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Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law

1. Introduction

Relying on definition of artificial intelligence (AI) in the Merriam-Webster Dictionary, Alexander Kriebitz and Christoph Lutge observed that the word “intelligent” does not specifically refer to the machine itself, but to the fact that if the task performed by the machine would have been accomplished by a human being, the mode of achieving the task would be considered as intelligent.¹ They concluded that comparison to human intelligence is more relevant to the output of computing than to the input or to “decision-making process in machines.”² The two authors observed that since AI has not become an ontological entity, it cannot be “regarded as an independent factor or potential perpetrator of human rights violation,” “at least not yet.”³ “Instead, human rights compliance that relates to AI solutions remains in the domain of human responsibility and works to bind nation states, companies or non-governmental organizations (...) using these technologies.”⁴ It is worth adding that AI has not been developed in a legal vacuum. Respect for human rights, as a general and universal law, should guide developers, providers, and users of AI. But it might be that particularities of AI require additional legal regulation concerning human rights.

Some writers are looking towards the future. Considering predictions from some AI experts that artificial general intelligence (AGI) could emerge by 2040 and might develop self-consciousness, James Dawes raises the question: does consciousness entails rights?⁵ In other words, if AGI acquires self-consciousness, could that entitle AGI to human rights protection? National courts have provided contradictory answers to the question of whether an AI system can be recognized as an inventor.⁶ The concept of robot judges

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1 Alexander Kriebitz, Christoph Lutge, “Artificial Intelligence and Human Rights: A Business Ethical Assessment,” *Business and Human Rights Journal*, vol. 5, no. 1, 2020, p. 88.

2 *Ibid.*, p. 89.

3 *Idem.*

4 *Idem.*

5 James Dawes, “Speculative Human Rights: Artificial Intelligence and the Future of the Human.” *Human Rights Quarterly*, vol. 42, no. 3, 2020, pp. 573-593.

6 Haochen Sun, “Artificial Intelligence Inventions” *Florida State University Law Review*, vol. 50, no. 1, 2022, pp. 62, 63.

has also been contemplated.⁷ Almost two decades ago, Alzbeta Krausova wrote an article on the legal regulation of artificial beings.⁸ Despite the fact that AI can already produce unpredictable outputs and that the process of artificial reasoning can escape human control, we believe that development would not move in that direction. At least there is possibility and widespread concern to prevent the development of AGI towards full independence from human control.

There is now a broad consensus and evidence that AI can impact human rights, both positively and negatively. The potential effects to human rights have captured the attention of practitioners and scholars. The Committee on Artificial Intelligence, established by the Council of Europe, prepared a Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law.⁹ An international convention is necessary not only to harmonize national approaches to the impact of AI on human rights, but also do address the trans-border aspect of the issue. Some AI systems have been already available world-wide, and problems may arise from the fact that AI system is located in one country while its users may be located in other countries. The trans-border interaction may create two problems: the protection of human rights of users in other countries and the protection of AI system from malicious use by users in other countries. The purpose of this article is to present the Draft, to analyze it, and to highlight its achievements and potential shortcomings. One notable shortcoming might be that the Draft does not address the impact of AI on economic, social and cultural rights in adequate way.

2. The Committee on AI and preparation of the Draft Framework Convention

Pursuant to Article 17 of the Statute of the Council of Europe (CoE), and in accordance with Resolution CM/Res(2021)3 on intergovernmental committees and subordinate bodies, their terms of reference, and working methods, the Committee of Ministers in 2021 approved the establishment of the Committee on AI (CAI) with the mandate to develop a legal instrument on the development, design, and application of AI systems, grounded in the CoE's standards on human rights, democracy, and the rule of law. CAI commenced its operations in the year 2022, with a deadline set for November 15, 2023, to formulate a legal instrument in the form of a Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law.

The CAI is comprised of 47 individuals, reflecting the total number of member states of the CoE. Member states have been invited to appoint one or more representatives of the highest possible rank specializing in digital governance and the legal implications stemming from the design, development, and application of AI systems. Each member of the Committee is entitled to one vote. Should a government appoint more than one

7 Peter K Yu, "Artificial Intelligence, the Law-Machine Interface, and Fair Use Automation," *Alabama Law Review*, vol. 72, no. 1, 2020, p. 189.

8 Alzbeta. Krausova, "Legal Regulation of Artificial Beings," *Masaryk University Journal of Law and Technology*, vol. 1, no. 1, 2007, pp. 187-198.

9 <https://www.coe.int/en/web/artificial-intelligence/cai>.

member, only one of them is entitled to participate in voting.¹⁰ The CAI builds upon the work conducted between 2019 and 2021 by the CoE's Ad Hoc Committee on AI (CAHAI). This committee was tasked with assessing the feasibility and potential elements of a legal framework for the development, design, and application of artificial intelligence, grounded in the CoE's standards on human rights, democracy, and the rule of law, based on extensive consultations with multiple stakeholders.

Additionally, the CAI was assigned eight tasks, among which we highlight the following: "establish an international negotiation process and conduct work to elaborate an appropriate legal framework on the development, design, and application of artificial intelligence, based on the CoE's standards on human rights, democracy and the rule of law, and conducive to innovation, which can be composed of a binding legal instrument of a transversal character, including notably general common principles, as well as additional binding or non-binding instruments to address challenges relating to the application of AI in specific sectors, in accordance with the relevant decisions of the Committee of Ministers."¹¹ It is crucial to emphasize that the objective encompasses regulating three stages of AI technology - design, development, and application. This reflects the complexity of this field and the equal legal significance of each component in the regulatory process. Furthermore, the legal act's cross-sectional nature signifies a shift towards horizontal regulation of the AI sector based on general principles, moving away from the previous vertical framework that focused on legal regulations for specific subdomains within artificial intelligence.

In February 2023, the CAI decided to publicly release the so-called Zero Draft of the Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law. Subsequently, in July of the same year, the Consolidated Working Draft of the Framework Convention was published. This version follows the first reading of the revised Zero Draft, prepared by the CAI Chair with assistance from the Secretariat, intended as a basis for further negotiations, incorporating provisions preliminarily agreed upon during the first reading and proposals prepared by the Chair with Secretariat support.¹²

On December 18, 2023, the CAI adopted the Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy, and the Rule of Law, which will be the focus of our article. This document encompasses the outcomes of the CAI's second reading of the Draft Framework Convention. It serves as the foundation for the third and final reading, without precluding the ultimate outcome of negotiations within the CAI. All provisions are subject to preliminary reservations and verifications.

3. Analysis of the Draft Convention

The draft consists of a preamble and thirty-six articles divided into eight chapters, each bearing the following titles: 1. General provisions; 2. General obligations; 3. Principles

¹⁰ Terms of Reference of the Committee on Artificial Intelligence for 2022. Council of Europe, 2022. <https://rm.coe.int/terms-of-reference-of-the-committee-on-artificial-intelligence-for-2022/1680a74d2f>.

¹¹ *Ibid.*

¹² *Ibid.*

related to activities within the lifecycle of AI systems; 4. Remedies; 5. Assessment and mitigation of Risks and Adverse Impacts; 6. Implementation of the Convention; 7. Follow-up mechanism and cooperation; 8. Final Clauses.

3.1. Preamble

The preamble of the Draft is articulated through 17 clauses. Given it is a working version, some clauses are presented in several versions, with final selection to be made for the definitive version of the Framework Convention. Beyond the “standard” provisions found in CoE convention preambles, clauses 3 and 4 assertively highlight that AI possesses the capacity to enhance human prosperity and both individual and societal well-being, by facilitating progress and innovation. Furthermore, it is acknowledged as a technology whose design, development, and application can offer unprecedented opportunities for the protection and promotion of human rights, democracy, and the rule of law. Conversely, clauses 5, 6, and 7 of the preamble express concerns that AI could compromise human dignity and autonomy, specifically human rights, democracy, and the rule of law. Additionally, profound apprehensions are voiced regarding potential discrimination within the digital realm, particularly in AI systems, which could place certain groups at a disadvantage, hindering their full enjoyment of human rights and fundamental freedoms, and preventing their full, equal, and effective participation in economic, social, cultural, and political activities.

It is crucial to note that clauses 9 and 11 of the preamble define the unique character of this document, aligning with the CAI’s objective. It implies that the Framework Convention will be founded on general principles with horizontal (global) applicability across the entirety of the AI field. Consequently, the document will serve as a foundation for future regulation of specific issues within the domains of AI design, development, and application. Nevertheless, clause 16 states that the Convention is intended to address specific challenges arising from the design, development, use, and withdrawal of AI systems. Indeed, clause 15 specifically highlights the significance of protecting the right to privacy in relation to the automatic processing of personal data.

In clause 10 of the preamble, there is also a recognition of the need for digital literacy and trust in the design, development, use and decommissioning of AI systems. Clauses 13 and 14 underscore the importance of applying the most significant international treaties in the field of human rights. Finally, clause 17 affirms the commitment to protecting human rights and fundamental freedoms, democracy, and the rule of law, emphasizing the need for the application of standards for lawful, ethical, responsible, fair, and transparent design, development, use, and decommissioning of these technologies.

3.2. Chapter I - General provisions

Article 1 of the Draft, titled “Objective and Purpose,” stipulates that the provisions of the agreement aim to ensure that all activities, throughout the life cycle of AI systems, fully respect human rights, democracy, and the rule of law. This broadly establishes the

protection of the foundational values of the organization enacting it, and will have a significant role in future interpretation and application of the Framework Convention. It is further stated that each contracting party should adopt or maintain appropriate legislative, administrative, or other measures for the implementation of the Convention's provisions. Thus, it is indicated that these measures will be graduated and differentiated as necessary in light of the seriousness and likelihood of negative impacts on human rights, democracy, and the rule of law throughout the life cycle of AI systems. This may include specific or horizontal measures applicable regardless of the type of technology used. Additionally, it is mentioned that a follow-up mechanism will be established to ensure the effective implementation of these provisions.

This article has been structured differently in all three existing versions of the Draft, reflecting its significance. Notably, the formulation concerning the gradual adoption of measures and their differentiation based on the potential for jeopardizing human rights, democracy, and the rule of law is particularly interesting. Although this provision indicates that legal legislation will evolve alongside the development of artificial intelligence, conditioned by changes in this field, it also mandates preventive action. It deals with the "likelihood" of negative impacts on one side and, on the other, horizontal legislation, with its principles and norms. That certainly constitutes preventive action against the dangers of artificial intelligence. Furthermore, this formulation allows for the unimpeded development of artificial intelligence, ensuring that the positive impacts of this technology are not burdened by legal regulation. This is a risk-based approach.

In the second Article, the Draft's authors define the concept of an AI system. It is described as a system based on machine learning that, "for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that may influence physical or virtual environments." The Article notes that various AI systems vary in their levels of autonomy and adaptability after implementation.¹³

Article 3 of the Draft regulates the scope or field of application of the Convention. There are three versions of the Article, differentiated by the level of details concerning public, private, and research activities. We believe that option A in the Draft is most suitable. It stipulates that the Convention will apply to activities throughout the life cycle of AI systems that have the potential to interfere with human rights, democracy, and the rule of law, but will not apply to research and development activities related to AI systems, unless the systems are tested or used in ways that have the potential to interfere/disrupt human rights, democracy, and the rule of law. By prescribing the provision in this way, it implies that it applies to all entities (public authorities, private entities, and individuals) undertaking such actions.

The Draft addresses the issue of the protection of national security and defense by

¹³ This refers to a general definition of an artificial intelligence system, grounded in the fundamental operations of such systems, which is understandable given the complexity of this area. For instance, the EU's AI Act suggests that the concept of an artificial intelligence system should be clearly defined for legal certainty while allowing flexibility to accommodate future technological developments. The definition should focus on the key functional characteristics of the software, especially its capacity to generate outputs like content, predictions, recommendations, or decisions impacting the environment it interacts with, whether physical or digital.

provisions which are given in different versions. Some of the versions, we believe, are problematic. Thus, option A of this provision stipulates the possibility of derogation from the Convention's application, stating that contracting parties are not obliged to apply the Convention to the design, development, use, or decommissioning of AI systems for the protection of essential national security interests, including activities related to foreign intelligence and counterintelligence operations, provided that such activities are conducted in accordance with relevant international law, including obligations under international human rights law, and respecting democratic institutions and processes. The issue who will determine whether such activities are conducted in accordance with international human rights law has remained open. For example, Article 15 of the European Convention on Human Rights (ECHR) strictly delineates the conditions under which derogation from the Convention's obligations is permissible, specifically in scenarios of "a danger threatening the life of the nation"¹⁴, and in specifically designated circumstances.¹⁵ The contracting parties to the ECHR are obligated to notify the Secretary General of the CoE in the event of a derogation from the Convention, detailing the measures taken and the reasons for their implementation.¹⁶ The European Court of Human Rights holds the authority to determine whether a derogation from the obligations of the ECHR was justified. At the end of the first chapter, it is stipulated that the Convention shall not apply to activities within the lifecycle of AI systems utilized for purposes pertaining to national defense. This proposal is even more problematic. It does not require the non-application should be in accordance with international human rights. While national defense constitutes a legitimate ground for the limitation or intervention by public authorities in human rights, it is imperative that certain conditions are met for undertaking actions from the lifecycle of AI for national defense purposes that may result in human rights violations. The exclusivity in enacting this provision is contentious, especially as it does not mandate that derogations from the Convention's application must fulfill conditions of legality, necessity in a democratic society, proportionality, and so forth.

3.3. Chapter II - General obligations

Article 4 of the Draft, entitled "Protection of human rights," prescribes that each contracting party shall adopt or maintain measures to ensure that activities throughout the lifecycle of AI systems are in compliance with obligations to protect human rights, as established by relevant international law, as well as by domestic legislation. "Integrity of democratic processes and respect for the rule of law," is the title of Article 5 of the Draft,

14 See more on the definition of "public emergency threatening the life of the nation" as it relates to a specific crisis situation or extraordinary circumstances impacting the entire population and posing a threat to the organized life of the community of that state in *Lawless v. Ireland* (No. 3), (App. no. 332/57), the European Court of Human Rights, decision, 1 July 1961.

15 Article 15, paragraph 1 of the European Convention on Human Rights stipulates that in time of war or other public emergency threatening the life of the nation any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

16 Article 14 of the European Convention on Human Rights.

in which it is mandated that the contracting parties shall adopt or maintain measures aimed at ensuring that AI systems are not utilized in a manner that could undermine the integrity, independence, and efficiency of democratic institutions and processes, including the principle of the separation of powers, respect for judicial independence, and access to justice. Furthermore, it states that they will adopt or maintain measures aimed at protecting (the participation of individuals) in democratic processes, fair access to public dialogue (and the ability of individuals to make decisions without undue external influence or manipulation) in the context of activities within the lifecycle of AI systems. These are certainly core provisions of the Draft. In connection with these provisions, it is worthy to refer to transnational interaction between AI system and its users and other individuals. AI system, located in a contracting party, interacts with its users in other contracting parties. These interactions can be beneficiary, but also detrimental for both sides. AI system located in one contracting party can negatively affect human rights of individuals in other contracting parties.¹⁷ On the other hand, users in other contracting parties can misuse this AI system. We believe it will be useful that the Draft addresses this transnational interaction of AI system to prevent or mitigate possible negative transnational effects.

3.4. Chapter III - Principles related to activities within the lifecycle of AI systems

The Draft stipulates that this chapter establishes general common principles that each party should apply concerning AI systems in a manner appropriate to its domestic legal system and in accordance with other obligations of the Convention. This part of the Draft is of paramount importance as it represents a horizontal approach to the regulation of AI systems, by determining the principles upon which these systems, in their entirety, must operate. Articles 6 through 13 of the Draft outline the following principles: 1. Human dignity and individual autonomy; 2. Transparency and oversight; 3. Accountability and responsibility; 4. Equality and non-discrimination; 5. Privacy and personal data protection; 6. Preservation of health (and the environment); 6. Reliability and trust; 7. Safe innovation. Essentially, each provision implies that the states party to the Convention must adopt or maintain measures in the field of AI systems in accordance with the aforementioned principles.

3.5. Chapter IV - Remedies

Article 14 of the Draft comprehensively prescribes, also at the principle level, that each party shall undertake measures to ensure accessible and effective legal remedies for human rights violations arising from the actions within the lifecycle of AI systems. This includes documenting the actions of AI systems (and their access) that may impact human rights, providing information to competent authorities, as well as ensuring effective avenues for individuals whose rights have been infringed to challenge decisions made

¹⁷ R. D. Taylor, *Data localization: The internet in the balance*. Telecommunications Policy, 44(7), 102003. <https://doi.org/10.1016/j.telpol.2020.102003>.

using this technology. Additionally, it envisages the possibility of submitting complaints to public authorities, including a supervisory mechanism. Furthermore, Article 15 of the Draft emphasizes the importance of human oversight/review, pursuant to which each contracting party should provide effective procedural safeguards, protection mechanisms, and rights, in accordance with applicable domestic and international law, to be available to persons affected by the actions of artificial intelligence. Each party should strive to ensure, where an AI system significantly impacts human rights, that individuals interacting with the AI system are informed that they are communicating with an AI system, not a human being.

This article is highly significant for the protection of human rights, democracy, and the rule of law, as it lays the foundation for rectifying potential violations of these values by the actions of AI systems, by prescribing the obligation to provide protection mechanisms. Additionally, the principle of transparency is evident in the obligation to inform individuals that they are interacting with artificial intelligence, which greatly contributes to the protection of their human rights, given that transparency is key to earning the trust of users, or those affected by a decision. Accordingly, based on transparency that enables understanding of the decision-making process by artificial intelligence, persons whose rights have been infringed are more likely to successfully seek protection of their rights through legal remedies.

3.6. Chapter V - Assessment and Mitigation of Risks and Adverse Impacts

Article 16 of the Draft, which addresses the issue of risk and impact assessments, stipulates that each contracting party should take measures to identify, assess, prevent, and mitigate risks and impacts on human rights, democracy, and the rule of law arising from the design, development, use, and decommissioning of AI systems. These measures should include proper management of risk and impact processes, taking into account the perspective of all relevant stakeholders, recording, monitoring, and reviewing adverse impacts, cyclically conducting the process throughout the entire lifecycle of the system, adequate documentation, publishing information about efforts to identify, assess, and mitigate risks, as well as the implementation of preventive and mitigating measures.¹⁸ Additionally, contracting parties should undertake legislative or other necessary measures to establish mechanisms for the temporary suspension, prohibition, or other appropriate measures concerning specific uses of AI systems that are considered incompatible with the respect for human rights, the functioning of democracy, and the rule of law.

¹⁸ The consolidated version of the Draft included an article within this chapter, which anticipated that each contracting party should undertake appropriate measures, especially concerning the training of those responsible for the design, development, use, and decommissioning of artificial intelligence systems, to ensure that relevant actors are capable of applying appropriate methodology or guidelines for the identification, assessment, prevention, and mitigation of relevant risks and impacts related to the realization of human rights, the functioning of democracy, and the respect for the rule of law.

3.7. Chapter VII - Follow-up mechanism and cooperation

In the interest of fostering the most inclusive cooperation regarding the Convention, Articles 24 and 25 anticipate a series of elements upon which the contracting parties should periodically consult. In this vein, Article 24 prescribes that the contracting parties shall regularly consult to ensure the effective utilization and application of the Convention. Consultations will also cover the consideration of possible supplements or amendments to the Convention, issues related to interpretation and application, exchange of information about significant legal, political, or technological developments pertinent to application, facilitating the amicable resolution of disputes, and cooperation with relevant stakeholders, as well as public hearings on relevant aspects of the application of this Convention. It further states that the Conference of Parties will be convened by the Secretary-General of the CoE whenever necessary, and in any event when a majority of the parties or the Committee of Ministers requests its convening, with the Conference's procedural rules to be agreed upon by consensus. Additionally, it is prescribed that the parties will be supported by the Secretariat of the CoE in carrying out these functions, and the possibility of proposing to the Committee of Ministers appropriate ways of engaging relevant expertise in support of the effective application of the Convention is outlined.

Article 25 addresses the issue of international cooperation. It is prescribed that the parties shall cooperate in achieving the goal of the Convention, primarily by exchanging relevant information related to AI that may have a significant positive or negative impact on the enjoyment of human rights, the functioning of democracy, and the respect for the rule of law. The contracting parties are encouraged to assist states that are not members of the Convention to act in accordance with its provisions and to join it, and the inclusion of relevant non-state actors in the information exchange process is also encouraged. Furthermore, they are encouraged to strengthen cooperation to prevent and mitigate risks and adverse impacts on human rights, democracy, and the rule of law in the context of activities within the lifecycle of AI systems. Article 26 prescribes monitoring mechanisms, stating that the parties should establish effective mechanisms for monitoring compliance with the obligations of the Convention. These mechanisms should perform their tasks independently and impartially, with the necessary authority, expertise, and resources. Should a party envision multiple mechanisms, steps should be taken to facilitate their effective cooperation. If mechanisms different from existing human rights structures are used, steps should be undertaken to promote effective cooperation between these mechanisms and domestic human rights structures.

4. Impact of AI on economic, social and cultural rights

There is widespread consensus that AI can impact economic, social and cultural rights in positive and negative way. Basic, general international obligation concerning these rights is established by para 1 of Article 2 of the 1966 International Covenant on Economic, Social and Cultural Rights. The paragraph stipulates that each state party "undertakes to take steps, individually and through international assistance and co-

operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant”. Consequently, state parties are obliged to govern development and use of AI systems in a manner that maximizes the enjoyment of economic, social and cultural rights. Given the foreseen negative effects, additional regulation is deemed necessary.

Having observed that development in technology has had prolonged effects on reshaping the workplace environment since the beginning of the industrial revolution, mostly in positive way, Somesh Sankhala and Falguni Mundhra stated that “the rampant growth in technology in today’s era and the introduction of artificial intelligence in the workplace, the scale at which it could disrupt the world of employment and life, in general, is colossally unprecedented.”¹⁹ According to prediction of some IMF experts, AI will have a huge impact to global employment. They state:

In advanced economies, about 60 percent of jobs are exposed to AI, due to prevalence of cognitive-task-oriented jobs. A new measure of potential AI complementarity suggests that, of these, about half may be negatively affected by AI, while the rest could benefit from enhanced productivity through AI integration. Overall exposure is 40 percent in emerging market economies and 26 percent in low-income countries. Although many emerging market and developing economies may experience less immediate AI-related disruptions, they are also less ready to seize AI’s advantages. This could exacerbate the digital divide and cross-country income disparity.²⁰

Without timely and proper measures taken at the national and international levels to mitigate the problem, it might produce deep and painful consequences in national and global societies. Indeed, the issue has prompted certain regulatory consideration. The Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, issued by US President Biden on 30th October 2023²¹, addresses the issue. The Order requires the development and use AI *inter alia* to support American workers. It recommends collective bargaining to ensure that workers will enjoy benefits from AI. The Order promises that the Administration will support job training and education to facilitate access to opportunities that AI creates. In the workplace itself, the Order advises, “AI should not be deployed in ways that undermine rights, worsen job quality, encourage undue worker surveillance, lessen market competition, induce new health and safety risks, or cause harmful labor-force disruptions.” Considering various risks that AI is bringing, the UN AI Advisory Body, established by the Secretary General Antonio Guterres, warns in its Interim Report, published in December 2023, that at the social level the risks “encompasses the impact on labour markets if large sections of the workforce are displaced...”²² The AI Advisory Body also observes that social shifts in the way we relate to each other cannot be ruled out due to increasing mediation of AI in our interactions. It

19 Somesh Sankhala, Falguni Mundhra, “Artificial Intelligence vs Human Rights,” *Jus Corpus Law Journal*, vol. 3, no. 2, 2022, p. 401.

20 Gen-AI: Artificial Intelligence and the Future of Work, IMF, SDN/2024/001, January 2024, 2

21 <https://bit.ly/3VsbWw7>.

22 Governing AI for Humanity, Interim Report, AI Advisory Body, December 2023, para 28. <https://www.un.org/en/ai-advisory-body>.

cautions that “These may have unpredictable consequences for family life and for physical and emotional well-being.”²³

Interestingly, such concerns have not been displaced in relevant EU documents. The Presidency conclusions of 21st October 2020 on the Charter of Fundamental Rights in the context of AI and digital change address impact of digital technologies to social rights, noting that they can facilitate access to social security and social systems.²⁴ They underlined that “while digital algorithms, including AI-based ones, may allow the development of better-targeted individual assistance and treatments, the application of such technologies should benefit the whole social community, promote the adequate social protection and healthcare of groups in vulnerable situations and should not be used to weaken the principle of solidarity.” A Proposal for a regulation on harmonized rules on AI of 2021²⁵ addresses the impact of AI to human rights, but it mentions among social and economic rights just workers’ right to fair and just working conditions without broader elaboration.

Negative effects of AI on social and economic rights coupled with the widespread closure of workplace worldwide, demand attention from legislators, especially in the current political landscape, marked by a global wave of populism. While it is crucial to safeguard the integrity of democratic processes and respect for the rule of law, as envisaged by Article 5 of the Draft, this alone is insufficient. Both national and international measures are necessary to prevent or, at list, mitigate social and political consequences of huge and rapid shift in the labor market. While the measures that the Biden administration intends to implement for American workers are essential for internal social and political stability, they may not be enough to prevent a potential flux of immigrants from Mexico and other countries in Latin America. Adequate measures need to be taken and the US should help these countries in developing their AI capacities. AI has the potential to benefit everyone, as advocated by the Interim Report of the UN AI Advisory Body. Realization of this potential could significantly improve social, economic and political condition worldwide, contributing to stability and progress within the international community. Achieving this goal requires concerted efforts from each state individually and collaborative cooperation on a global scale.

Considering that the Framework Convention is intended to become a treaty open for states beyond the Council of Europe, it holds the potential to become a global legal instrument governing the impact of AI on human rights. As a global legal framework, it could provide equal opportunities for all to benefit from AI, thus contributing to global peaceful and sustainable development. The contribution might be amplified by reference to impact of AI to economic, social and cultural rights. Clause 6 of the preamble of the Draft Framework Convention expresses deep concern that discrimination in digital contexts,

23 *Ibid.*

24 The Charter of Fundamental Rights in the context of Artificial Intelligence and Digital Change, Presidency conclusions, Brussels, 21 October 2020 (OR. en) 11481/20 FREMP 87 JAI 776, para 23 - <https://bit.ly/3zaWDkg>.

25 Proposal for a Regulation of the European Parliament and of the Council laying down harmonized rules on artificial intelligence (Artificial Intelligence Act) and amending certain Union legislative acts, Brussels, 21. 4. 2021, COM(2021) 206 final 2021/0106 (COD) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0206>.

especially those involving AI systems, disables vulnerable groups from full enjoying their human rights and hinders their full and equal participation in economic, social, cultural and politic affairs. Article 25 of the Draft obliges contracting parties to co-operate in the realization of the purpose of the Convention, including prevention or mitigation of risks and adverse impacts on human rights. Having that in view and above mentioned Article 2 of the International Covenant on Economic, Social and Cultural Rights, we believe, it would be appropriate that a new article is inserted in chapter III of the Draft that would oblige contracting parties to take measures, individually and through international assistance and co-operation, to provide that AI systems serve full realization of economic, social and cultural rights.

5. Conclusions

The Draft Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law focuses on aligning the development and application of AI systems with human rights, as well as the fundamental values of democracy and the rule of law, making it the first international treaty that comprehensively regulates the field of AI at the principle level. The Draft aims to establish general principles, obligations, and mechanisms for risk management, striving to encourage innovation while protecting against potential harms associated with AI technologies. The document emphasizes the importance of balancing the benefits of AI with the need for transparency, accountability, and protection of human dignity and rights, while also highlighting cooperation through international standards for ethical AI practices. It is a laudable document that deserves attention and support by general public.

We wrote this article to stress importance of the document, but also to turn attention to eventual shortcomings. We thought that the proposed provisions on inapplicability of the Framework Convention on matters of national security and defense should be reconsidered in the light of the practice of the European Court of Human Rights. Considering specificities of interactions between AI system located on one contracting party and its users and other individuals in other contracting parties, it might be worth that the Draft addresses the transnational aspect of AI. We advocate also insertion of a new article in chapter III of the Draft that would address impact of AI systems on economic, social and cultural rights.