constructing a wiser and more efficient global public finance regime. In this regard, I see a big advantage of financing through the GET over other resources, given that that e-commerce is growing fast and will continue to grow even faster. Therefore, the revenue potential will grow and could become a real and substantial resource for the provision of global public goods needs in the global 21st century. In addition, despite the obstacles, I think that wide political consensus
could be achieved in support of a global tax to fund global public goods. I will develop this argument in the coming chapter.

III. Third Layer: Political Feasibility

It is not difficult to expect that the main argument against the GET will be that it is an unrealistic model that will be left on the shelf as an ideal and optimistic proposal, one that will fail to generate positive discussion, much less implementation. I wish to refute this rather typical argument. I think that a global e-commerce tax for funding global public goods is indeed a project of formidable dimensions but it is nonetheless a viable one. In this chapter I will enlist political theories to argue in this section that governments have good reasons for accepting the GET and they might accept it fully or partially in the short or long run.

A. Realist Theory and the Political Feasibility of Global E-commerce Tax

The Realist theory assumes that states are perpetually engaged in an international struggle for survival. Power and interests are the key factors in state relations. States use power to achieve their interests in the international field through self help in an anarchical world that lacks normative values. Neo-Realism attributes this state of war in the international system to the structure of this system rather than to its nature. Neo-Realism emphasizes that state power includes military power as well as all other sources of power, such as, economy, politics and so on.

Upon these assumptions of realism, it was argued that there is no room for international cooperation. The classical realist argument adopted a mercantilist

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179 See: Kenneth Waltz, Theory of International Politics (1979); Steven Lamy, supra note 21, at 182, 182-199.
tradition that didn't recognize international cooperation.\textsuperscript{180} In the words of Joseph Grieco put it:

“For realists, international anarchy fosters competition and conflict among states and inhibits their willingness to cooperate even when they share common interests. Realist theory also argues that international institutions are unable to mitigate anarchy’s constraining effects on inter-state cooperation. Realism, then, presents a pessimistic analysis of the prospects for international cooperation and of the capabilities of international institutions”\textsuperscript{181}.

However, international cooperation does exist and institutions such as the International Monetary Fund (IMF) and the World Bank have indeed evolved, seemingly in defiance of the realists’ pessimistic prognosis. Enlisting the \textit{Hegemonic Stability Theory}\textsuperscript{182} the realists argue that these institutions emerged as institutions to serve the interests of the USA as a hegemonic power after World War II. But a different and more convincing reasoning was later furnished by Robert Koehane in his fascinating book \textit{AFTER Hegemony}.\textsuperscript{183} \textit{AFTER Hegemony} argues that states cooperate when cooperation serves their interests and maximizes their benefits in comparison to non cooperation.\textsuperscript{184} In this context, international institutions play a vital role in assuring maximization of the benefits.\textsuperscript{185} In the author’s words:


\textsuperscript{181} Joseph Grieco, supra note 18.


\textsuperscript{183} ROBERT KEOHANE, \textit{AFTER Hegemony} (Princeton Univ. Press 1985).


“… Cooperation can under some conditions develop on the basis of complementary interests, and that institutions, broadly defined, affect the patterns of cooperation that emerge.

…

Even egoistic actors may agree to accept obligations that preclude making calculations about advantage in particular situations, if they believe that doing so will have better consequences in the long run than failure to accept any rules or acceptance of any other politically feasible set of rules.”

Modern realists recognize international cooperation but think that it is narrow and shallow; in their eyes, even when countries obligate themselves to cooperate, such obligations are limited because they can withdraw at any time if it advances their interests. Cooperating countries do not perceive cooperation obligations as binding.

My argument is that states, as egoistic actors, have good reasons to cooperate deeply and intensively and even compromise their sovereignty by accepting the GET. In the current state of affairs, states are facing the Prisoners Dilemma, in which, their optimal interest is to tax e-commerce income but they can't do it because if one state taxes but the neighboring country don't tax the income, the e-commerce will naturally move into the neighboring country, and the first country will loose more than it would have lost by defacto non taxation. The outcome of this dilemma is non taxation of cross border e-commerce income. I am aware of the counter argument - that a similar dilemma exists in the case of tax shelters and tax competition in general and other cases but that it didn't lead to global tax as I am proposing and expecting. This is true but the dilemma in the case of e-commerce is much more severe, for several reasons: First, The mobility of e-commerce business is much higher than in traditional businesses. Second, the global and virtual features of e-commerce business make it very difficult to any one state to tax e-commerce income. Third, any taxation by one country has spillover effects on the other countries. Taken all together it means that the dilemma is very severe in the case of e-commerce taxation. Thus, it provides better reasons for increased international cooperation.

186 Robert Keohane, supra note 183, at 9, 13.
The cooperative strategy is much more beneficial to the governments than the current state of arts. In cooperation, governments don't disclaim tax revenues because they are unable to collect these revenues in the current situation. In cooperation, governments improve the possibility to impose any tax on cross border e-commerce income. By accepting the GET governments gain some clear benefits: First, the taxation of cross border e-commerce income that wasn't actually taxed before; Second, more neutrality between e-commerce income and traditional income; Third, the supply and finance of global Public Goods. Fourth, possible reduction of national spending and financing of global Public Goods. Fifth, contribution to better global world is also a benefit to egoistic governments in my view even according to real theory.

An analysis of the interests and stakes of the leading countries as they emerge as a result of the internal influence of different stakeholders, suggests that the USA might oppose the GET as a result of the influence of its e-commerce corporations which dominate the global e-commerce market. These corporations, being American corporations, are paying USA taxes on their cross border e-commerce income. However, they use tax planning strategies and subsidiaries in low tax jurisdictions to reduce their tax liability. The global e-commerce tax might increase their tax burden and they could lobby in the USA government and politicians to oppose the tax. Their stronger concern might be the negative influence of the tax on their business growth. However, these corporations also need to spend significant resources on tax planning to reduce their tax liability and are still exposed to tax risk because source countries are arguing and acting to tax these corporations for their cross border sales to customers within the territory of the source countries. This tax exposure is very high. Settling this risk through the payment of Global e-commerce tax might be a wiser strategy. Therefore, it is not clear that American e-commerce corporations would necessarily urge their government to oppose the GET. Furthermore, other stakeholders inside the USA might push their government to accept the GET. Global infrastructure corporations could benefit from increased spending on global public goods and support the model. Environmental groups have a clear interest in increasing global public goods supply and finance and would lobby in the USA politics to push it in this direction. Human rights organizations are also an important stakeholder that arguably would support global e-commerce tax to
fund global public goods. In sum, the picture in the USA is complex and it is
difficult to anticipate the U.S.A. position. But, we can at least say that it is by no
means clear that the USA would strongly oppose the model. The USA might even
agree to it.

The picture seems is even clearer in Europe. European e-commerce
corporations sell mainly to Europeans and have less of a global reach than the
American e-commerce corporations. In addition, Europeans consume cross border
e-commerce from global corporations more than the Americans. Therefore, it seems
that Europe would have a greater interest in accepting the GET. Moreover, the
Europeans - countries and citizens - seems to care more about global justice and
global public goods and their powerful activists in these fields could and would urge
their governments to join an international treaty that advances these interests and
values. Support can also be expected to come from developing countries as they
would gain a share of the international tax pie on cross border e-commerce income
and would also benefit from joining the Global Fund and from spending the tax
revenues to fund global public goods.

In conclusion, despite the many difficulties and obstacles, there is a light at the
end of the tunnel that illuminates the darkness of international politic.

B. Liberal Theory and the Political Feasibility of Global E-commerce Tax

The Liberal Theory puts human liberty in the center and sees the role of states
as the promotion of human liberty. Welfare is one of the foundations for the
promotion of human liberty and states ought to work towards the maximization of
welfare. In their interaction in the international system, according to liberal theory,
states are governed and motivated by values and international public law despite the
existing anarchy in the international system. Libertarians recognize the existence of
anarchy in the international arena but normatively they view it negatively and try to
find solutions to the reign of anarchy.\textsuperscript{187} Liberal internationalism argues that
international law is the way to handle anarchy; liberal institutionalism argues that

\textsuperscript{187} Tim Dunne, \textit{supra} note 20; Andrew Moravcsik, \textit{supra} note 20; Anne Marie Slaughter Burley, \textit{supra}
international regimes and institutions are the means of overcoming anarchy; liberal idealism argues for the establishment of global government to abolish anarchy altogether.

Modern liberalism reformulated liberalism as a theory rather than an ideology. The core assumptions of the reformulated liberalism are as follows:\footnote{See: Andrew Moravesik, *supra* note 20, at 513-553.} the fundamental actors in international politics are individuals and private groups, who are on the average rational and risk-averse and who organize exchange and collective action to promote differentiated interests under constraints imposed by material scarcity, conflicting values, and variations in societal influence; states represent a subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics; the configuration of interdependent state preferences determines state behavior. Neo-Liberal Internationalism emphasizes the importance of international law in containing and restraining anarchy and in establishing a normative order in the international field. Neo-Liberal Institutionalism emphasizes the importance of international regimes and institutions especially in the era of globalization as a tool for countering anarchy and for creating orderly institutions I in the international field. They view institutions as "the mediator and the means for achieving co-operation among actors in the system"\footnote{Steven Lamy, *supra* note 21, at 182, 189-190.}. Neo-Liberal Idealism emphasizes democracy and fairness in international relations and institutions as the main tool for confronting the extensive challenges of globalization in an anarchical world and for the advancement of global peace and welfare\footnote{David Held, *supra* note 22.}.

Global institutions are seen in liberal theory as essential pillar to keep a democratic world. As David Held\footnote{id, at 237-238.} put it:

“… A political basis exists upon which to build a more systematic democratic future. This future has to be conceived in cosmopolitan terms – a new institutional complex with global scope, given shape and form by reference to a basic democratic law, which
takes on the character of government to the extent and only to the extent, that it promulgates implements and enforces this law. But however its institutions are precisely envisaged, it is a future built upon the recognition that democracy within a single community and democratic relations among communities deeply interconnected, and that new organizational and legal mechanisms must be established if democracy is to survive and prosper.\[192\]

In the case of cross border e-commerce income taxation, no one country can independently tax the income efficiently and fairly, for several reasons. First, each country faces a prisoner's dilemma situation which leads to non taxation in order to keep the income in the country instead of moving to a competing neighboring country. Second, the income is global in its nature and disregards country oriented borders which makes taxation of the income by one country very difficult and unjustifiable. Third, any taxation by one country has spillover effects on other countries which makes the individual country taxation unfair and liable to prompt counter responses from other countries. For all these reasons, cooperation between the countries is needed to tax global e-commerce income to gain tax revenues.\[193\]

The GET model is one that enables and provides a very high level of cooperation and it seems that the lower level of cooperation would not suffice for purposes as taxing global e-commerce income. Given that the GET model includes spending the tax revenues in the funding of global public goods, the liberal theory would support it as a model that advances human liberty and welfare on a global basis rather than for the benefit of any particular county. The GET will serve the interests of all the countries in contrast to the current situation and will benefit the humanity as such with no change in the relative welfare and power between the countries. Therefore, liberal theory can be expected to support the model.\[194\]


\[193\] Richard Doernberg et al, supra note 32, at 593; Arthur Cockfield, supra note 102, at 133, 165; Stephen Kobrin & Elizabeth Wagner, supra note 12.

\[194\] I find support to my argument that the GET is positively feasible, in the existing world politics, in the writing of other scholars and institutions who proposed to establish International Tax Organization. see REPORT OF THE HIGH-LEVEL PANEL ON FINANCING FOR DEVELOPMENT (2001), available at
Based on the concepts and principles of modern liberalism, individuals, private groups and several domestic actors would urge their liberal governments to give priority to the establishment of a fair and efficient global taxation on global e-commerce income for the funding of global public goods and take measures towards its implementation in the international system. Among these groups we could count: environmentalists; human rights activists; global justice movements; corporations from different industries including the e-commerce industry; and several other groups who would find that the model serves and advances their interests, values and preferences.

In conclusion, the world has changed dramatically in the era of globalization and e-commerce. The international tax regime on e-commerce has no choice but to keep up with the trends. Countries must accept these fundamental changes to retain their relevance in taxing global income and their ability to fund the global public goods in the era of globalization. I totally agree with Roland Paris who wrote:

“The rise of electronic commerce, I have argued, will likely spur the movement toward the globalization of taxation—a development that would represent a historic shift in the balance of political authority between territorial states and the international state. Apart from national defense, no activity is more central to the idea of the modern state than that of taxation. Scholars from the 16th century onward have treated taxation as a special prerogative and occupation of the state. Jean Bodin, who is widely regarded as the first theorist of the modern state, described taxation as one of the ‘unique attributes of sovereign power’” (quoted in Wolfe, 1968:268). In the words of sociologist Fritz Karl Mann, “taxation is the inseparable
twin of the modern state” (Mann, 1943:225). Devolution of de facto authority over taxation from the exclusive domain of the territorial state to a transnational tax regime would be an important substantive and symbolic development in the gradual internationalization of the state.

Political opposition to the globalization of taxation is, as we have noted, certainly possible. In the end, however, changes in the technology, mobility, and scope of global commerce will likely leave states with little choice but to increase the coordination and harmonization of their respective tax policies. The non territorial character of electronic commerce poses a particular challenge to existing systems of taxation and to the minimalist international tax regime whose principal features were established at the end of World War I—a challenge that will soon have to be addressed. Splendid isolation is rapidly becoming an untenable stance for states in the realm of taxation. And to the extent that de facto taxing authority migrates upward from the state to a new global tax arrangement, the emerging international state will have gained an important additional function. Schumpeter’s thesis— that material conditions, including changes in technology and economics, influence the evolution of political forms—seems even more relevant today than it was in 1918.”

**C. State Sovereignty Concerns**

It is obvious that concerns of state sovereignty stand behind the hesitation of states to accept global e-commerce tax and question the political feasibility of the tax. However, in this section, I will argue that state sovereignty concerns are exaggerated and outdated and should be evaluated in terms of their modern understanding when enlisted as arguments against the feasibility of the tax. In my view, taking sovereignty seriously actually supports the feasibility of a global e-commerce tax to fund global public Goods.

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First, Sovereignty is not a natural concept. It was developed during the legal history, in special social and economical circumstances to serve some purposes. The concept, as law in general, is very linked to time, society, economy, world order and other factors. All these have changed dramatically over the years and so changed the concept of sovereignty to fulfill its purpose\textsuperscript{196}. Sovereignty has been transformed and redefined to meet the new world order of the 21\textsuperscript{st} century. One view, argues that the new sovereignty is fulfilled through participation in decision making process within an international organization. To use the words of Chayes & Chayes: "Sovereignty no longer consists in the freedom of states to act independently, in their perceived self-interest, but in membership in good standing in regimes that make up the substance of international life"\textsuperscript{197}. According to this meaning, the proposed Global E-commerce Tax balances sovereignty concerns appropriately, because the establishment of the model is totally negotiable and requires the consent of the states, and the main decisions on the tax and the spending of the revenues are taken by the states themselves within the Global Fund as an international institution. Another view, transforms sovereignty to mean "global sovereignty". To quote the source: "... the development of a global economy – rather than an international economy – and the associated reorganization of social power, has transformed this essentially territorial model of sovereignty"\textsuperscript{198}. The Global E-commerce Tax does not infringe this meaning of sovereignty. To the contrary, it strengthens sovereignty in its global sense.

Second, intensive scholarship has been devoted to analysis of the globalization process and the global village in which we are living in these days. The intensive relations and linkage between countries has changed the world we once knew. In the new world, the ability of one nation state to unilaterally determine the rules has seriously declined. The ability of the nation state to impose an income tax on cross border e-commerce income is very limited, for the reasons outlined above. . This decline, as such, is the real threat to the nation state sovereignty. When the nation state looses its ability to tax, it looses one of the defining aspects of its core existence.

\textsuperscript{196} David Held, Law of States, Law of Peoples: Three Models of Sovereignty, 8 LEGAL THEORY 1, 2 (2002); Paul Berman, supra note 8, at 311, 441-490; Kanishka Jayasuriya, supra note 24.
\textsuperscript{197} Abram Chayes & Antonia HANDLER Chayes, supra note 23. See also: Anne Marie Slaughter Burley, supra note 23.
\textsuperscript{198} Kanishka Jayasuriya, supra note 24, at 425, 432-433.
and sovereignty. My proposal for global e-commerce tax is an attempt to arrest this erosion of state sovereignty by restoring the states' ability to tax. Nation states will be able to exercise this ability anew by way of the global Fund as an international organization created by national states to serve their common interest. In my view, when we compare the current situation in which the individual nation states are unable to tax cross border e-commerce income to the proposed model in which they agree to cooperate within a global fund which will enable full taxation of cross border e-commerce income and the spending of the revenues gained in the service of a common interest, I think that the proposed change strengthens sovereignty rather than weakens it. This way, I argue, states are reasserting their sovereignty in a global world. I totally agree that: """"Given a world in which largely irrevocable changes in the global economy have destroyed the ability of states to prosper under autarchy, and in which states must achieve social objectives to be legitimate, international institutions are now the primary means by which states may prosper and achieve social objectives. Consequently, they are the primary means by which states may reassert, or express their sovereignty. Institutions actively aid states in this reassertion of sovereignty. This is a fundamentally transformational argument: it rests on the claim that both the international system and state-society relations were transformed by events of the twentieth century. As a result, the nature of sovereignty itself is said to be transformed.""""

Third, public finance concerns played a central role in the formation of the nation state and have influenced the behavior of the nation state throughout history. The modern state was originated, survived and flourished as an effective tool to collect taxes and spend them on public goods. Public finance concerns, mainly economic pressures and crisis, the state ability to tax and the state ability to finance public goods, transformed political order and governance structures throughout history. The advent of global e-commerce brought new economic pressures in its wake, destroyed the ability of the state to tax e-commerce, and depleted its funds available for public spending. History tells us that developments of this kind are the


harbingers of political change. I am not arguing that these pressures will definitely cause immediate dramatic change and a totally new world order. Nonetheless, I think that there is a consensus that they stimulate and certainly contribute to political change. I also think that the pressure for political change grow in tandem with the pressures generated by the ubiquity of e-commerce and growing share of total commerce. As a result I surmise that in the not so distant future sovereign states should and will start negotiating a global e-commerce tax to fund global public goods.

In sum, sovereignty matters. I am not calling for the end of sovereignty as others did. On the positive level, rather than the normative one, I am a realistic who takes sovereignty seriously as a concern of the nation states. But I am arguing that sovereignty has changed in the global village as happened in the past following other major economic upheavals. The new sovereignty compels international cooperation and participation in crystallizing the new world order to meet the new challenges. Negotiating and designing a global e-commerce Tax to Fund global public goods will enable taxation of e-commerce income to stop the diminishing ability of the individual nation's states to tax this income. On paper this seems like a proportionate diminishing and compromise of sovereignty but substantively it means the promotion of sovereignty on the 21st century.

D. Supporting Empirical Case Studies

I have presented theoretical and analytical basis to my argument that governments have good reasons for accepting and implementing the GET model and that sooner or later they will reach the same conclusion. I would now like to add empirical support for this argument. I will show comparable cases in which governments cooperated and seemingly traded their sovereignty even in tax matters to achieve other interests and values. The first case concerns the recent proposals of G20 countries and leaders and scholars to impose global taxes on financial institutions to achieve the global public good of financial stability. The second case is the growing trend towards cooperation on global tax issues which constitutes a clear change to the traditional attitude. The third case will address the cooperation between increasing

numbers of countries who have sacrificed a certain measure of their sovereignty in order to establish active and competent international institutions for dealing with global economic issues and have transferred important authorities to these institutions. The fourth case will be the cooperation between most of the governments of the states in the United States of America in imposing sales and use taxes on e-commerce. In this cooperation, state governments surrendered their tax sovereignty in the form of the Streamlined Sales Tax Project in order to enable them to impose a good sale and use tax on e-commerce to cope with the decline in revenues currently and in the future.

1. Case I: Global Tax on Financial Institutions and Other Global Taxes

The EU leaders supported his call, and the UK and the EU subsequently adopted a number of measures to advance the proposal.

At the end of the day, the G20 asked the IMF to submit suggestions on how the financial sector could make a fair and substantial contribution toward paying for any burden associated with government interventions to rejuvenate the banking system. In its final report, “A Fair and Substantial Contribution by the Financial Sector”, submitted for discussion during the G20 meeting in Toronto on June 2010, the IMF proposed to levy a “Financial Stability Contribution” (FSC) and “Financial Activities Tax” (FAT) on financial institutions to recover the fiscal costs of bailing out banks during the crisis, and to create a reserve fund for similar future situations; and finally - to limit volatility and speculative activities in financial transactions. In my view, the FSC, in substance, is also a tax, regardless of its title as a contribution or tax. The IMF wrote explicitly in the report: "The design of levies, and funds if established, should be guided by an internationally accepted set of principles, especially with a view to facilitating the resolution of cross-border institutions. These principles might cover the determination of the target size of the fund (if established), the level of annual levies and the base on which they are imposed, the treatment of foreign branches and foreign subsidiaries, and the treatment

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of different classes of creditors in case of resolution. This would facilitate cooperation across countries and help ensure a level playing field, including by avoiding double charging/taxation. Most importantly, it could facilitate resolution of cross-border institutions. The creation of a multi-country (e.g., pan-European) fund can be envisaged and is almost a necessity for closely integrated financial markets. It would provide a large impetus to addressing presently unresolved legal and operational issues—such as differing national insolvency regimes, lack of common triggers for intervention actions and approaches to supervision, and varying deposit guarantee schemes across countries."

This case strengthens my argument that the world has changed and politicians are now prepared to forego elements of state sovereignty in the interests of effectively containing and staving off global threats. 10 years ago a proposal for a global tax coming from the UK would have been considered inconceivable..

2. Case II: Growing Trends of Cooperation on Global Tax Issues

Taxation has been traditionally conceived as a core matter of the state and each country has full powers to determine its own tax laws and rules. No limitations have been imposed on sovereign countries in exercising their taxing authorities, whether by other countries, international rules or institutions. International cooperation in tax matters has thus far been limited in comparison to cooperation on trade or monetary or other economic issues.

However, over the last decade this scene has changed. Countries no longer enjoy absolute sovereignty in fixing their tax laws and rules: Globalization has increased tax competition which in turn has limited the tax autonomy of sovereign countries. Tax havens have curtailed the taxation powers of countries. E-commerce has decreased the aggregate tax pie of all the countries; Constitutional norms too now limit countries in their ability to set their own tax laws. Contemporary international norms restrict the tax jurisdiction of countries.

204 id, Section 25, at 15-16.
As a result, we are witness to a growing trend of cooperation on global tax issues. Indirect taxes, customs and tariffs have been removed to advance international trade. The last decade has witnessed a proliferation of bilateral tax treaties. Multilateral tax treaties are being discussed and free tax zones are being established, reflecting increased cooperation between countries. There is a steady increase in exchange of information. And tax harmonization processes are being discussed and implemented.\textsuperscript{206} "Major Theoretical developments in tax policy are now arising not through solely national political and legal processes but through the interactions of non governmental actors in transnational settings."\textsuperscript{207}

One clear example of intensive international cooperation on global tax matters is the cooperation in the battle against harmful tax competition. Countries have agreed in this regard to set international rules and frameworks that limit their taxing powers. Countries respect these international norms and have changed their tax laws in compliance with these norms and continue to consider these in their consideration of each and every new piece of tax legislation. As a matter of fact, cooperative efforts have even been made to coordinate national tax rates.

It is also important to notice that in this process the OECD\textsuperscript{208} has played a central role as a supra-national institution. Diane Ring discussed the role of the OECD in competing Harmful Tax Competition and reached somewhat more more conservative conclusions on its role and constraints.\textsuperscript{209} As the story of tax competition revealed, according to Ring, the OECD played an important role and succeeded in achieving some of its goals but at the same time it limited its project and original


\textsuperscript{208} The OECD is an international institution established in 1961 as the successor of the Organization for European Economic Cooperation (OEEC) which was established in 1947 to run the Marshall Plan for reconstruction of Europe following World War II. The OECD today includes 34 countries and aims to "promote policies that will improve the economic and social well-being of people around the world" (http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1_1_1,00.html). The OECD Secretariat collects and analyses data, after which committees discuss policy regarding this information, the Council makes decisions, and then governments implement recommendations.

\textsuperscript{209} \textit{See}: Diane Ring, \textit{supra} note 12, at 649.
initiative due to U.S. opposition and opposing actions of other international organizations that were concerned about an over incursion of the countries tax sovereignty.

The OECD also played a central role in discussions international cooperation on e-commerce taxation issues. Arthur Cockfield conducted a detailed analysis of the OECD role in e-commerce taxation and concluded that "the OECD is increasingly acting as an informal (lower case) world tax organization in contrast to the sometimes touted need for a formal (upper case) World Tax Organization that could impose binding tax rules on participating nations."\(^{210}\)

In sum, I view this growing trend of cooperation in global tax issues as indicative of further and deeper international cooperation on global tax issues. In that sense it adds further clout to my argument on the political feasibility of global e-commerce tax. It also enhances the viability of the global fund, given the key role of OECD on the determination of international tax norms. This becomes even clearer in the next case which highlights the growing supranational role of international institutions on global economic issues.

3. Case III: Supranational Role of International Institutions on Global Economic Issues

My third case study supporting the the argument for the political feasibility of a global e-commerce tax is the clear development of international and supranational\(^{211}\) institutions charged with administration of global economic issues. These institutions are gradually assuming the far reaching powers of states and are replacing the territorial state in issues that used to be within the sovereignty of the territorial state. In this context I will present and analyze, the World Trade Organization (WTO) and The International Monetary Fund (IMF) as international organizations that establish supra-national rules on trade and monetary policy and limit territorial state authority and sovereignty, in the same way as noted above regarding the OECD’s role

\(^{210}\) Arthur Cockfield, supra note 12, at 136, 168.

on tax matters. This fundamental change in the international world order and the gradual edging towards a supra-national order in the era of globalization clearly buttresses my argument in favor of the feasibility of a global e-commerce tax. A Global e-commerce tax to fund global public goods is part of the emergence of global world order and the growing scope of global governance.

The World Trade Organization (WTO): The WTO came into being on 1 January 1995, but it represents a trading system which is actually half a century older. As of 1948 it was the General Agreement on Tariffs and Trade (GATT) that established the rules for the system. As presented quite simply on the WTO website, "The WTO deals with the rules of trade between nations at a global or near-global level". In the heart of the system there are the WTO agreements negotiated and signed by 153 countries, providing the legal ground rules for international commerce, which obligate governments to maintain their trade policies within agreed limits. In addition, The WTO constitutes a global or semi global forum for negotiating trade issues between the member states to continue the development of the global trade system. Furthermore, the WTO established and runs a dispute settlement system between the countries on international trade issues. But WTO went much far further than just trade issues. The WTO also instituted rules on the protection of intellectual property, on health and on safety measures. The WTO influences human rights, labor law and competition law.

With burgeoning and ever expanding role of the WTO it has become a central international actor with tremendous powers that limit state action and policy making. Relevant writings have dealt extensively with the growing powers of the WTO and the Seattle riots of 1999 are just one example of the criticism that has been leveled against the far reaching powers of the WTO. As Jeffry Atik Wrote: "The WTO is
feared as a super-government, driven by the logic of free trade to override national preferences. Perhaps the most frightening aspect of the WTO is its facelessness. The absence of identifiable personalities in the WTO invites the projection of our worst fears about globalization. … Although the WTO is still of recent origin, it yields considerable (and unexpected) power. The substantive terms of its agreements limit the scope of action for national regulation, stripping power away from states. Its enhanced dispute resolution mimics a form of hierarchical supremacy: “WTO rules act as a super-constitutional text with a force superior to ordinary national enactments. Once the WTO Dispute Settlement Body finds that a national measure is inconsistent with a WTO obligation, the WTO member is expected to bring its law into conformity. Although national law does not automatically melt away like inconsistent state law in the United States, the mark of WTO supremacy is apparent: national law is expected to give way.”

The International Monetary Fund (IMF); The IMF was established in 1945 following World War II, to rebuild and oversee the International Monetary System which collapsed during the 1930's Crisis. The IMF promotes international monetary cooperation and exchange rate stability; it facilitates the balanced growth of international trade, and provides resources to help members experiencing balance of payments difficulties or to who require assistance in poverty reduction. The IMF currently has a global membership of nearly 187 countries. Upon joining, each IMF member of the IMF is assigned a quota, based broadly on its relative size in the world economy.

The IMF role has developed dramatically during the years. It is not the aim of this section to describe the IMF in detail, but to rather to outline and emphasize its current role as a global institution that sets the rules and designs monetary policy on a supra national basis that limits nation state policy making in the monetary field. Today, the IMF role is influential to the extent of preventing any member state from pursuing its own monetary policy, independently from the IMF. In addition, the IMF


216 *See: The International Monetary Fund, [www.imf.org](http://www.imf.org).*
wields tremendous power in setting loan conditions. A state requiring an IMF loan must comply with all the conditions stipulated for receiving the loan. In the past, these conditions generally related to the macroeconomic running of the country, but of late they are gradually touching more and more of the countries’ microeconomic issues, to the extent of actually intervening in its legislation. This is especially true in relation to countries that suffered a severe financial crisis and require the assistance of the IMF, as was the case in Argentina, Russia and other countries as well. Furthermore, the IMF has developed and/or implemented Uniform Standards and Codes of conduct in the financial field that influence the daily behavior of domestic banks, insurance companies and other financial institutions. These norms that used to be a matter for the independent determination of nation state, have now become an internationally determined matter, subject to international norms. Standards setting groups comprising national representatives and experts draft the codes, and the IMF now serves as the multilateral organization that monitors and compels compliance with these norms. One step forward in the direction of our proposal was taken recently, when the previous IMF head, Dominique Strauss-Kahn, called for the introduction of a global currency backed by a global central bank which would act as the "lender of last resort" in the event of severe economic crisis, although he added: "I fear we are still very far from that level of global collaboration".

4. Case IV: The Streamlined Sales Tax Project

The states in the USA levy a sales tax on sales (and services) within the state. The revenues of sales tax in 2008 amounted to 357 billion dollars more than income tax revenues (332 billion dollars). Forty five states impose this tax by their own state legislation. Each state established its own tax base, its own tax rate and its own tax

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rules. On the other hand, the U.S.A. Constitution defines limitations on the state taxation authority. To satisfy the requirements of the "Due Process Clauses" of the constitution, the state must establish "minimal contact" with the taxpayer in order for the tax to be constitutional. An even higher threshold of "substantial nexus" is required according to the "Commerce Clauses" which bind state taxation to the fairness standards of inter-state commerce.

The Sales Tax faces tremendous challenges in e-commerce transactions similar to those facing the international tax regime. First, the distinction between tangible and intangible sales and the distinction between sales and services becomes more difficult in e-commerce setting making it difficult to levy the tax. Second, the determination of “substantial nexus” based on territorial linkage to a state becomes exceedingly tenuous and even arbitrary in e-commerce transactions. Third, the enforcement of sales tax on e-commerce transactions encounters tremendous difficulties, causing a serious decline on sales tax revenues. Fourth, the different states are competing to get their fair share in the tax base, raising normative problems regarding the appropriate tax sharing model.

Several proposals were given to cope with these challenges. For example, it was argued that e-commerce transactions should be exempted from Sales Tax. This argument was partly accepted in the legislation of the Internet Tax Freedom Act 1998, which exempted several internet services from taxation. Another proposals, suggested a withdrawal tax through the seller, who would transfer the tax revenues to the "source country"- i.e. "the sellers country" according to one view or the

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223 U.S. Const. amend. XIV, § 1.
224 U.S. Const. art. I, § 8, cl.3.
"destination country", i.e. "the buyers country" according to a different view. However, the leading argument called for Harmonization of the Sales Tax Laws in the different states.

The harmonization of the sales tax laws became a reality in The Streamlined Sales Tax Project (SSTP). The initiative for the project came from 27 states who had deeply internalized the implications of their diminished sales tax revenues on e-commerce transactions and understood the risk of a race to the bottom as a result of tax competition between the states, and even worse, the risk of loosing the tax altogether if the Internet Tax freedom Act were to be applied generally to any e-commerce transaction. Given these pressures, the states were ready to forego their tax sovereignty. After two years of research, discussion and negotiation, the states reached the Streamlined Sale and Use Tax Agreement (SSTUA). The SSTUA designs a harmonized model of sales tax to be adapted by the "Member States" in order to reduce the differences between the states regarding the definitions, base, and rates of the sales tax. The SSTUA standardizes the major tax base definitions (Article II). It establishes uniform sourcing rules for all taxable transactions including mail orders and telecommunication services (Article III). The SSTUA simplifies the tax rates to simplify the tax system and reduce tax differences between the States and within the State. It constitutes a central, electronic registration system that enables all member states to simplify and optimize the tax administration (Article IV). Finally, the SSTUA sets the rules for state entry and withdrawal from the agreement (Article VIII). As of today, 23 states are member states of the SSTUA.

The SSTUA shows that sovereign states are indeed ready to compromise their sovereignty in order to retain their tax power. In this case, states compromised their sovereignty through harmonization of their laws by way of cooperation with other states. The SSTUA titles the relations between the states "COOPERATING SOVEREIGNS" and describes it as follows:

"This Agreement is among individual cooperating sovereigns in furtherance of their governmental functions. The Agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state" 233.

I would argue that a great similarity exists between the challenges of levying sales tax on cross states e-commerce transactions and the challenges of levying income tax on cross country e-commerce income. 234 Therefore, the handling of the sales tax challenges by the SSTUA could and should affect the handling of the taxation of global e-commerce income. Based (inter alia) on the SSTUA, I claim that we could and should conclude that:

**First:** Sovereigns are ready to compromise their sovereignty to keep their tax revenues. The SSTUA began as a project to cope with the diminished sales tax revenues. This decline and its threat to the states induced them to cooperate on a level that necessitated the change of their internal tax laws in accordance with the tax model designed in the SSTUA. For a long time, tax laws had been considered as constituting the very core of state sovereignty fully immune from outside intervention. The SSTUA accord indicates a change in this attitude. Taxation sovereignty, like sovereignty in general, is also changing. The concept of cooperative sovereignty is gaining increasing acceptance in tax law too. As such I argue that a global tax on global e-commerce income is politically feasible. As countries continue to loose tax revenues on global e-commerce income, they will continue to look for a global cooperation in order to arrest this decline. The level of cooperation will increase the

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233 SSTUA, supra note 231, Section 1101.
234 Difference still exists of course. But the similarity is much more greater than the difference.
decline becomes more severe. At some point, in my view, countries will accept the level of cooperation required by the GET Model proposed in this article. I am aware of the difference between cooperation between the states of The USA and overall international cooperation, and am similarly aware of the considerably greater difficulties that would accompany an attempt to conclude a global e-commerce tax agreement in comparison to the SSTUA. Nevertheless, I think that a global e-commerce tax is feasible and the SSTUA precedent strengthens my argument.

Second, the working process involved in concluding the SSTUA and the organizational structure of the Streamlined Sales Tax Project are also of great importance in the study and design of global e-commerce tax. The work was conducted by a number of small working groups representing the different states and professionals; subjected to the general supervision of the public and directed by a coordinating committee. A supreme “management committee” determined policy and was responsible for the administration of the project in its entirety. A similar structure and process would be of benefit in creating an infrastructure for global e-commerce tax.

Third, the centralized management of the tax model and the heavy on technology to enforce the tax proved successful in levying sales tax on e-commerce transactions. This too constitutes a precedent, reflecting the feasibility of global e-commerce tax which is also based on a centralized body to manage the tax and the use of technology for its enforcement.

In sum, the states of the USA faced great challenges in levying sales tax on e-commerce transactions, in response to the severe depletion of their tax revenues. This pressure and threat enforced the States to compromise their tax sovereignty. They agreed to harmonize their internal Sales Tax Laws in accordance with the Streamlined Sale and Use Tax Agreement (SSTUA) which they reached and signed. I use this case study to argue that a similar development is taking place in the international system. I am aware of the differences between cooperation among states in a federal system and cooperation among countries in the international system. Nonetheless, despite these differences I think that the similarities are great and the many valuable lessons can be learned from it. Countries are now willing to compromise their tax sovereignty in
order to levy tax on global e-commerce income. For several normative reasons I think that A Global E-commerce Tax to Fund Global Public Goods is the appropriate model for taxing global e-commerce income and I am trying here to give the empirical evidence by case studies that it is also feasible politically. It's just a question of time when the loss of tax revenues will be sufficient enough, to enforce the countries to accept the model.

Conclusion

A global e-commerce tax to fund global public goods is an innovative idea that brings substantial changes to the existing international tax regime and therefore faces several obstacles. However, I tried in this long article to handle these obstacles and made the best argument I can in favor of this idea. The idea in more details includes imposing one global tax in one rate of 15% on global e-commerce income by supranational institution, The Global Fund, to be established by international treaty. The Global Fund shall spend the tax revenues to fund global public goods such as global communications network, financial stability, climate stability and global diseases. The details of the Global Fund institutional design were set in this article to ensure creditability and fair taxation and spending.

From a tax policy perspective, it seems well founded that global e-commerce tax is the appropriate tax for global e-commerce income. The global feature of cross-border e-commerce income together with its virtual figure and the existence of tax havens reduce the ability of any territorial country to tax global e-commerce income. Global e-commerce tax will change this scene dramatically and enable taxation of e-commerce income. This tax meets the canons of "good tax" because it is certain, effective and administrable; the tax is also efficient according to both criteria's of Capital Export Neutrality and Capital Import Neutrality; furthermore, it achieves inter-individual equity by decreasing the tax gap between e-commerce and non e-commerce income and achieves inter-nation equity by distributing the revenues to fund global public goods.

From a Global Public Goods Finance Perspective it seems that the second pillar of the model which argues for using the tax revenues to fund global public
goods, contributes a unique and fundamental contribution to global public goods finance. The under-provision of global public goods and the shortage in finance resources is well known. The demand for innovative resources is calling for new thinking and the pressure is becoming more serious and acute from day to day. I am deeply convinced that global e-commerce tax is good resource for financing global public goods. It is an obvious global activity that uses global infrastructure and should be taxed for the benefit of the global public goods. This usage of the revenues could also enhance economic efficiency and contribute to processes of economic development that would increase welfare at developing and developed countries as well. The revenue potential of the tax seems promising and growing rapidly. Finally, it is also important to see that this spending pillar contributes also to the political feasibility of the comprehensive model and this linkage between global public goods finance and political feasibility is important as we have seen that this feasibility is the main obstacle of the idea.

The political feasibility of a global e-commerce tax to fund global public goods is really an obstacle in front of the idea that I am trying to advance and achieve. But I tried to handle this obstacle and analyzed the interests of the countries from a realistic point of view. As realistic, rather than utopian, I found basis for reaching international treaty on a global e-commerce tax to fund global public goods. This is because, countries currently are loosing their tax power on global e-commerce income and at the same time spend their funds to partially finance global public goods and suffer the under-provision of these goods. The proposed model will give them back the power of taxation and they fulfill their sovereignty and cooperate with each other to tax jointly through the Global Fund. Countries don't effectively loose taxes, but raise taxes, to benefit the global community. This global finance could reduce the national spending on global public goods or at least improve the provision of global public goods. In sum, from cost benefit analysis, countries could and should agree and the case studies support this argument. In the end of the day, I think that the world really changed and recent global crises expedited the change. Given this change, ideas that were totally utopian in the past are more realistic today.

The proposed model should be implemented by international treaty. Countries should accept the idea and negotiate its full details and reach common agreement. A
wide range of acceptance is needed for the success of the model. I gave the theoretical and policy arguments in support of the idea. I brought the idea for discussion at the academic table as well as the political podium. My mission as academic ends here. From here on, it’s the mission and challenge of others.

In conclusion, I would like to present The Global E-commerce tax to Fund Global Public Goods as a challenge and call for taking this challenge forward.