

UN Role in International Tax Order: Past, Present, & Future

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International Taxes System

- **OECD**
 - OECD Model Tax Convention – primarily to protect economic interest of its member states
- **UN Tax Committee**
 - UN Model Tax Convention – primarily for developing countries
- **Contestation between OECD & UN**
- **‘Spaghetti Bowl’ of Bilateral Double Taxation Conventions**
 - Tax Information Exchange Agreements
 - Limited Purpose Agreements
 - Global South states are at the receiving end of the system
- **N.B. What lens do we use to analyse international tax system?**

Conceptual Lenses

- **International Political Economy**
 - Encompasses intersection of politics & economics as evermore goods, services, capital, expertise, & ideas move across borders
 - Used only in 1960s; has its roots in mercantilist literature of Colbert, Mun, & Hamilton who favored **using state powers to increase the national wealth**
- **Neo-Colonial Lens** – use of other means to control erstwhile colonies
- **International Relations Context**
 - **Realism** – views global system as anarchic wherein States wrestle for power being amoral self-interested rational actors
 - **Liberalism** – an alternative paradigm attaches importance to strands like cooperation, institutionalization, justice, law, order, freedom, & human rights

N.B. International Cooperation – the operating framework

International Cooperation

“International co-operation is...only the reverse, positive side of conflict, and...“co-operation” in reality quite often is nothing but a euphemism for the new forms of power struggle, or the dominance of richer and more powerful nations over poorer and weaker. Thus, the study of economic cooperation has itself become a study of international economic power.”*

International Tax Cooperation

- International Tax System is a product of International Tax Cooperation – not other way round
- **Realism** implies brute pursuance of objectives; **Liberalism** implies cooperation
- **Liberalism & Realism** are not competing theories; complementing
- **Liberalism** is projected & **Realism** is pursued in IR
- Ploys like ODA, Capacity Building, Technical Assistance could be a camouflage to strip taxing rights

N.B. UN is instrumentalized to spur international tax cooperation framework; Revisionist Perspective

Double Taxation Conventions

DTC framework's original stated purpose was **Avoidance of Double Taxation**, but then it was also leveraged to: -

- (i) **Allocate taxing rights on incomes between states;**
- (ii) Enable exchange of actionable tax information;
- (iii) Reconcile differences in concepts of incomes & their sources;
- (iv) Establish a common method for classification of items of incomes;
- (v) Relieve difficulties to economic operators; &
- (vi) Extend administrative assistance to tax administrations in the collection of taxes.

N.B. **Avoidance of Double Taxation was possible & common to most tax systems via Unilateral Relief – historical context to embedded fiscal tension**

DTC History – 19th Century Genesis

- **Evolution – 1840s**
 - Regulation of fiscal claims and rights on profits arising from intra-Prussian trade
 - East & West Prussian states economic tensions
 - Prussian Industrial Code 1845
- **1st Double Taxation Agreements**
 - Prussia-Austro-Hungarian Empire DTC 1899
 - German Double Taxation Act 1909

DTC History – Inter-War Period

- International Financial Conference 1920
- LN Report 1923
- LN Report 1925
- LN Report 1927
- LN MTC 1928
- LN MTC 1935
- LN MTC 1943 – **The Mexico Draft**
- LN MTC 1946 – **The London Draft**

Transition – From LN to UN

- “...the work done both in Mexico and in London could be usefully reviewed and developed by a **balanced group of tax administrators and experts from both capital-importing and capital-exporting countries and from economically-advanced and less-advanced countries**, when the League work on international problems is taken over by the United Nations.”

OEEC's Role

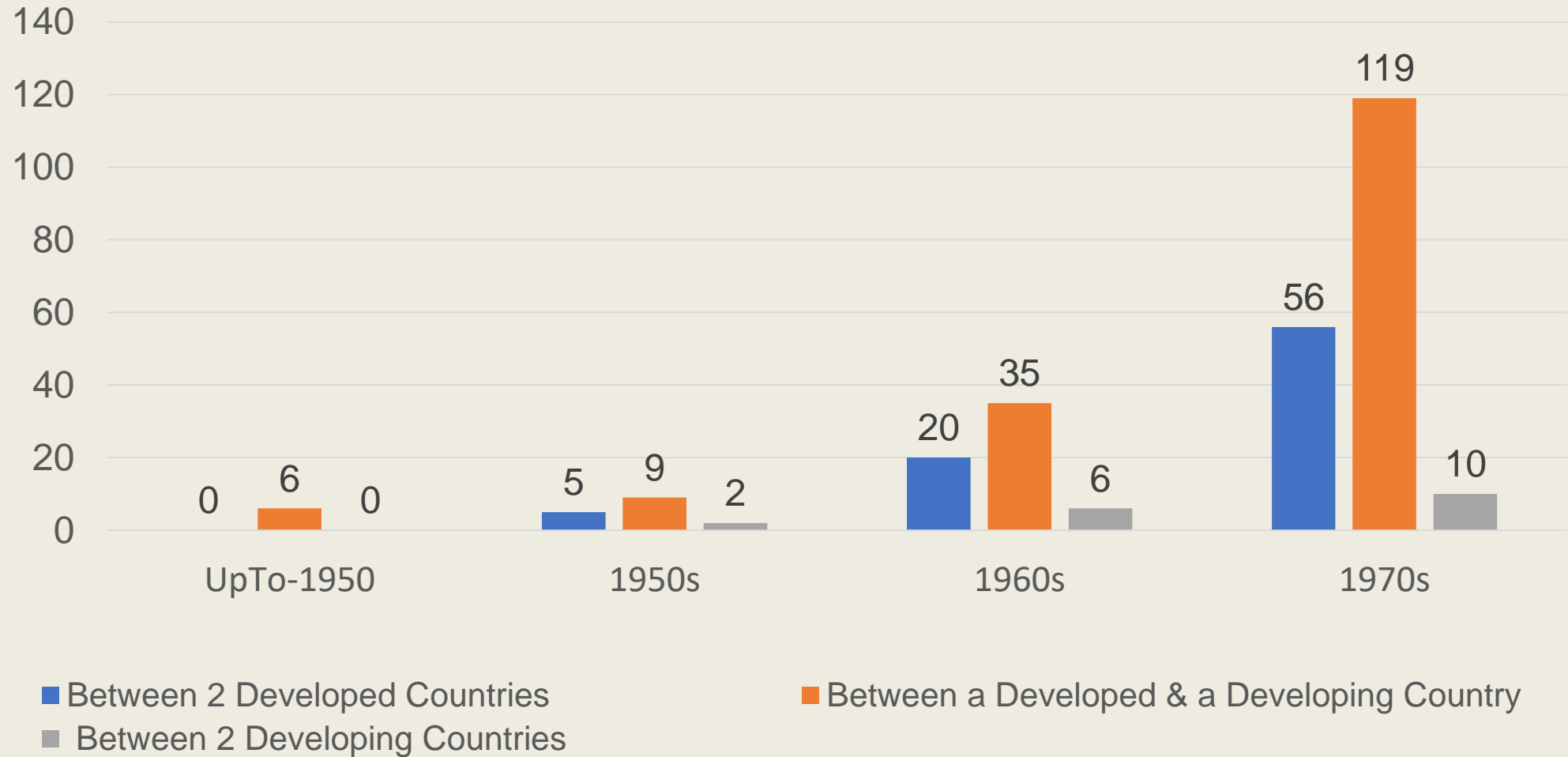
- **Fiscal Committee 1954** – constituted to exclusively focus international tax matters
- **1st Set of Recommendations** – 1955
- **1958** – Fiscal Committee mandated to develop an MTC & an implementation toolkit
- **1958-61** – 4 Reports published – “The Elimination of Double Taxation”
- **Contribution** – Refinement of LN MTC 1943 & LN MTC 1946 (Article on Professional Services broke into ten different articles)

OECD's Role

- **OEEC transmuted into OECD on April 1, 1961**
- **OEEC's tax work is taken over by OECD**
- **OECD MTC 1963**
- **OECD MTC 1966**
- **OECD MTC 1967**
- **OECD MTC 1977**

N.B. DTCs at desired pace were not coming through

DTC's Signed Till 1980



“The New Initiative”

- In 1971, Patrick Kelley's wrote in **“Tax Treaties between the United States and Developing Countries: The Need for a New US Initiative,”**: -
“The efforts of the United States to conclude a series of **bilateral tax treaties with developing countries has reached a virtual stalemate**. Of the twenty-two conventions for the avoidance of double taxation of income currently in force between the United States and other nations, only two treaties, Pakistan and Trinidad and Tobago, exist with members of the so-called “Third World.” *The American Journal of International Law*
- Simultaneously, OECD Reports encouraged Member States to engage other countries to sign DTCs
- Neoliberalist varnish of the international intellectual environment

N.B. But what was “The New Initiative?”

ECOSOC Res. 1273/1967 – Exegesis

- That “particular attention should be paid to the question of tax agreements between developed and developing countries, since this was **an area of high priority.**”
- That “there would be real advantage to all” countries “**if unilateral relief from double taxation were replaced by bilateral or multilateral agreements.**”
- That since “the traditional tax convention have not commended themselves to developing countries,” it was “**important to search for more appropriate treaty pattern.**”
- That “**tax treaties...can serve to promote the flow of investment...especially if the treaties provide for favourable tax treatment to such investments.**”
- That UNSG was mandated “to set up an ad hoc working group consisting of experts and tax administrators both from developed and developing countries and **adequately representing different regions and tax systems.**”

UN's Instrumentalization

- **1968 – Ad Hoc Group of Tax Experts** formed of 18 Experts
 - OECD Member states – 11 Experts
 - Non-OECD countries 7 experts -
 - Made it a countermajoritarian group.
- AHG's operational perimeters were set as **“tax treaties between developed and developing countries... in the context of the special economic relationship”** in order **“to facilitate trade”** and **“promote foreign investment in developing countries.”**
- **Protection of tax** base or domestic resource mobilization is not a focus area

N.B. What does it lead to?

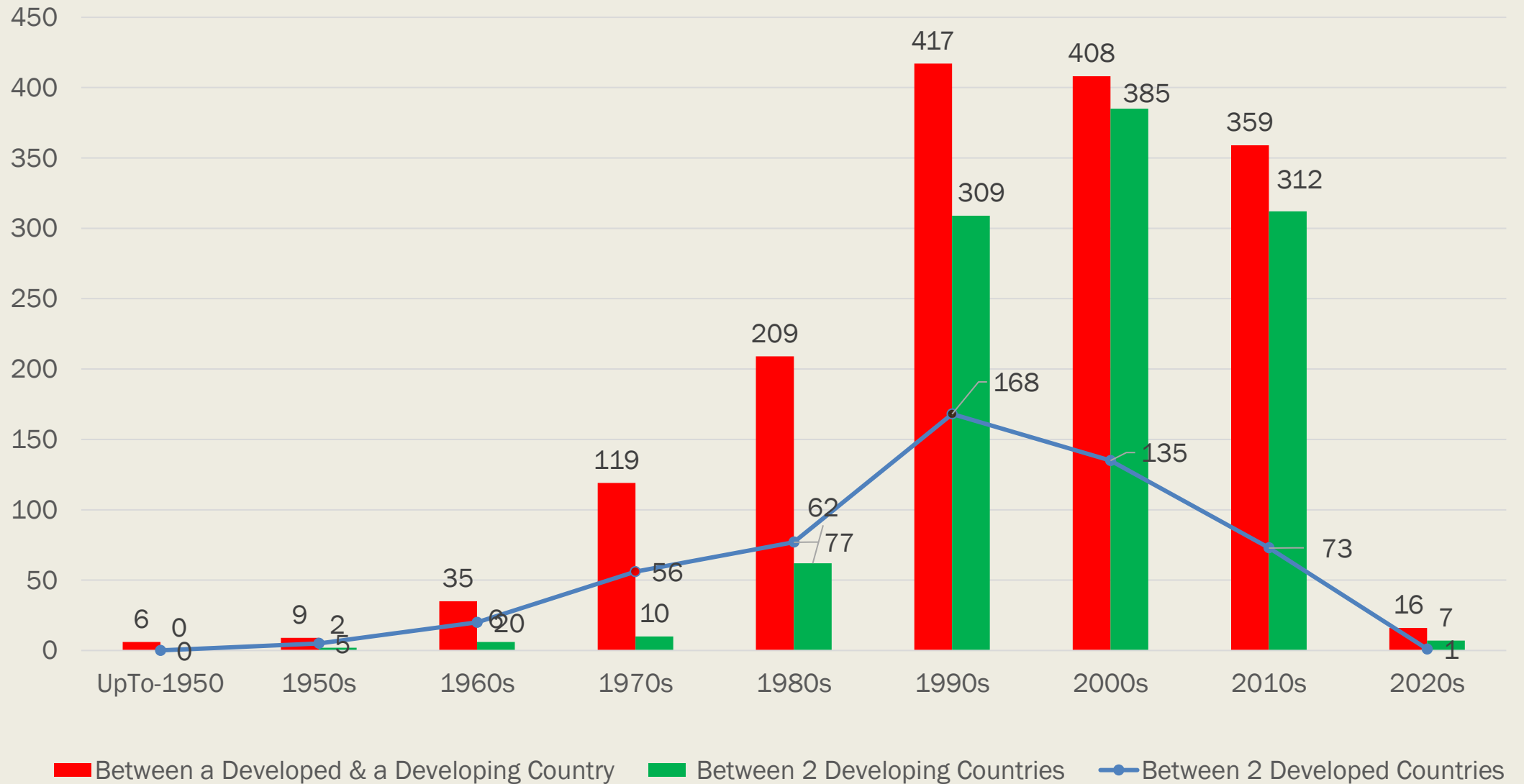
UN-ization of OECD Model

- **1968 – Ad Hoc Group of Tax Experts 1st Meeting**
- 11 out of 18 AG Experts were from OECD countries

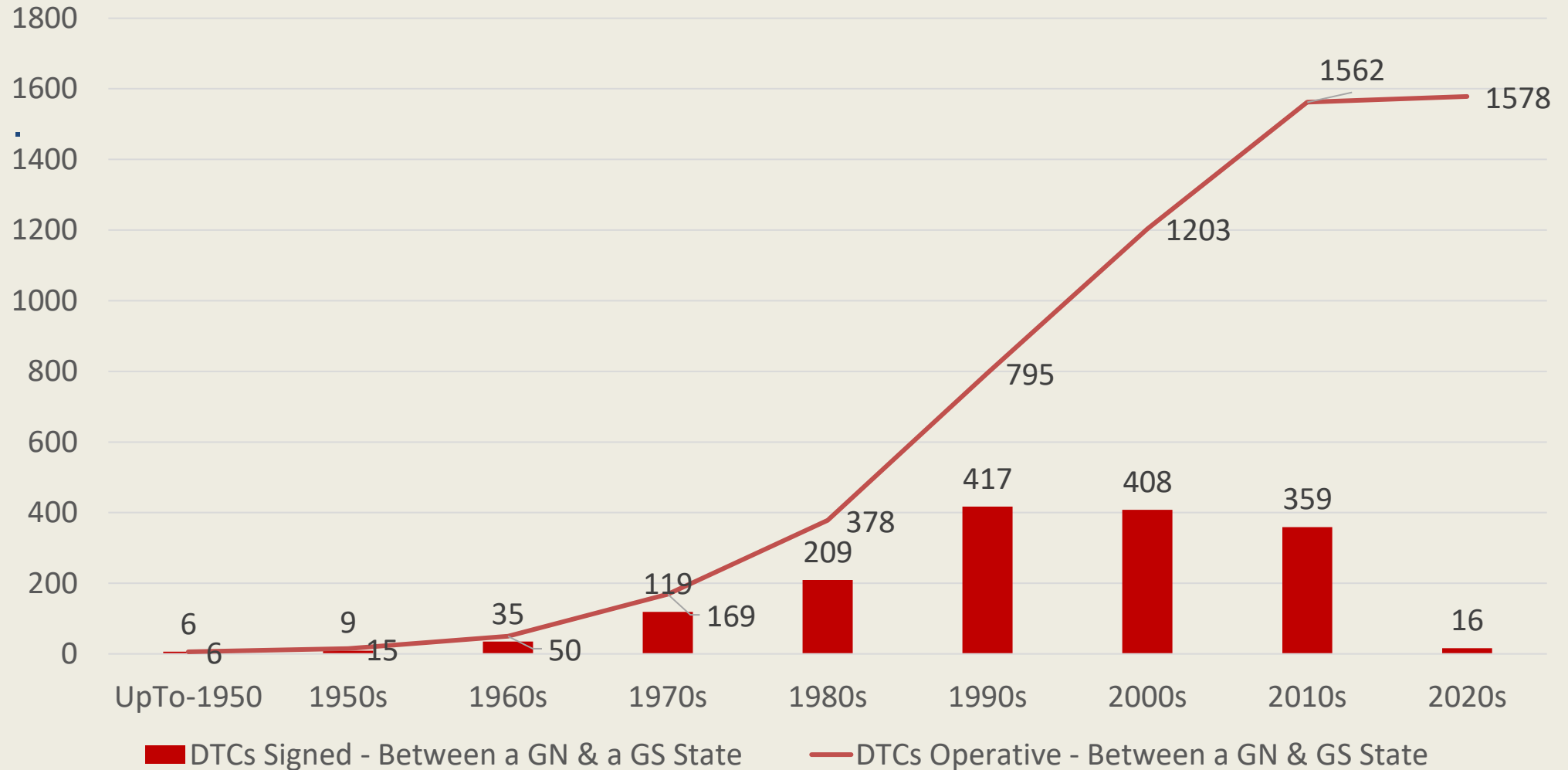
“Notwithstanding the fact that the OECD Draft Model Convention had been elaborated by experts from countries on approximately equal levels of economic development and that it seemed, in its current form, less suited for treaties between developed and developing countries, **the Group accepted it as the best available framework for its discussions, to be considered together with other documents circulated. This offered the most expeditious way in which the particular problems could be explored.**”

N.B. OECD Members’ Tax Experts meet & decide OECD MTC is good for developing countries.

DTCs Signed 1950s - 2020



DTCs Signed & Operative (GN & GS States)



Semantic Occupation

- A **conceptual ecosystem** straddling on law, tax, accountancy, finance, development, and diplomacy has been created to practically incapacitate developing countries to think beyond the **set conceptual confines** euphemistically dubbed as *international tax cooperation*.
- **An amphitheater**
- **Power struggle** Global haves & global have-nots
 - Official development assistance
 - Technical assistance
 - Capacity building
- **Legal infrastructure** for licit & illicit financial flows
- **Conceptual caging**

Global South's Options

(A) Optimising on UN Tax Committee

- Capacity building
- Carve outs
- Neutralizing PE concept
- Re-aligning source taxation rights
- Role for International Tax Justice Champions

(B) Transitioning from ALP to FAM

- Breaking conceptual confines – Article 7(4) of UN MTC
- International conference on Transition

(C) Optimising on UN-level Intergovernmental negotiations

- New UN Tax Convention
- Intergovernmental Tax Body
- International Tax Court

(D) Developing a Structured South-South Cooperation

- Global South Conference of Tax Administrations
- Representative body
- Coordination of Regional Tax Organizations

Thanks