



Global reach, modest bite? A glimpse in the «first-ever international legally binding treaty» on AI

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The Convention's object and purpose

Article 1 – Object and purpose

- 1 The provisions of this Convention aim to ensure that activities within the lifecycle of artificial intelligence systems are fully consistent with human rights, democracy and the rule of law.

A «global» treaty?

Article 30 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non-member States which have participated in its elaboration and the European Union.
- 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 Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five signatories, including at least three member States of the Council of Europe, have expressed their consent to be bound by this Convention in accordance with paragraph 2.
- 4 In respect of any signatory which subsequently expresses its consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

The Framework Convention was drafted by the 46 member states of the Council of Europe, with the participation of all observer states: Canada, Japan, Mexico, the Holy See and the United States of America, as well as the European Union, and a significant number of non-member states: Australia, Argentina, Costa Rica, Israel, Peru and Uruguay.

Signatories

▸ Andorra		▸ Switzerland	
▸ Georgia		▸ Ukraine	
▸ Iceland		▸ United Kingdom	
▸ Liechtenstein		▸ Canada	
▸ Montenegro		▸ European Union	
▸ Norway		▸ Israel	
▸ Republic of Moldova		▸ Japan	
▸ San Marino		▸ United States of America	

Signature ≠ ratification!

**How did the global
aspiration of the Convention
impact its scope and
content?**

Impact on the scope:

A) The application of the Convention to private actors

Article 3 – Scope

The scope of this Convention covers the activities within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and the rule of law as follows:

- a Each Party shall apply this Convention to the activities within the lifecycle of artificial intelligence systems undertaken by public authorities, or private actors acting on their behalf.
- b Each Party shall address risks and impacts arising from activities within the lifecycle of artificial intelligence systems by private actors to the extent not covered in subparagraph a in a manner conforming with the object and purpose of this Convention.

Each Party shall specify in a declaration submitted to the Secretary General of the Council of Europe at the time of signature, or when depositing its instrument of ratification, acceptance, approval or accession, how it intends to implement this obligation, either by applying the principles and obligations set forth in Chapters II to VI of this Convention to activities of private actors or by taking other appropriate measures to fulfil the obligation set out in this subparagraph. Parties may, at any time and in the same manner, amend their declarations.

When implementing the obligation under this subparagraph, a Party may not derogate from or limit the application of its international obligations undertaken to protect human rights, democracy and the rule of law.

Impact on the scope: B) National security and national defence

Article 3 – Scope

- 1 The scope of this Convention covers the activities within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and the rule of law as follows:
 - 2 A Party shall not be required to apply this Convention to activities within the lifecycle of artificial intelligence systems related to the protection of its national security interests, with the understanding that such activities are conducted in a manner consistent with applicable international law, including international human rights law obligations, and with respect for its democratic institutions and processes.
 - 4 Matters relating to national defence do not fall within the scope of this Convention.

Impact on the content: a «declaratory» Convention?

13. The Framework Convention ensures that each Party's existing applicable obligations on human rights, democracy and the rule of law are also applied to activities within the lifecycle of artificial intelligence systems. In this sense, the Framework Convention is aligned with the applicable human rights protection systems and mechanisms of each Party, including their international law obligations and other international commitments and their applicable domestic law. As such, no provision of this Framework Convention is intended to create new human rights or human rights obligations or undermine the scope and content of the existing applicable protections, but rather, by setting out various legally binding obligations contained in its Chapters II to VI, to facilitate the effective implementation of the applicable human rights obligations of each Party in the context of the new challenges raised by artificial intelligence. At the same time, the Framework Convention reinforces the role of international human rights law and relevant aspects of domestic legal frameworks in relation to activities within the lifecycle of artificial intelligence systems that have the potential to interfere with human rights, democracy and rule of law.

An example: the Disappearance of Human Oversight, Draft After Draft

- Draft January 2023

Article 20 – Additional Procedural Safeguards

1. Each Party shall, within its jurisdiction and in accordance with its domestic law, ensure that where an artificial intelligence system substantially informs or takes decision(s) affecting human rights and fundamental freedoms **there is a right to human**

Article 15 – Procedural safeguards

- 1 Each Party shall ensure that, where an artificial intelligence system significantly impacts upon the enjoyment of human rights, effective procedural guarantees, safeguards and rights, in accordance with the applicable international and domestic law, are available to persons affected thereby.

- Draft December 2023

Article 15 – Procedural safeguards

1. [Recognising the importance of human review / [oversight], each Party shall ensure that, [where an artificial intelligence system substantially informs or takes decisions [or acts] impacting on human rights], effective procedural guarantees, safeguards and rights, in accordance with the applicable domestic and international law, are available to persons affected thereby.

Has the Convention any added normative value?

Article 8 – Transparency and oversight

Each Party shall adopt or maintain measures to ensure that adequate transparency and oversight requirements tailored to the specific contexts and risks are in place in respect of activities within the lifecycle of artificial intelligence systems, including with regard to the identification of content generated by artificial intelligence systems.

Article 15 – Procedural safeguards

- 2 Each Party shall seek to ensure that, as appropriate for the context, persons interacting with artificial intelligence systems are notified that they are interacting with such systems rather than with a human.

Has the Convention any added normative value?

Article 14 – Remedies

- 1 Each Party shall, to the extent remedies are required by its international obligations and consistent with its domestic legal system, adopt or maintain measures to ensure the availability of accessible and effective remedies for violations of human rights resulting from the activities within the lifecycle of artificial intelligence systems.
- 2 With the aim of supporting paragraph 1 above, each Party shall adopt or maintain measures including:
 - a measures to ensure that relevant information regarding artificial intelligence systems which have the potential to significantly affect human rights and their relevant usage is documented, provided to bodies authorised to access that information and, where appropriate and applicable, made available or communicated to affected persons;
 - b measures to ensure that the information referred to in subparagraph a is sufficient for the affected persons to contest the decision(s) made or substantially informed by the use of the system, and, where relevant and appropriate, the use of the system itself; and
 - c an effective possibility for persons concerned to lodge a complaint to competent authorities.

Has the Convention any added normative value?

Article 16 – Risk and impact management framework

- 1 Each Party shall, taking into account the principles set forth in Chapter III, adopt or maintain measures for the identification, assessment, prevention and mitigation of risks posed by artificial intelligence systems by considering actual and potential impacts to human rights, democracy and the rule of law.
- 2 Such measures shall be graduated and differentiated, as appropriate, and:
 - a take due account of the context and intended use of artificial intelligence systems, in particular as concerns risks to human rights, democracy, and the rule of law;
 - b take due account of the severity and probability of potential impacts;
 - c consider, where appropriate, the perspectives of relevant stakeholders, in particular persons whose rights may be impacted;
 - d apply iteratively throughout the activities within the lifecycle of the artificial intelligence system;
 - e include monitoring for risks and adverse impacts to human rights, democracy, and the rule of law;
 - f include documentation of risks, actual and potential impacts, and the risk management approach; and
 - g require, where appropriate, testing of artificial intelligence systems before making them available for first use and when they are significantly modified.
- 4 Each Party shall assess the need for a moratorium or ban or other appropriate measures in respect of certain uses of artificial intelligence systems where it considers such uses incompatible with the respect for human rights, the functioning of democracy or the rule of law.

What future for the AI Convention?

Highly unlikely of
universal ratification

Potential for
influencing the
interpretation of other
norms, especially by

Human rights courts

Domestic courts

