YTJN New York Tax Talks Day Five Roundup: Fifth Session of the Intergovernmental Negotiating Committee to Develop a UN Framework Convention on International Tax Cooperation

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The Big Picture: The Battle Over Treaty Supremacy

Day 5 marked the final day of Workstream One discussions and it was arguably the most consequential. Delegates spent the entire morning and part of the afternoon locked in debate over Article 21, the provision that determines how the Framework Convention will relate to the vast existing network of bilateral tax treaties and other international agreements.

The question at the heart of the debate: **Will the new UN Framework Convention take precedence over old treaties or will the old treaties remain supreme?**

Two starkly different visions emerged:

One side (led by the Africa Group, India, Brazil, and others) argued that Article 21 must ensure that the commitments made in this Convention are actually implemented—including through renegotiation of existing treaties where necessary. Without this, they warned, the Convention would be rendered meaningless.

The other side (led by the UAE, EU countries, UK, Switzerland, and others) argued that existing treaties represent carefully balanced sovereign agreements and that the Convention should not create obligations to renegotiate them. They called for deleting paragraphs that require treaty alignment.

The Co-Lead opened with an appeal for brevity: "*I suspect that this is one article that we might have all 193 states wanting to make a comment on*".

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... 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 States 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..."

The Core Debate: Should the Convention Require Treaty Renegotiation?

The UAE opened the discussion with significant concerns about paragraph three: "*This represents a significant departure from established treaty practice. International agreements are negotiated individually and reflect carefully balanced outcomes between sovereign states*". They warned that the provision could "create considerable legal uncertainty [and] substantial administrative burdens" and proposed replacing the mandatory obligation with language that "encourages states to promote consistency where appropriate and by mutual agreement".

Czechia went further, proposing to delete paragraph three entirely for several reasons: the wording establishes "undefined concepts such as progressive and meaningful steps," it would create "a degree of legal uncertainty that is not workable," and EU member states are "strictly bound by EU law". They also proposed deleting paragraph four.

Switzerland raised a critical legal question: do the Convention's commitments apply to treaties with non-parties? They requested clarification that "the commitments under the Framework Convention would only affect future treaties between state parties to the Framework Convention". On multilateral agreements, they noted that "a single country's request to renegotiate would require all the other countries to do so" pointing to the Multilateral Convention on Mutual Administrative Assistance (MAC) as an example.

Germany argued that "the convention should not restrict the state sovereignty in bilateral negotiations" and that "existing cooperation frameworks should be acknowledged as capable of satisfying the convention's objectives where appropriate".

Norway raised a practical example: "*In relation to Article 5... between Norway and Sweden, both countries rely primarily on the principle of physical presence to tax income from business activities. We would like clarity on whether paragraph two and three in this article would require us to amend the tax treaty between our two countries*".

India delivered a powerful defense of the article: "*We can understand that there can be a desire for adjusting the language of this article. But what this article seeks to do is something that we cannot compromise upon... If I sign up to a commitment that I am willing to effectively exchange information with a treaty partner, then my domestic law should contain my ability to do that. My treaties should be aligned with that commitment*".

India warned that deleting paragraphs three and four would "make all review to be done under this framework convention a dead letter". They emphasized that for the first time, "193 countries have got together and each one speaking with a voice as equal as the other".

Brazil agreed: "*I do concede that it's possible to make it more conditional... But I also agree with the Indian delegate that we should not forget the direction of what we want to achieve here. And reshaping or excluding entire paragraphs there, we would not support. It seems to undermine our own work*".

Mexico raised concerns about the practical implications: "*What happens if paragraph three... every country will have the prerogative to go and take progressive and meaningful steps to align the principles of the convention... this could also result in an assessment of some international tax treaties or free trade agreements*". They suggested that "this could lead to another attempt to leverage one part of the world against the other".

The Africa Group (Zambia) delivered a comprehensive statement: "*The African group supports Article 21 as it is a pivotal provision determining the legal relationship between the Framework Convention and existing including future international tax agreements. We regard it as one of the load bearing provisions of this convention*".

They proposed two key amendments:

1. **Delete the second sentence of paragraph three** because it "converts an unconditional obligation into a request triggered one... An obligation that awaits the trigger is an obligation deferred".

2. **Empower the COP to determine the timeframe** for alignment: "*The African group proposes that paragraph four should empower the conference of the parties to determine the time frame when the existing treaties are to be brought into conformity with this article*".

Nigeria called attention to existing practice: "*Under the global forum... we do all things possible, including amending our domestic law... Under the inclusive framework, we have obligations... and we ensure that we carry out all obligations, including changing existing treaties*". They noted that the Vienna Convention's Article 30 already establishes that "if you enter into a new agreement... the new agreement automatically updates your existing agreements".

Lesotho observed: "*I think I can be excused into thinking that there are two groups in this very same forum. Those that are totally convinced that the status quo is to remain, and those that firmly believe that the change is long overdue*".

Senegal responded to sovereignty concerns: "*I don't think we're eroding state sovereignty here. This isn't anything particularly new... States are fully able to take measures as they see fit even within the context of this convention*".

Kenya added: "*This committee is well guided by the terms of reference... Tax treaties, especially those negotiated by developing countries on an unequal footing and which are based on outdated and non inclusive principles represent the very international tax rules which this Framework Convention seeks to address*".

The Russian Federation called for compromise: "*Radical approaches that aim to see the deletion of this provision... are not acceptable. There has to be a compromise here*".

The UK made a procedural intervention: "*It seems that there is no common understanding on the interaction between a number of the different provisions that are on the table, namely Article 5, Article 20, Article 21, and the relationship with Protocol one. I would like to call for an explanatory note*".

Stakeholder Interventions

The African Union emphasized: "*Article 21 is that mechanism. It is therefore the bridge between what we promise one another in this room and what our citizens will one day receive*".

Centre for Fiscal Studies offered a legal analysis: "*Under the general laws of treaties, this convention would have arrived then holding priority over every pre existing tax treaty to the extent of incompatibility. Paragraph two surrenders that priority*". They warned that the duty to negotiate "is a duty to negotiate, not a duty to agree... deadlock is always a victory".

The Tax Justice Network Africa noted: "*Historically, bilateral renegotiations for developing countries have not been very successful or favorable because they face significant power imbalances... threats of removal of investment*".

Article 22: Settlement of Disputes

"1. The States Parties shall endeavour to settle any dispute among them concerning the interpretation or application of the Convention through negotiation or other peaceful means of their own choice.

> *2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to conciliation in accordance with Annex 1."*

The Debate

Nigeria raised a question about the meaning of "peaceful means": "*What do we mean by peaceful means? What will entail, what will not entail? For instance, if I go to court, is it peaceful, is it not peaceful?*"

Côte d'Ivoire argued that paragraph two is unnecessary because conciliation is already covered under "peaceful means" in paragraph one. They also noted that their constitutional law "does not currently allow for conciliation in fiscal matters".

Czechia supported this view: "*We also think that the second paragraph is already covered in paragraph one, and therefore we can delete paragraph two*".

ATF noted that the article should "establish a mechanism for facilitating the operationalization of Protocol two".

BCAS raised questions about whether "retaliatory trade tariffs, blacklisting, or gray listing can be said to be peaceful means".

The DMUN Foundation (youth) called for clarity on the conciliation process, including "the appointment and qualifications of conciliators, procedural timelines, participation by additional states with a direct interest, allocation of costs, and treatment of related disputes".

Articles 23-28: Final Provisions

Article 25: Reservations — The Most Contested Final Provision

> *"No reservations may be made to this Convention."*

The Debate: Should Reservations Be Allowed?

A significant split emerged on whether the Convention should allow reservations.

Those who supported allowing reservations argued it would encourage broader participation:

Malaysia noted that the prohibition "may diminish flexibility for member states and could potentially discourage wider voluntary participation and accession".

The United Arab Emirates called for "a more flexible approach that preserves the objective and purpose of the Convention while allowing limited and carefully circumscribed reservations where necessary".

Czechia stated: "*Given the fact that tax is such an integral part of state sovereignty, we believe that the Framework Convention should allow for reservations*". They noted that "during the intersessional meeting, with an exception of one member state supported a provision that would allow states parties to provide reservations".

Switzerland called the lack of reservations "an obstacle for Switzerland in regard to its sovereignty and also constitutional constraints". They argued that "where operational provisions are concerned, there we must insist on the possibility to make reservations".

Sweden favored "an approach more closely aligned with established treaty practice, allowing reservations rather than imposing a blanket prohibition".

China warned that "the absence of reservation clause would block [a state's] participation and contribution to the framework convention".

Mexico connected the issue to decision-making: "*Are we looking at this article as an independent article... if decision making becomes simple majority... countries who might not accompany that decision would then want to have a reservation... would not be able to. That's a double caveat*".

Norway offered a balanced perspective: "*Whether this will be possible depends on the final content and level of ambition of the convention... we may therefore need to return to this provision once there's greater clarity on the other articles*".

Those who opposed allowing reservations argued it would weaken the Convention:

The Africa Group (Kenya) stated: "*We support this draft and our view is that it is in full alignment with the aim of achieving the objectives, principles, commitments, and all other provisions of this Framework Convention*". They noted that "we see similar language being adopted in many framework conventions such as the UNFCCC... the Framework Convention on tobacco control... the Kyoto Protocol".

Lesotho argued: "*If you're going to say you are participating in the framework through reservations, it's like having a team of players and you put them on the team sheet and then some of them said we are not going to play. For us, that will not be a collaboration or participation*".

Brazil suggested the issue is premature: "*We are not yet in the position to decide whether we should or should not have reservations... we would have to double check the final provision and then decide with more data*".

India asked: "*I wonder which is that article on which we can place a reservation... Part two is the heart, which has to be the core and which cannot allow any reservations*".

Zambia warned: "*If you open up for reservations, what document do you have as an end result? There's a risk that then the document becomes watered down*".

The African Union stated: "*Participation cannot be pursued at the expense of the integrity and the effectiveness of the convention itself... if parties are permitted to selectively exclude or modify those commitments through reservations, we risk creating different versions of the same convention*".

Africa Tax Administration Forum added: "*No reservation helps to reinforce the integrity of the convention... Reservation will let a party have the benefit of the whole while exercising the obligation it finds inconvenient. This will unravel the package*".

Tanzania connected the issue to optionality: "*If the convention is optional, the protocols are optional and even the provisions of the protocol are optional, then we risk creating optional international tax cooperation rather than effective international tax cooperation*".

New York University noted: "*In the context of framework conventions, it is not typical that there would be an ability to do a reservation*".

Brot für die Welt stated: "*Allowing for reservations will create a confusing system where it is unclear which country has committed to what... The OECD approach is not a solution. It has created a very complex and incoherent international system*".

Other Final Provisions

Article 24 (Signature, Ratification, Acceptance, Approval, Accession):

1. *This Convention shall be open to all States for signature in [ ] from [ ] and thereafter at United Nations Headquarters until [ ].*
2. *This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.*
3. *This Convention is open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.*

Nigeria proposed deleting the "until" date, arguing that "any state that wishes to join the convention should be allowed to join irrespective of the time". **Mexico** agreed: "Putting a definitive end date would then make matters difficult for countries that might come later".

Article 26 (Entry into Force):

1. *This Convention shall enter into force on the ninetieth day after the date of deposit of the [number to be determined] instrument of ratification, acceptance, approval or accession.*
2. *For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the [number to be determined] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State of the relevant instrument or on the date on which this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.*

Norway suggested the threshold should be "carefully considered and be at a level where this convention can actually have effect for a large number of countries". Singapore agreed that "the threshold should be sufficiently high to reflect broad participation".

Article 27 (Withdrawal):

1. *At any time after two years from the date on which this Convention has entered into force for a State Party, that State Party may withdraw from the Convention by giving written notification to the Depositary.*
2. *Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.*
3. *Any State Party that withdraws from the Convention shall be considered as also having withdrawn from any protocol to which it is a Party.*

Singapore questioned "the intent behind the two year time frame," noting it "could create a lock in period of sorts".

Article 23 (Depositary):

The Secretary-General of the United Nations shall be the depositary of the present Framework Convention and of protocols adopted in accordance with Article [ ].

Nigeria suggested deleting the word "present" as unnecessary.

What's Next?

Next week (starting 10 August 2026), the committee will shift to the two early protocols that will accompany the Framework Convention:

Protocol 1: Taxation of Income Derived from the Provision of Cross-Border Services in an Increasingly Digitalized and Globalized Economy

What's on the agenda:

- Presentation of the Co-Lead's draft protocol
- Discussion on the substantive provisions

Key questions to watch:

- How will the protocol define "cross-border services" in the digital economy?
- Will it establish new nexus rules (like "significant economic presence") that depart from traditional permanent establishment rules?
- How will it balance the taxing rights of source countries (where services are consumed) and residence countries (where providers are based)?
- Will developing countries gain meaningful taxing rights over digital services provided by foreign companies?

Why it matters: This protocol could fundamentally reshape how countries tax the digital economy from streaming services to cloud computing to online advertising. For developing countries, this represents an opportunity to tax digital giants that currently pay little or no tax where their users are located.

Protocol 2: Prevention and Resolution of Tax Disputes

What's on the agenda:

- Presentation by the Co-Leads on the Co-Leads' draft protocol
- Discussion on dispute prevention and resolution mechanisms

Key questions to watch:

- Will dispute resolution be mandatory or optional?
- Will arbitration be included (many developing countries have reservations about this)?
- What dispute prevention mechanisms will be established?
- Will taxpayers be able to initiate dispute resolution procedures directly?

- How will developing countries' capacity constraints be addressed?

Why it matters: When tax disputes drag on for years, governments lose revenue that could fund education, healthcare, and youth programs. Effective dispute resolution means faster collection of taxes owed and more money for public services.

What Do YOU Think? 🤔

On Article 21 (relationship with other agreements):

- Should the Framework Convention require countries to renegotiate existing tax treaties to align with its principles? Or should existing treaties remain untouched unless both parties agree to change them?
- Some say that without an obligation to align, the Convention becomes meaningless. Others say that requiring renegotiation infringes on sovereignty and creates legal uncertainty. Where do you stand?

On Article 25 (reservations):

- Should countries be allowed to make reservations to the Framework Convention? Some say this would encourage broader participation. Others say it would create a confusing system where countries have different obligations.
- Is a convention where every country has the same obligations more important than one where every country participates? Or is participation more important than uniformity?

On Protocol 1 (cross-border services):

- Should the protocol establish new rules for taxing digital services based on where users are located? Or should traditional physical presence rules continue to apply?
- Developing countries lose billions in tax revenue from digital services provided by foreign companies. Should the UN Tax Convention give them the right to tax these services?

On Protocol 2 (dispute resolution):

Should dispute resolution be mandatory or optional? Should taxpayers be able to initiate procedures directly?

We want to hear from YOU! Share your thoughts on these questions. Tag us on social media or write to us. Your voice matters in building a tax system that works for people—not just profits.

Stay Engaged

The UN Framework Convention on International Tax Cooperation is one of the most important negotiations of our time. **Young people have a stake in the outcome.** Follow YTJN for daily updates, and use your voice to demand a tax system that works for people—not just profits.