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4

What Would International Law Do Without Draft Article 21 of the UN Tax Convention?

An Assessment in Light of the Vienna Convention on the Law of Treaties

Fiscal Policies

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Summary

Draft Article 21 addresses how the UN Framework Convention on International Tax Cooperation (UN Tax Convention) would interact with existing and future international agreements. This paper assesses what the provision would change compared with the rules otherwise applicable under the Vienna Convention on the Law of Treaties (VCLT), combining legal analysis with a qualitative mapping of positions expressed during and after the fifth negotiating session. It distinguishes treaty priority, progressive alignment, obligations to negotiate, treaty modification and institutional oversight.

For earlier agreements between Convention parties, Draft Article 21 includes a savings clause and an alignment duty. The savings clause may preserve existing treaty rights and obligations even where incompatible Convention provisions would otherwise take priority under the VCLT. The alignment duty requires parties to progressively align those agreements with the Convention. It does not itself amend them or give the Convention priority. For future agreements, the Draft Article 21 requires compatibility with the Convention. The paper examines what this requirement means for which treaty takes priority, whether some parties may modify the Convention among themselves, and State responsibility for breaches.

The negotiating record also shows that similar drafting proposals by States can pursue different, sometimes opposing, objectives. By examining these proposals alongside their stated reasons, the paper identifies where legal clarification could help address disagreements and where substantive differing positions remain over the strength of obligations and oversight. It therefore offers negotiators a general international law framework by which to assess how different formulations of Article 21 would shape the Convention's relationship with other treaty commitments.

Keywords: *UN Tax Convention; Article 21; Vienna Convention on the Law of Treaties; treaty conflict; progressive alignment; international tax cooperation*

1. Introduction

The negotiations for a United Nations Framework Convention on International Tax Cooperation are taking place within an international tax system already structured by over 3,500 bilateral tax treaties, multilateral instruments and regional arrangements.[1] The new Convention will therefore need to operate alongside preexisting legal commitments whose terms and membership significantly differ. Draft Article 21 addresses that relationship through provisions on domestic implementation, future agreements, preservation of existing rights and obligations, progressive alignment, negotiation and reporting.[2]

The political stakes are substantial. Preserving existing agreements may protect legal certainty and foreseability, but it may also limit the practical reach of new multilateral commitments under the Framework Convention. Requiring alignment may facilitate reform, while raising questions about its scope, pace and effects on treaty consent. The legal consequences depend on the mechanism chosen: priority in application, a duty to renegotiate and an actual change to an existing treaty do different things and can cause significantly diverse legal effects.

This paper combines treaty law analysis with a qualitative mapping of negotiating positions to clarify those consequences. It asks what rules would apply without Article 21, what the Zero Draft changes, and which choices remain for negotiators. Its contribution is to reduce uncertainty about the available mechanisms and make their implications easier to assess. Legal clarification may help address some disagreements; it cannot, however, resolve political differences over how much change the Convention should require.

[1] Philip Baker, 'Using Multilateral Instruments to Preserve a Bilateral System' (2024) 27 Journal of International Economic Law 611, 611–13. See also OECD, Model Tax Convention on Income and on Capital: Condensed Version 2017 (OECD Publishing 2017); United Nations, United Nations Model Double Taxation Convention between Developed and Developing Countries 2021 (United Nations 2021).

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[2] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21. This paper analyses that draft. The Co-Lead's Rev.1 Draft, UN Doc A/AC.298/CRP.38 (16 November 2026), retains Article 21, paragraphs 1–3, unchanged and makes only editorial adjustments to paragraph 4. The analysis and conclusions concerning Article 21 therefore remain applicable. Annex A reproduces the provision as it appears in the Rev.1 Draft.

The analysis does not prescribe a single compromise text. It identifies alternatives and explains their effects, including where a seemingly technical adjustment would strengthen or weaken a legal obligation. This allows questions of legal feasibility to be distinguished from choices about the desired level of commitment and supervision.

2. Scope and Evidence

The paper examines Article 21 of the Co-Lead's Zero Draft dated 21 July 2026. It uses the Vienna Convention on the Law of Treaties (VCLT), the International Law Commission's work on fragmentation, and international jurisprudence on inter-State negotiation. Bilateral tax treaties provide the main illustrations, but the analysis also considers overlapping multilateral commitments and the Convention's relationship with its protocols.[3]

The position mapping covers public oral interventions during the fifth negotiating session and subsequent Workstream I written submissions, reviewed by 24 September 2026.[4] It records proposed drafting actions separately from the reasons advanced for them. Oral and written evidence remain distinct; a later written submission is not assumed to erase an earlier oral position. Group statements are not attributed to individual members without evidence that they adopted them. Annex B explains the dataset and provides selected records supporting the analysis.[5]

[3] Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, 1155 UNTS 331, in particular arts 26–27, 30–31 and 34–36; International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group finalized by Martti Koskenniemi, UN Doc A/CN.4/L.682 (13 April 2006); Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Judgment) [2018] ICJ Rep 507; Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece) (Judgment) [2011] ICJ Rep 644; Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) [2010] ICJ Rep 14.

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[4] The position mapping covers publicly available oral interventions during the fifth session of negotiations on Workstream I and written submissions made in relation to the Co-Leads' Zero Draft, UN Doc A/AC.298/CRP.32 (21 July 2026). The analysis treats the public intervention or submission as the evidentiary basis for attributing a position to a State, negotiating group or stakeholder. Where no Article 21 position was identified in the available material, no position was inferred.

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[5] The coding framework distinguishes the textual action proposed from the underlying substantive position. Relevant fields include the Article 21 component concerned, drafting action, analytical orientation, substantive position detail, neutral summary of the position, alternative wording proposed, reasons given by the actor, evidence excerpt, legal instruments or principles expressly cited and the source modality of the intervention.

The public record cannot establish positions expressed only in closed consultations, the reasons for every change of wording, or the views of silent delegations. This paper therefore purposedly distinguishes recorded statements from interpretations of their implications. Its proposed areas of accommodation are analytical possibilities, not findings of preexisting political agreement.[6]

[6] The identification of possible areas of convergence is an analytical step undertaken in this paper rather than a coding category demonstrating State agreement. The position mapping itself records substantial differences concerning the preservation of existing agreements, the strength and operation of progressive alignment, and the mechanism for dealing with agreements that remain unaligned. It therefore supports analysis of overlapping concerns but does not, by itself, establish negotiated consensus.

3. The Treaty Law Baseline Without Article 21

If the Framework Convention contained no Article 21, how would international law govern its relationship with other treaties? The absence of a relationship clause would not leave a legal vacuum. The general law of treaties would supply the starting rules, particularly Article 30 VCLT on successive treaties relating to the same subject matter. These rules are residual: they govern the relationship insofar as the parties have not validly agreed on a different arrangement. States may therefore use an express treaty provision to shape that relationship, within the limits imposed by international law.[7]

This provides the baseline against which Article 21 should be assessed. The question is what its provisions would change, clarify or add to the legal position that would otherwise prevail. The following scenarios establish that baseline before Section 4 examines the draft. They distinguish priority in application from treaty validity, modification and termination, while also considering obligations towards States that are not parties to both instruments.[8]

A shared label such as "taxation" is not enough to resolve the relationship between two instruments. The specific provisions contained in each treaty must be singularly interpreted and compared: do they address the same situation, and can both their obligations be performed together? A general framework commitment and a specific allocation rule may, in fact, coexist without contradiction. Conversely, a framework convention can contain sufficiently determinate obligations to create a genuine

[7] VCLT art 30; International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, Report of the Study Group finalized by Martti Koskenniemi, UN Doc A/CN.4/L.682 (13 April 2006), paras 251–252.

[8] The scenarios assume that the relevant treaties are in force between the States concerned. The application of the VCLT as a treaty depends on its scope, including through the provisions set out in its Article 4. Where the VCLT does not apply as such, the relevant rules of customary international law must be identified separately. The analysis draws on the wider literature on treaty conflict, conflict avoidance and the relationship between general treaty law and particular treaty regimes. For further reference, see Joost Pauwelyn, Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law (Cambridge University Press 2003); Christopher J Borgen, 'Resolving Treaty Conflicts' (2005) 37 George Washington International Law Review 573; Jan Klabbers, Treaty Conflict and the European Union (Cambridge University Press 2008).

incompatibility. Its designation as a framework convention does not, as a matter of treaty law, settle that question.[9]

3.1. Earlier Bilateral Treaties Between Common Parties

Suppose States A and B are parties to a bilateral tax treaty and both later become parties to the Framework Convention. If the instruments relate to the same subject matter, Article 30(3) VCLT makes the earlier treaty applicable only insofar as its provisions are compatible with the later treaty. For an actual incompatibility, this is a rule of partial subordination of the earlier provisions. It is therefore insufficient to say only that the Convention would not automatically displace existing treaties: where the conditions are met, the default rule would indeed give the later Convention priority in application.[10]

That priority does not by itself invalidate or terminate the bilateral treaty, since compatible provisions would continue to apply. Article 59 VCLT addresses the separate possibility of implied termination where all parties to the earlier treaty conclude a later one on the same subject matter and either intend the later treaty to govern the matter or adopt provisions so incompatible that the instruments cannot be applied together. Those conditions are more demanding than a conflict affecting a particular provision. The procedural requirements for invoking termination or suspension must also be respected.[11]

3.2. Later Bilateral Treaties Between Convention Parties

The sequence can also be reversed. If A and B conclude a bilateral agreement after becoming parties to a multilateral Framework Convention whose membership includes other States, Article 30(4)(a) VCLT refers their mutual relations to the rule in paragraph 3. Taken alone, that rule favours the later bilateral agreement to the extent of

[9] International Law Commission, Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc A/CN.4/L.682 (13 April 2006), paras 21–24 and 253–255. The Commission took note of the Study Group's conclusions; see Report of the International Law Commission, UN Doc A/61/10 (2006), ch XII, and UN General Assembly resolution 61/34 (4 December 2006), para 4. The study and conclusions are used here as analytical guidance, not as independently binding rules.

[10] VCLT art 30(3).

[11] VCLT arts 30(3), 59 and 65. Article 59 addresses termination or suspension implied by the conclusion of a later treaty; this is distinct from the partial priority rule in Article 30(3).

incompatibility. An account of the default rules must therefore cover both temporal sequences.[12]

But Article 30(5) VCLT expressly preserves Article 41 VCLT and questions of State responsibility. A bilateral arrangement intended to modify a multilateral treaty between some of its parties must satisfy the requirements of Article 41 VCLT: that is, that the modification must be permitted by the treaty or, if not prohibited, respect the other parties' rights and obligations and the effective execution of the treaty's object and purpose. Article 41 also addresses notification. The later-treaty rule is not a general licence for two States to contract out of their multilateral commitments.

Three legal questions must therefore remain separate: which rule governs the mutual relationship, whether the attempted inter se modification is permissible, and whether concluding or applying the later agreement breaches obligations owed under the multilateral treaty. A prohibited modification cannot simply be assumed to produce the same effects as a permissible one. Equally, incompatibility alone does not justify treating the whole later treaty as automatically void. The answer depends on the provisions concerned and the applicable rules.[13]

3.3. Non Common Parties and Responsibility

Where only A is a party to the Convention and A and B share a bilateral treaty, Article 30(4)(b) VCLT preserves the treaty they share as the basis of their mutual rights and obligations.[14] This accords with the principle of *pacta tertiis*: the Convention does not impose obligations on B or remove B's rights merely because A has joined it. If neither State is a Convention party, Article 21 would impose no treaty obligation on either.[15]

[12] VCLT arts 30(4)(a), 30(5) and 41. The schematic later-bilateral scenario assumes that only some parties to the earlier multilateral treaty conclude the later agreement.

[13] VCLT arts 30(4)(a), 30(5) and 41; Co-Lead's Zero Draft, art 21(1)(b). The relationship between a compatibility requirement and the consequences of a prohibited inter se modification must be assessed separately from the ordinary later-treaty rule.

[14] VCLT art 30(4)(b).

[15] VCLT arts 34–36.

Protection of B's rights does not dispose of A's obligations towards the other Convention parties. A may still incur responsibility if concluding or applying its agreement with B breaches a Convention obligation. That depends on the content of the obligation, including any savings clause, and on whether it operates reciprocally or protects a collective interest. One must also distinguish whether a breach has occurred from which States may invoke responsibility for it. It would be premature to classify all obligations of the future Convention as collective merely because the instrument is multilateral.[16]

3.4. Express Clauses and Overlapping Multilateral Commitments

Against this residual framework, States may expressly regulate the relationship between their treaty commitments. Article 30(2) VCLT recognises clauses that subordinate one treaty to another or provide that it is not to be considered incompatible with another treaty.[17] Other arrangements must likewise be assessed through their wording and the applicable rules of international law. Article 21 is one such attempt to specify how overlapping commitments should operate.

Those provisions can preserve existing rights, require compatibility, establish priority in defined circumstances, or regulate how particular groups of parties apply different instruments among themselves. The legal effect follows from the wording and context, not the clause's label. In particular, a requirement to conclude only compatible agreements is not necessarily an express instruction to a court about which provision to apply if an incompatible agreement is nevertheless concluded.

Multilateral overlaps require further attention. The BEPS Multilateral Instrument (MLI), the Convention on Mutual Administrative Assistance in Tax Matters and regional agreements involve memberships and procedures that cannot be reduced to a single bilateral relationship. A request from one Convention party cannot

[16] VCLT arts 26, 30(4)(b), 30(5) and 34. See also ILC, Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts 12, 42 and 48. The content of the primary obligation and the conditions for invoking responsibility are distinct questions.

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[17] VCLT art 30(2); ILC Fragmentation Report, paras 251–252. Article 30(2) expressly addresses subordination and non-incompatibility clauses; other relationship clauses require interpretation in their particular context.

itself amend an instrument for all its participants. Any proposed *inter se* adjustment must also respect the rights of other parties and the relevant instrument's modification rules. This paper identifies those constraints rather than attempting an instrument-by-instrument resolution of every overlap.

Two comparators illustrate distinct techniques. The MLI changes the operation of covered tax agreements through substantive provisions, compatibility clauses and a system of reservations and notifications. It shows that multilateral consent can implement treaty changes without a separate bilateral renegotiation in every case; it does not show that a broad duty to pursue alignment has the same effect.[18] Additionally, UNCLOS Article 311 combines a rule governing its relationship with the 1958 Geneva Conventions, protection of compatible agreements and limits on *inter se* modification. It illustrates the possibility of preserving agreements conditionally rather than insulating them irrespective of compatibility.[19] Neither model necessarily determines the choices that are appropriate for the UN Tax Convention.

[18] OECD, Explanatory Statement to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2016), paras 12–17 and 26–29; BEPS MLI, arts 1–2. See also Philip Baker, "Using Multilateral Instruments to Preserve a Bilateral System" (2024) 27 Journal of International Economic Law 611. Matching notifications are not an identical requirement under every MLI provision; the applicable compatibility clause, reservations and notifications must be examined.

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[19] United Nations Convention on the Law of the Sea (1982), art 311(1)–(4). Paragraph 2 preserves compatible agreements subject to protection of other parties' rights and obligations; paragraph 3 separately addresses *inter se* modification or suspension.

4. The Legal Effects of the Current Draft

Against that baseline, Article 21 combines a compatibility condition for future agreements with preservation of earlier rights and obligations, duties to pursue alignment and negotiate, and reporting. Annex A reproduces the draft so that each legal proposition can be read against its wording. The table below summarises the main functions.[20]

Provision	Function	Principal effect
21(1)(a)	Domestic implementation	Affirmative duty to take implementation measures.
21(1)(b)	Future agreements	Conditions treaty-making on compatibility with Framework Convention commitments.
21(2)	Existing agreements	Preserves prior treaty rights and obligations, subject to paragraph 3.
21(3), first sentence	Progressive alignment	Requires meaningful steps by Framework Convention parties; does not bind non parties.
21(3), second sentence	Negotiation	A qualifying request triggers good faith negotiations between Framework Convention parties.
21(4)	Reporting	Makes alignment measures and the disposition of requests visible to the Conference of the States Parties (CoSP).

4.1. Domestic Implementation

Paragraph 1(a) requires legislative, administrative and other measures necessary to implement the Convention.[21] This affirmative formulation resembles implementation provisions in human rights treaties, although resemblance does not establish drafting influence. The reference to domestic law and constitutional procedures is best

[20] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21.

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[21] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(1)(a).

read as addressing the means of implementation, not as permission to withhold performance. That reading accords with Articles 26 and 27 VCLT. Article 46 concerns the narrow, separate question of invalid consent arising from a manifest violation of a fundamental internal rule on competence to conclude treaties; it is not a general constitutional defence to non-performance.[22]

4.2. Future Agreements and the Compatibility Condition

Paragraph 1(b) preserves treaty making freedom only for agreements compatible with the State Party's Convention commitments.[23] Its immediate effect is to constrain the exercise of that freedom. A State Party cannot justify non-compliance with this condition simply by invoking the later date of a bilateral agreement. This is an additional substantive constraint on future treaty making, not merely a restatement of chronology.

The clause is also relevant for the purposes of Article 41 VCLT. An agreement that purports to derogate *inter se* from the Convention cannot be analysed as if the Convention contained no compatibility restriction. Whether a particular agreement is an impermissible modification, and the derived legal consequences of that finding, require attention to both the specific clause involved and Article 41 VCLT. Article 30(5) VCLT preserves questions of responsibility arising from conclusion or application of incompatible obligations.[24]

Paragraph 1(b) therefore limits the ability of Convention parties to depart from their commitments through later agreements. Whether it also establishes the priority of the Convention over an incompatible later provision requires further interpretation. The draft contains no express rule specifying that consequence. For agreements between Convention parties, the analysis must also address the limits on *inter se* modification under Article 41 VCLT. The compatibility condition

[22] VCLT arts 26–27 and 46. Compare International Covenant on Civil and Political Rights, art 2(2), and International Covenant on Economic, Social and Cultural Rights, art 2(1), for affirmative implementation provisions. These parallels do not establish the drafting history of Article 21(1)(a).

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[23] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(1)(b).

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[24] VCLT arts 30(4)(a), 30(5) and 41; Co-Lead's Zero Draft, art 21(1)(b). The relationship between a compatibility requirement and the consequences of a prohibited modification must be assessed separately from the ordinary later-treaty rule.

should therefore not be reduced either to a simple reversal of *lex posterior* or to a restriction whose breach could entail only State responsibility.

For greater predictability, States could clarify whether they intend only a compatibility obligation or also an express rule of priority, what agreements the condition covers, and how incompatibility is to be determined. These choices become particularly important where the later agreement is with a non-party: the Convention can regulate the conduct of its own party without binding the other State. The existence and extent of responsibility still depend on the obligations actually undertaken.[25]

4.3. Existing Agreements and the Savings Clause

Paragraph 2 provides that, subject to paragraph 3, the Convention shall not affect rights and obligations under agreements concluded before its entry into force.[26] For common parties, this has consequences beyond confirming that an earlier treaty remains in force. On its ordinary reading, it preserves earlier rights and obligations even where Article 30(3), without such a clause, would subordinate incompatible earlier provisions to the later Convention. It can also weigh against an inference of termination under Article 59.[27]

The qualification "subject to paragraph 3" requires the savings clause to be read with the duties of alignment and negotiation. It prevents preservation from excusing inaction under those duties. But paragraph 3 does not itself state that incompatible earlier provisions cease to apply, and the qualification specifies no date at which preservation expires. The draft therefore combines protection at the level of treaty application with obligations to pursue change. An alignment duty should not be presented as if it automatically restored the Convention's priority.

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[25] VCLT arts 26, 30(4)(b), 30(5) and 34. See also ILC, Articles on Responsibility of States for Internationally Wrongful Acts (2001), arts 12, 42 and 48. The content of the primary obligation and the conditions for invoking responsibility are separate questions.

[26] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(2).

[27] VCLT arts 30(3), 59 and 65. Article 59 addresses termination or suspension implied by the conclusion of a later treaty; this is distinct from the partial priority rule in Article 30(3).

This distinction gives legal substance to concerns that preservation may entrench existing agreements. Even meaningful negotiations may leave an agreement unchanged. If States intend preservation to end after a defined period or to depend on substantive compatibility, that consequence should be explicitly specified. Conversely, retaining the present structure means accepting that change may depend on subsequent measures rather than on immediate priority of the Convention. Neither conclusion requires treating all existing agreements as incompatible.

States could instead agree on express priority for the Convention in defined conflicts between common parties. Such priority would govern application to the extent specified; it need not terminate the earlier treaty.[28] Its practical reach would still depend on whether the Convention contains obligations sufficiently determinate to establish a conflict. Where membership differs, the limits and possible responsibility described in Section 3.3 remain relevant.

4.4. Progressive Alignment

The first sentence of paragraph 3 requires progressive and meaningful steps towards alignment with the Convention's provisions and principles, including renegotiation where necessary. Its structure is that of an obligation concerning conduct directed towards an objective. It neither imposes immediate complete alignment nor makes purely nominal efforts sufficient. The duty is addressed to Convention parties and is not made conditional on a request under the second sentence.[29]

The available means depend on the inconsistency. Interpretation or changes in administrative application may suffice where the existing treaty permits them. If its terms cannot accommodate the required change, amendment, replacement or another legally effective instrument may be necessary. An interpretation cannot simply rewrite the treaty. Nor does the absence of an obligation to achieve agreement make the express requirement to renegotiate

[28] VCLT arts 30 and 39–41; ILC Fragmentation Report, paras 251–266. Agreement on priority in application must be distinguished from amendment or termination of an earlier treaty.

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[29] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(3), first sentence.

where necessary merely optional.[30] The BEPS MLI illustrates how States can use a separate multilateral agreement to modify the application of existing tax treaties without negotiating an individual amending protocol for each one. A comparable approach could provide a means of pursuing alignment under a future Convention, but would require the necessary consent and operative provisions; the alignment obligation in draft Article 21 would not, in itself, be capable of producing those modifications.[31]

The reference to "principles" makes alignment potentially broader than the removal of strict conflicts between concrete obligations. It also makes assessment less determinate: a broad allocation principle may guide review without identifying one required replacement rule. "Related instruments" likewise requires definition. It may encompass arrangements with different legal status; not every non-binding standard or administrative arrangement is a treaty to which Article 30 applies. The text should therefore distinguish the scope of the alignment duty from the legal means available to implement it.

The draft fixes no deadline for complete alignment and supplies no detailed benchmarks for meaningful progress. Negotiators could specify review stages, reasoned explanations, priorities or timeframes, with attention to capacity and the cooperation required from treaty partners. Those choices affect the strength and verifiability of the obligation. Calling it an obligation of conduct does not settle them.

4.5. Requests to Negotiate and Failure to Agree

The second sentence of paragraph 3 requires a State Party to enter negotiations in good faith and without undue delay when another State Party requests renegotiation, amendment or modification of an existing agreement to achieve alignment. This adds a specific procedural duty to the standing alignment obligation. The reference

[30] VCLT arts 31–32 and 39–41; Co-Lead's Zero Draft, art 21(3). Interpretation must remain within the applicable rules of interpretation; it cannot be assumed to substitute for amendment where the existing text cannot bear the proposed meaning.

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[31] OECD, Explanatory Statement to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (2016), paras 13–17. The operation of the MLI in a particular treaty relationship depends on the applicable provisions, reservations and notifications.

to the other State Party does not impose a corresponding duty on a non-party.[32]

Compliance with an obligation to negotiate requires meaningful engagement in good faith, but does not ordinarily require agreement. The ICJ has explained that parties must be willing to consider adjustments to their positions, while recognising that the instrument establishing the obligation may require a specific result.[33] Draft Article 21 requires negotiations directed towards alignment, without expressly requiring agreement on a particular amendment. On that reading, refusal to engage following a qualifying request, undue delay or obstruction could breach the negotiation duty, even where failure to agree would not itself establish a breach.[34]

The request must be directed towards alignment, but the draft does not identify a preliminary decision maker or specify what reasons the requesting State must provide. This leaves room for disagreement about opportunistic requests and bargaining pressure. A requirement to identify the relevant treaty provisions and alleged inconsistency could make the mechanism more assessable. Whether to add such a requirement, a response deadline or technical assistance is a drafting choice; none should be described as already contained in the current text.

Failure to agree is not necessarily a breach of the negotiation duty, and compliance with that duty does not necessarily exhaust the broader alignment obligation. A dispute about compliance with Article 21 must be connected to Article 22: the draft provides for peaceful settlement and, if negotiations do not resolve a Convention dispute within a reasonable time, conciliation at the request of a disputing party. A disagreement over whether Article 21 was complied with is different from a disagreement over the desirable

[32] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(3), second sentence.

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[33] Obligation to Negotiate Access to the Pacific Ocean (Bolivia v Chile) (Judgment) [2018] ICJ Rep 507, 538, paras 86–87, referring to Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v Greece) (Judgment) [2011] ICJ Rep 644, 685, para 132, and Pulp Mills on the River Uruguay (Argentina v Uruguay) (Judgment) [2010] ICJ Rep 14, 68, para 150.

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[34] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(3), second sentence.

commercial terms of an amendment. Article 22 does not, merely by providing conciliation, authorise a body to rewrite the tax treaty.[35]

Conciliation generally assists parties through examination of the dispute and proposed terms of settlement, rather than imposing an adjudicated amendment. Its precise procedure and effect will depend on the conciliation rules ultimately adopted.[36] This should not be conflated with the separate protocol on prevention and resolution of tax disputes. Existing tax treaties' own amendment and termination provisions may also influence the options and bargaining position of their parties.

4.6. Reporting and Institutional Support

Paragraph 4 requires reports on alignment measures and on the number and disposition of renegotiation requests. It delegates the intervals and form of reporting to the Conference of the States Parties (CoSP); it does not itself establish an alignment deadline. Reporting is a distinct obligation, not evidence that every reported effort has satisfied paragraph 3.[37]

The institutional context is broader than paragraph 4. Articles 13–17 address implementation review, subsidiary bodies, information and the Secretariat. Article 14 permits additional technical mechanisms, which could provide a basis for advice on alignment if given an appropriate mandate. Technical assessment, facilitation, recommendations and settlement of a legal dispute are different functions. Their allocation should specify who may request assistance, who participates, the status of findings and their relationship with Article 22. A power to set reporting formats cannot

[35] Co-Lead's Zero Draft (21 July 2026), arts 13–17, 20(3)–(4), 21 and 22. In particular, Article 22(2) refers unresolved Convention disputes to conciliation upon the request of a disputing State Party.

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[36] For an example of a treaty-based conciliation procedure involving proposals for amicable settlement and non-binding recommendations, see VCLT, Annex, paras 5–6. The procedure contemplated by the Framework Convention must be assessed under its own provisions: see Co-Lead's Zero Draft, art 22(2). On amendment, termination and withdrawal from existing treaties, see VCLT arts 39–41, 54 and 56, together with the provisions of the treaty concerned.

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[37] Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), art 21(4).

by itself be treated as an unlimited authority to impose substantive amendments or new obligations.[38]

4.7. Protocols and the Scope of Article 21

Article 20 makes participation in a protocol separate from participation in the Convention. Article 21(1)(b) refers to the Convention and its protocols, but frames compatibility by reference to commitments under the Framework Convention; paragraph 3 also refers to the Convention. The draft therefore leaves questions about how Article 21 is intended to operate in relation to protocol obligations. The analysis cannot assume that accession to the Convention binds a State to a protocol it has not accepted. Any extension of the relationship clause should clarify the relevant obligations and party configurations.[39]

4.8. Comparison of the Principal Scenarios

The following matrix summarises the bilateral examples. “Earlier” and “later” refer to the sequence of the relevant treaties; actual analysis must also establish entry into force for each State. The draft’s reference to entry into force should clarify how it treats agreements concluded between the Convention’s general entry into force and its entry into force for a later-joining State.

[38] Co-Leads’ Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), arts 13–17 and 22.

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[39] Co-Leads’ Zero Draft of the United Nations Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.32 (21 July 2026), arts 20(3)–(4), 21(1)(b) and 21(3).

Party configuration	Without Article 21 (following VCLT provisions)	Effect of the Zero Draft (UNTC)
Both join the Convention after an earlier bilateral treaty	Article 30(3) VCLT: earlier incompatible provisions are subordinated; Article 59 VCLT is a separate question.	Article 21(2) UNTC preserves earlier rights and obligations; Article 21(3) UNTC adds alignment and negotiation duties, not express automatic priority.
Two Convention parties conclude a later bilateral treaty	Article 30(4)(a) VCLT favours the later treaty in their mutual relations, subject to Articles 30(5) and 41 VCLT.	Article 21(1)(b) UNTC adds a compatibility condition; consequences must be assessed with *inter se* modification and responsibility.
Only one Convention party; earlier bilateral treaty	The shared bilateral treaty governs mutual rights; other Convention obligations may still apply for the State party.	The non-party is not bound. The Convention party remains subject to its alignment and reporting duties, within the savings structure.
Only one Convention party; later bilateral treaty	The shared treaty governs mutual relations, without removing possible responsibility under the Convention for the State party.	Compatibility constrains the Convention party's conduct; it does not bind the non-party.
Neither is a Convention party; either sequence	The Convention does not govern their treaty relationship merely because it exists.	Article 21 creates no Convention obligations for them.

5. Negotiating Positions and the Consequences of Drafting Choices

The negotiating record reveals disputes about both the strength of the obligations and the legal mechanisms used to implement them. As an example illustrating this interplay, a mere proposal to 'delete' a sentence from the draft text is not enough to establish the proposer's underlying objective. This section reads drafting actions with their stated reasons and applies the distinctions developed above.

Three main legal questions have recurred across State interventions. The first is whether preexisting agreements should simply be preserved or whether their continued operation should be qualified by the obligations created by the Framework Convention. The second concerns the nature of the alignment obligation: whether States should be required to pursue changes to their existing treaty network, encouraged to do so, or left to the ordinary operation of treaty law. The third concerns what should happen when adjustment requires the cooperation of another treaty party and negotiations fail to produce agreement.[40]

The analysis below distinguishes between preservation and priority, the standing alignment duty, the request-triggered negotiation duty, and institutional supervision. Separating those questions can clarify choices without assuming that the underlying interests of drafting positions are compatible.

5.1. Preservation of Existing Agreements

Article 21(2) has attracted different assessments. Norway supports preservation but proposes removing "subject to paragraph 3"; the Netherlands emphasises legal certainty and existing treaties as products of sovereign negotiation. Other participants are concerned

[40] African Group, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 9; Norway, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 7. The submissions illustrate opposing approaches to the relationship between preservation of existing agreements and progressive alignment.

that preservation may frustrate the new commitments. The African Group proposes protecting earlier agreements insofar as they conform with the Convention, while Nigeria asks whether paragraph 2 gives earlier agreements priority they would not otherwise enjoy under Article 30 VCLT.[41]

Nigeria's concern has a basis in the comparison with Article 30(3) VCLT: for common parties, paragraph 2 may preserve earlier rights that would otherwise yield to incompatible later obligations. Removing "subject to paragraph 3" would weaken the express connection to alignment, but would not by itself delete paragraph 3 if that paragraph remained. Conversely, conditioning preservation on conformity would narrow the savings clause. Where that condition failed, the applicable default or express priority rules would still need to be identified; the result would not be automatic invalidity of the earlier treaty.

Two party configurations remain legally distinct. The limits concerning non parties have been described in Section 3.3. Expressly restating those limits would clarify protections already supplied by general international law. It would not, by itself, resolve the treatment of agreements between Convention parties or establish agreement on that separate question.

For agreements between common parties to the Convention, States can choose preservation, conditional preservation, or an express priority rule, subject to applicable legal limits. They should also specify whether protection is continuing or transitional. That choice determines more than whether the earlier treaty remains formally in force: it determines the treatment of incompatible rights and obligations while alignment is pursued.

Separating these configurations improves legal precision, but does not establish how ratification decisions would change. This paper

[41] African Group, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 9; Norway, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 7; Nigeria, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 6; United Nations Web TV, Fifth Session of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation, Workstream I, 7 August 2026, intervention of the Netherlands at 01:04:36–01:07:43

does not assume that preserving more existing rights is necessary for broad participation, or that an express priority rule would necessarily prevent it. Those political effects require evidence beyond this legal assessment.

An academic submission from the University of Nairobi Committee on Fiscal Studies illustrates a possible architecture. It proposes leaving agreements with non-parties unaffected while allowing agreements between States Parties to remain in force pending alignment and requiring them, as far as possible, to be interpreted and applied consistently with the Framework Convention. This proposal is far from evidence of State consensus, but it nevertheless demonstrates that the negotiation need not choose only between unconditional preservation and automatic displacement.[42]

5.2. The Scope and Strength of Progressive Alignment

The positions on paragraph 3 are similarly difficult to understand if they are classified only by whether a delegation proposes retaining, deleting or amending the provision. Japan and Norway favour deletion because they regard "progressive and meaningful steps" as legally uncertain and object to an obligation to reopen existing treaty relations. The Netherlands also opposes the progressive alignment requirement. The United Arab Emirates has proposed replacing the affirmative obligation with language encouraging States to pursue alignment.[43]

Other States support retaining an obligation but understand it in a qualified manner. Brazil describes the approach as gradual and based on best possible efforts. Mauritius emphasises that alignment with the Framework Convention does not mean wholesale renegotiation of a tax treaty. Mexico supports flexibility in the means through which States pursue alignment. Nigeria supports the alignment

[42] Committee on Fiscal Studies, University of Nairobi, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 6. The proposed text distinguishes agreements with non-Parties from pre-existing agreements between States Parties and proposes that the latter remain in effect pending alignment.

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[43] United Nations Web TV, Fifth Session of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation, Workstream I, 7 August 2026, intervention of Japan at 01:02:29–01:03:23; Norway, Workstream I written submission concerning the Co-Leads' Zero Draft, p 7; United Arab Emirates, oral intervention during the Fifth Session, Workstream I, 7 August 2026, 00:02:57–00:07:21. See also the intervention of the Netherlands at the same meeting, 01:04:36–01:07:43.

objective while asking for clearer benchmarks for determining what "progressive and meaningful steps" actually require.[44]

These positions include concerns about uncertainty, capacity and the desirability of an alignment duty itself. Clarifying the duty may address the first concerns without answering the last.

Paragraph 3 requires steps towards alignment and expressly includes renegotiation where necessary. It does not require wholesale renegotiation of every existing treaty. Clarifying that structure could improve predictability, but an obligation of conduct can still be demanding and enforceable. It should not be equated with optional cooperation. For example, the provision could clarify that alignment:

- Concerns only those aspects of an existing agreement relevant to obligations or principles contained in the Framework Convention;
- Does not itself modify an existing treaty;
- May be pursued through interpretation or application where legally sufficient, and through amendment, replacement or renegotiation where the treaty's terms require change; and
- Requires demonstrable steps whose adequacy can be assessed against the relevant inconsistency, the means available and any agreed benchmarks.

Such clarification would not eliminate the substantive disagreement between States that oppose any treaty alignment obligation and those seeking a stronger one. It would, however, remove an ambiguity that presently causes very different propositions to be debated under the same label. A requirement to take reasonable steps towards compatibility is legally different from a requirement to automatically reopen thousands of tax treaties.

[44] Brazil, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 2; United Nations Web TV, Fifth Session, Workstream I, 7 August 2026, intervention of Brazil at 00:43:04–00:48:01; United Nations Web TV, Fifth Session, Workstream I, 7 August 2026, intervention of Mauritius at 01:32:25–01:33:59; Nigeria, Workstream I written submission concerning the Co-Leads' Zero Draft, p 6. For Mexico, see the oral intervention of 7 August 2026 at 00:49:45–00:56:04.

5.3. Different Reasons for Deleting the Negotiation Sentence

The second sentence of paragraph 3 offers the clearest example of why drafting actions cannot be interpreted in isolation. Several States favour deleting or limiting the sentence because they oppose a Framework Convention obligation requiring a treaty partner to enter negotiations following a unilateral request. Japan, Norway, the Netherlands, the United Arab Emirates and others have raised concerns centred on treaty consent, sovereignty or the legal implications of compulsory renegotiation.[45]

Yet Burkina Faso, Côte d'Ivoire and Tanzania also supported deletion of the second sentence, endorsing the African Group's proposal. The African Group explained that its aim was to prevent the request mechanism from qualifying or delaying the standing alignment obligation. The African Union expressly articulated the same concern, while ATAF also supported deletion in line with the African Group's position. These interventions illustrate why support for the same textual deletion cannot, by itself, establish agreement on its purpose.[46]

The legal consequence of deletion consequently depends on what happens to the first sentence.

Deleting paragraph 3 in full would remove the express alignment and request-triggered negotiation duties. The remaining relationship would not necessarily revert entirely to the VCLT defaults: if paragraph 2 remained, its savings clause would continue to affect earlier agreements. Other Convention obligations would also need to be considered.

Deleting only the second sentence would leave the standing alignment obligation, including renegotiation where necessary, if the first sentence remained unchanged. It would remove the express

[45] Japan, oral intervention, 7 August 2026, 01:02:29–01:03:23; Norway, Workstream I written submission, p 7; Netherlands, Workstream I written submission, p 6; United Arab Emirates, oral intervention, 7 August 2026, 00:02:57–00:07:21. UN Web TV: https://webtv.un.org/en/asset/k1v/k1vnw85h8w. See also Mexico, 00:49:45–00:56:04, on bargaining asymmetries.

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[46] United Nations Web TV, Fifth Session of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation, ninth meeting, Workstream I, 7 August 2026, interventions of Zambia on behalf of the African Group, Burkina Faso, Côte d'Ivoire, the United Republic of Tanzania, the African Union and the African Tax Administration Forum.

procedural entitlement attached to a qualifying request. Negotiation might still be required as a necessary alignment measure, but its trigger and enforceability would be less specifically defined.

An alternative is to retain both duties while clarifying that the first operates independently of any request and that the second adds a procedural entitlement. Another is to specify a standing negotiation requirement more directly. Replacing negotiations with preliminary consultations is a further choice, but it may weaken the requested State's duty to address treaty change. These are alternatives with different effects, not interchangeable ways of expressing one consensus.

5.4. Unresolved Negotiations and Convention Disputes

Even a perfectly drafted obligation to negotiate cannot by itself guarantee alignment. Nigeria expressly identifies this problem: a treaty partner may negotiate without agreeing to the amendment necessary to bring an existing treaty into line with the Framework Convention. The University of Nairobi Committee makes the same point and proposes a consequence for unresolved negotiations, including possible conciliation and multilateral recording of outstanding requests.[47]

A good faith negotiation duty does not ordinarily guarantee agreement. The question is therefore which further obligations or procedures States want, and which already follow from the Convention's dispute settlement provisions.

The available drafting choices produce materially different legal consequences:

States could prescribe a more determinate alignment outcome or a timetable. Such a commitment would go beyond the present process obligation and would require clarity about the changes expected and the cooperation necessary to achieve them. A broad framework principle will not always identify a particular tax allocation rule or amendment.

[47] Nigeria, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 6; Committee on Fiscal Studies, University of Nairobi, Workstream I written submission concerning the Co-Leads' Zero Draft, pp 6–7.

Conversely, States could retain the present conduct standard without further alignment deadlines. Existing agreements might then remain unchanged after genuine negotiations. This does not necessarily mean that all Convention duties have been discharged, or that a dispute about compliance lacks a settlement route.

Article 22 already provides a route to conciliation for unresolved disputes concerning interpretation or application of the Convention. Any additional facilitation, reporting of deadlock or technical review should be designed in relation to that provision. Negotiators should distinguish assistance in reaching an amendment from examination of whether a State has breached its duties; neither function entails a power to impose an amendment unless that power is expressly established.

Procedural consequences may improve accountability without prescribing the exact tax treaty outcome. Their usefulness depends on access, timing, capacity and follow up. A request by one party, a joint request and an automatic referral are materially different institutional choices.

5.5. Reporting and Institutional Oversight

The same separation of legal functions is useful for paragraph 4. Some delegations view reporting and CoSP oversight as necessary to make progressive alignment effective. India opposes deletion of paragraph 4 on that basis, while Ghana, Tanzania and the African Group have supported a stronger institutional role, including discussion of timeframes for bringing existing treaties into conformity.[48]

Others regard an institutional role for the CoSP with considerably more caution. Finland has expressed concern about monitoring and assessing progress towards alignment; Germany has raised concerns

[48] United Nations Web TV, Fifth Session of the Intergovernmental Negotiating Committee on the UN Framework Convention on International Tax Cooperation, Workstream I, 7 August 2026, interventions of Ghana at 02:18:08–02:20:32 and India at 00:32:20–00:38:21; African Group, Workstream I written submission concerning the Co-Leads' Zero Draft, p 9; United Nations Web TV, Fifth Session, Workstream I, 7 August 2026, intervention of Tanzania at 02:07:30–02:09:51.

about reporting in connection with renegotiation; Norway proposes deleting paragraph 4 altogether.[49]

There is a substantial difference, however, between requiring States to report factual information and giving the CoSP power to determine how a bilateral treaty must be amended.

The current formulation of Article 21(4) merely requires reporting. Articles 13–17 supply a wider framework for review and support, but do not justify treating every possible institutional function as implicit in Article 21. A technical body could be mandated to identify inconsistencies or recommend options, including wording, without being empowered to amend agreements. The existence, composition and authority of such a body would need to be specified.

Negotiators can therefore distinguish the following functions, and decide which to combine:

- Reporting requirements and their relationship with the Convention's general review process;
- Technical advice on the nature of an inconsistency and available means of alignment;
- Facilitation or recommendations to assist treaty partners, with a defined request procedure;
- Assessment of compliance with Convention obligations, coordinated with Article 22; and
- Expressly authorised timelines, benchmarks or consequences for persistent non-compliance.

These functions have different legal effects and resource implications. Timely reporting can make inactivity visible; advice can support States with limited negotiating capacity; compliance review can test whether conduct meets the agreed standard. None is equivalent to a

[49] Finland, Workstream I written submission concerning the Co-Leads' Zero Draft of the United Nations Framework Convention on International Tax Cooperation, p 4; United Nations Web TV, Fifth Session, Workstream I, 7 August 2026, intervention of Germany at 00:22:57–00:25:20; Norway, Workstream I written submission concerning the Co-Leads' Zero Draft, p 7.

power to impose new bilateral treaty terms, but the absence of that power does not make oversight legally insignificant.

5.6. What Legal Clarification Can and Cannot Achieve

The analysis above identifies choices concerning treaty preservation, alignment, negotiation and oversight whose legal consequences should be made explicit. The principal questions for negotiators therefore remain as follows:

1. For existing agreements between common parties, should preservation be unconditional, conditional on compatibility, or limited in time? If a priority rule is intended, what obligations and conflicts should it cover?

2. What conduct does alignment require, when is renegotiation necessary, and what benchmarks or timeframes make progress assessable?

3. Should a qualifying unilateral request create an additional duty to renegotiate, and how can that entitlement coexist with a standing alignment duty and safeguards against abusive pressure?

4. What support, reporting and follow up should apply when alignment remains incomplete, and how should those functions interact with Article 22?

The evidence also marks the limits of clarification. Describing alignment accurately as a conduct obligation will not necessarily meet the objections of States that reject an obligation to reopen treaties. Conversely, removing the request mechanism or replacing negotiations with consultations may not satisfy States seeking a stronger entitlement to treaty change.

The perhaps more modest practical contribution of this analysis is, therefore, to identify where uncertainty about legal operation can be reduced and where a substantive choice remains in place. Greater precision can make upcoming negotiating sessions more informed; it does not establish that legal certainty, effective alignment and broad participation will all necessarily be achieved through the same treaty formulation.

6. Conclusion

Article 21 should be assessed against the rules that would otherwise govern treaty relationships. For common parties, the VCLT baseline differs according to whether bilateral tax treaties precede or follow the Convention; *inter se* modification and responsibility prevent that analysis from being reduced to chronology alone. Non-party rights, the nature of the Convention obligation and the scope of protocol participation are also relevant factors to be taken into consideration.

The current draft preserves earlier rights and obligations while requiring steps towards alignment, creates a specific negotiation duty between Convention parties, and requires reporting. Its compatibility condition constrains future treaty making. These mechanisms do not have identical effects: alignment does not itself restore priority over earlier agreements, and a duty to negotiate does not itself amend a treaty. The existing dispute settlement and institutional provisions must be considered when assessing what happens if implementation fails.

The negotiating record shows that similar drafting proposals can pursue different objectives. Clarification can help distinguish disagreements about legal consequences from disagreements about the desired level of obligation. It can also expose the costs of a proposed change, including a weaker procedural entitlement, broader preservation of existing rights or stronger supervision. The aim is to give negotiators a clearer account of those choices, leaving the substantive balance to the States negotiating the Convention.

Annex A: Article 21 of the Rev.1 Draft

Co-Lead's Rev.1 Draft of the UN Framework Convention on International Tax Cooperation, UN Doc A/AC.298/CRP.38 (16 November 2026), p 10. The following reproduces the revised provision; see footnote 2 regarding its relationship to the text analysed in this paper.

Article 21 — Relation with Other Agreements, Instruments and Domestic Law:

1. (a) Each State Party shall take such legislative, administrative and other measures as may be necessary to give effect to its obligations under this Convention in accordance with its domestic law and constitutional procedures.

(b) The provisions of the Framework Convention and its protocols shall in no way affect the right of Parties to enter into bilateral or multilateral agreements, including regional or subregional agreements, on issues relevant or additional to the Convention and its protocols, provided that such agreements are compatible with the State Party's commitments under the Framework Convention.

2. Subject to paragraph 3, this Convention shall not affect the rights and obligations of any party under a bilateral, regional or multilateral agreement into which a State Party has entered prior to the entry into force of this Convention.

3. States Parties shall take progressive and meaningful steps towards aligning their existing international tax agreements and related instruments with the provisions and principles of this Convention, including, where necessary, the renegotiation of existing agreements. Where a State Party requests the renegotiation, amendment, or modification of an existing agreement to achieve such alignment, the other State Party shall enter into negotiations in good faith and without undue delay.

4. Each State Party shall report to the Conference of the Parties, at intervals and in a form to be established by the Conference of the Parties, on actions that they have taken in furtherance of paragraph 3, including information regarding the number of requests they have made or received to renegotiate existing treaties and the disposition of such requests.

Annex B: Evidence and Methodological Limits

This paper draws on a qualitative mapping of publicly available oral interventions during the fifth negotiating session and subsequent Workstream I written submissions concerning Article 21, reviewed by 24 September 2026. The mapping distinguishes the drafting changes proposed by each actor from the reasons advanced in support of them.

Oral interventions and written submissions are recorded separately and compared where their formulations differ. No position is inferred from silence, and statements made on behalf of a group are not attributed to individual members without supporting evidence. The legal consequences discussed in the paper are the author's analysis of the recorded proposals.

The table below presents selected examples supporting the discussion in Section 5. Entries paraphrase the relevant positions and include source locators.[50] They illustrate particular drafting choices and their stated reasons; they do not measure levels of support or establish agreement among negotiating parties.

Actor and record	Source locator	Component	Recorded position paraphrased
Nigeria O-0135	Written Page 6	21(2): existing-agreement savings clause	Nigeria considers paragraph 2 legally problematic because preserving existing treaty rights and obligations may allow earlier agreements to prevail over the Framework Convention where they are inconsistent with it.
Norway O-0144	Written Page 7	21(3), first sentence: progressive alignment	Norway opposes the obligation to take progressive and meaningful steps to align existing agreements with the Convention.

[50] Oral interventions cited in the table are from the morning Workstream I meeting of 7 August 2026, available on United Nations Web TV: https://webtv.un.org/en/asset/k1v/k1vnw85h8w. Written submissions are identified by actor and page; fuller references appear in Section 5.

Actor and record	Source locator	Component	Recorded position paraphrased
Mexico O-0122	Oral 00:49:45–00:56:04	21(3), second sentence: duty to negotiate	Proposes ending paragraph 3 after its first sentence, thereby deleting the request-triggered renegotiation mechanism.
African Group O-0243	Written Page 9	21(3), second sentence: duty to negotiate	The African Group proposes making renegotiation for alignment purposes a required obligation rather than one triggered only by a request from another State Party.
African Group O-0246	Oral 00:57:01–01:02:24	21(3), second sentence: duty to negotiate	Proposes deleting the second sentence so that the alignment obligation does not depend on a State Party making a renegotiation request.
Burkina Faso O-0020	Oral 02:16:20–02:18:04	21(3), second sentence: duty to negotiate	Supports the African Group proposal to delete the second sentence of paragraph 3.
Côte d'Ivoire O-0034	Oral 01:24:29–01:26:57	21(3), second sentence: duty to negotiate	Supports deleting the second sentence of paragraph 3.
United Republic of Tanzania O-0239	Oral 02:07:30–02:09:51	21(3), second sentence: duty to negotiate	Supports deleting the final sentence of paragraph 3.
Nigeria O-0137	Written Page 6	21(3), second sentence: duty to negotiate	Nigeria considers that the renegotiation obligation may be too weak because it does not require the parties actually to reach agreement on amendments needed for alignment.

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WHAT WOULD INTERNATIONAL LAW DO WITHOUT DRAFT ARTICLE 21 OF THE UN TAX CONVENTION?

An Assessment in Light of the Vienna Convention on the Law of Treaties

This paper was authored by Ezequiel Steuermann and reviewed by Camila Barretto Maia and Magdalena Rochi, with research contribution by Tatiana D'Allier Zinn.

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Designed by Emilia Guzmán.

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