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**Review of progress made in the promotion and
implementation of the right to development**

Revised draft convention on the right to development, with commentaries*

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* The present document is being issued without formal editing. It was prepared by Diane Desierto on behalf of the drafting group of experts, with initial inputs on an interim version provided by the previous drafting group chair, Mihir Kanade, without having been reviewed or endorsed by the drafting group or the Chair-Rapporteur of the Intergovernmental Working Group on the Right to Development.



Introduction

1. In its resolution 48/10, the Human Rights Council requested the Chair-Rapporteur of the Working Group on the Right to Development to submit a revised draft convention on the right to development to the Working Group at its twenty-third session.
2. In the same resolution, the Human Rights Council requested the United Nations High Commissioner for Human Rights to engage experts for their continued provision of necessary advice, inputs and expertise to the Chair-Rapporteur in the fulfilment of his mandate and the preparation of the revised draft of the convention on the right to development, to facilitate the participation of the experts in the twenty-third session of the Working Group, and to provide advice with a view to contributing to discussions on the elaboration of a draft convention on the right to development, as part of the implementation and realization of the right to development.
3. Consequently, the Office of the United Nations High Commissioner for Human Rights convened meetings of the drafting group of experts, which were held virtually on 21 October 2021, and in person in Geneva from 28 February to 1 March 2022. The members of the drafting group were Diane Desierto (Philippines), who acted as Chair-Rapporteur of the meeting, Koen de Feyter (Belgium), Mihir Kanade (India), Margarete May Macaulay (Jamaica) and Makane Moïse Mbengue (Senegal).
4. During the meetings, the drafting group considered all comments and textual suggestions made during and received after the twenty-first and twenty-second sessions of the Working Group. The Chair-Rapporteur of the Working Group attended the in-person meeting in Geneva and shared his observations on the comments and textual suggestions and provided further guidance to the drafting group.
5. On the last day of the in-person meeting, on 1 March 2022, the drafting group adopted the draft text ad referendum. On 18 March 2022, Ms. Desierto submitted on behalf of the drafting group the revised text of the draft convention on the right to development to the Chair-Rapporteur of the Working Group.
6. The Chair-Rapporteur of the Working Group subsequently reviewed and endorsed the draft convention on the right to development.
7. The revisions to the Draft Convention reflect the Expert Drafting Group's deliberations on the submissions from States, agencies and other specialized bodies within the United Nations, international organizations, and civil society organizations. The Secretariat of the Intergovernmental Working Group on the Right to Development prepared the 8 March 2022 compilation of comments and textual suggestions on the draft convention on the right to development (A/HRC/WG.2/23/CRP.1). The revisions to the Draft Convention contextualized such submissions in light of international law and international law jurisprudence, as well as the treaty practices, interpretive elaboration and commentaries as well as decisions of other treaty mechanisms interpreting human rights treaties, at the United Nations human rights system. None of the revisions have been created or implemented *de novo*, with every attempt made instead at considering any substantive revisions that are strictly grounded on, or consistent with, international law and applicable international law jurisprudence.
8. As indicated in the commentaries to the 17 January 2020 initial Draft Convention on the Right to Development (A/HRC/WG.2/21/2):
 - “... (2) The draft convention is characterized by several important features. As a starting point, every possible attempt has been made to base the language of the preamble and the text on existing international legal instruments, including human rights treaties and relevant declarations and resolutions adopted by States. Useful reference has also been made in this respect to comments and recommendations made by human rights treaty bodies, jurisprudence of international and regional courts, various reports of the International Law Commission and interpretative guidance provided by experts. No concepts, norms, rights or obligations have been created *de novo*.

(3) The content as well as structure of the draft convention, including several of the substantive provisions, draw significantly from the Universal Declaration of Human Rights (UDHR) and the nine “core human rights treaties”, viz. International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), International Convention on Elimination of All Forms of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), and International Convention for the Protection of All Persons from Enforced Disappearance (CPED) and Convention on the Rights Persons with Disabilities (CRPD). In particular, the draft convention benefits significantly from the scheme of the CRPD, including its final provisions.

(4) At the same time, the draft convention does not compartmentalize itself into strict models of treaty styles. As will be evident from the commentaries below, the specific nature of the right to development necessitates deriving the most appropriate features from different templates. Thus, while the draft convention draws on standard human rights treaty models that focus on human beings as the right-holders and States as corresponding duty-bearers, it also appropriately incorporates inter-State reciprocal obligations found in standard statist-type treaties. Similarly, the draft convention borrows significantly from features of framework conventions that typically focus on laying down principles, rights and general obligations and not so much on the details of regulation which can be developed subsequently in a phased manner through a Conference of the States Parties.¹ Indeed, for the most part, the draft convention restates existing norms and principles of international law in the specific context of the right to development while establishing a Conference of the States Parties to permit future development as needed. There are no benchmarks or quantifiable targets pertaining to development that are incorporated in the draft convention.

(5) The draft convention also builds on the United Nations Declaration on the Right to Development, 1986 (DRTD). Every attempt has been made to adhere strictly to its content and language. Only modifications necessary for adapting from a declaration to a legally binding instrument have been incorporated. Like the DRTD, and for reasons explained in the commentaries below, no definition of “development” is provided in the substantive provisions. However, the process of development and its attributes have been described in the preamble in a similar fashion as the DRTD.

(6) The scheme of the draft convention benefits significantly from those portions of the 2010 Report of the high-level task force on the implementation of the right to development which are uncontroversial and universally accepted.² While not alluding to or incorporating the highly debated “right to development criteria and operational sub-criteria” drafted by the task force, this draft convention adopts the three levels of obligations on States related to the realization of the right to development which the task force identified as: (a) States acting individually as they formulate national development policies and programmes affecting persons within their jurisdiction; (b) States acting individually as they adopt and implement policies that affect persons not strictly within their jurisdiction; and (c) States acting collectively in global and regional partnerships. At the same time, the draft convention also adopts the contemporary three-pronged typology of obligations on States to respect, protect and fulfil human rights. In addition, the draft convention reaffirms existing obligations of international organizations and legal persons under international law.

(7) The draft convention is divided into five parts, apart from the preamble. The preamble adopts a logical flow to its paragraphs informed by the evolutive trajectory

¹ For an in-depth discussion on how a pure framework convention on the right to development could be structured, see *Ibid.* Also see, Koen de Feyter, *Towards a Framework Convention on the Right to Development*, International Policy Analysis, Friedrich Ebert Stiftung, 2013.

² A/HRC/15/WG.2/TF/2/Add.2 and Corr.1

of the right to development leading up to this draft convention. Part I comprises three opening provisions addressing the purpose of the convention, definitions for specific terms used and general principles that should guide the implementation of obligations by the duty-bearers. Part II focuses on the right to development itself and its right-holders. The four provisions therein comprise the content of the right and its relationship with the right to self-determination, other human rights, as well as with the general duty of everyone to respect human rights under international law. Part III then focuses on duties and duty-bearers. It does not create new obligations and only reiterates those already existing under international law. It begins with general obligations of States Parties and international organizations and then proceeds with provisions covering various important dimensions of the obligation to respect, protect and fulfil the right to development across all the three levels identified by the high-level task force. It pays special attention to the duty to cooperate. It also addresses specific aspects relevant to the realization of the right to development such as the prohibition of coercive measures, special or remedial measures, gender equality, the contexts of indigenous and tribal peoples, prohibition of limitations, impact assessments, statistics and data collection, international peace and security, sustainable development, and harmonious interpretation with other international agreements. Part IV sets up a *sui generis* mechanism for implementation of the draft convention by establishing two treaty bodies viz. the Conference of the States Parties and a subsidiary Implementation Mechanism comprising experts. Part V contains the final provisions.

(8) The *sui generis* structure of the treaty bodies established in this draft convention departs from the traditional compliance, monitoring and enforcement mechanisms adopted vis-à-vis current core human rights treaties based on several important factors enumerated in the commentaries below. At the same time, it draws from best practices adopted in these human rights treaties as well as in treaties from other special regimes. In synchronization with the duty to cooperate underpinning the right to development, this *sui generis* mechanism is based on a cooperative model rather than an adversarial one. Most importantly, it takes into account the existence and continued relevance of the Intergovernmental Working Group on the Right to Development (IGWGRTD), established by the erstwhile Commission on Human Rights in 1998 which continues to play an indispensable role in the promotion of the right to development under the auspices of the Human Rights Council. It also takes into account the recent establishment of the expert mechanism by the Human Rights Council through resolution A/HRC/42/L.36 adopted on 27 September 2019 “to provide the Council with thematic expertise on the right to development in searching for, identifying and sharing with best practices among Member States and to promote the implementation of the right to development worldwide”. The structure is informed by the need to avoid duplication with existing human rights treaty and Charter based bodies as well as the multiple reporting obligations that States Parties already have, and to ensure best utilization of available secretarial and financial resources to support the new treaty bodies.

(9) Both the Conference of the States Parties as well as the implementation mechanism envisaged under this draft convention pay special attention to the consideration of obstacles faced by the States Parties to the realization of the right to development, including those resulting from conduct of other States or international organizations, *whether parties to the convention or not*. The generation of comprehensive information on the obstacles that States Parties face, especially those emanating externally, is a significant value-added over existing mechanisms under other treaty bodies and avoids duplication. It also catalyses awareness of factors necessary for informed international cooperation to realize the right to development for all. These are also the reasons behind mandating the implementation mechanism, amongst other things, to review requests by rights holders to comment on situations in which their right to development has been adversely affected by the failure of States, *whether parties or not*, to comply with their duty to cooperate as reaffirmed and recognized under the draft convention. There is no complaints mechanism for individuals or groups included in the draft convention for reasons explained in the

commentaries, without foreclosing the possibility of willing States Parties establishing one through an optional protocol at a subsequent stage. An inter-State dispute resolution procedure before the International Court of Justice (ICJ) is incorporated, however, this is subject to agreement between the parties to the dispute. No compulsory jurisdiction is vested in the ICJ under this draft convention for reasons outlined in the commentaries.

(10) Taking into account the direct impact that several international organizations have on the right to development, the draft convention permits any international organization to also become a party. This includes regional organizations – especially, regional integration organizations – as well.

(11) Finally, the title for this legally binding instrument has been suggested as the “Convention on the Right to Development” following the titles of the seven core human rights treaties other than the ICCPR and the ICESCR. However, States may also strongly consider naming the instrument as the “International Covenant on the Right to Development” drawing inspiration from the ICCPR and the ICESCR and to consciously elevate its status to the “international bill of human rights”. This would not be without legal basis following Resolution 52/136 of 12 December 1997 adopted by the United Nations General Assembly (UNGA) affirming the appropriateness of inclusion of the DRTD in the international bill of human rights.”

9. Revisions to the 17 January 2020 Draft Convention on the Right to Development reflect both substantive as well as clerical, formatting, typographical, or sequential revisions, upon consideration of the various submissions of States, international organizations, specialized agencies and bodies within the United Nations system, and the submissions of civil society organizations. To the extent that revisions have not been made to the 17 January 2020 Draft Convention on the Right to Development, the commentaries pertaining to that text have been maintained.

10. The Expert Drafting Group’s deliberations on proposed amendments or revisions to the 17 January 2020 Draft Convention on the Right to Development were guided by the following three considerations.

(a) Proposed revisions or amendments that strengthened and improved the text, consistently with international law, were accepted. Recommendations that ultimately weakened the text due to inconsistency with international law, or by introducing further challenges to the effective implementation of the draft Convention, were cautiously reviewed and scrutinized by the Expert Drafting Group.

(b) Proposed revisions that simply repeated or duplicated provisions in the draft Convention were not accepted. Any proposed revisions that would be contrary to existing international law or would potentially result in a conflict or outright breach of existing international law were avoided.

(c) Proposed revisions that sought contextual elaboration of the draft Convention text were noted for possible inclusion in the commentaries to the Revised Draft Convention. Only suggestions that were relevant to the context of the provision concerned were accepted.

11. All submissions were extensively considered and deliberated on by the Expert Drafting Group before revisions were undertaken. The 6 April 2022 Revised Draft Convention on the Right to Development reflects the full consideration of all submissions made to the Expert Drafting Group, and their consistency with existing international law and applicable international law jurisprudence, especially in light of treaty practices, interpretive practices, recommendations made, and decisions reached in other human rights treaty bodies and special procedures within the United Nations human rights system that bear on interrelated, indivisible, and interdependent rights with the right to development. The comparison of revisions to the 17 January 2020 Draft Convention through the 6 April 2022 Revised Draft Convention are attached as Annex A to these Commentaries.

Revised Draft Convention on the Right to Development

Commentary

1. The current title of the proposed legally binding instrument is “Convention on the Right to Development” following the titles of the seven core human rights treaties other than the ICCPR and the ICESCR. This would not be without legal basis following Resolution 52/136 of 12 December 1997 adopted by the United Nations General Assembly (UNGA) affirming the appropriateness of inclusion of the DRTD in the international bill of human rights. Although not entirely unanimous,³ the resolution records the position of an overwhelming majority of States that the DRTD has a place in the same league as the UDHR, ICCPR and the ICESCR. Responding to the first draft, the Special Envoy of the UNSG on Disability and Accessibility suggested naming the legally binding instrument as “International Covenant on the Right to Development”. A similar suggestion was made by All Win Network. Ultimately, the Expert Drafting Group maintained the use of the word “Convention” so as to avoid any rendering any confusing impression that the treaty was drafted at the time of the post-war drafting of the International Bill of Rights (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) in 1965, without diminishing the significance of subsequent modern human rights treaty developments that take the form of a “Convention”.

2. The Expert Mechanism on the Rights of Indigenous Peoples has suggested that the word “sustainable” should be added in the title in light of the current and future challenges facing humanity, including climate change. While the drafting group agrees entirely with the symbiotic relationship between the right to development and sustainable development, as reflected in numerous provisions of the draft convention, the right to development has its own particularities which significantly overlap, but are not entirely coterminous, with the “right to sustainable development”. As such, although the drafting group wholeheartedly endorses the movements towards recognition of the “right to sustainable development” as a human right, it recommends not to modify the words “right to development” in the title of the legally binding instrument.

Preamble

The States Parties to the present Convention,

Commentary

1. Revisions to the Preamble were driven by concerns over the structure, sequence of treaties and instruments referred to, as well as contextual elaboration requested in the State and non-State submissions often to align for consistency with language or practice relating to Agenda 2030 on Sustainable Development, subsequent practices interpreting the 1986 Declaration on the Right to Development, or subsequent treaty developments in international human rights law after the passage of the International Bill of Rights through the ICCPR and ICESCR. Preambular paragraphs were reorganized to reflect the legal antecedents of the right to development flowing from the Charter of the United Nations and the practices of the United Nations that led to the formulation of the 1986 Declaration on the Right to Development, followed by subsequent elaboration of other human rights treaties, General Assembly resolutions, other international instruments, as well as regional human rights treaties and instruments that specifically recognize the right to development, and more recent international instruments such as the Agenda 2030 on Sustainable Development that track the evolutive trajectory of international law norms infusing content to the right to development after the 1986 Declaration on the Right to Development. Thereafter, preambular paragraphs referred to numerous obstacles to development and the reconceptualization of development and the right to development from legal and institutional interpretive practices after the 1986 Declaration on the Right to Development.

³ The resolution was adopted with 129 States in favour to 12 against, with 32 abstentions. See record at <https://www.un.org/press/en/1997/19971212.GA9380.html>

Guided by all the purposes and principles of the Charter of the United Nations, especially those relating to the achievement of international cooperation in solving international problems of an economic, social, cultural, environmental or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction of any kind,

Commentary:

1. The Grand Council of the Crees has suggested that the word “environmental” be added to the paragraph after the word “cultural”. The drafting group notes that this paragraph is a direct reference to article 1(3) of the Charter of the United Nations, which does not employ the word “environment”. Indeed, “environment” and its derivatives are absent in the entire Charter of the United Nations since the environmental movement grew at the global stage only in the 1970s. The Expert Drafting Group accepted the recommendation, recognizing that the United Nations itself issued Agenda 2030 on Sustainable Development “guided by the purposes and principles of the Charter of the United Nations, including full respect for international law. It is grounded in the Universal Declaration of Human Rights, international human rights treaties, the Millennium Declaration and the 2005 World Summit Outcome. It is informed by other instruments such as the Declaration on the Right to Development.”⁴

2. The Expert Drafting Group accepted the recommendation of CINGO that this preambular paragraph be made at the very beginning of the Preamble. In the view of the Drafting Group, this provides structural consistency with the traceability of the right to development’s subsequent elaboration in the 1986 Declaration on the Right to Development to the mandate of the United Nations itself under its purposes and principles.

3. The Expert Drafting Group noted the recommendation of Namibia in its oral statement to list all the grounds of for non-discrimination in this provision, as well as the proposed modification by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights (proposing to add the phrase “and additionally in reaffirming the role of international solidarity in resolving the problems addressed by cooperation” immediately after the phrase “without distinction of any kind”). However, the Expert Drafting Group observes that these proposed elaborations, while conceptually valuable, are not found in the 1986 Declaration on the Right to Development, which contains an almost identical preambular paragraph. Neither do the proposals dovetail with other international human rights treaty practices. As such, the Expert Drafting Group maintains its position from the commentaries to the 17 January 2020 Draft Convention on the Right to Development, which state the following:

“(1) All core human rights treaties commence their respective preambular references to legal instruments with the Charter of the United Nations as relevant to them. This paragraph therefore sets the stage for tracing obligations pertaining to the realization of the right to development to the Charter of the United Nations.

(2) Draft preambular paragraph (i) notes that States Parties, in adopting this convention, are guided by all the purposes and principles of the Charter of the United Nations, and in particular, those pertaining to international cooperation. It reflects one of the fundamental “purposes” for the establishment of the United Nations as incorporated in article 1(3) of its Charter viz. achievement of international cooperation. The DRTD begins its preamble with an almost identical paragraph. A similar high location of this paragraph in the draft preambular section on trajectory of the right to development not only highlights the central importance of international cooperation to the realization of the right, but also that its roots lie in the very institutional objective of the United Nations.

(3) The sole modification from the language of the Charter and the DRTD is that the words “without distinction as to race, sex, language or religion” employed therein have been replaced by the words “without distinction of any kind” to better

⁴ United Nations General Assembly Resolution 70/1, *Transforming our world: the Agenda 2030 for Sustainable Development*, A/RES/70/1, 21 October 2015, at para. 10.

accommodate the other grounds of discrimination that have been acknowledged with the evolution of human rights law. This is similar to the approach of paragraph (b) of the preamble to the CRPD.”

4. The Expert Drafting Group finds that the above formulation closely tracks the language of the Charter of the United Nations, without foreclosing the evolutive possibilities for future recognition of any other grounds of prohibited discrimination. The concern to characterize development cooperation in relation with international solidarity is already appropriately addressed in Article 3(i) of the General Principles of this 2022 Revised Draft Convention.

Recalling the obligation of States under articles 1 (3), 55 and 56 of the Charter of the United Nations to take joint and separate action in cooperation with the Organization for the promotion of higher standards of living, full employment and conditions of economic and social progress and development; solutions of international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Commentary:

1. The Expert Drafting Group maintained language drawn from Articles 1(3), 55 and 56 of the Charter of the United Nations, and did not accept suggestions that would omit, dilute, or change the precise language of these provisions, or would be redundant. As such, the Expert Drafting Group noted the proposal of the Centre for Human Rights, University of Pretoria for a separate paragraph (“*Recalling the United Nations Charter Articles 55 and 56 on international cooperation, including in particular with regard to universal respect for, and observance of, human rights and fundamental freedoms for all, without discrimination on any grounds that are prohibited by international human rights law*”), as already reflected in the current preambular paragraph, the language for which is drawn from articles 55 and 56 of the Charter.

2. For similar reasons, the Expert Drafting Group in turn did not accept modifications proposed by a) China (recommending: “*Recalling the obligation of States under the Charter to take joint and separate action in cooperation with the Organization for the promotion of higher standards of living, full employment and conditions of economic and social progress and development; solutions of international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction of any kind, [for the promotion of economic and social development of peoples of all countries]*”; b) Cuba (recommending some of the aforesaid deletions and suggested replacing the words “full employment” with “decent work for all”); and c) CETIM (recommending adding the word “decent” when referring to “full employment”). The Expert Drafting Group takes the view that the above language, without the proposed modifications, sufficiently reflects the specific nature of international obligations contained in Articles 1(3), 55, and 56 of the Charter of the United Nations.

Reaffirming that, under the provisions of the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized, and that everyone, as a member of society, is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for her or his dignity and the free development of her or his personality,

Commentary

1. The Expert Drafting Group reiterated the language of Articles 28 and 22 of the Universal Declaration in this preambular paragraph, accepting the recommendation of Catholic Inspired NGOs to use the word “reaffirming” rather than “considering” as the operative initial verb of this paragraph. Mindful of the precise language of Articles 28 and 22 of the Universal Declaration as reflected in this preambular paragraph, the Expert Drafting Group did not accept Cuba’s recommendation that the phrase “social and international order

in which the rights and freedoms set forth in the Declaration can be fully realised” be transformed into “social and international order in which all the rights and freedoms can be fully realized”. The Expert Drafting Group likewise did not accept the proposal to delete the entire paragraph as suggested by the Grand Council of the Crees. The drafting group noted that the objective of this preambular paragraph is to highlight the Universal Declaration as part of the “considerations” for the adoption of the draft convention.

2. The Special Envoy of the UNSG on Disability and Vulnerability suggested that specific mention should also be made of article 25 of the UDHR since it includes key rights and elements on human development such as food, clothing, housing, medical care, necessary social services and the right to security. The drafting group deliberated upon this suggestion and noted that article 25 relates to the right to an adequate standard of living. Considering that the words “rights and freedoms set forth in the Declaration” are all-inclusive and taking note of the fact that the preamble is already quite lengthy, the drafting group recommends retaining the paragraph as it is. In addition, in view of a new paragraph 2 to draft article 12 in this interim revised draft, any further additions in the preamble as suggested are not necessary.

3. The Expert Drafting Group did not accept the recommendation of Association pour l'Intégration et le Développement Durable au Burundi to refer to the United Nations Declaration on the Rights of Indigenous Peoples be mentioned in the same paragraph, since this precise instrument is explicitly referred to in the succeeding fourth preambular paragraph.

Recalling the provisions of all human rights treaties, as well as other international instruments, including the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,

Commentary:

1. The Expert Drafting Group did not accept Brazil’s recommended splitting of this paragraph into two – one explicitly enumerating seven of the nine core human rights treaties (the Convention Against Torture, International Convention for the Protection of All Persons from Enforced Disappearance, and the International Convention on Migrant Workers were not included), and the other enumerating a number of declarations adopted at the global level. In particular, the additional preambular paragraph suggested by Brazil is as follows: “*Taking note of all human rights declarations, including the Declaration on the Rights of Disabled Persons, the Declaration on Race and Racial Prejudice, the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief, the Declaration on the Rights of Indigenous Peoples, the Declaration on the Rights of Peasants and Other People Working in Rural Areas, the Declaration on Social Progress and Development, the Universal Declaration on the Eradication of Hunger and Malnutrition, the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind*”. In the view of the Expert Drafting Group, this paragraph distinctly separates out hard law (e.g. human rights treaties), from softer norms (e.g. international instruments), without need of elaborating each human rights treaty or each international instrument. Human rights treaties are not only those concluded at the international level (e.g. thus far the nine human rights treaties listed by Brazil that were produced through the United Nations system), but also encompass regional human rights treaties and potentially even future bilateral treaties that contain human rights provisions. Other human rights treaties are also generated outside of the United Nations system, such as those concluded at the International Labour Organization. It is thus sufficient to specify “all human rights treaties”, without need of providing a limited enumeration. It is similarly important to recall “other international instruments” with explicit references to the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. As the commentaries to the 17 January 2020 Draft Convention on the Right of Development noted, preambular paragraph 6 and Article 23 of the 2007 United Nations Declaration on the Rights of Indigenous Peoples specifically mention the right to development. Preambular paragraphs 3 and 22 and Article 3(1) of the 2018 United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas specifically mention the right to development.

2. The Expert Drafting Group did not accept Bangladesh's proposed formulation to restrict this paragraph to "all international human rights instruments treaties". As previously discussed above, various human rights treaties are regional in nature, with the possibility that bilateral treaties (such as in economic agreements) might also contain references to human rights provisions.⁵ For similar reasons, the Expert Drafting Group also did not accept Cuba's proposal to refer only to "all international human rights instruments", since this elided the distinction between treaties as a source of international law and softer international instruments (short of treaty status) that could only provide evidence of the possible existence of customary international law. The Expert Drafting Group also did not accept the recommendations of The National Alliance of Women's Organization, UK, and Soroptimist International, to explicitly refer to certain human rights treaties (e.g. the Convention on Elimination of Discrimination Against Women and the Convention on Rights of Persons with Disabilities) at the end of the paragraph, since these treaties did not explicitly mention the right to development.

3. The Expert Drafting group recalls that the commentaries to the zero draft had noted that this paragraph was formulated in the way it was to specifically avoid referring to only the nine "core" human rights treaties and to accommodate other relevant instruments such as those adopted under the International Labour Organization. In view of the suggestions received and in light of the explanations already provided in the commentaries to the zero draft, the drafting group recommends retaining the phrase "all human rights treaties". However, the words "as well as other human rights instruments, including the United Nations Declaration [...]" have been added. It is also pertinent to highlight that the use of the word "recalling" rather than "reaffirming" is a pragmatic choice that takes into account that not all States are parties to all human rights treaties or may have voted in favour of these declarations.

4. The Grand Council of the Crees have suggested that the American Declaration on the Rights of Indigenous Peoples be added in this paragraph. The drafting group accepted to include this, but in the preambular paragraph related to regional instruments since the current paragraph pertains to international instruments.

Reaffirming the Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986,

Commentary

1. This draft preambular paragraph then reaffirms the DRTD, commencing the series of next few paragraphs which relate directly to the right to development. The Expert Drafting Group notes that there were no modifications or proposals made in relation to this preambular paragraph.

Recalling the reaffirmation of the right to development in several international declarations, resolutions and agendas, including the Rio Declaration on Environment and Development, the Vienna Declaration and Programme of Action, the Programme of Action of the International Conference on Population and Development, the Copenhagen Declaration on Social Development and the Programme of Action of the World Summit for Social Development, the Beijing Declaration and Platform for Action, the Rome Declaration on World Food Security, adopted at the World Food Summit, the United Nations Millennium Declaration, the Durban Declaration and Programme of Action, the Monterrey Consensus of the International Conference on Financing for Development, the Declaration of Principles and Plan of Action, adopted

⁵ See Ole Kristian Fauchald, *International investment law in support of the right to development?*, 34 Leiden Journal of International Law 1 (2021), pp. 181-201; Organization of Economic Cooperation and Development (OECD), *The future of investment treaties: Background note on potential avenues for future policies*, 29 March 2021, full text at <https://www.oecd.org/daf/inv/investment-policy/Note-on-possible-directions-for-the-future-of-investment-treaties.pdf> (last accessed 10 April 2022); Chi Manjjiao, *Sustainable development provisions in investment treaties*, United Nations Economic and Social Commission for Asia and the Pacific, 2018, full text at <https://www.unescap.org/sites/default/files/Sustainable%20Development%20Provisions%20in%20Investment%20Treaties.pdf> (last accessed 10 April 2022).

at the World Summit on the Information Society, the Tunis Agenda for the Information Society, the 2005 World Summit Outcome, the United Nations Declaration on the Rights of Indigenous Peoples, the outcome document of the high-level plenary meeting of the General Assembly on the Millennium Development Goals, the Istanbul Programme of Action for the Least Developed Countries for the Decade 2011–2020, the outcome documents of the thirteenth session of the United Nations Conference on Trade and Development, held in 2012, the outcome document of the United Nations Conference on Sustainable Development entitled “The future we want”, the quadrennial comprehensive policy review of operational activities for development of the United Nations system, the SIDS Accelerated Modalities of Action (SAMOA) Pathway, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, the Paris Agreement on climate change, the Sendai Framework for Disaster Risk Reduction 2015–2030, the New Urban Agenda, adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), and the outcome documents of the fourteenth session of the United Nations Conference on Trade and Development,

Commentary:

1. As indicated in the commentaries to the 17 January 2020 Draft Convention on the Right to Development, this preambular paragraph specifically lists international instruments that explicitly reaffirm the right to development by incorporating the same into the text of these instruments: “inclusion of the right to development in each of these documents sequentially has played a significant role in its evolution and in gradually cementing its place within the corpus of human rights norms. A generic statement to the effect of “recalling the reaffirmation of the right to development in several international declarations, resolutions and agendas”, without listing them specifically, would not do justice to the objective of highlighting this evolution.”

2. The Expert Drafting Group accepted China’s recommendation to delete “of 2015” from the phrase “2030 Agenda for Sustainable Development and the Sustainable Development Goals”. The Expert Drafting Group partially accepted suggestions of international instruments, where these made direct references to the right to development in the texts of these instruments: a) the Rome Declaration on World Food Security of the World Food Summit of 1996 (suggested by FAO); b) the Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance of 2001 (suggested by Global Forum of Communities Discriminated on Work and Descent); c) the Geneva Declaration of Principles and Plan of Action of 2003 adopted at the World Summit on the Information Society and the Tunis Agenda for the Information Society of 2005 (suggested by IT for Change); and d) the outcome documents of the thirteenth session of the United Nations Conference on Trade and Development of 2016 (suggested by Argentina). The Expert Drafting Group accepted Turkey’s recommendation to add the name “Istanbul” to the “Programme of Action for the Least Developed Countries for the Decade 2011-2020”.

3. Grand Council of the Crees recommended including the American Declaration on the Rights of Indigenous Peoples of 2016 in the list. Considering that the list enumerated in this paragraph relates to declarations adopted at the global level, the American Declaration is added to the preambular paragraph pertaining to regional instruments.

4. Argentina suggested that there should be reference to “international documents which have a binding instrument in the area of development including the outcome document of the WTO ministerial conference in Hong Kong in 2005”. The drafting group, however, notes that the list included in this preambular paragraph relate to those declarations, resolutions and agendas that make a direct and explicit reference to the right to development. The WTO Ministerial Declarations do not make such references and hence have not been included in this paragraph.

Reaffirming the objective of making the right to development a reality for everyone, as set out in the Millennium Declaration, adopted by the General Assembly on 8 September 2000,

Commentary:

1. No comments or proposals were submitted on this preambular paragraph. The Expert Drafting Group recalls that, as indicated in the commentaries to the 17 January 2020 Draft Convention: “[this paragraph] of the draft preamble then specifically makes a note of the Millennium Declaration of 2000 from which emanated the Millennium Development Goals (MDGs). One of the stated objectives of this Declaration was “making the right to development a reality for everyone”. The MDGs, of course, have been replaced by the SDGs incorporated in the current 2030 Agenda, which in turn states that this agenda is grounded in the Millennium Declaration. The draft paragraph is identical to paragraph 6 of the annual resolution on the right to development adopted by the UNGA in December 2018.”

Recalling the multitude of resolutions adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council on the right to development,

Commentary:

1. The Expert Drafting Group took note of Brazil’s suggestion that the word “recalling” be replaced with “taking note of”. The drafting group examined the preambles of all the core human rights treaties and noted that while “recalling” is used on numerous occasions, the words “taking note of” have never been employed. Indeed, the practice of employing “taking note of” is more prevalent in the preambles of resolutions, rather than human rights treaties. This does not *ipso facto* make the use of “taking note of” entirely inappropriate in preambles of treaties. However, in the context of the current paragraph, the drafting group considered that “taking note of” weakens rather than strengthens the paragraph. On this basis, the word “recalling” was retained.

Recalling also, in particular, General Assembly resolutions 48/141 of 20 December 1993, in which the Assembly established the Office of the United Nations High Commissioner for Human Rights, with a mandate to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for that purpose, 52/136 of 12 December 1997, in which the Assembly affirmed that the inclusion of the Declaration on the Right to Development in the International Bill of Human Rights would be an appropriate means of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, and 60/251 of 15 March 2006, in which the Assembly established the Human Rights Council, deciding that its work should be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, including the right to development,

Commentary:

1. The Expert Drafting Group accepted Cuba’s recommendation to delete the superfluous phrase “civil, political, economic, social and cultural rights”, given the antecedent phrase “all human rights” that already encompasses this enumeration.

Taking note of the regional human rights instruments and the subsequent practices relating thereto that specifically recognize and reaffirm the right to development, including the African Charter on Human and Peoples’ Rights, the Inter-American Democratic Charter, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Arab Charter on Human Rights, the Human Rights Declaration of the Association of Southeast Asian Nations, the American Declaration on the Rights of Indigenous Peoples, and the Abu Dhabi Declaration on the Right to Development,

Commentary:

1. The Expert Drafting Group notes that this preambular paragraph initiates the first use of the phrase “taking note of” in a human rights treaty. However, it notes China’s recommendation, without elaboration, that this phrase be used in lieu of “bearing in mind”. The Expert Drafting Group accepts the recommendation, with sensitivity towards any States outside of regional human rights treaty mechanisms that may not necessarily be expected to bear such regional human rights instruments in mind.

2. The Expert Drafting Group did not accept Cuba's suggestion to delete the phrase "and the subsequent practices relating thereto that specifically recognize and reaffirm the right to development". Article 31(3)(b) of the Vienna Convention on the Law of Treaties accepts that as part of the unitary system of treaty interpretation, "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" shall also be taken into account.

3. The Expert Drafting Group accepted recommendations that named regional instruments that "specifically recognize and reaffirm the right to development", such as the: a) Inter-American Democratic Charter (recommended by the Special Envoy of the United Nations Secretary-General on Disability and Vulnerabilities), since Article 6 therein provides that "it is the right and responsibility of all citizens to participate in decisions relating to their own development"; b) Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (also recommended by the same Special Envoy of the UNSG on Disability and Vulnerabilities, as well as by the Committee on the Rights of Persons with Disabilities) which explicitly refers to the right to development in the Additional Protocol's sixth preambular paragraph; c) American Declaration on the Rights of Indigenous Peoples (recommended for inclusion by the Grand Council of the Crees), which also explicitly refers to the right to development in its fifth preambular paragraph and Article XXIX therein. Other instruments proposed for inclusion by Panama and the Special Envoy of the UNSG on Disability and Vulnerability (referring to the American Convention on Human Rights), do not contain an explicit reference to the right to development and thus were not included in this paragraph but instead in the next succeeding preambular paragraph.

Taking note also of the obligations of States pertaining to integral development in the Charter of the Organization of American States, and to progressive development in the American Convention on Human Rights,

Commentary:

1. The Expert Drafting Group accepted China's proposal to use the phrase "taking note of", and added the word "also", for similar reasons discussed in the commentary to the preceding paragraph. The Expert Drafting Group did not accept Cuba's proposal to delete this paragraph. The Committee is of the view that these particular regional interpretive practices in the 1948 Charter of the Organization of American States and the 1969 American Convention on Human Rights are salient in laying out the many usages and understandings that also helped inform the 1986 Declaration on the Right to Development. As the commentaries to the 17 January 2020 Draft Convention explained, this "draft preambular paragraph has been drafted in a plain manner...these "obligations of States" (rather than framing it in the language of rights) pertaining to "integral development" and "progressive development".

Taking into consideration the various international instruments adopted for realizing sustainable development, including in particular the 2030 Agenda for Sustainable Development, which affirm that sustainable development must be achieved in its three dimensions, namely, economic, social and environmental, in a balanced and integrated manner and in harmony with nature,

Commentary:

1. The Expert Drafting Group modified the word "considering" into "taking into consideration", for mainly for syntactic and stylistic purposes. The Expert Drafting Group did not accept Nigeria's proposal to delete references to the 2030 Agenda for Sustainable Development, since this particular instrument significantly refers to the three-dimensional approach to achieve sustainable development, in the third preambular paragraph of the 2030 Agenda. To recall the commentaries to 17 January 2020 Draft Convention, this draft preamble paragraph relates to the "evolutive trajectory of the right to development with a reference specifically to sustainable development and the 2030 Agenda. There is consensus that sustainable development encompasses three general policy areas which must be achieved in a balanced and integrated manner: social development, economic development and environmental protection. In addition, sustainable development must also be achieved in "harmony with nature". The three dimensions of sustainable development, and particularly

the social development dimension of the concept, includes human rights, and as such, it is impossible to have sustainable development if it undermines human rights. This draft preambular paragraph merely considers the various instruments affirming sustainable development with the objective of laying the stage for the symbiotic relationship between the right to development and sustainable development to unfold subsequently in draft articles 3(e) and 22.”

2. The Expert Drafting Group considered Iran’s suggestion to add the words “based on cultural backgrounds and national circumstances of member States” at the end of this paragraph, as well as UNESCO’s proposal to add the clause “building on the enabling role of culture to foster content and context-relevant development in an increasing knowledge-driven society”. Various international instruments adopted for realizing sustainable development, including the 2030 Agenda, already take into account cultural diversity, national circumstances, as well as the role of culture. To avoid verbosity, the Expert Drafting Group retains the paragraph as it is.

Acknowledging that the realization of the right to development is a common concern of humankind,

Commentary:

1. The Expert Drafting Group considered China’s proposal to add the phrase “and the right to development is the most fundamental human right”, and declined to include this phrase, since it would appear to establish an unfounded hierarchy among human rights norms. International law does not in fact create such hierarchies among human rights norms, except for those that are considered *jus cogens*. The right to development has not been recognized as a *jus cogens* norm under existing international law.

2. The EU has suggested that the preambular paragraph “uses concepts of which the meaning is unclear in the context of international human rights law, such as common concern of humankind”. The commentaries to the zero draft have already explained that the norm of “common concern of humankind” is firmly established in international law and its meaning is clear, including in the context of human rights generally,⁶ as well as specifically.⁷ This norm is particularly applicable to the right to development since its nature is such that it inevitably transcends the boundaries of a single State and its realization requires collective action in response; no single State can resolve the problems posed or receive all the benefits the right to development provides. Depicting the realization of the right to development as a common concern implies an agreement to recognise the very existence of a shared problem and a shared responsibility, which is at the core of the duty of international cooperation inherent to the right to development. As the commentaries to the 17 January 2020 Draft Convention observe, at the same time, the norm of “common concern of humanity” operates very much within the framework of respect for national sovereignty and not outside of it. These features make the notion of “common concern of humankind” particularly applicable and appropriate for the right to development. Indeed, realizing the right to development entails duties for States not just internally, but also externally as well as collectively. The Expert Drafting Group thus retains this paragraph.

Concerned at the existence of serious obstacles to the realization of the right to development comprising, inter alia, poverty in all its forms and dimensions, including extreme poverty, hunger, inequality in all forms and manifestations within and across countries, climate change, health emergencies and health crises, colonization, neo-colonization, forced displacement, racism, discrimination, conflicts, foreign domination

⁶ Charles Beitz, “Human Rights as a Common Concern”, *The American Political Science Review*, Vol. 95, No.2, 2001, pp.269–282; Dinah Shelton, “Common Concern of Humanity”, at p.38, noting that “the development of human rights law to protect individuals beyond the context of armed conflict, and international criminal law, in which individuals are prosecuted for the most serious crimes against the international community, can also be seen as reflections of some common concerns of humanity”.

⁷ Laura Horn, “The Implications of the Concept of Common Concern of Humankind on a Human Right to a Healthy Environment”, *Macquarie Journal of International and Comparative Environmental Law*, Vol. 1, No. 2, 2004, pp.233–268; Edith Brown Weiss, “The Coming Water Crisis: A Common Concern of Humankind”, *Transnational Environmental Law*, Vol. 1, No.1, 2012, pp.153–168.

and occupation, aggression, threats against national sovereignty, national unity and territorial integrity, terrorism, crime, corruption, all forms of deprivation affecting the subsistence of peoples, and the denial of other human rights,

Commentary:

1. This paragraph closely tracks the tenth preambular paragraph of the 1986 Declaration on the Right to Development, with some innovations. All the suggestions received with respect to this preambular paragraph were supportive. Numerous suggestions for further strengthening it were made. China suggested that the following words be added after the preambular paragraph in the zero draft: “and recognizing that securing the subsistence and development of people is the paramount prerequisite of the right to development, and in this regard, poverty, hunger, health, climate change and other issues related to the subsistence of people of all countries, especially developing countries, should be addressed as priority,”. The Expert Drafting Group considered that the suggested addition makes the preambular paragraph quite verbose. Additionally, the phrasing suggests that the right to development needs to be preceded by subsistence and development of people. This reinforces the debate whether a “development-based approach to human rights” is more appropriate than a “human rights-based approach to development”. The drafting group reiterates that both approaches are problematic if they suggest that either development or human rights are a pre-requisite to the other. The normative framework of the right to development makes development itself a human right.

2. The Expert Drafting Group notes numerous proposals for other additional obstacles to be listed in the preambular paragraph. These include: “poverty in all its forms and dimensions, including extreme poverty” (Cuba and Argentina), “the imposition of unilateral coercive measures” (Cuba), “foreign domination and occupation, unilateralism, global health threats”, “terrorism, unilateral coercive measures, wars, military interventions” (Iran), “foreign occupation” (Pakistan), “discrimination” (FAO), “casteism, work and descent based discrimination” (Global Forum of Communities Discriminated on Work and Descent), “inequality between women and men” (National Alliance of Women’s Organizations, UK), and “gender inequality” (Soroptimist International); “the patriarchal system” (Latin American Campaign for the Right to Education).

3. While not offering specific language for textual modification, several respondents suggested inclusion of other obstacles to the list. These include inclusion of health emergencies, pandemics and other health crises (The Special Envoy of the UNSG on Disability and Accessibility, Catholic Inspired NGOs), absence of the mastery of latest technology (The National Human Rights Commission of Mauritius), unequal access to information and technology (Catholic Inspired NGOs), the patriarchal system (Latin American Campaign for the Right to Education), gender inequalities (Legal Resources Centre, Catholic Inspired NGOs), sexism, discrimination on sexuality and ableism (Amman Centre for Human Rights Studies), the continued disregard for customary and alternative forms of tenure (Legal Resources Centre), international cooperation still applied with conditions, unfair international trading system and unregulated finance, adverse bilateral and multilateral investment agreements, property and intellectual rights, asymmetries of power in global governance and decision-making, external debt of developing countries and Least Developed Countries, unilateral coercive measures, dumping of toxic and dangerous products and waste, international crime, terrorism and corruption, lack of democracy, lack of participation, and the lack of education and of education on human rights (Catholic Inspired NGOs).

4. It may be noted at the outset that the preambular paragraph is aimed at being inclusive rather than exhaustive. This is reflected in the use of the words “inter alia”. Indeed, the obstacles to the realization of the right to development cannot be exhaustively listed, and doing so would make the Convention unmanageably verbose. While it is true that many of the obstacles suggested by respondents for inclusion are not listed in the zero draft, the usage of the words “inter alia” is aimed at ensuring that the paragraph still reasonably acknowledges the existence of other important obstacles.

5. As such, the Expert Drafting group has been selective in further expanding the inclusive paragraph. The inclusion of “pandemics and other health crises” has now become

essential in view of the outbreak of the COVID-19 pandemic after the finalization of the zero draft and its commentaries. The Expert Drafting Group accepted the proposal of the Special Envoy of the UNSG on Disability and Accessibility to include “health emergencies and health crises”.

6. The Expert Drafting group also accepted the suggestion to qualify the word “poverty” with “all its forms and dimensions” and make a reference to “extreme poverty”. Additionally, the drafting group accepted the recommendation to include the terms “foreign domination and occupation”, although there is a good case to make that these terms are included in the words “aggression and threats against national sovereignty, national unity and territorial integrity”, already present in the paragraph.

7. Other suggestions were omitted to avoid making the inclusive paragraph cumbersome and because many of those obstacles are addressed specifically in substantive provisions of the draft convention.

Emphasizing that the right to development is an inalienable human right of all human persons and peoples, and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Commentary:

1. This paragraph closely tracks the sixteenth preambular paragraph in the 1986 Declaration on the Right to Development, with very few changes (e.g. use of the word “emphasizing”, including the phrase “of all human persons and peoples”). The Expert Drafting Group did not accept Cuba’s proposal to replace “human persons” in this paragraph with “natural persons”, since the 1986 Declaration on the Right to Development specifically uses the phrase “human person”. Neither did the Group accept Ecuador’s proposal to replace “equality of opportunity for development” with “rights and duties for development”, since the substantive content of this paragraph is in the disparity or inequality of opportunities for development as noted in the 1986 Declaration on the Right to Development. It is precisely for this reason that Article 15 of the 2022 Revised Draft Convention maintains the provision on specific and remedial measures to accelerate or achieve de facto equality in the enjoyment of the right to development.

2. The Expert Drafting Group also did not accept Iran’s proposal to refer to the right to development as an inalienable human right of all human persons, peoples, “and nations”, since the 1986 Declaration on the Right to Development did not recognize the right to development as pertaining to nations, and Article 4(1) of the 2022 Revised Draft Convention explicitly refers to the right to development as pertaining to all human persons and peoples. While Panama’s oral statement sought to change the use of the term “human person” into “individuals” or “natural individuals”, the Expert Drafting Group determined that the phrase “human person” has settled usage in international law as well as the original 1986 Declaration on the Right to Development and should be used consistently. The Expert Drafting Group also rejected the proposal of the Global Forum of Communities Discriminated on Work and Descent to delete the phrase “who constitute nations”, and instead used the original language of the 1986 Declaration on the Right to Development (e.g. “who make up nations”). The drafting group notes that the holders of the right to development, as explicitly recognized in draft article 4 as well as in article 1 of the DRTD are human persons and peoples. Given its character as a human right, nations or even States are not independent holders of the right to development. Human beings, individually and collectively, always remain the right-holders of the right to development, as consistent with the 1986 Declaration on the Right to Development. Draft article 12(2) stipulates that “States Parties recognize that each State has the right *on behalf of its peoples*, as well as the duty, to formulate, adopt and implement appropriate national development laws, policies and practices aimed at the full realization of the right to development”. The words “on behalf of its peoples” clearly indicate that when States (or nations) exercise the right to formulate appropriate national development policies, it is a right exercised by the State against other States and the international community *on behalf of* or *as agents* of their peoples and human persons – the principal right-holders. It may also be noted that the later part of the paragraph recognizes that equality of opportunity for development is a “prerogative” of nations as well. As such, the Expert Drafting Group

strongly recommends that the right-holders in the first part of the paragraph be limited to human persons and peoples.

3. The Expert Drafting Group also deemed the Legal Resource Centre's proposal to include the phrase "that cannot be denied based on any ground" to be superfluous and repetitive, since that is exactly what the inalienability of the right to development means. Grand Council of the Crees suggested that the formulation be modified to: "*Emphasizing that the right to development is an inalienable human right of all human persons and peoples, and that equality of opportunity for development is a prerogative both of nations, [peoples] and of individuals who constitute nations,*". The Expert Drafting Group did not accept this proposal, as including peoples would be redundant and already encompassed within the phrase "individuals who make up nations".

Recognizing that development is a comprehensive civil, cultural, economic, environmental, political and social process that is aimed at the constant improvement of the well-being of the entire population and of all peoples and individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Commentary:

1. This paragraph is almost identical to the second preambular paragraph of the 1986 Declaration on the Right to Development. To maintain consistency with the rest of the draft convention and to avoid compartmentalization of economic, social and cultural rights on the one hand and civil and political on the other, the paragraph has been reformulated to list these in alphabetical order.

2. Ecuador and the Latin American Campaign for the Right to Education suggested inclusion of the word "environmental", which, the Expert Drafting Group accepted for inclusion, consistent with the evolution of international law and sustainable development.

3. The Grand Council of the Crees recommended including the word "spiritual" in the first part of the paragraph. In view of the new preambular paragraph immediately following this, it is not necessary to include the word "spiritual" in this particular paragraph. It was also suggested to modify the words "well-being of the entire population and of all individuals" to "well-being of the entire population and of all peoples and individuals". Considering that peoples are self-standing right-holders, the Expert Drafting Group accepted this proposal. The Holy See recommended including the word "ethical", which the Expert Drafting Group did not deem necessary for this particular preambular paragraph but is more related to the next new preambular paragraph. The Expert Drafting Group did not accept the Holy See's proposal for a new para. 4bis ("Stressing that the right to development is linked to responsible stewardship and care for our common home, which concerns the entire human family, and further stressing the need to work together to seek sustainable and integral human development"). This particular phraseology, while drawing from the *Laudato Si* papal encyclical (which is itself a significant international instrument but not a treaty itself or evidence of a norm of customary international law yet at this time), does not, however, reflect the status of existing general international law as a whole.

4. The Expert Drafting Group did not accept China's recommendation to include the clause "and promote economic, political, social, cultural and environmental rights in a coordinated and people-centered approach". This suggestion departs considerably from the second preambular paragraph of the 1986 Declaration on the Right to Development, and introduces unnecessary verbosity and possible interpretive ambiguities as to the precise legal definition of a "people-centred approach", since this phrase is nowhere mentioned in the 1986 Declaration or in the rest of the text of the 2022 Revised Draft Convention, or reflected in existing international law.

5. Personhood Education recommended that a stand-alone paragraph comprising a consolidated definition of "development" be included in the preamble and suggested the following: "Development, as understood in this Convention, consists in progressively increasing economic prosperity and improving living conditions, such as, *inter alia*, low unemployment rates and safe working conditions; robust manufacturing, service and farming sectors; fair and ethical trading policies; food security; well-funded and functioning

infrastructure including adequate healthcare, communication, technology, and transportation; good banking and finance practices; a stable currency; adequate housing; and increasing ability of individuals to save money and purchase property.” In its oral statement at the 21st session of the WGRTD, Women's Federation for World Peace International also recommended inclusion of a definition of “development”. The commentaries to the zero draft had pointed out that the authors of development are the right-holders and as such, the preamble *describes* rather than *defines* development. In the same spirit, the drafting group strongly recommends refraining from any attempt to define development in a straitjacket manner. For example, the definition suggested by Personhood Education focuses on progressively increasing economic prosperity as the central element of development, which runs contrary to the description of development in this preambular paragraph as well as the following new paragraph.

6. CETIM has suggested that participation in “decision making” be included in addition to “participation in development”. While the Expert Drafting Group agrees that participation in decision making is a core element of how development should be understood, the Group considers that the same is implicit in the words “participation in development”. Indeed, participation of right-holders in all elements and stages of the development process, including decision-making, programming, implementation, review etc. are already encompassed within the more general phrase “participation in development”.

Acknowledging that development is understood not simply in terms of economic growth, but also as a means to widening people’s choices to achieve a more satisfactory intellectual, emotional, moral and spiritual existence rooted in the cultural identity and the cultural diversity of peoples,

Commentary:

1. The Expert Drafting Group included this new preambular paragraph to address recommendations made by UNESCO to reflect article 3 of the UNESCO Universal Declaration on Cultural Diversity (“Cultural diversity widens the range of options open to everyone; it is one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional and spiritual existence”), as well as to blend proposals from the Holy See for a para.4bis and from the Grand Council of the Crees to include the word “spiritual”. The Expert Drafting Group takes the view that the inclusion of this paragraph will strengthen the overall text of the 2022 Revised Draft Convention, especially in light of the definition of the right to development in Article 4(1) therein.

Reaffirming the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all civil, cultural, economic, political and social rights, including the right to development,

Commentary:

1. This paragraph draws its content from the second clause within the tenth preambular paragraph of the 1986 Declaration on the Right to Development (e.g. “considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion, and protection of civil, political, economic, social and cultural rights and that, accordingly, the promotion of and respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms”). The Expert Drafting Group did not accept All Win Network’s proposal to add the word “racial”, since this would not be consistent with the group of rights as legally defined in this paragraph. The Expert Drafting Group did not accept Personhood Education’s proposal to delete the clause “reaffirming the universality, indivisibility, interrelatedness, interdependence”, because these are settled terms under international human rights law ensuring a holistic, and not fragmented, understanding of human rights. Moreover, the substance of these terms are themselves aligned with the content advanced in the second clause of the tenth preambular paragraph of the 1986 Declaration on the Right to Development.

Recognizing that the realization of the right to development constitutes an important end and an integral means of sustainable development, and that the right to development cannot be realized if development is not sustainable,

Commentary:

1. The Expert Drafting Group considers this preambular paragraph in conjunction with the 2022 Revised Draft Convention's Article 3(g) (sustainable development) and the new Article 23 (Sustainable Development). It considered several proposals from: a) the Special Envoy of the UNSG on Disability and Vulnerabilities to include a clause on "social sustainability and the inclusion of persons"; b) the Holy See to refer to "sustainable and integral development"; c) Pakistan to use the word "operationalized"; d) the comment of Modern Advocacy Humanitarian Social and Rehabilitation to harness sustainability in relation to the individual human being; and e) Bangladesh's proposal for a new paragraph on hunger and extreme poverty. While the Expert Drafting Group has considered all of these proposals on their merits, the Expert Drafting Group took the approach to separate out and capture several of these ideas into related provisions, namely, Article 3(g) and Article 23 within the 2022 Revised Draft Convention. For this preambular paragraph, however, the Expert Drafting Group determined that the premise and substantive content of this preambular paragraph, as a matter of treaty architecture, should remain the same in establishing the mutual linkages of the right to development and sustainable development at the outset before proceeding to identify specific dimensions on social sustainability, operationalizing, or integral development concerns raised.

Considering that peace and security at all levels is an essential element for the realization of the right to development and that such realization can, in turn, contribute to the establishment, maintenance and strengthening of peace and security at all levels,

Commentary:

1. Cuba recommended deletion of the words "and that such realization can, in turn, contribute to the establishment, maintenance and strengthening of peace and security at all levels". The Expert Drafting group considered that the relationship between peace and security on the one hand and the realization of the right to development on the other is not unidirectional. The instrumental role of the right to development in contributing to peace and security at all levels is significant enough to merit a spotlight. As such, the paragraph has been retained as it is, and is also linked to the new Article 22 on International Peace and Security in this 2022 Revised Draft Convention, which took note of the gist of the proposal from CINGO (e.g. "progressive disarmament should be achieved so that the resources released may be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries) and incorporated some aspects of this proposal in Article 22(2).

Recognizing that good governance, accountability and the rule of law at all levels, including the national and international levels, and the realization of the right to development are mutually reinforcing,

Commentary:

1. The Expert Drafting Group noted China's proposal to insert a new preambular paragraph before this paragraph (e.g. "Reaffirming that the existence of extreme poverty inhibits the full and effective enjoyment of human rights, emphasizing that eradicating poverty in all its forms and dimensions, including extreme poverty, is a great global challenge, an indispensable requirement and an overarching priority for sustainable development, and reaffirming also that the immediate alleviation and eventual eradication of extreme poverty must remain a high priority for the international community, and that joint efforts towards the achievement of this goal should be strengthened."). The Expert Drafting Group did not accept the proposed new preambular paragraph, due to repetitiveness, and because its ideas are already reflected in the thirteenth preambular paragraph and Article 23 of the 2022 Revised Draft Convention.

2. The Expert Drafting Group modified Cuba's proposal to delete "at both national and international levels", and instead referred to "at all levels, including the national and international levels". Cuba recommended deletion of the words "at both the national and

international levels”. The Expert Drafting Group inferred that the recommendation was made so that the importance of good governance and the rule of law does not appear to be limited to the national and international levels. The Amman Center for Human Rights Studies, in the same vein, suggested adding the word “local” before “national and international levels”. The drafting group agreed with the underlying logic behind these suggestions and has accordingly modified the phrasing to “all levels”.

3. The Expert Drafting Group simplified the language of this paragraph to specifically convey the mutual reinforcing relationship between the right to development, good governance, accountability and the rule of law, and thus did not accept the Grand Council of the Crees’ proposal to include the phrase “and other human rights” after the words “right to development”. The Group did not accept the new provision (“Reaffirming that unilateral coercive measures are a major obstacle to the implementation of the Declaration on the Right to Development”) that was proposed by the Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights, since this was already addressed in Article 14 of the 2022 Revised Draft Convention.

Recognizing also that the human person and peoples are the central subjects of the development process, and that development policy should therefore make them the main participants and beneficiaries of development,

Commentary:

1. This preambular paragraph closely tracks the thirteenth preambular paragraph in the 1986 Declaration on the Right to Development. The Expert Drafting Group did not accept Cuba’s proposal to delete the word “human” and the phrase “of development”, since it would not improve or strengthen the text. The Expert Drafting Group noted the proposal of the Holy See to reformulate this paragraph into a more elaborate form (“Recognizing that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace, that every human person and peoples are therefore central subjects of the development process, and that development policy should consequently therefore make the human person the main participant and beneficiary of development”). However, because the core ideas of the proposal were already contained in this formulation taken directly from the 1986 Declaration on the Right to Development, the Expert Drafting Group did not see the need to reformulate the provision.

Recognizing further that all human persons and peoples are entitled to a national and global environment conducive to just, equitable and participatory development, centred on human persons and peoples, respectful of all human rights,

Commentary:

1. The Expert Drafting Group considered China’s proposal in its oral statement to replace “of all human rights” with “respectful of the right to development”, but decided to maintain the phrase “of all human rights”, to be consistent with the applicability of the right to development to all human persons and peoples under Article 4 of this Revised Draft Convention and Article 4 of the 17 January 2020 Draft Convention on the Right to Development, and also in relation to Article 1(1) of the 1986 Declaration on the Right to Development. The proposal would dilute the paragraph rather than strengthen it within the terms of the draft convention. Additionally, China’s proposal to refer to change the phrase “human-centred development” into “human and people-centred development”, was simply reformulated into “just, equitable and participatory development, centred on human persons and peoples”. While the phrase “people-centred” is used in the 2030 Agenda on Sustainable Development, the phrase “people-centred development” does not appear in that document. Conversely, Cuba’s proposal to delete the word “human” and replace the word “global” with “international”, and to add the phrase “and freedoms” after the phrase “respectful of all human rights”, similar to the proposal of the Holy See, would, in the view of the Expert Drafting Group, not improve the substance of this preambular paragraph.

2. The Amman Center for Human Rights recommended insertion of the word “local” before “national and global”. The Expert Drafting Group understands the rationale for this proposal, but will maintain the language. The use of the word “national” does not exclude

local contexts and captures what the high-level task force on the implementation of the right to development defined as the “core norm” of the right to development, indicating the obligations of States internally, externally and collectively.⁸

Acknowledging that States have the primary responsibility, through cooperation, including engagement with civil society, for the creation of national and international conditions favourable to the realization of the right to development,

Commentary:

1. The Expert Drafting Group accepted the recommendation of Catholic Inspired NGOs (CINGOs) to use a stronger word than “bearing in mind”, even if the original language is identical to the fourteenth preambular paragraph and Article 3(1) of the 1986 Declaration on the Right to Development. However, the Expert Drafting Group included the phrase “including engagement with civil society” out of consideration for Article 13(2) of this Revised Draft Convention, which refers to such engagement with civil society in the context of the duty to cooperate.

2. For similar reasons as above, the Expert Drafting Group did not see the need to accept the recommendation of the Amman Center for Human Rights Studies to insert the word “local”, and also did not accept the Grand Council of the Crees proposal to add the phrase “and other human rights” after “the right to development”. Neither proposal strengthened the paragraph.

Recognizing that every organ of society at the national or international level has a duty to respect the human rights of all, including the right to development,

Commentary:

1. China has suggested eliminating the words “human rights” and focusing on the right to development. The suggested formulation is: *Recognizing that every organ of society at the national or the international level has a duty to respect the right to development of individuals and peoples,*”. The Expert Drafting Group, for the reasons noted in the commentaries above with respect to a similar suggestion, recommends retention of the words as they are. An additional reason is that revised draft articles 3 and draft article 7 are aimed at recognizing the principle that everyone has the duty to respect human rights, including the right to development, of others in international law.

2. The Amman Center for Human Rights Studies and the National Alliance of Women’s Organization, United Kingdom, have recommended inclusion of the word “local” before “national”. For the reasons noted in the commentaries above, the drafting group recommends retaining the language as it is.

Concerned that, despite the adoption of numerous resolutions, declarations and agendas, the right to development has not yet been effectively operationalized,

Commentary:

1. Argentina has recommended deleting this entire paragraph. The contention is that “within the framework of the 2030 Agenda, and in accordance with A/RES/70/01, actions are being taken in the development of States and Argentina is making proactive efforts in this regard. In particular, our country has been defending the concept of Common but Differentiated Responsibilities within the framework of the Sustainable Development Goals. In this way, the proposed Convention on the Right to Development should not necessarily represent a mechanism that surpasses the objectives set out in the 2030 Agenda”. The drafting group could not see how the proposed convention represents a mechanism that surpasses the objectives set out in the 2030 Agenda. To the contrary, this paragraph highlights that despite the adoption of the 2030 Agenda, amongst other resolutions, declarations and agendas, the right to development has not yet been effectively operationalized. This is reflected in the deceleration of almost every SDG and target even prior to the COVID-19 pandemic and more so during the pandemic. In this regard, the first thematic study of the Expert Mechanism on the Right to Development titled “Operationalizing the Right to Development in Achieving

⁸ A/HRC/15/WG.2/TF/2/Add.2 and Corr.1, paragraph 18 and annex, paragraph 1.

the Sustainable Development Goals” demonstrates that adoption of the 2030 Agenda by itself is no guarantee for success unless the right to development is operationalized. It is precisely because the right to development has not been effectively operationalized that the 2030 Agenda, amongst others, have been derailed. As such, the Expert Drafting Group strongly recommends retention of this paragraph. It is at the heart of the motivations behind this convention.

Convinced that a comprehensive and integral international convention to promote and secure the realization of the right to development, through appropriate and enabling national and international action, is essential.

Commentary:

1. The Expert Drafting Group takes note of Cuba’s proposal to insert the phrase “of the need that a” before the phrase “comprehensive and integral international convention”, and Bangladesh’s proposal to insert the word “now” before “essential”. However, the language is retained as it is since the proposals will not improve the substantive content of the paragraph.

2. The National Alliance of Women’s Organizations, UK, suggested including the word “local” before “national”. The explanation provided is that every level of society must be involved in the implementation of this Convention, and that, it is often grassroots organizations and local laws and regulations which are and should be responsible for recognizing the needs of individuals and their communities. While the Expert Drafting Group entirely agrees with this explanation, it reiterates that the word “national” includes “local”. The word is not to be understood as only the central government of a State, but every action undertaken within a nation. The use of the word “international” also does not and cannot exclude participation of grassroots organizations.

Have agreed as follows:

Part I

Article 1

Object and purpose

The object and purpose of the present Convention is to promote and ensure the full, equal, and meaningful enjoyment of the right to development by every human person and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels.

Commentary:

1. The Expert Drafting Group recalls that in the commentaries to the 17 January 2020 Draft Convention, it was noted that this provision does not by itself describe the right to development or obligations of specific duty-bearers. Rather, it is aimed at clearly articulating the purpose of the convention so that the substantive provisions on rights and duties to follow can be interpreted in its light. It was also noted that the provision focuses on what the convention seeks to achieve vis-à-vis the right-holders, rather than how it seeks to do so. Suggestions received for reformulating or improving this draft article were reviewed with this rationale in mind.

2. Cuba has suggested that the provision be reformulated to: “The object and purpose of the present Convention is to promote and ensure the [effective realization of the right to development, its] full, ~~equal and meaningful~~ [and equitable] enjoyment ~~of the right to development~~ by every human person and all [the] peoples ~~everywhere~~ [of the world], and to ~~guarantee its effective operationalization and full implementation~~ [its application] at the national and international levels.

3. Iran has suggested the following modifications: “The object and purpose of the present Convention is to promote and ensure the full [realization of the right to development and the

full], equal and meaningful enjoyment of the right to development by every human person and all peoples everywhere, [as well as all nations,] and to guarantee its effective operationalization and full implementation at the national and international levels”.

4. The South Centre suggested that the words “and to guarantee” be replaced with the word “through”. In explaining the rationale, the South Centre noted that for the achievement of the objectives of the convention, “it is necessary to consider that implementation of international law is dependent upon domestic mechanisms that vary according to the peculiarities of the legal system of each State, and it may require not only normative changes, but also changes in the economic, social, cultural, fiscal, political and governance structures of States”. It was also pointed out that “international treaties establish rules of conduct among its Parties, which generally allow certain flexibility for them to adopt the most adequate measures in accordance with their legal systems, to comply with the obligations included in the treaties. Given the nature of the right to development, as a right by itself and as a means for the full enjoyment of all other human rights, the notion of “guarantee” may raise concerns about the scope and extent of the obligations regarding the operationalization of the draft Convention, as the right to development can only be progressively realized through an incremental process supported by increased international cooperation”.

5. The Centre for Human Rights, University of Pretoria, has recommended adding the words “through inter alia eradication of the barriers to the right including poverty, inequality, colonialism, imperialism, cultural and traditional norms inconsistent with international human rights standards” at the end of the provision.

6. Soroptimist International has suggested that the words “without discrimination” be added after the words “all peoples everywhere”. It contended, rightly in the view of the drafting group, that including ‘without discrimination’ ensures that peoples are not viewed homogeneously, and that development must reach all individuals who comprise ‘peoples’ without distinctions based on gender, race, ethnicity, and other factors referred to elsewhere within the Convention.

7. The Expert Drafting Group evaluated all the suggestions, and chose to maintain the language of the provision in its original form under the 17 January 2020 Draft Convention. As stated in the commentaries to that draft:

“4. Draft article 1 highlights that the object and purpose of this convention is to “promote and ensure” the enjoyment of the right to development by every human person and all peoples everywhere. The provision focuses on what the convention seeks to achieve vis-à-vis the right-holders, rather than how it seeks to do so. As such, it remains silent on the precise nature of duties of the corresponding duty-bearers, which are covered with precision subsequently in the draft convention utilizing the respect, protect and fulfil framework. This is akin to the formulation of the object and purpose provision in the CRPD, which also focuses on what that convention seeks to achieve rather than what the duty-bearers must do to help achieve the same.

5. The phrase “full, equal and meaningful enjoyment” also draws inspiration from article 1 of the CRPD, although “meaningful” is not mentioned therein. The term “full and equal enjoyment” is also found in the CERD. Both these conventions focus on specific categories of persons who were generally covered under non-discrimination provisions of previously adopted core human rights treaties, but such generality did not in practice ensure equality with others for persons with disabilities or those belonging to marginalized racial groups. As such, “full and equal enjoyment” is followed in these Conventions with the words “of all human rights and fundamental freedoms” to highlight that everything guaranteed in core human rights treaties must be fully and equally applicable to persons within these categories as well. In case of draft article 1, the focus is specifically on enjoyment of the right to development and the nature of this enjoyment must therefore be appropriately adapted. “Full and equal” are obvious candidates because they describe that the enjoyment should aim to cover the full scope of the right to development and in an equal and non-discriminatory manner to all right-holders everywhere. The inclusion of “meaningful” in draft article 1 signifies that in addition to “full and equal”, the enjoyment of the right to development should also be real or tangible and have meaning in the self-determined

perspective of its right-holders. It also alludes to the indispensability of “meaningful participation” of the right-holders which is specifically incorporated in the DRTD, as well as in paragraph four of the draft preamble.

6. The terms “by every human person and all peoples” describe the specific right-holders of the right to development as contained in draft article 4. The word “everywhere” thereafter highlights the applicability to right-holders in all parts of the world under all circumstances.

7. The terms “and to guarantee its effective operationalization and full implementation at the national and international levels” underscore the very reason why the status quo on the right to development is not deemed adequate and adoption of a convention is deemed essential. “Guarantee” signifies the seriousness in purpose which has been found wanting hitherto. “Effective operationalization” reiterates the words used in paragraph twenty-five of the preamble. The explanation for the choice of these words in the commentary to the preamble is equally applicable here. The paragraph further seeks to ensure that the object and purpose is not limited to “effective operationalization” irrespective of outcomes. It also aims at “full implementation” of the right in terms of achieving results. “National and international levels” follows the essence of paragraphs twenty-two, twenty-three and twenty-four of the preamble, and more specifically, the language of article 10 of the DRTD. As explained in earlier comments, the soul of the right to development is indeed the existence of a national and international order favourable to its realization.

8. Draft article 1 does not by itself describe the right to development or obligations of specific duty-bearers. Rather, it is aimed at clearly articulating the purpose of the convention in idealistic terms so that the substantive provisions on rights and duties to follow can be interpreted in its light.”

Article 2

Definitions

For the purposes of the present Convention:

Commentary:

1. Ecuador recommended that the definition and scope of the right to development be included within Article 2 definitions. Iran stated the whole article should be deleted. Qatar sought deletion of the definition of an international organization, and asked for definitions of the right to development and the right to self-determination to be inserted in this article. The Special Envoy of the UNSG on Disability and Vulnerability sought definitions for “development”, “sustainable development”, and “social sustainability”, a view also shared by the Committee on the Rights of Persons with Disabilities. Fundacao Antonio Menghetti also asked to include the definition of the right to development in this section, as did the Women’s Federation for World Peace International.

2. The Expert Drafting Group notes that the items enumerated in this Article 2 refer to a set of limited, necessarily objective legal definitions that involve the applicability of the Convention (e.g. the definition of “legal person”, the definition of “international organization” according to the ILC 2011 Draft Articles on the Responsibility of International Organizations, the clarification of the shorthand reference in Article 25 (Conference of States Parties) to “Working Group on the Right to Development” as well as the “High Level Political Forum on Sustainable Development”. It is not the provision of the draft convention that is intended to provide settled objective legal definitions for substantive concepts such as “development” or “sustainable development”, especially since these concepts are expected to evolve as a result of the interaction of human persons’ and peoples’ participation, contribution, and enjoyment of development that is indivisible from, interdependent, and interrelated with all other human rights and fundamental freedoms. Article 4 of the Revised Draft Convention recognizes inherently that the right to development involves the participation, contribution, and enjoyment of civil, cultural, economic, political, and social

development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms. It is inherently context-specific to the circumstances of the rights-holder and the duty-bearers. Article 3(g) of the Revised Draft Convention provides the description of sustainable development as a general principle that would guide parties in achieving the object and purpose of the Convention and implementing its provisions. It is not necessary, therefore, to provide the requested definitions for this provision.

(a) “Legal person” means any entity that possesses its own legal personality under domestic or international law and is not a human person, a people or a State;

Commentary:

1. Cuba sought deletion of the word “human” and its replacement with the word “natural”. Turkey took the position that only individuals should be specified. CINGOs said that the phrase “legal person” is unusual in international human rights law, because only States and international organizations are subjects of international law. The Expert Drafting Group maintained this definition of legal person, noting the expansion of business entities as legal persons, especially where States have duties to ensure that businesses comply with international human rights law.⁹

(b) “International organization” means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality; international organizations may include, in addition to States, other entities as members;

Commentary:

1. CETIM raised the question to ask “what is meant by an international organization may include among its members other entities”. The Expert Drafting Group notes that international organizations may themselves include among its members a regional organization, such as the European Union’s membership at the World Trade Organization.

2. South Africa sought to delete the last phrase “international organizations may include, in addition to States, other entities as members”, stating that emphasis should be placed on the international legal personality of the relevant international organization. The Expert Drafting Group submits that this emphasis is already read into the above definition, which is derived identically from the International Law Commission’s 2011 Draft Articles on the Responsibility of International Organizations.

(c) “Working Group on the Right to Development” means the entity established by the Commission on Human Rights in its resolution 1998/72 of 22 April 1998, as endorsed by the Economic and Social Council in its decision 1998/269 of 30 July 1998;

(d) “High-level political forum on sustainable development” means the entity established pursuant to the outcome document of the United Nations Conference on Sustainable Development (Rio +20) of 2012, as endorsed by General Assembly resolution 66/288 of 27 July 2012 and supplemented by Assembly resolution 67/290 of 9 July 2013.

Article 3

General Principles

Commentary:

1. The Expert Drafting Group noted Argentina’s comment on the broader objectives regarding the implications of development under paras. 7, 8, and 9 of the 2030 Agenda for

⁹ See United Nations Guiding Principles on Business and Human Rights, full text at https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinessshr_en.pdf (last accessed 1 April 2022); Committee on Economic, Social and Cultural Rights, General Comment No. 24 on State Obligations under the International Covenant on Economic Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 10 August 2017.

Sustainable Development. In the view of the Expert Drafting Group these broader objectives, while expansive, would not necessarily anticipate future objectives regarding the implications of development. The definition of the right to development under Article 4(1) of the Revised Draft Convention allows for the evolution of such objectives and implications of development, in relation to binding international human rights law. There is no necessity to enumerate and expand the list of General Principles to this end.

2. Ecuador has recommended including a gender approach in development, but the Expert Drafting Group is of the view that this concern is not only addressed by Article 16 but also Article 4(1) of the Revised Draft Convention.

3. The Expert Drafting Group notes the appreciation of South Africa in its oral statement that the issue of the duty to cooperate under Article 3 is further elaborated in Article 13.

4. The Human Rights Commission of Mexico City expressed a preference for including recognition for local government as the most suitable for enabling participation for true realization of human rights. The Expert Drafting Group is of the view that this preference, while understandable, is a very specific policy determination that does not have to be reflected in General Principles that are intended to be broad overarching principles that will help achieve the object and purpose of the Convention and implement its provisions.

5. CETIM stated that it is inappropriate to define development, but defer to peoples on the development that best suits them. The Expert Drafting Group takes the same position, but notes that precisely in order for people to determine the development model suitable to their contexts, the right to development is there to ensure that individuals and peoples can participate in, enjoy, and contribute to their development as specified in Article 4(1). Jo Clemente Institute (IJC) argued that accessibility should be included as a guiding principle and as a separate right, but the Expert Drafting Group is of the view that this quality is not an overarching general principle, and that in any event, this is embraced in treaty bodies' interpretations of economic, social, and cultural rights.

To achieve the object and purpose of the present Convention and to implement its provisions, the Parties shall be guided by, inter alia, the principles set out below:

Commentary:

1. South Centre recommended modifying the chapeau of this draft article to the following: "To achieve the object and purpose of the present Convention and to implement its provisions, the Parties shall [fully respect the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations,] and shall be guided, inter alia, by the following principles:". Providing the rationale for this suggestion, the South Centre referred to article 3(2) of the DRTD which recognizes that the right to development requires "full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations." The Expert Drafting Group agrees with the suggestion to include the aforesaid principle in draft article 3, however, it recommends doing so in the list of principles set out in the sub-paragraphs, rather than in the chapeau.

(a) Development centred on the human person and peoples: the human person and peoples are the central subjects of development and must be the active participants and beneficiaries of the right to development;

Commentary:

1. Cuba proposed the deletion of the word "human". The Expert Drafting Group reiterates that the 1986 Declaration on the Right to Development uses the phrase "human person" and that is the same phrase used throughout the Revised Draft Convention. The Expert Drafting Group did not accept South Africa's proposal to delete the word "the" before active, since this did not strengthen the provision.

2. The Expert Drafting Group accepted and modified the proposal of Ecuador to use the phrase "Development centred on the human being and the peoples" into "Development centred on the human person and peoples", since this would strengthen the provision and ensure consistency with usages throughout the rest of the Revised Draft Convention. While the Expert Drafting Group recognizes Ecuador's proposal to refer to "the rights of nature

should be considered as a fundamental element to generate sustainable development”, this concept of “rights of nature” is regionally specific to the Inter-American system and is not reflective of existing general international law and international human rights law.

3. The Expert Drafting Group noted the Holy See’s proposal to insert “in virtue of his or her inherent dignity, is” after the phrase “the human person”. However, reference to this phrase is unnecessary since the third preambular paragraph already achieves this objective.

4. The Expert Drafting Group further notes the Food and Agriculture Organization’s support for reference to human rights-based approaches in Article 3, but sought to replace references to “people” with “People”, as is done in the UN Declaration on the Rights of Indigenous Peoples and the African Charter on Human and Peoples’ Rights. The Expert Drafting Group notes that this proposal will not necessarily strengthen the provision.

5. The Expert Mechanism on the Rights of Indigenous Peoples recommended the following reformulation of this sub-paragraph: “Human person and people-centred development: ~~the human person and people are the central subjects of development and should be the active participants and beneficiaries of the right to development~~ [to be sustainable, development must be centred on the human person and peoples as well as the natural environment (living and non-living beings). Human beings and the natural environment are the central subjects of sustainable development. They are the active participants and beneficiaries of this development;]”. By way of explanation, the EMRIP noted that this rewording includes the natural world and the sustainability of development. The Expert Drafting Group notes that sustainable development is specifically incorporated as a principle in sub-paragraph (f) of this revised draft article. Each of the principles listed in these sub-paragraphs are applicable cumulatively and are not mutually exclusive. As such, it is neither necessary nor useful to reformulate each sub-paragraph with elements of one or more of the other sub-paragraphs.

(b) Universal principles common to all human rights: the right to development should be realized in a manner that integrates the principles of equality, non-discrimination, empowerment, participation, transparency, accountability, equity, subsidiarity, universality, inalienability, interdependence and indivisibility;

Commentary:

1. The Expert Drafting Group accepted the Philippines’ proposal to include the word “transparency” as among such universal principles common to all human rights, as well as Cuba’s proposal to enumerate equality, non-discrimination, participation, empowerment, and transparency first in the provision. The Expert Drafting Group did not accept Ecuador’s extensive enumeration of grounds of non-discrimination in this provision, since it is sufficient to refer to “non-discrimination” without prescribing or limiting or expanding the grounds for prohibited discrimination, which may evolve over time. The Expert Drafting Group noted the Holy See’s concern over the reference to the term “empowerment” as suggestive of a perhaps individualistic approach to human rights, but this word has already been interpreted in the context of the right to development: “Empowering people means moving beyond purely technocratic solutions and treating people as passive objects of aid or charity. People are empowered when they are able to claim their rights and to shape the decisions, policies, rules and conditions that affect their lives.”¹⁰

2. The Special Envoy of the UN Secretary General on Disability and Vulnerability recommended addition of the words “universal inclusion and accessibility”. Soroptimist International also recommended the addition of the word “inclusivity”. The National Human Rights Institution of El Salvador recommended the inclusion of “transparency, responsibility and accountability”. The Catholic Inspired NGOs suggested deletion of the word “empowerment”, questioning whether it is a universal principle in human rights law. It contended that empowerment is a way to implement human rights but not a universal

¹⁰ United Nations Office of the High Commissioner for Human Rights, *Accelerating sustainable development with human rights*, at [https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/EIEPamphlet.pdf#:~:text=Empowerment%20requires%20securing%20civil%20and%20political%20rights%20as,to%20act%20as%20agents%20of%20their%20own%20development.\(last%20accessed%201%20April%202022\).](https://www.ohchr.org/sites/default/files/Documents/Issues/MDGs/Post2015/EIEPamphlet.pdf#:~:text=Empowerment%20requires%20securing%20civil%20and%20political%20rights%20as,to%20act%20as%20agents%20of%20their%20own%20development.(last%20accessed%201%20April%202022).)

principle. As such, it suggested that “the well-known and accepted human rights principles that are universal and inalienable, interdependent and indivisible” be mentioned in this sub-paragraph.

3. The Expert Drafting Group notes that, as indicated in the commentaries to the 17 January 2020 Draft Convention, this sub-paragraph is aimed at restating the universally acknowledged principles that are common to the realization of all human rights and ensuring that they are applied to the realization of the right to development. As such, the suggestion by Ecuador to replace the words “the right to development should be realized in a manner” with the words “the right to development should be understood in such a way”, in the opinion of the drafting group, weakens rather than strengthens the text. The drafting group agreed with the recommendation by Catholic Inspired NGOs to add the principles or universality, inalienability, indivisibility, interdependence and interrelatedness of all human rights. The absence of these important and basic principles in the zero draft was indeed a glaring omission, and their inclusion strengthens the text. However, the drafting group notes that there are other principles common to all human rights, as listed in the text of this sub-paragraph, that are also well-recognized.¹¹ As such, the drafting group agreed that the principles of “transparency”, “inclusion” and “accessibility” should be added to this provision, as suggested by several respondents above. The drafting group could not find any compelling reason to omit “equity” or “empowerment”. Both are well-recognized human rights principles¹² that are essential for the realization of the right to development.

(c) Human rights-based development: as development is a human right that is indivisible from and interrelated and interdependent with all other human rights, the laws, policies and practices of development, including development cooperation, must be normatively anchored in a system of rights and corresponding obligations established by international law;

Commentary:

1. The Expert Drafting Group noted the comment of the Global Forum of Communities Discriminated on Work and Descent on implementing measures such as affirmative action. However, this specific comment could already be encompassed within the interpretation of the above general principle.

2. The Expert Drafting Group noted the proposal of the International Human Rights Association of American Minorities in their oral statement for a new paragraph (c)bis on “international humanitarian-law based approach to development: colonialism and foreign occupation must be realized consistent with international humanitarian law for the restoration and reparation of exploited peoples and countries.” While the Expert Drafting Group understands this point of advocacy, it is not a general principle within the purview of general international law, including approaches to reparation for historic injustices which remain varied across the world, and within the parameters of international law and international human rights law.

3. China recommended the deletion of this paragraph. The Expert Drafting Group notes that during the 21st session of the WGRTD, China and Iran had also expressed concerns about the usage of the title “Human Rights-Based Approach to Development”, especially on the ground that this concept has never been legally defined in any instrument. The Expert Drafting Group notes that human right-based approach to development currently dominates practices for planning and programming and is promoted by the United Nations system and

¹¹ OHCHR, *What are Human Rights?*, available at <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>; World Health Organization, *A Human-rights based approach to health*, available at https://www.who.int/hhr/news/hrba_to_health2.pdf; UNFPA, *Human Rights Principles*, available at <https://www.unfpa.org/resources/human-rights-principles>; OHCHR, *Principles and guidelines for a human rights approach to poverty reduction strategies*, available at <https://www.ohchr.org/Documents/Publications/PovertyStrategiesen.pdf>; FAO, *Exploring the human rights-based approach in the context of the implementation and monitoring of the SSF Guidelines*, <http://www.fao.org/3/a-i6933e.pdf>.

¹² Ibid.

widely adopted by development agencies, organizations, and practitioners.¹³ The Expert Drafting Group is also well-aware of the critiques of human rights-based approaches to development as it is deployed selectively in many of these practices on the ground, especially since such practices focus predominantly, in programmatic terms, on the internal obligations of States and not equally on the external and collective dimensions of the obligations of States. This lopsided deployment of a human rights-based approach to development is contrary to the right to development that requires an equal focus on all three dimensions of obligations of States – internal, external, and collective. Indeed, the Expert Mechanism on the Right to Development has acknowledged this problem in its first thematic study submitted to the Human Rights Council, calling for recalibration of human-rights based approach to development to be fully compliant with the normative framework of the right to development.¹⁴

4. Accordingly, the Expert Drafting Group observes that it is precisely to avoid a counterproductive deployment of human rights-based approach to development that the draft general principle provides a definition of this approach to mean that development is a human right. The draft convention has the opportunity for the first time to adopt a clear understanding of human rights-based approach to development to the effect that development is a human right and insist that development must be realized as such. It may be pertinent to point out that even the UN System’s internal Statement of Common Understanding on Human Rights-Based Approaches made no reference whatsoever to the right to development, when it was adopted. This convention provides a unique opportunity to course-correct the widely dominant lopsided narratives and practices around human-rights based approach to development that deprioritize the external and collective dimensions of obligations of States and define this approach through the lens of the right to development. This would not only have the effect of legally defining, for the first time, human rights-based approach to development in a manner that is consistent with the right to development but would also provide the normative basis for recalibrating current tools for deployment of HRBA. As such, the drafting group strongly recommends retention of the sub-paragraph and the title as it is.

5. Insofar as Cuba’s recommendation for deletion of the words “in a manner consistent with and based on all other human rights” and replacement with the words “as a universal human right, indivisible and interdependent with all other human rights” is concerned, the drafting group considered it with interest. That development as a human right must be realized in a manner consistent with and based on all human rights, as suggested in the 17 January 2020 Draft Convention, essentially seeks to ensure that development laws, policies and practices are designed and implemented in a manner that do not violate any human right. No trade-off with human rights is permitted in the development process. As the commentaries the 17 January 2020 Draft Convention note, this is central as a guide for the implementation of almost every obligation contained in the draft convention, including those related to conducting impact assessments and implementation of development agendas.¹⁵ The Expert Drafting Group noted that the phrasing suggested by Cuba is also capable of ensuring the aforesaid objectives. As such, the Expert Drafting Group has incorporated the suggestions by Cuba, with the addition of the word “interrelated”, as an alternative text for negotiations by States, but with retention of the title as “human rights-based approach to development” for reasons spelt out above.

(d) Contribution of development to the enjoyment of all human rights: development, as described in the present Convention, is essential for the improvement of living

¹³ OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (Geneva, United Nations, 2006); United Nations Development Group, *UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding)* (New York, United Nations, 2003).

¹⁴ A/HRC/48/63.

¹⁵ For instance, the policy and operational support prepared by the UN Development Group for UN Country Teams in integrating human rights in SDGs implementation underscores the importance of the right to development and is essentially built on this principle. Available at <https://undg.org/wp-content/uploads/2016/09/Policy-Operational-Support-to-UNCTs-on-HR-in-SDG-Implementation-FINAL...-1-1.pdf>.

standards and the welfare of human persons and peoples and contributes to the enjoyment of all human rights;

Commentary:

1. The Expert Drafting Group introduces this new paragraph drawing from, and slightly modifying, China's proposal for a provision that reads: "contribution of development to the enjoyment of all human rights: Development is the basis for the improvement of living standards and the welfare of the population of each state and hence contributes to the enjoyment of all human rights." The Expert Drafting Group welcomes this paragraph and its origin in Human Rights Council Resolution 41/19.

(e) Principles of international law concerning friendly relations and cooperation among States: The realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations;

Commentary:

1. The Expert Drafting Group introduces this new sub-paragraph, accepting the proposal of the South Centre to include this as one of the core General Principles. This is an architectural norm aligned with the fundamental purposes and principles of the Charter of the United Nations, as well as UN General Assembly Resolution 2625 (Friendly Relations Declaration).

(f) Self-determined development: development is determined by individuals and peoples as rights holders. The right to development and the right to self-determination of peoples are integral to each other and mutually reinforcing;

Commentary:

1. The Expert Drafting Group accepted Argentina's proposal in its oral statement to add the phrase "of peoples" after "the right to self-determination", since this is consistent with existing international law.

2. China sought to remove all words after "self-determined development" and replacement with this sentence: "Countries choose independently their development concepts, paths, and models in accordance with their national conditions." The Expert Drafting Group considered this suggestion and was concerned that this phrasing, in contrast with the open-ended nature of the original text, is very specific and may permit adoption of development concepts, paths and models in accordance with the national conditions of countries, but that may nevertheless undermine the right to development of others, especially if such policies have extra-territorial adverse impacts. This may defeat the three-dimensional obligations of States inherent to the right to development, including the duty to cooperate. Additionally, rather than peoples who are the holders of the right to self-determination, the language suggests countries as the holders of a human right, introducing an entirely new concept in international law. The Expert Drafting Group strongly recommends that the principle in this sub-paragraph be retained in an open-ended manner as suggested in the 17 January 2020 Draft Convention, with the more specific draft article 5 delving into the full scope of the right to self-determination and its relation with the right to development. It may be counterproductive to attempt to give full shape to this relationship in a short sentence in this sub-paragraph.

3. Cuba has recommended including the following words after the reference to the right to self-determination: "of their political condition, to the realization of their economic, social and cultural development, to full sovereignty over all their wealth and natural resources". For the same reasons spelt out above, the Expert Drafting Group recommends not qualifying or limiting the right to self-determination with only some of its elements in this sub-paragraph and leaving it open-ended, so that the full relationship is fleshed out in the supporting draft article 5.

4. The Expert Drafting Group further notes the comment of the Latin American Campaign for the Right to Education that "the consequence of this statement it is important to recognize, promote, and defend the existence of multiple types of development, in line with community life projects and the cultural diversity of the planet." The Expert Drafting

Group agrees that there are multiple types of development, but these should not defeat the right to development of others, as well as the three-dimensional obligations of States inherent to the right to development, including the duty to cooperate, among others.

(g) Sustainable development: development must be achieved in its three dimensions, namely, economic, social and environmental, in a balanced and integrated manner and in harmony with nature. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations; and the right to development cannot be realized if development is unsustainable.

Commentary:

1. The first sentence of this sub-paragraph is drawn directly from the 2030 Agenda for Sustainable Development. The first clause of the second sentence is drawn from Principle 3 of the 1992 Rio Declaration on Environment and Development (e.g. “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations”), while the second sentence is based on the 17 January 2020 Draft Convention.

2. China has suggested that the text be entirely replaced with the following: “the goal of the right to development is the coordinated and sustainable economic, political, social, cultural and ecological development enjoyed by human person and people”. It may be noted that the text proposed in the 17 January 2020 Draft Convention is aimed at providing a guiding principle to States for realization of the object and purpose of the convention and its implementation. The relationship between sustainable development and the right to development is presented, consciously so, as bi-directional and not unidirectional. This paragraph is aimed at being simple and non-controversial. The full scope of this symbiotic relationship is developed fully in draft article 22, which also highlights its bidirectional nature. The Expert Drafting group was concerned that China’s suggestion is unidirectional in nature since it reflects the idea that the realization of the right to development should result in sustainable development. It does not accommodate the fundamental principle that development itself cannot be sustainable if its realization undermines the right to development. This principle is equally fundamental and has significant policy implications. For instance, laws, policies and practices adopted by States and institutions with the objective of realizing the Sustainable Development Goals may be unsuccessful if they undermine the right to development. Indeed, the first thematic study of the Expert Mechanism on the Right to Development highlights that the derailment of the 2030 Agenda and deceleration in most of its goals and targets even prior to the COVID-19 pandemic was the direct result of not operationalizing the right to development. In the opinion of the Expert Drafting group, the instrumental role of the right to development in realizing sustainable development must also be reflected in this guiding principle. As such, it is recommended that the paragraph be retained as it is. Venturing into specific details rather than leaving the principle broad and open-ended may be counter-productive.

3. Ecuador has also recommended including the sentence “development cannot be sustainable if the rights of nature are not protected” at the end of the sub-paragraph. In explaining the rationale, Ecuador noted that “development cannot be sustainable if nature is not considered a subject of rights”. It further pointed out that in the Constitution of Ecuador, article 71 states the following: “Nature or Pacha Mama (Mother Earth), where life is reproduced and carried out, has the right to have its existence fully respected and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes”. The Expert Drafting Group has already considered a similar suggestion with respect to sub-paragraph (a) of this draft article 3 and recommends, for the same reasons noted in the commentaries to sub-paragraph (a), the modified language above. This does not exclude the possibility of including this language should there be an agreement among States during the negotiations at a later stage.

4. The Expert Drafting Group noted the proposal of the Catholic Inspired NGOs have recommended that a definition of sustainable development be included in this sub-paragraph: “development that should respect and preserve the environment and meet the needs of present and future generations”. The Expert Drafting Group notes that this suggestion seems to follow, with modifications, the definition of sustainable development first provided by the

Brundtland Commission report of 1987 as follows: “Sustainable development can be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

5. All Win Network has recommended inclusion of the words “and unobtainable” after “unsustainable”. The Expert Drafting Group notes that this inclusion, while interesting, introduces a new element in the principle that predominantly seeks to highlight the symbiotic relationship between the right to development and sustainable development. As such, it recommends not including the word “unobtainable” here.

(h) Right to regulate: the realization of the right to development entails the right for States Parties, on behalf of the rights holders, to take regulatory or other related measures to achieve sustainable development on their territory in accordance with international law, and consistent with the provisions of the present Convention;

Commentary:

1. Argentina, in their oral statement at the 21st session of the WGRTD, recommended that the words “in accordance with international law” be added at the end of the paragraph. The Expert Drafting Group agreed with this recommendation since it helps strengthen the text and ensures that the exercise of the right to regulate does not militate against international law.

2. The Grand Council of the Crees recommended adding the words “in a manner consistent with this Convention” at the end of the paragraph. The Expert Drafting Group also agreed with this recommendation for the same reasons as above.

3. The Special Envoy of the UN Secretary General on Disability and Vulnerability suggested to include not only the right of States Parties to regulate but also to “enact legislation”. Similarly, All WIN Network recommended inclusion of the words “legal measures” after “regulatory”. The Expert Drafting Group notes that the words “to take regulatory or other related measures” are broad enough and undoubtedly include enactment of legislations or other legal measures as necessary.

4. The International Federation of Social Workers expressed concern that the right to regulate by a State should not compromise any other fundamental rights. The Expert Drafting Group agreed with this proposition and notes that the inclusion of words “in accordance with international law and in a manner consistent with the provisions of this Convention” addresses the concerns raised.

5. Soroptimist International recommended inclusion of the words “across all sectors” after the words “to achieve sustainable development”. By way of justification, it noted that by this inclusion, this clause can emphasise the interconnectedness of different aspects of the right to development and can ensure efforts are made in all sectors – education, health etc – to realise that right. It further noted that without including an explicit reference to all sectors, a disproportionate focus may be placed on one sector over others, leading to uneven development processes which are contrary to the right to development. The Expert Drafting Group, while agreeing with the overall observations, considered that the right to regulate to achieve sustainable development includes all sectors. Lopsided development of one sector at the expense of any other is antithetical to sustainable development. This is the essence of the 2030 Agenda where all SDGs and targets are equally important and no trade-off between them is considered compatible with sustainable development.

6. CETIM suggested that the words “and at the international level” be added after the words “on their territory”. It noted that “decisions taken at the international level can hinder national economic and social development programs and policies, such as “the unfair rules of the international financial and trade systems and of coercive measures, to mention only these examples”. The Expert Drafting Group understands the concerns but did not see how the suggested text addresses the concerns raised. Additionally, the principle speaks to the right of States to regulate and it is difficult to see how this right exists for regulation at the international level, although elements of an *obligation* to do so through discharge of the duty to cooperate do exist. As such, the Expert Drafting Group does not recommend its inclusion.

7. Cuba suggested the deletion of this entire paragraph. It was not clear to the Expert Drafting Group what the concerns might be, however, it believes that with the modifications made to the text, those concerns ought to be addressed. The Expert Drafting Group reiterates that the right of a State to take regulatory measures within its own territory to achieve sustainable development is a cardinal and fundamental principle of international law and is at the heart of the right to development.

(i) National and international solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of cooperation and unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals everywhere. This principle includes the duty to cooperate with complete respect for the principles of international law;

Commentary:

1. China recommended adding the following statement at the end “adhere to the principle of common but differentiated responsibilities and to the international development cooperation pattern that features South-North cooperation as main channel and South-South cooperation as supplements”. The drafting group does not recommend adding this sentence in this particular paragraph. The primary purpose of this paragraph is to highlight that the rights and obligations recognized in this convention cannot be realized or discharged in the absence of solidarity among the different members of the society. The United Nations system has been engaged in considering the relation between human rights and international solidarity since at least 2001. The draft declaration on human rights and international solidarity, submitted by Ms. Virginia Dandan, the second independent expert on this topic, to the Human Rights Council in 2017, contained a definition of “international solidarity”.¹⁶ It defines international solidarity as the “expression of a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals”.¹⁷ The Expert Drafting Group recommends that considering the purpose of this paragraph, it is best not to add selective themes such as common but differentiated responsibilities or South-North/South-South cooperation. There are other equally important themes in the context of solidarity such as special and differential treatment in trade or technology facilitation, which ought not to be left out if only the two named above are included. Additionally, these specific themes are covered more specifically in draft article 12 related to the duty to cooperate, as well as in the next new subparagraph (j) in Article 3 of this Revised Draft Convention.

2. Cuba has recommended modifying the paragraph as follows: “International [cooperation and] solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions ~~and the recognition of different needs and rights~~ to achieve common goals; ~~this principle includes the duty to cooperate;~~”

3. Ecuador has suggested modifying the title of the paragraph to “National and International Cooperation”. It justified this reformulation firstly because “the term ‘solidarity’ on many occasions can show unequal relationships between ‘those who have’ and ‘those who have not’. Addressing cooperation means that both actors have something to offer and something to demand. Cooperation is implemented both internationally and nationally”. Ecuador also suggested modification to the text as follows: “the ~~realization~~ [fulfilment] of the right to development requires ~~an enabling~~ [a conducive] national and international environment created through a spirit of unity among ~~individuals~~ [persons,] peoples, States, and international organizations, ~~encompassing~~ [that encompasses] the union of interests, purposes, and actions and the recognition of different needs and rights to achieve common goals; this principle includes the duty to cooperate;”.

¹⁶ Annex of report A/HRC/35/35 of the Independent Expert on human rights and international solidarity, Virginia Dandan.

¹⁷ Ibid, article 1.

4. Saudi Arabia proposed to add the phrase: “implementing the right of development requires complete respect for the principles of international law as they relate to cordial relations and cooperation between national in compliance with the UN Charter”.

5. Iran suggested that the title be modified to “international [cooperation and] solidarity”. It also recommended the following modification in the text: “through a spirit of [cooperation and] unity”.

6. Soroptimist International recommended adding the word “everywhere” after the words “achieve common goals”. As justification, it noted that this addition “emphasises the universality of the right to development, and connects to the idea that development is a prerogative both of individuals and nations. In addition, using ‘everywhere’ adds a geographical dimension at the national and community levels, ensuring the inclusion of all countries and communities, both urban and rural”.

7. South Africa recommended deleting the last clause, “this principle includes the duty to cooperate”.

8. The Holy See recommended insertion of the clause “protect our common home and promote the common good” before the clause “this principle includes the duty to cooperate”.

9. Insofar as the inclusion of the word “cooperation” in the title is concerned, the Expert Drafting Group has already noted that the primary purpose of this paragraph is to highlight the relationship between international solidarity and human rights, including the right to development, as has been on the agenda of the UN system since 2001. As the commentaries to the 17 January 2020 Draft Convention noted, the independent expert on international solidarity and human rights, Mr. Obiora Okafor, has observed that “inadequate attention has thus far been paid to the importance of international solidarity to the fuller realization of human rights, including the right to development”.¹⁸ As such, the Expert Drafting Group considers it important to place the spotlight on “solidarity” as a principle by itself, and thus, could not agree with the suggestion by Ecuador that the term “solidarity” on many occasions can show unequal relationships between ‘those who have’ and ‘those who have not’, and that in contrast, addressing cooperation means that both actors have something to offer and something to demand. In fact, both solidarity and cooperation can operate in factual situations of unequal powers between the parties. Solidarity can be shown to a stronger party by a weaker party as well in case of unfortunate events in the former. The Expert Mechanism on the Right to Development has explained the relation between international solidarity and international cooperation as follows: “It may be stressed that the duty of international cooperation is underpinned by the indispensability of international solidarity. Much like human dignity constitutes the foundation for universal human rights, international solidarity constitutes the foundation for the duty of international cooperation”. For this reason, the Expert Drafting Group recommends retaining the focus of this paragraph on solidarity, and agrees that solidarity is essential at all levels and has hence made the necessary modification in the title.

10. Insofar as the text is concerned, the Expert Drafting Group considered it appropriate to adhere as much as possible to the definition of international solidarity contained in the draft declaration on human rights and international solidarity. Only the modifications as reflected in the reformulated text above were thus accepted when they help strengthen the text. The draft declaration on human rights and international solidarity notes that international solidarity consists of preventive solidarity, reactive solidarity and international cooperation.¹⁹ The Expert Drafting group thus recommends retaining the words “this includes the duty to cooperate” considering the relation between solidarity and cooperation discussed above.

(j) South-South cooperation as a complement to North-South cooperation: South-South cooperation is not a substitute for, but rather a complement to, North-South cooperation, and hence should not result in the reduction of North-South cooperation or hamper progress in fulfilling existing official development assistance commitments;

¹⁸ Ibid, paragraph 4.

¹⁹ Ibid, article 2.

Commentary:

1. Responding to China's proposal to introduce a provision on South-South cooperation in the previous sub-paragraph, the Expert Drafting Group introduces this new sub-paragraph, drawn from paragraph 10 of the Buenos Aires outcome document of the second High-Level United Nations Conference on South-South Cooperation.²⁰

(k) Universal duty to respect human rights: everyone has the duty to respect all human rights, including the right to development, in accordance with international law;

Commentary:

1. The Expert Drafting Group accepted the suggestion of Soroptimist International to insert the word "all" before the phrase "human rights", since this strengthens the provision.

(l) Right and responsibility of individuals, peoples, groups and organs of society to promote and protect human rights: in accordance with international law, everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of the right to development at the national and international levels. Individuals, peoples, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the right to development can be fully realized.

Commentary:

1. China recommended modifying the text of the paragraph as follows: everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of the right to development at the national and international levels; individuals, groups, institutions and non-governmental organizations also have an important [can play a role] and a responsibility in contributing, [in accordance with international laws and national laws, regulations and policies], as appropriate, to the promotion of the right [to development of everyone] of everyone to a social and international order in which the right to development can be fully realized.

2. Cuba recommended deletion of the entire paragraph. No explanation was however provided in the written response.

3. Iran suggested replacing the words "organs" with "all sectors". It also suggested modifying part of the text as follows: "promote and protect [the right to development as] as human rights".

4. South Africa raised a comment on the responsibilities of individuals, groups, and organs of society to promote and protect human rights, stating that the latter are not full subjects of international law.

5. The Special Envoy of the UN Secretary General on Disabilities and Vulnerabilities suggested adding the "private sector" while referencing the rights and responsibilities of different actors.

6. The Grand Council of the Crees suggested adding the word "peoples" in both the title and the text immediately after the word "individuals".

7. Soroptimist International suggested modifying part of the text as follows: "protection and realization of the right to development [in all sectors]".

8. As noted in the commentaries to the 17 January 2020 Draft Convention, this paragraph incorporates the general principle that the right and responsibility of individuals, groups and organs of society to promote and protect human rights must guide Parties in achieving the object and purpose of this Convention and to implement its provisions. In effect, it seeks to

²⁰ A/RES/73/291, 30 April 2019, full text at <https://www.unsouthsouth.org/wp-content/uploads/2019/10/N1911172.pdf> (last accessed 1 April 2022). See also United Nations, *Report of the second High-level United Nations Conference on South-South Cooperation*, A/CONF.235/6, 20-22 March 2019, para. 10, full text at <https://www.unsouthsouth.org/wp-content/uploads/2019/07/N1920949.pdf> (last accessed 1 April 2022).

ensure that Parties to this convention implement its provisions by fully respecting the role of human rights defenders and non-governmental organizations in protecting and promoting the right to development. The title and language of this paragraph follows the landmark “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” adopted unanimously by the UNGA in 1998.²¹ This Declaration is also commonly known as the UN Declaration on Human Rights Defenders.²² The description addresses the related rights as well as the responsibilities of human rights defenders and follows the agreed language of this Declaration. The Expert Drafting Group is of the view that it is vitally important to follow the unanimously agreed language from this important declaration and refrain from editorializing it, especially if this weakens the import of the principles contained therein. The first statement of this paragraph focusing on rights reflects article 1 of the 1998 Declaration and the second sentence focuses on the roles and responsibilities as enshrined in article 18(3) of the 1998 Declaration.²³ The only addition that the Expert Drafting Group recommends is the word “peoples” in both the title and the description, considering their importance as self-standing holders of the right to development.

Article 4

Right to development

Commentary:

1. Ecuador proposed amending the title of this article to “the right to comprehensive development”. The Russian Federation opined that the provision is vague because it does not contain elements of the right to development.
2. The Expert Drafting Group maintains the title of this article, consistent with the actual use of the phrase “right to development” under the 1986 Declaration on the Right to Development. The Expert Drafting Group likewise takes a different view that Article 4 itself provides by its own terms for the substantive elements of the right to development.

1. Every human person and all peoples have the inalienable right to development, by virtue of which they are entitled to participate in, contribute to, and enjoy civil, cultural, economic, political and social development that is indivisible from and interdependent and interrelated with all other human rights and fundamental freedoms.

Commentary:

1. At the outset, the Expert Drafting Group notes that article 4 is the heart and soul of the draft convention. It defines the right to development and spells out its scope. It is conceptually and linguistically drawn from article 1(1) of the DRTD. As the commentaries to the 17 January 2020 Draft Convention noted, paragraph 1 of draft article 4 consciously does not tamper much with the formulation of the right to development in article 1(1) of the DRTD. It only makes suitable modifications to adapt to the requirements of a legally binding instrument and to ensure that there is no room for any ambiguity in its construction. Considering that this article formulates the principal subject of this convention – the right to development – it is important to remain as close as possible with its formulation in the DRTD. In particular, the threefold entitlements of the right to development viz. the entitlement to participate in, contribute to and enjoy development, are fundamental. It is in this context that the suggestions for modification made by respondents were considered.

²¹ A/RES/53/144 of 9 December 1998.

²² For a discussion, see <https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>

²³ Ibid, article 18(3), stipulating that “Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized”.

2. China has recommended that the text be entirely modified as follows: “Every human person and all peoples have the inalienable right to development. ~~by virtue of which they are entitled to participate in, contribute to and enjoy economic, social, cultural, civil and political development that is consistent with and based on all other human rights and fundamental freedoms~~ [Every human person is entitled to participate in and promote the development of economy, politics, culture, society and ecological civilization, and enjoy the benefits of innovative, coordinated, green, open, and shared development]”. The Expert Drafting Group observes that this suggestion fundamentally changes the language and scope of the right to development as enshrined in the DRTD, and thus refrains from this approach for reasons indicated above. The content and scope of the right to development has been shaped over the years based on the language of article 1(1), and it would be counterproductive to entirely alter the same in the legally binding instrument.

3. Cuba has recommended that the article be modified as follows: “Every ~~human~~ person and all peoples have the inalienable right to development by virtue of which they are ~~entitled~~ [empowered] to participate in, ~~contribute to and enjoy~~ economic, social, cultural, civil and political development that is ~~consistent~~ [interconnected] with ~~and based on~~ all other human rights and fundamental freedoms [, as well as to contribute to that development and enjoy it]. A similar suggestion was made by Ecuador. The Expert Drafting Group notes that replacing the word “entitled” with “empowered” changes the entire objective of the provision and modifies its scope significantly. To be “entitled” signifies a right inherent in the right-holders and replacing it with the word “empowered” weakens the provision.

4. Ecuador recommended that the words “throughout the entire life cycle” be introduced after the words “inalienable right to development”. It justified this “since the logic of the development model is currently focused only on young people and adults”. A similar suggestion was considered by the drafting group in the commentary to draft article 3(c). For the reasons spelt out therein, the drafting group does not recommend introducing these words in the definition of the right to development in draft article 4(1).

5. Turkey also proposed the insertion of the word “and” between the words “economic” and “social”. The Expert Drafting Group did not take this suggestion in line with the reformulation of this provision.

6. FAO suggested that the words “economic, social, cultural, civil and political” be reorganized alphabetically to match the modern way of listing these rights. The Expert Drafting Group agreed with this suggestion.

7. The Holy See proposed to include the clause “the inherent dignity of every human person is the foundation of freedom, justice, and peace and the right to development is an inalienable human right by virtue of which every human person and all peoples” right before the phrase “are entitled to participate in”. For the same reasons stated above, the Expert Drafting Group maintains the closeness of the formulation to Article 1(1) of the Declaration on the Right to Development, with adaptations that simply reflects the expected indivisibility, interdependence and interrelatedness of a human right such as the right to development, with all other human rights and fundamental freedoms. The Holy See’s proposal on the inherent dignity of every human person is already reflected in the third preambular paragraph in the Revised Draft Convention, as well as in international human rights law that contains such language and will be deemed indivisible from, interdependent with, and interrelated with the right to development.

8. The Centre for Human Rights, University of Pretoria, recommended that the principle of “free, prior and informed consent” be added to draft article 4(1) to reflect the rights of indigenous peoples to development. The drafting group notes that the right to development is guaranteed to all human persons and peoples, and not only to indigenous peoples. The right to free, prior and informed consent, as recognized in the UNDRIP, is guaranteed to indigenous peoples but not to all other persons or peoples. The rights of indigenous peoples, including free, prior and informed consent, are specifically incorporated in draft article 17. As such, it is unnecessary to specify the same in draft article 4(1).

9. Alliance VITA recommended addition of the following sentence at the end: “This right shall always be implemented through the prism and within the limits of respect for the human being”. The Expert Drafting Group notes that draft article 4 is aimed at defining and

specifying the scope and content of the right to development, not how it should be implemented. The role of duty-bearers is addressed in subsequent provisions. Additionally, the suggested sentence is inherent in the very idea of human rights. It is difficult to see how any human right can be “implemented” by breaching the limits of respect for the human being.

2. Every human person and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

Commentary:

1. The Expert Drafting Group did not accept Cuba’s proposal to delete the word “human” before person, since this formulation is derived directly from Article 2(3) of the 1986 Declaration on the Right to Development.

2. Iran suggested that the paragraph be modified as follows: “Every human person and all peoples have the right to active, free and meaningful participation in development and [realization of right to development] in the fair distribution of benefits resulting therefrom”. The Expert Drafting Group notes that the suggested text does not read well and is not necessary. The objective of the added text is inherent in the provision as it is.

3. Turkey proposed inserting the word “processes” after the word “development”, and the phrase “determination of” before the phrase “fair distribution of benefits”. The Expert Drafting Group favors the existing formulation from Article 2(3) of the 1986 Declaration on the Right to Development, since the proposed insertions would not improve the provision.

4. The Holy See proposed inserting the phrase “individually and in association with others, has”, after the phrase “every human person”. The Expert Drafting Group did not accept this insertion, since it would change the applicability of this legally binding instrument more towards individuals and associations, while overlooking its core applicability as well to peoples, especially in the context of the right to development and the right to self-determination.

5. The Expert Mechanism on the Rights of Indigenous Peoples suggested introducing the words “the design and implementation of” after the words “participation in”. The Expert Drafting Group recommends the leaving the provision as all-encompassing as it is, noting that the concept of “participation in” development applies to all stages of the development process including decision-making, monitoring and evaluation, and not just the design and implementation.

6. The Centre for Human Rights, University of Pretoria, has suggested that the participation called for must not only be “active, free and meaningful” but also must be “informed through prior consultation”. It also noted that participation must be emphasized to have the goal of consent. It further suggested that the provision must also emphasize what participation entails. The Expert Drafting Group notes that the concept of “free, prior and informed” applies to consultation or consent. This provision speaks to “participation” which is much broader than the act of conducting consultation or obtaining consent. Considering the objective of this provision, it is not useful to be narrow and specific at the cost of being broad and accommodative of all dimensions of participation.

7. Alliance VITA recommended adding the sentence “As to ensure such right, they shall be provided with necessary assistance and help to fully benefit from it” at the end of the paragraph. The Expert Drafting Group has noted above that this draft article is about the right to development and not about the duty-bearers and their obligations. The suggested sentence would be a superfluity here.

8. The Human Rights Commission of Mexico City recommended that “non-discrimination and progressive realization as a concrete obligation should be mentioned in this article”. The Expert Drafting Group again notes that this provision does not speak to the obligations of duty-bearers which are specifically included in Part III of the draft convention.

Article 5

Relationship with the right of peoples to self-determination

Commentary:

1. The Expert Drafting Group agreed with Argentina's proposal to include the phrase "of peoples".
2. The Expert Drafting Group noted Maat for Peace's recommendation that "the Convention must include a clear obligation for the occupying power to work on developing the resources of the region it occupies for the benefit of the occupied people and not to benefit financially from their natural resources, as this is prohibited under international law." However, the Expert Drafting Group takes the view that obligations of the occupying power, as enshrined in both international law and international human rights law, are already encompassed within the terms of Article 5, as well as Article 4(1) of the Revised Draft Convention.
3. For similar reasons, the Expert Drafting Group notes Jo Clemente Institute (IJC)'s proposal to connect the right to self-determination with the rights of persons with disabilities. This concern as to the interdependence of human rights with the right to development, as well as the right to self-determination, further reinforces the core importance to the precise formulation of Article 4(1) of the Revised Draft Convention.

1. The right to development implies the full realization of the right of all peoples to self-determination.

Commentary:

1. China has recommended adding the words "and to choose their own development concepts, models and path in accordance with their national conditions and based on their economic development levels, development stages and priorities" at the end of the sentence. The Expert Drafting Group notes that the suggested addition is inherent in the right to self-determination and may not be necessary to specify. Additionally, it permits an interpretation that development concepts, models or paths may be chosen even if they undermine human rights. For instance, it may permit an interpretation that justifies violations of internationally recognized labour standards on the ground that the chosen models based on national conditions and economic development levels so require. Furthermore, it may permit adoption of development concepts, paths and models in accordance with the national conditions of countries, that may nevertheless undermine the right to development of others, especially if such policies have extra-territorial adverse impacts. This may defeat the three-dimensional obligations of States inherent to the right to development, including the duty to cooperate. The Expert Drafting group strongly recommends against introducing language that may be amenable to misinterpretations. As such, the open-ended nature of the provision as it currently stands is adequate enough.
2. The Global Forum of Communities Discriminated on Work and Descent has recommended adding the sentence "States must enforce this right". The Expert Drafting group notes that this obligation is implicit in the fact that peoples have the right to self-determination. It is unnecessary to stipulate in a provision that emphasizes the existence of a right that the principal duty-bearers, States, must enforce it. Additionally, the ensuring paragraphs of this draft article, especially paragraph 4, highlight the obligations of States.
3. Legal Resources Centre has suggested adding the words "and freely pursue the realization of their right to development" at the end of this sentence. The Expert Drafting Group notes that this suggestion is directly covered in paragraph 2 of this draft article and hence it is not necessary to repeat it in paragraph 1.
4. AAfRR has recommended adding the "right of return" to the provision suggesting the following language after "self-determination": "and the right of return, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources". The Expert Drafting Group considers that the references to natural wealth and

resources are fully covered in the ensuing paragraph. Insofar as the right of return is concerned, while the Expert Drafting Group agrees with the existence of this right, it recommends not incorporating the same in this draft article. The right of return applies to individuals as well, such as in the case of refugees. This right is not necessarily attributable to the right to self-determination of peoples alone, which is the focus of this article.

2. All peoples have the right to self-determination, by virtue of which they freely determine their political status and freely pursue the realization of their right to development.

Commentary:

1. Ecuador has suggested the following modification: “All peoples have the right to self-determination ~~by virtue of which they freely determine their political status~~, [in accordance with their freedom to decide their political affinity, beliefs, and practices,] and freely pursue the realization of their right to development”. By way of explanation, it noted that “considering that the dynamics of the communities is not limited to the political affinity of their members, but revolves around their beliefs and practices, it was suggested to replace the term “condition” with “affinity”, and include the terms underlined”. The Expert Drafting Group notes that the language of paragraph 2 is drawn from the language of paragraph 1 of article 1 common to the ICCPR and the ICESCR. This language from the two covenants is the established and agreed language relating to the right to self-determination, and thus will not be modified for purposes of the Revised Draft Convention.

2. Saudi Arabia has recommended introducing the words “in accordance with national laws” at the end of the paragraph. This suggestion is self-defeating for the right to self-determination inasmuch as national laws may in some circumstances be the very reason why the right of some peoples to self-determination may be violated. The proposal will weaken the right, as already established in Common Article 1 to the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

3. Global Forum of Communities Discriminated on Work and Descent recommended adding the words “and cultural” after the words “political”. Since this paragraph follows the language of article 1(1) of the ICCPR and the ICESCR, the Expert Drafting Group does not recommend adding the suggested words. Additionally, if the language is to be expanded, it may be counterproductive to include only one additional type of status such as cultural, and not the others such as social or economic.

3. All peoples may, in pursuing the realization of their right to development, freely dispose of their natural wealth and resources based upon the principle of mutual benefit, sustainable development, and international law. In no case may a people be deprived of its own means of subsistence. Nothing in the present Convention shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

Commentary:

1. At the outset, it may be noted that this paragraph is almost identical to paragraph 2 of articles 1 common to the two covenants. The Expert Drafting Group was disinclined to change the settled language of international human rights law in common Article 1, paragraph 2 of the ICCPR and ICESCR, especially where the change would weaken, dilute, or not improve the protections already afforded under this language.

2. China has recommended deletion of this entire paragraph. There is however no justification provided. Considering the importance and centrality of this paragraph to the right to self-determination, it is difficult to see why the paragraph should be eliminated.

3. Cuba as recommended the following modification: “All peoples ~~may~~ [have the right], in pursuing the realization of their right to development, to exercise their inalienable right to full sovereignty over all their wealth and natural ~~freely dispose of their natural wealth and~~ resources based upon ~~the principle of mutual benefit and~~ international law. In no case may a people be deprived of its own means of subsistence”. The replacement of the word “may” with “have the right” does not read well considering that the term right is repeated twice thereafter. The suggestion to eliminate key terms employed in the two covenants weakens

the text. As such, the Expert Drafting Group does not recommend the suggested modifications. The Expert Drafting Group, however, agrees that the words “natural wealth and resources” be modified to “wealth and natural resources”. A similar suggestion was made by Ecuador.

4. Ecuador also recommended modification of the paragraph as follows: “All peoples may, in pursuing the realization of their right to development, freely dispose of their ~~natural~~ wealth and [natural] resources[, provided that the environmental impact of the use and exploitation of said natural resources is considered,] based on the principle of mutual benefit and international law. ~~In~~ [Under] no ~~case~~ [circumstances] may a ~~people~~ [person] be deprived of ~~its own~~ [their] means of subsistence. [The development of human beings and peoples can have the necessary resources to achieve sustainability and availability for future generations]. By way of explanation, it highlighted that this right must be exercised in a manner that is sustainable. In similar vein, the Grand Council of the Crees recommended adding the words “sustainable development” after “mutual benefit”. The Expert Drafting Group agrees with this suggestion and considers that such inclusion addresses the concern raised by Ecuador.

5. Saudi Arabia has recommended adding the words “in accordance with national laws”. For the same reasons stated in the commentary to draft paragraph 2 above, the Expert Drafting Group did not accept the proposal.

6. UNESCO has recommended replacing “natural wealth” with “natural and cultural wealth”. In view of the deletion of the word “natural” before “wealth” and its introduction before the word “resources”, it is no more necessary to specify the type of wealth. Leaving it open-ended is adequate.

7. The National Human Rights Commission of Mauritius recommended that principles of good governance should apply. In the view of the Expert Drafting Group this is already addressed in the twenty-first preambular paragraph of this Revised Draft Convention.

8. IT for Change has recommended the following modification: “All peoples may, in pursuing the realization of their right to development, freely dispose of their natural wealth and resources, [as well as data and knowledge commons,] based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence, [including of their right to access, control and benefit from such resources].” The Expert Drafting Group notes that the provision as modified already does not restrict itself to “natural” wealth, but applies to all types of wealth. As such, it is unnecessary to specifically add “data and knowledge commons”. The addition of words “including of their right to access, control and benefit from such resources” is unnecessary. It is implicit in the text as it is. This is also clear from the use of the word “including” in the revised text suggested by IT for Change.

4. The States Parties to the present Convention, including those having responsibility for the administration of Non-Self-Governing Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations and international law.

Commentary:

1. The Expert Drafting Group notes that the main objective of this paragraph is to highlight to obligation of States Parties to promote the realization of the right to self-determination and to respect that right in conformity with the provisions of the Charter of the United Nations. This obligation also is entailed on those States Parties who have a responsibility for the administration of non-self-governing territories. The paragraph corresponds with paragraph 3 of articles 1 common to the two covenants.

2. China has recommended that this paragraph be deleted. It is unclear what the reason for this suggestion is. However, considering the importance of this paragraph, the Expert Drafting Group recommends retaining it.

3. Global Forum of Communities Discriminated on Work and Descent recommended adding the words “and with ILO Convention 169” at the end. The Expert Drafting Group does not recommend specifying ILO Convention 169, and is of the view that the insertion of

the phrase “and international law” after the phrase “Charter of the United Nations” already embraces these concerns. The Grand Council of the Crees has recommended adding the words “and international law” after the “Charter of the United Nations”. The Expert Drafting Group agrees with this suggestion.

4. Soroptimist International has recommended that the words “protect, expand and fulfil” be added after “respect”. The Expert Drafting Group notes that the word “promote” employed in the previous part of the text is broad enough to cover the suggested additional words, and prefers to keep the language close to the formulations in ICCPR and ICESCR.

5. States shall take resolute action to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and discrimination, colonialism, domination and occupation, aggression, interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to recognize the fundamental right of peoples to self-determination.

Commentary:

1. The Expert Mechanism on the Rights of Indigenous Peoples has suggested the following modification: “States shall take resolute ~~steps~~ [action] to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, ~~colonialism, foreign domination and occupation,~~ [all forms of] aggression, [colonialism, domination and occupation], ~~aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war~~ and the refusal to recognize otherwise the fundamental right of peoples to self-determination”. It may be necessary to reproduce the explanation provided by the Expert Mechanism:

“The EMRIP is of the view that points 5 and 6 contain contradictions that can lead to misunderstandings and in some cases justify violations of human rights by States. In some countries, speaking out on the autonomy of a region populated by indigenous people is enough to be accused of treason, separatism, and undermining national unity and the territorial integrity of the State. It is difficult to see how the right to self-determination can be affirmed when the mere verbal reference to this right can lead to a long prison sentence in some States. Similar problems arise in militarized indigenous territories, when military forces are considered by indigenous peoples as occupying forces. For the EMRIP, the risk of conflict can only be prevented through respect for the rights of peoples and the individual”.

The Expert Drafting Group largely agrees with the observations made by the Expert Mechanism and has modified the language of paragraph 5 accordingly.

2. Iran has suggested inclusion of “unilateral coercive measures”. In light of the modifications made above, unilateral coercive measures are covered by the broad language of the revised text.

3. Legal Resources Centre recommended eliminating the word “racial” before “discrimination”, while the Global Forum of Communities Discriminated on Work and Descent suggested inserting the word “any” before the word “massive”, and insert the phrase “caste-based discrimination, discrimination on work and descent” before the word “colonialism”, and the insertion of the phrase “violations by for-profit entities” after the phrase “foreign domination”. The Expert Drafting Group agrees with the Legal Resources Centre proposal since it strengthens the provision, but does not accept the proposals from the Global Forum of Communities Discriminated on Work and Descent since the current broader language in this paragraph of the Revised Draft Convention already addresses these concerns.

4. The National Human Rights Institution of El Salvador recommended to take into account discrimination based on sex, language, religion, political opinion or other nature, national or social origin, economic situation, birth, vulnerable groups or other condition. In view of the modifications already made and the explanation in the previous paragraph, it is not necessary to modify the text any further.

5. Legal Resources Centre also recommended eliminating the words “massive and flagrant” to ensure that all violations of human rights are eliminated, regardless of their size

or scope. The Amman Center for Human Rights Studies also made the same suggestion. The Expert Drafting Group notes that these words are drawn from article 5 of the DRTD. Their objective is not to exclude the lesser forms of violations of human rights, but to specify that certain situations that undermine the right to self-determination lead to massive and flagrant violations of human rights. As such, the Expert Drafting Group does not recommend eliminating those words.

6. People for Successful Corean Reunification recommended adding the words “including by the State itself” after the word “refusal”. The Expert Drafting Group considers this unnecessary and obvious since the obligation on States to prevent and eliminate violations refers to both internal and external action.

7. The Expert Drafting Group takes note of the comment of Al Haq and Al Mezan that balancing the interest of the State and a people’s right to self-determination should not be the litmus test for protecting the right to self-determination of the people. The Expert Drafting Group observes that international law and international human rights law jurisprudence addresses the tensions of that balance, as does the final paragraph 6 of Article 5 of this Revised Draft Convention.

8. Jo Clemente Institute (IJC) proposed the inclusion of the phrase “disability based discrimination”, but for reasons previously stated, the Expert Drafting Group is of the view that the broad reference to discrimination allows for multiple evolving bases of discrimination to be contemplated in this paragraph.

6. Nothing contained in the present Convention shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory, without distinction of any kind.

Commentary:

1. As the commentaries to the 17 January 2020 Draft Convention noted, paragraph (6) incorporates a cardinal principle introduced in the law on self-determination through the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the UNGA in 1970.²⁴ The principle seeks to balance the right to self-determination of peoples with the right of States to protection of their territorial integrity, if they are conducting themselves in compliance with the principle of equal rights and self-determination of peoples and are thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind. The principle has now become firmly embedded in international law.²⁵

2. Cuba suggested deleting the entire text after the words “independent States”. The Expert Drafting Group strongly recommends against this deletion. As noted above, the language incorporated in this paragraph is firmly established in international law and the balance struck is significant.

3. The Expert Mechanism on the Rights of Indigenous Peoples has recommended replacing the entire paragraph with the following: “States must take all measures to achieve respect for equal rights and self-determination of peoples and all other human rights, in order to prevent conflict and promote national inclusion and cohesion”. The Expert Drafting Group does not recommend this. The content of the paragraph suggested is already covered in previous paragraphs. Additionally, the principle contained in this paragraph is fundamental and should not be eliminated.

²⁴ The UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the UNGA on 24 October 1970 in resolution 2625 (XXV), annex.

²⁵ See for instance, the Vienna Declaration and Programme of Action, A/CONF.157/24 (Part I), chap. III, paragraph 2; Declaration on the Occasion of the Fiftieth Anniversary of the United Nations, A/RES/50/6, adopted by the UNGA on 24 October 1995. See also, article 46(1) of UNDRIP.

4. Argentina in its oral statement at the 21st session of the WGRD noted that “only part of the corresponding resolution 2625 has been copied and this could weaken the paragraph”. In order to strengthen the principle of respecting the territorial integrity, it suggested that this paragraph be completed with the statement in resolution 2625 that follows the one originally proposed. The Expert Drafting Group agrees, and puts forward this modified formulation.

5. The Expert Drafting Group notes the proposal of the International Human Rights Association of American Minorities (IHRAAM) for a seventh paragraph. This proposal, while laudable, is better addressed to the Conference of States Parties to this Revised Draft Convention, which is tasked with establishing the implementation mechanism.

Article 6

Relationship with other human rights

1. States Parties reaffirm that all human rights, including the right to development, are universal, inalienable, interrelated, interdependent, indivisible and equally important.

Commentary:

1. The Expert Drafting Group noted the proposal of the Holy See to insert the word “and” before the word “indivisible”. However, the insertion does not improve the provision, and instead creates syntax problems.

2. UNESCO proposed adding the word “and apply online and offline” to this provision, but in the Expert Drafting Group’s view, the phrase does not strengthen or improve the provision, and renders it disjoint.

3. For similar reasons, All Win Network’s proposal to insert the word “vital” after the word “universal” is superfluous, and introduces unnecessary subjectivity and ambiguity. The Expert Drafting Group also does not accept CINGO’s proposal to delete the word “States”, as this does not strengthen the provision.

4. The Expert Drafting Group inserted the word “inalienable” after the word “universal”, in line with the modified text of Article 3(b) of the Revised Draft Convention.

2. States Parties agree that the right to development is an integral part of human rights and should be realized in conformity with the full range of civil, cultural, economic, political and social rights.

Commentary:

1. China has suggested that the paragraph be reformulated to: “States Parties agree that the right to development is an integral part of human rights and ~~should be realized in conformity with the full range of civil, cultural, economic, political and social rights~~ [the most fundamental human right]. The commentaries to the preamble above have already discussed why the words “the most fundamental human right” should be avoided. For the same reasons, it is recommended that these words not be introduced in this paragraph. Additionally, the text suggested for deletion, as proposed by China, would significantly weaken the provision. That the right to development should be realized in conformity with all other human rights is a natural corollary of paragraph 1. The Expert Drafting Group therefore recommends retaining those words.

2. Cuba has suggested adding the words “and fundamental freedoms” at the end. The Expert Drafting Group agrees with this suggestion, especially in light of the use of these words in several other draft articles.

3. CINGO has recommended deleting the word “States” before “Parties”. The Expert Drafting Group maintains the same response as in the previous provision.

4. The Grand Council of the Crees suggested replacing the word “should” with “must”. The drafting group agrees with this recommendation in light of similar changes made in other provisions.

5. The Human Rights Commission of Mexico City suggested that the concept of “progressive realization” be included in this paragraph. The Expert Drafting Group notes that this concept is more appropriate in the context of the duty to fulfil as incorporated in draft article 12. Realization of the right to development includes the duty to respect and protect as well. As such, it is recommended that no further modifications be made in this paragraph.

6. Some respondents made suggestions for specific references to selected human rights in this draft article or paragraph. For example, the National Human Rights Institution of El Salvador recommended to include rights of migrants and their families. Similarly, Latin American Campaign for the Right to Education recommended explicitly referring to the relation between the right to development and the right to education. The Expert Drafting Group does not recommend making specific references only to selected human rights in this draft article. All human rights are equally important and highlighting this is part of the intention of this draft article.

7. The Centre for Human Rights, University of Pretoria, recommended including two additional paragraphs as under:

“Any existing national development plan and strategies and other trade and investment agreements, including regional or sub-regional agreements, on issues relevant to this Convention shall be reviewed, adapted and implemented in compliance with and in a manner that does not undermine their obligations under this Convention as well as other relevant international human rights principles, standards and instruments”.

“States and other development partners shall before entering into and signing any development plan, undertake mandatory human rights due diligence specifically human rights, social, environment and sustainability impact assessments prior to implementing any development project to assess and mitigate direct and potential impact on peoples”.

The Expert Drafting Group notes that the objective of this draft article is to set the relation between the right to development and other human rights. The suggested text, while important in its own right, goes much beyond the scope of this draft article. In addition, these principles are fully covered in Part III of the draft convention.

Article 7

Relationship with the responsibility of everyone to respect human rights under international law

Nothing in the present Convention may be interpreted as implying for any human or legal person, people, group or State any right to engage in any activity or perform any act aimed at the destruction, nullification or impairment of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention. To that end, States Parties agree that all human and legal persons, peoples, groups and States have the general duty under international law to refrain from participating in the violation of the right to development.

Commentary:

1. Iran recommended that the title be modified to “~~Relationship with the~~ [The] general duty of everyone to respect [the right to development as] human rights under international law. The Expert Drafting Group notes that this suggestion fundamentally alters the objective of the provision which seeks to establish the relation between the right to development and the general duty under international law of everyone to respect, that is, not violate human rights. As such, it is not recommended to modify the title.

2. The Expert Drafting Group notes the comments raised by the Russian Federation as to the list of duty-bearers under international law, which the Russian Federation addresses only to be States and international organizations. The evolution of international law to recognize individuals, groups, and peoples as subjects of international law, as well as the ongoing evolution of the treatment of non-State actors such as businesses and corporations in international law, foreclose the hard restrictive view of such duty-bearers. The Revised

Draft Convention precisely delineates obligations (and who discharges them), differentiating the same from the rights-holders.

3. South Africa proposed the deletion of the second sentence of this provision, objecting to the existence of a general duty under international law to refrain from participating in the violation of the right to development. The Expert Drafting Group notes that individuals are not only subjects of international law, but are also expected to act consistently with international law. Thus, Article 1 of the Universal Declaration of Human Rights makes it clear that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience *and should act towards one another in a spirit of brotherhood.*” (Italics added.) The extensive discussion detailed in the commentaries to the 17 January 2020 Draft Convention is worth reiterating:

“1. Considering the positive contribution of non-state actors, especially legal persons, in promoting development as well as their significant potential to have negative impacts on development, it is impossible to avoid a meaningful reference to their role in this draft convention. Indeed, scholars have pointed out that any adequate conception of the right to development in the 21st century should not be purely statist and must account for the role of everyone, particularly legal persons as defined in this draft convention, in governance at national and global levels. In a legally binding instrument, this, however, must be done in a manner that accurately reflects the current position in international law in as uncontroversial terms as possible, without foreclosing the possibility of States accepting at a later time the prevalence or adoption of higher standards under international law.

2. The human rights obligations of human and legal persons under international law have been a subject of debate among scholars. Diverse arguments have been made based on both treaty and customary international law as sources. There appears to be consensus that only States have the full range of obligations under international law to respect, protect and fulfil human rights, and that non-state actors cannot generally be expected to be bound by the latter two types of obligations. The main bone of contention has been whether current international law recognizes the minimum obligation to respect human rights, that is do no harm to human rights, not just on States but universally on everyone.

3. In order to provide a proper commentary to draft article 7, it is first important to address the following questions sequentially: a) Do current international law instruments restrict human rights duties only to States? b) If not, how are the duties of human and legal persons and other non-State actors articulated and interpreted?

4. In the post WWII era, the UDHR was the first international legal instrument specifically focused on human rights. Its first preambular paragraph recognizes “the inherent dignity [...] of all members of the human family” as the foundation of freedom, justice and peace in the world. The final paragraph of the preamble then proclaims that the UDHR serves “as a common standard of achievement for all peoples and all nations” and prescribes what is required “to this end” viz. “every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance [...]”. The phrase “every organ of society” clearly includes everyone who plays a role in the social order and must, at the very least, include everyone capable of impeding the realization of the rights proclaimed in the UDHR. In this context, it has been noted that although the UDHR contains a catalogue of rights, it does not identify any specific duty-bearer.¹⁶⁶ Some scholars have interpreted this absence to contend that international law does not restrict human rights duties only to States, while others have noted that not much should be read into the absence considering that the UDHR was meant to be non-binding. In terms of the substantive provisions, article 29(1) of the UDHR stipulates that “everyone has duties to the community in which alone the free and full development of his personality is possible”. Although the precise content of duties of “everyone” to others is not stipulated herein, this provision is the clearest rejection of the position that human rights duties under international law are restricted only to States. The preambles of both the ICCPR and the ICESCR are on similar lines. They recognize that “the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant”. This statement also acknowledges that non-state actors, in this case

individuals, have duties to others, and that this duty includes at the least “a responsibility to strive for the promotion and observance of the rights”. Among the regional instruments, the American Convention on Human Rights specifically incorporates Chapter V entitled “Personal responsibilities” and its singular provision, article 30, is entitled “Relationship between Duties and Rights”. It stipulates that “every person has responsibilities to his family, his community, and mankind”. It also provides the rationale behind this duty by stipulating that “the rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society”. The African Charter on Human and Peoples’ Rights is the most explicit in recognizing human rights duties on individuals, in a separate Chapter entitled “Duties”. Article 27 thereof, provides that “every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community”. Similar to the American Convention, the stated rationale for this duty is that “the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest”. Articles 28 and 29 then incorporate a series of duties on the individual. The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted unanimously without vote by the UNGA in 1998, recognizes in its preamble “the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels”. In terms of international organizations, there is no doubt that several of them do already contain duties with relation to human rights. Thus, there is no legal basis for sustaining the proposition that international law can impose, or even that it actually imposes, human rights duties only on States. It is equally clear that there is no theoretical justification for a proposition that States cannot recognize or confer human rights obligations on non-State actors without their consent. States do have the jurisdiction and authority to enter into such international treaties that create rights and obligations for third parties within their jurisdictions as a matter of their reserved domain of domestic jurisdiction. One must hasten to add that recognition of human rights duties under international law, whether on States or non-State actors, does not ipso facto correspond with a requirement that its enforcement must also be through an international mechanism. In fact, this is hardly the case and there is no necessary existential correlation between the two. Duties recognized under international law may be enforced through a range of international mechanisms, or may be left to States to enforce domestically, or may not be enforced at all. The presence or absence of enforcement or its mechanism does not have any bearing on the presence or absence of a right or duty.

5. Since international law clearly does not restrict human rights duties to only States, it is now important to analyse how the duties of human and legal persons are articulated in these instruments and interpreted by courts, human rights bodies, and scholars. Some of the provisions outlined above already provide good illustrations. No explicit general obligation on human and legal persons to protect and fulfil human rights can be gathered from these instruments. But, this may be difficult to sustain with regards to the obligation to respect human rights. The strongest argument from scholars in favour of the proposition that universal duty of everyone to respect human rights already exists, emerges from article 5(1) common to both the ICCPR and the ICESCR stipulating that “nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”. The argument is that this provision, by prohibiting an interpretation of the Covenants as validating the presence of any right in anyone to violate human rights of others, in effect recognizes the obligation on everyone, whether a State or not, to respect human rights of others. Article 5(1) of the Covenants is derived from article 30 of the UDHR. It has been pointed out that a reading of this provision that limits the obligation to respect human rights to States necessarily contravenes article 30, “as the absolution of non-state actors from the obligation to respect human rights amounts to a right on the part of those actors to engage in activity or perform acts that destroy human rights”. Therefore, “the converse application of article 30 of the UDHR implies that non-state actors have an obligation to respect human rights, in that they are prohibited from infringing human rights in their own actions, although a duty to protect and to promote or fulfill human rights is not necessarily implied”.

6. However, on the other side, scholars have raised two arguments to contend that this interpretation misreads the objective of the provision. Firstly, they contend that the provision is only an articulation of the doctrine of “abuse of rights” which operates in a very limited context and arguably has nothing to do with any presumed expression of duty on non-State actors to respect human rights. Secondly, even if the provision were to apply beyond the “abuse of rights” context, it has been contended that the provision only implies “the absence of a right to do something” viz. absence of the right to violate rights of others, and that is “not the same as a duty not to do it” viz. prohibition to violate rights of others.

7. The first argument is derived from the title “Prohibition of abuse of rights” of the analogous provision in article 17 of the European Convention on Human Rights which was contemporaneously drafted. Neither the UDHR nor the two Covenants contain these words. Nor is the term employed in the similar article 29(1) of the American Convention on Human Rights, which is titled simply as “Restrictions regarding interpretation”. “Abuse of rights” refers “to the harmful exercise of a right by its holder in a manner that is manifestly inconsistent with or contrary to the purpose for which such right is granted/designed”. The essence of this concept is that the right-holders recognized under the Convention should not have the possibility to rely on the very rights guaranteed to them therein in such a way as to claim justification for violation of rights of others. Based on this title, article 17 of ECHR is interpreted as pre-requiring the presence of a right recognized in the Covenant that is capable of being invoked as a reason to restrict rights of others. If there is no specific right which its right-holder is abusing or intends to abuse, the provision is inapplicable. In other words, the provision may not govern situations when the person, group or State is abusing or intends to abuse a duty. Because the provision is thus to be understood only in the context of “abuse of rights”, it becomes irrelevant to situations of duties of these actors and thus no inference may then also be drawn that the provision in fact recognizes any duties. Caution, however, needs to be exercised in drawing such serious restrictive interpretations to article 30 of the UDHR or article 5(1) of the ICCPR and ICESCR. It appears that article 17 of the European Convention was introduced with the specific title “Prohibition of abuse of rights” to impede the abusive exercise of certain rights such as freedom of religion, belief, expression, assembly or association by fascist individuals or groups or those with other totalitarian ideologies aiming “to do away with democracy, after prospering under the democratic regime, there being examples of this in [...] European history”. Indeed, it has been pointed out that “this fundamental provision of the Convention is designed to safeguard the rights listed therein by protecting the free operation of democratic institutions”. Referring to the travaux préparatoires of the UDHR and the ICCPR, it has been pointed out that the original intent of their drafters also was perhaps similarly to restrict use of, in particular, political rights and freedoms by those promoting fascism and totalitarian ideologies to defeat human rights of others in the society. This line of argument restricts the interpretation of these provisions to the very limited historical context of preventing abuse of civil and political rights for promotion of fascism and ideologies of hatred and xenophobia. This does not, however, explain its inclusion in the ICESCR, which fact negates the idea that the provision should be restricted to such exclusive contexts of abuse of civil and political liberties which fascist or racist groups might otherwise claim from human rights instruments. But more importantly, the very language of these provisions does not lend any support to the proposition that they are applicable only if rights of persons, groups or States as incorporated in the Covenants are specifically invoked in an abusive manner. Article 5(1) of the ICCPR and the ICESCR begins with the words “nothing in the present Covenant may be interpreted” rather than something to the effect that “no rights recognized in the present Covenant may be interpreted”. Similar words are employed in article 30 of the UDHR, article 17 of the ECHR and article 29 of the ACHR. The all-encompassing coverage of these words can only mean a rejection of the idea that the provisions apply only to rights recognized in the Covenants that may be invoked by persons, groups or States. There is no basis in international law other than the title of article 17 of the European Convention for such a restrictive interpretation.

8. The second argument is that even if article 5(1) is not restricted to abuse of rights but to abuse of anything in Convention, the provision still signifies only “the absence of a right to do something” and that is “not the same as a duty not to do it”. In other words, all that the provision arguably does is indicate that the Covenant should not be interpreted in a manner that allows deriving from it a positive right to violate rights of others, but this does not mean

that there is a prohibition to violate rights of others. This argument, ironically, is defeated by the title of article 17 of the European Convention discussed above, which categorically stipulates that what is contained in the provision is a “prohibition of abuse” (even though it restricts its further applicability to rights and not to the entire Convention). In other words, the provision incorporates a prohibition (duty not to do something) not just the absence of permission as is suggested. Indeed, the Human Rights Committee has accepted this principle in the case of *Sergio Euben Lopez Burgos v. Uruguay*,¹⁹⁶ where it was considering whether a State Party can be held accountable for violations of rights under the Convention which its agents commit upon the territory of another State. After referring to article 5(1) of the ICCPR as it relates to States, it noted that “in line with this, it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory”. Not only did the Committee clearly interpret article 5(1) as containing a prohibition that would necessitate holding States accountable, it also applied the provision beyond the “abuse of rights” concept when it analysed the issue from the perspective of the abuse of “responsibility under article 2 of the Convention”.

9. It is clear, therefore, that the arguments in favour of interpreting article 5(1) of the ICCPR and ICESCR as recognizing general duties on everyone, not just States, to respect human rights have significant merit. The clearest expression of this is in article 10 of the consensual 1998 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which stipulates that “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so”.

10. In light of the aforesaid, draft article 7 is entitled “Relationship with the general duty of everyone to respect human rights under international law”. The use of the word “duty” closely follows the language of the UDHR, the two Covenants, the African Charter on Human and Peoples’ Rights and the American Convention on Human Rights.¹⁹⁹ First part of the draft article is an almost identical replication of article 5(1) of the ICCPR and ICESCR. The only difference is that instead of “person” employed in the latter, paragraph 1 disaggregates it to “human and legal persons”, in line with other provisions of the draft convention. Additionally, “people” is also added to the provision considering the importance of their legal personality under the draft convention. The second part of draft article 7 records the agreement by States of the proposition that “all human and legal persons, peoples, groups and States have the general duty under international law to refrain from participating in the violation of the right to development”. This language reflects the consensual article 10 of the 1998 UNGA Declaration referred to above. This part of the article has been drafted as an agreement by States of a proposition to signify that the general obligation of everyone to respect human rights already exists under international law and that the draft convention is not conferring upon anyone new obligations to respect the right to development. The words “to that end” signify that this agreement by States is related to the prohibition contained in the previous sentence.”

4. Qatar proposed amending the second sentence to refer to “under international law to refrain from committing or participating in any act that would lead to a violation of the right to development.” The Expert Drafting Group accepted and modified this proposal to the formulation above.

5. The Holy See made several proposals for this provision, such as inserting the word “and” before “groups” in the second sentence, and inserting the phrase “responsibility, in virtue of the inherent dignity of every human person” before the phrase “general duty under international law”, and finally inserting a third sentence to this provision (e.g. “States have the duty to implement appropriate mechanisms, at the national and international levels, to ensure that such violations do not occur and that recourse is provided for victims in the event of such violations.”) The Expert Drafting Group is of the view that these proposals change the content, objective, and substance of this provision, which focuses on everyone’s responsibility to respect human rights under international law. The Revised Draft Convention cannot be interpreted in any manner that destroys, nullifies, or impairs any of the rights and freedoms in this Revised Draft Convention.

6. The Expert Drafting Group further notes that both the Russian Federation and the Catholic Inspired NGOs raised questions whether anyone other than States and international organizations are subjects of international law. According to Catholic Inspired NGOs, international law recognizes international legal personality only to States and international organizations. According to Russian Federation, “the well-established position is that States, international organizations, in certain cases – nations and peoples fighting for their independence have international legal personality. Individuals and legal entities, in turn, do not have international legal personality”. The German Institute for Human Rights, in an article reviewing the draft convention and shared with the drafting group, observed that “The draft herewith creates an obligation for legal entities (such as business enterprises) to respect the right to development. But such an obligation of legal entities to respect human rights does not yet exist in international law (see the above-mentioned negotiations around a Legally Binding Instrument on Business and Human Rights). To date, such an obligation has only been incorporated into non-binding instruments”.

7. Similar points were raised during the 21st session of the WGRTD by Russian Federation and APG23 as part of their oral statements. Clarification was specifically sought on the definition of “legal person” as employed in draft article 2(a). The queries were also linked to draft article 3(h) which incorporates the general principle of “Universal duty to respect human rights” and further stipulates that “everyone has the duty to respect human rights, including the right to development”. They were also linked to draft article 7 which incorporates the agreement by States that legal persons possess “the general duty under international law to refrain from participating in the violation of the right to development”. The Expert Drafting Group notes that these questions obviously relate to whether legal persons, in particular, business corporations, possess a duty to respect human rights and more specifically, the general duty under international law to refrain from participating in the violation of human rights, including the right to development. These are very important questions and negotiating States will need to take positions on these provisions and ultimately decide in which shape to keep them or discard them.

8. The commentary below will analyse these questions in a consolidated manner. At the outset, the Expert Drafting Group notes that subjects of international law include anyone that has rights and/or duties recognized in international legal instruments.²⁶ While it is true that States are the original and full subjects of international law, there are a number of other partial subjects. Indeed, since the adoption of the Charter of the United Nations and the UDHR, human beings and peoples are undisputedly recognized as subjects of international law since they possess numerous human rights.²⁷ Their ability to bring complaints against States before international and regional fora would be impossible if they do not have partial international legal personality. Human beings also possess duties as signified in this draft article, but also in fields such as international humanitarian and criminal law. Business corporations are entirely capable of entering into agreements with States, including investment agreements or for salvage operations, and have the ability to enforce them in international fora. As such, it is an incorrect proposition and a voice from the past to state that human beings and legal persons are incapable of having, or do not have, partial international legal personality. Since they can and do possess rights and duties under international law, they are partial subjects of international law.

9. As draft article 2(a) stipulates, a “legal person” means any entity that possesses its own legal personality under domestic or international law and is not a human person, a people or a State. Legal personality can originate both from domestic law as well as from international law. For instance, international organizations possess legal personality under international law. This is undisputed and is long settled by the ICJ in its *Reparation for Injuries* case of 1949.²⁸ Business corporations possess legal personality by virtue of their incorporation under domestic law of various countries. This is also undisputed. Therefore,

²⁶ See: Christian Walter, 2013, *Subjects of International Law*, Max Planck Encyclopedia of Public International Law.

²⁷ Ibid.

²⁸ International Court of Justice, *Reparation for Injuries Suffered in the Service of the U.N.*, 1949 I.C.J. 174.

insofar as the definition clause is concerned, the drafting group notes that there is nothing really problematic.

10. The questions raised stem from the debates on whether business corporations, as legal persons whose existence is owed to domestic law, can have and do have obligations of any nature also under international law. In this context, it is important to state that under international law, it is clear that States have plenary competence to confer and recognize rights and duties on any non-State actor or legal person, whether incorporated under domestic law or international law. The competence of States to do so is unquestionable. Indeed, the EU Parliament has recently adopted a resolution by an overwhelming majority calling for a EU law whereby companies would be required to conduct environmental and human rights due diligence along their full value chain.²⁹ As the commentaries to the 17 January 2020 Draft Convention also note, States do have the jurisdiction and authority to enter into international treaties that create rights and obligations for third parties within their jurisdictions as a matter of their reserved domain of domestic jurisdiction. The question remains whether current international law, as it exists, does so. In other words, does current international human rights law recognize obligations on legal persons, including businesses, of any nature. The Expert Drafting Group has cogent reasons to answer this question in the affirmative.

11. As the commentaries to the 17 January 2020 Draft Convention also explain, the duty on legal persons to respect human rights and refrain from participating in violations of human rights, including the right to development, is distinct from the nature of obligations that international law recognizes for States. States have the entire range of human rights obligations – respect, protect and fulfil. On the other hand, the drafting group has referred to salient provisions of existing human rights instruments in the commentaries to the zero draft to point out that these instruments recognize the duty of legal persons, such as businesses, to one of those dimensions – that is, the duty to respect human rights. In other words, this refers to the duty to not violate the human rights of human beings and peoples.

12. The Expert Drafting Group notes that it is very cognizant of the fact that the UN Guiding Principles on Business and Human Rights of 2011 limited themselves to recognizing only a moral responsibility on corporations to respect human rights and did not go to the extent of acknowledging that they already do possess the legally binding duty to respect human rights under existing human rights law. However, this issue has now been settled by the Committee on Economic Social and Cultural Rights in its General Comment 24 on States' obligations in the context of business activities.³⁰ In its para 5, the Committee stated as follows:

“under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice. The present general comment therefore also seeks to assist the corporate sector in discharging their human rights obligations and assuming their responsibilities, thus mitigating any reputational risks that may be associated with violations of Covenant rights within their sphere of influence”.

13. The Committee has thus acknowledged that businesses, as legal persons, already have human rights obligations to not violate Covenant rights. In other words, even if businesses may have been incorporated under domestic law, international human rights law considers them as subjects insofar as these relate to the duty to respect human rights. There is generally a misconception that recognition of human rights duties under international law, whether on States or non-State actors, ipso facto corresponds with a requirement that its enforcement must also be through an international mechanism. In fact, this is hardly the case and there is no necessary existential correlation between the two. Duties recognized under international law may be enforced through a range of international mechanisms, or may be left to States to enforce domestically as is the case currently with businesses, or may not be enforced at

²⁹ European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)).

³⁰ E/C.12/GC/24

all. The presence or absence of enforcement or its mechanism does not have any bearing on the presence or absence of a right or duty.

14. In the commentaries to the 17 January 2020 Draft Convention, the Expert Drafting Group extensively explained that the duty of everyone, including legal persons, to respect human rights and not participate in violations is explicit in article 30 of the UDHR and article 5(1) of the two Covenants. Article 30 of the UDHR stipulates that: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein”. Similarly, article 5(1) common to the ICCPR and the ICESCR stipulates that “Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant”. These obligations to respect human rights are explicitly not limited to States, but include groups and persons. Additionally, article 9(2) of the 1986 Declaration itself stipulates that “Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights”.

15. During the oral statements at the 21st session of the WGRTD, Russian Federation observed that perhaps when these provisions refer to the words “any State, group or person” as having the obligation not to violate human rights, they refer either to a State or to groups of human beings, or to individual human beings, but not to legal persons. In other words, the suggestion was that while States are covered at one end of the spectrum and while the very individual is covered at the other end of the spectrum, legal persons are not. This, in the opinion of the Expert Drafting Group, is not how the provision ought to be read. There is no reason why the words group or person should exclude body incorporates. If that were the case, the easiest way for individuals or groups of individuals to violate human rights would be to simply create a legal person such as a business corporation and do through that legal person what international law prohibits them to do as human beings.

16. In any case, the drafting group notes that even the question of whether these provisions cover legal persons such as businesses has been answered by the international investment tribunal in the case of *Urbaser vs. Argentina* decided in 2016.³¹ Interpreting article 30 of the UDHR, the Tribunal held:

“The Declaration avoids making reference to who would be responsible for the rights and obligations arising therefrom. However, upon reading the Declaration, it is evident that obligations arising therefrom do not lie exclusively on States. The Preamble expressly sets forth that the duties would lie both on institutions and on individuals. [...]”³²

The tribunal then quotes Article 30 of the UDHR and concludes that “therefore, business companies and international corporations are affected by the obligations included in international human rights law”.³³ It describes this obligation on individuals and private parties in its decision as an obligation to abstain, that is, an obligation that prohibits the committing of acts violating human rights.³⁴

17. Finally, it may be reiterated that article 10 of the consensual 1998 United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, stipulates that “no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms”. The words “no one” in this Declaration includes all organs of society, not just individuals or groups of individuals. In this respect, the

³¹ Award of the Tribunal in ICSID Case No. ARB/07/26, available at https://www.italaw.com/sites/default/files/case-documents/italaw8136_1.pdf.

³² Ibid. para.1159.

³³ Ibid.

³⁴ Ibid. para.1210.

commentaries to the 1998 Declaration prepared by the UN Special Rapporteur on the situation of human rights defenders acknowledge that this article is addressed not only to States and human rights defenders, but to everyone and that this includes “all non-state actors, including armed groups, the media, faith-based groups, communities, companies and individuals”.³⁵

18. The Expert Drafting Group is fully aware of the ongoing parallel process in the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights for drafting a legally binding instrument. However, the Expert Drafting Group notes that this working group has, at least thus far, adopted a victim-centric approach based on provision of remedies and does not thus have to deal with the recognition of a legal duty of businesses to respect human rights under international law. That fact, however, should not have any bearing upon the acknowledgement of a legal duty on everyone, including legal persons such as businesses and international organizations, to the minimum duty to respect human rights and not participate in violations of human rights. As such, the Expert Drafting Group recommends retaining this provision as it stands.

19. A few other suggestions were made to improve the text of this paragraph. FAO recommended that the words “aimed at the destruction of any of the rights” be replaced with the words “aimed at the nullification or impairment of any of the rights” to bring them in sync with modern human rights lexicon. The Expert Drafting Group seriously considered this recommendation but notes that retaining the language of article 3 UDHR and of articles 5(1) of the two covenants serves important objectives, in that, this draft article helps give concrete meaning and interpretation to the provisions in these fundamental human rights instruments as well. As such, the Expert Drafting Group considers it important to retain the specific language as is present in the text.

20. UNESCO recommended adding the words “online or offline” after the words “perform any act”. Considering the context of this provision, the Expert Drafting Group does not recommend doing so. The word “any activity” and “any act” are all-encompassing irrespective of the medium through which they are conducted. Finally, International Service for Human Rights proposed the insertion of a specific provision on human rights defenders. The Expert Drafting Group addresses this matter in Article 15 Specific and Remedial Measures.

Part III

Article 8

General Obligations of States Parties

1. States Parties shall respect, protect and fulfill the right to development for all, without discrimination of any kind on the basis of race, colour, sex, language, religion, political or other opinion, nationality, statelessness, national, ethnic, or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention.

Commentary:

1. Cuba proposed deleting the words “or other”, “birth”, “status”, and the insertion of the phrase “conditional detrimental to human dignity”. The Expert Drafting Group did not see how these amendments would improve the text as a whole.

2. A number of suggestions were made involving the kinds of discrimination listed in this paragraph. A significant number of suggestions related to the word “gender”, “gender identity” and “sexual

³⁵ UN Special Rapporteur on the situation of human rights defenders, 2011, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, available at <https://www.ohchr.org/Documents/Issues/Defenders/CommentarytoDeclarationondefendersjuly2011.pdf>

orientation". Iran suggested deletion of the word "gender". For entirely different reasons, ADF International opined that "the explicit listing of both 'sex' and 'gender' in this provision would result in an unprecedented conceptual separation of these two notions in a United Nations human rights treaty. Such an understanding is not grounded in international human rights law per relevant treaties as well as state practice. Furthermore, it would create a situation of legal uncertainty, in that it would prevent States from clearly identifying and fulfilling the obligations incumbent upon them under existing international law". Ecuador and the Legal Resources Centre suggested adding the words "sexual orientation" after "gender". The Special Envoy of the UN Secretary General on Disability and Vulnerability, the National Human Rights Institute of El Salvador, the Amman Centre for Human Rights Studies, the Committee on the Rights of Persons with Disabilities, the National Human Rights Commission of Mauritius, recommended adding the words "gender identity" and "sexual orientation"/"sexuality". However, Iran, Qatar, Nigeria, Turkey, Egypt, the Russian Federation, Pakistan, Indonesia, the Holy See, ADF International, CINGOs all oppose the inclusion of the words "gender" and/or "sexual orientation" as grounds of discrimination, observing that these are not yet recognized in international human rights treaties. The Expert Drafting Group noted the deeply contested status of these grounds of discrimination in international human rights law, and their current omission from international human rights treaties due to the extensive differences among states on these alleged bases of discrimination. Due to the contested nature of these terms and their legal status, they will not be introduced in this Revised Draft Convention to expand the prohibited grounds of discrimination under this provision.

3. Another important suggestion by Ecuador was reference to "nationality" instead of "national origin". The Expert Drafting Group notes that the International Court of Justice, in the judgement rendered in the case of *Qatar vs. UAE* regarding the interpretation and application of the Convention on Elimination of Racial Discrimination, has drawn a distinction between nationality and national origin. In view thereof, the Expert Drafting Group considers it important to include both terms.

4. Other suggestions included incorporation of "heritage", "human mobility", "illness" (suggested by Ecuador), cultural background (UNESCO), "displacement", "statelessness" (UNHCR), "caste", "work", "descent" (Global Centre of Communities Discriminated on Work and Descent), and "faith" (Soroptimist International). The Expert Drafting Group considers that including all of these makes the provision quite verbose. The words "or other status" are broad enough to accommodate discrimination on the basis of every other status that is not specifically listed. The only word that the Expert Drafting Group recommends adding is "statelessness". This is necessitated by the inclusion of "nationality", and the lack thereof must also now be included.

5. Ecuador recommended adding the word "guarantee" before "respect, protect and fulfil". The commentaries to the zero draft explained at length the rationale behind adoption of the three-fold typology of "respect, protect and fulfil". The provisions to follow in Part III are based on this typology. As such, the Expert Drafting Group does not recommend adding "guarantee" since it is not included within the three-fold typology established in international human rights law.

6. Iran recommended deletion of "other status". The Expert Drafting Group does not recommend doing so since it will make the list exhaustive and will not accommodate the other kinds of discrimination suggested by other respondents.

7. UNESCO suggested adding the words "online and offline" before the words "without discrimination". For reasons discussed earlier, the Expert Drafting Group does not consider that incorporation of these words fits well within the context of the provision.

8. The Grand Council of the Crees recommended adding the words "and other international human rights law" at the end. The Expert Drafting Group considers that these words are unnecessary considering that the obligations set forth in this draft convention are fully in sync with other international human rights law. The National Association of Vocational Education of China recommended adding two additional paragraphs as follows:

“2. States Parties shall take all necessary measures to implement the right to personal development, including actively and extensively engaging in vocational education, providing free vocational education opportunities for poverty group;

3. States Parties shall take effective measures to provide equal and adequate development opportunities for all people already engaged in traditional occupations or practitioners of traditional occupations home and abroad, such as the practitioners of

traditional Chinese medicine, traditional medicine of ethnic minority and traditional handicraft.”

The Expert Drafting Group notes that draft article 8 relates to the general obligations of States Parties. This suggestion relates to specific issues that are beyond the context of this provision. As such, it is recommended not to modify the draft article on these lines.

2. States Parties shall cooperate with each other in ensuring development and eliminating obstacles to development, encouraging full observance and realization of all human rights.

Commentary:

1. The Expert Drafting Group notes the Philippines’ proposal to include the private sector as a duty bearer in advancing the right to development and in creating conditions favorable to the realization of development. This specific proposal, in the view of the Expert Drafting Group, focuses on the internal modality by which a State party can ensure realization of the right to development (e.g. especially in relation to the right to regulate as indicated in Article 3 of the General Principles). The above provision, however, refers to an external modality of inter-State cooperation, which will also be elaborated further in Article 13 of the Revised Draft Convention. The same response applies to Qatar’s proposal to reword the sentence into: “States Parties shall ensure that public authorities and institutions at all levels respect the right to development in accordance with this Convention.” This proposed sentence falls under paragraph 3 of Article 8, which draws entirely from the Holy See’s proposed sentence (e.g. “States Parties shall ensure that public authorities and institutions at all levels act in conformity with the present Convention.”).

2. The National Human Rights Institution of El Salvador has recommended that this provision also include the obligation of States to ensure that non-State agents, including companies and investors linked to development projects, also act in accordance with the convention and international human rights standards. The drafting group notes that this article focuses on the general obligations of States and expands on the specific obligations to respect, protect and fulfil human rights in later provisions of Part III. Indeed, the obligation of States to regulate legal persons is covered in these subsequent provisions. As such, the drafting group does not recommend adding the same here.

3. The National Human Rights Institution of El Salvador also suggested “to incorporate in this article the obligation of the States to promote, maintain and preserve the conditions necessary for the right to development to be an integral process, such as democratic and pluralistic governance, the guarantees to develop a democratic institutionality and fair and transparent rule of law through adequate accountability”. The drafting group considered this suggestion with significant interest but ultimately decided not to incorporate it. While good governance and the rule of law are important concepts signifying the purposes and motivations of the convention and have an important place in the preamble, the drafting group found it difficult to articulate these in a substantive provision that can form the basis for ensuring accountability in case of violations. In the opinion of the drafting group, elaborating on the underlying “conditions necessary for the right to development” is best left to be developed by the Implementation Mechanism set up under this draft convention.

4. The Special Envoy of the UN Secretary General suggested replacing the word “ensure” with “guarantee”, suggesting that the former is not strong enough. The Expert Drafting Group did not find that the word “ensure” is weaker than “guarantee”. To the contrary, it may be contended by some that “guarantee” may be provided by law but may not always translate into action. “Ensure” is a clearer word since it signifies a focus on the obligation to achieve a result. As such, the Expert Drafting Group considered it better to retain the word “ensure”.

5. Pakistan recommended inclusion of a third paragraph as follows: “3. States Parties shall co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence, mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights”. The Expert Drafting Group notes that the duty to cooperate

is specifically and in much more depth covered in draft article 13. As such, it does not recommend reiterating the same here.

6. Ecuador proposed the insertion of a new provision: “The States Parties undertake to guarantee the individual and collective rights enshrined in the Constitution of each State Party. The highest duty of States is to guarantee, respect, and enforce the rights enshrined in their Constitution.” The Expert Drafting Group does not accept the new provision, given the diversity of constitutions in States around the world, which might end up limiting the right to development if many human rights are not specified in such constitutions.

3. States Parties shall ensure that public authorities and institutions at all levels act in conformity with the present Convention.

4. States Parties recognize that each State has the right, on behalf of its peoples, and also the duty to formulate, adopt, and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realization. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to cooperation, aid, assistance, trade or investment, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Convention and international law.

Commentary:

1. Paragraph 3 is new, and drawn entirely from the proposal of the Holy See. This provision also used to be Article 12(3) of the 17 January 2020 Draft Convention. The Expert Drafting Group finds that this strengthens the general obligations of States, especially when the right to development is implicated in decision-making at all levels of governance in States. Paragraph 4 is drawn from Article 2(3), Article 3(1), 3(2), and 3(3), and Article 4 of the 1986 Declaration on the Right to Development.

2. Iran has recommended adding the word “hindering” after “nullifying”. For reasons explained previously, the drafting group does not recommend this.

3. The Special Envoy of the UN Secretary General on Disability and Vulnerability has recommended the inclusion of “national strategies” and “national plans”. The commentaries to the zero-draft have explained the rationale behind the use of words “laws, policies and practices” consistently in the draft convention. “Plans” and “strategies” are included in this broad framing and as such, for the sake of consistency and to avoid repetition and verbosity, the drafting group recommends retaining the language as it is. It was also suggested that impairments include “intellectual property and licenses” which are fundamental in the context of emergencies, pandemics and other health crises. The drafting group notes that intellectual property rights are covered under the term “trade” in light of the WTO’s Agreement on Trade Related Aspects of Intellectual Property Rights. As such, it is recommended to keep the words broad and not include one aspect of trade matter in addition.

4. The National Human Rights Institution of Mexico City suggested that “reference should be made to the obligation to adapt the domestic law to the postulates contained in the Convention on the Right to Development, which implies the obligation to suppress all those norms, policies and practices of any nature that involve a violation of the guarantees of effectiveness of human rights, or, failing that, that ignore their recognition or hinder their exercise, as well as guarantee the issuance of laws and development of policies and practices conducive to the effective observance of said guarantees”. The drafting group notes that the suggestion is in fact the essence of what the paragraphs already state. In particular, the obligation to take any appropriate measures including the adoption of legislative measures includes the obligation to adapt existing domestic law to bring it in sync with obligations under this convention. It was also suggested that the obligation to promote development using the maximum of available resources should also be included. The commentaries to the zero-draft explain in detail why the concept of “maximum of available resources” incorporated in the ICESCR was not carried forward in this draft article. For those reasons, the drafting group does not recommend making these modifications.

5. In its oral statement during the 21st session of the WGRD, Indonesia opined that “the main idea for the first sentence of this paragraph should be moved to the preceding part of

the draft, and that is to Article 3". The drafting group notes that the objective of article 3 is to provide a list of principles that the States Parties should be guided by to achieve the object and purpose of the convention and to implement its provisions. Draft article 12 on the other hand is a substantive provision stipulating a fundamental obligation of the States Parties under this convention. As such, the drafting group does not recommend making any changes herein.

6. Argentina has recommended inclusion of the words "and international law" at the end of the paragraph. Considering a similar addition in draft article 3 relating to the right to regulate, the drafting group agreed to include these words.

7. Pakistan has recommended addition of a fourth paragraph to the effect: "States Parties shall adhere to the obligations under international agreements including Addis Ababa Action Agenda to support common endeavor to realize the right to development and achieve the 2030 Agenda". The drafting group notes that the essence of this paragraph is addressed in draft article 13 relating to the duty to cooperate. However, it cautions against referring specifically to any Agendas in the substantive provisions, since agendas will evolve and change as per the requirements of the time. Additionally, the Addis Ababa Action Agenda is not a legally binding international agreement and it is doubtful whether such a status can be conferred through the means suggested.

Article 9

General obligations of international organizations

Without prejudice to the general duty contained in article 7, States Parties agree that international organizations also have the obligation to refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach any obligation that the State or the latter organization may have with regard to the right to development.

Commentary:

1. Iran suggested the following modification: "Without prejudice to the general duty contained in article 7, States Parties agree that international organizations also have the obligation to [shall] refrain from conduct that aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach that State's or that other international organization's obligations with regard to the right to development". While the Expert Drafting Group understands the intention behind this suggestion is to make the provision stronger, the words "States Parties agree" have significant importance in the context of this paragraph. They signify that these obligations already exist in international law and that States agree to recognize this. By contrast, the words suggested by Iran signify that the obligation is being conferred by this convention. As such, the Expert Drafting Group recommends retaining the words as they are.

2. The National Human Rights Institution of El Salvador suggested to broaden the obligations contained in draft article 9 to add the responsibility of international organizations "to incorporate the principles of human rights enshrined in the right to development and placing rights holders at the centre of adoption of their decisions. Likewise, a commitment should be established to promote, protect and fulfil the right to development". The drafting group notes that obligations of international organizations related to human rights must be carefully articulated within the confines of international law. The functions and mandates of international organizations are governed by their constituting documents as agreed by the States Parties founding them. Whether an international organization in fact has the obligation to promote, protect and fulfil human rights, including the right to development, will be based on its constituting document and may differ in scope from organization to organization. As such, it is important that the obligations outlined in this draft convention pertain to those that apply irrespective of the nature of their constituting documents. In the opinion of the Expert Drafting Group, these are covered in draft article 7 and this draft article 9, the latter of which reflects articles 14 to 16 of DARIO.

3. South Africa maintains that obligations cannot be created for non-States Parties, such as international organizations. The Expert Drafting Group maintains that the provision is directed towards reflecting the agreement of States Parties (their view) that international obligations also have the obligation to refrain from conduct as indicated in the provision. The provision is declaratory of the States Parties' agreement, not necessarily the agreement of the international organization(s) in question.

4. The Holy See proposed the word "responsibility" be inserted after the phrase "general duty". The Expert Drafting Group finds that the proposal would not strengthen the provision.

Article 10

Obligation to respect

States Parties shall refrain from conduct, whether expressed through law, policy or practice, that:

Commentary:

1. Brazil recommended the following modification: "States Parties undertake to refrain from [internationally unlawful] conduct, whether expressed through [domestic] law, policy or practice, that:". The Expert Drafting Group notes that it is not necessary to specify the words "internationally unlawful conduct" in the chapeau since everything that follows in the sub-paragraphs is aimed at establishing that the conduct described therein is internationally unlawful as per the convention. Additionally, the further suggestion that to be illegal such international conduct must be expressed through "domestic" law, policy or practice of a State unnecessarily restricts the application of the obligation to respect the right to development. Indeed, acts by States nullifying or impairing the right to development of others may happen in the international place, as signified by sub-paragraphs (c) and (d) of this draft article.

2. Personhood Education recommended adding the words "in accordance with obligations set forth in the present Convention" after the words "States Parties". Again, the drafting group notes that these words are unnecessary and make the provision verbose. This draft article itself seeks to articulate the obligation to respect the right to development.

(a) Nullifies or impairs the enjoyment and exercise of the right to development;

Commentary:

1. China recommended deletion of the words "or outside", a view that appears to be shared by the Holy See. The Expert Drafting Group accepts this recommendation, mindful that the same does not affect the binding effect of the right to development on a State Party's internal and external (or extra-territorial) conduct, as specified throughout the Revised Draft Convention itself. Turkey has also sought clarification on the rights and obligations that may arise outside the territory of States.

2. Cuba recommended adding the word "full" before enjoyment. The Expert Drafting Group considers it appropriate not to incorporate such thresholds in the text since it opens up possibilities of misinterpretation. For instance, nullification or impairment of partial enjoyment and exercise of the right to development may be seen to be excluded if the suggestion is incorporated.

3. Iran has recommended including the word "hinders" between "nullifies" and "impairs". The Expert Drafting Group has explained in the commentaries to the zero draft that the words "nullifies" and "impairs" are drawn from the language of human rights treaties, which do not additionally incorporate the word "hinders". In any case, the Expert Drafting Group considered that that word "impairs" includes "hinders" and the use of both simultaneously is largely a duplication. As such, the Expert Drafting Group does not recommend making the suggested modification.

4. All WIN Network recommended adding the words "or interferes with the full enjoyment of the right to development and human rights and in respect to international law"

at the end. For the same reasons as above, the Expert Drafting Group does not recommend including these words. In addition, the meaning of the suggested text is not entirely clear.

5. UNESCO recommended adding the words “online or offline” at the end of sub-paragraph (a). The Expert Drafting Group, for reasons explained earlier, does not consider that these suggestions fit within the context of the provision.

(b) Impairs the ability of another State or an international organization to comply with that State’s or that international organization’s obligations with regard to the right to development;

Commentary:

1. Cuba has recommended a linguistic change in the text. It suggests deletion of the words “that State’s or that international organization’s”. The Expert Drafting Group considers that these words provide clarity to the provision and as such may be retained. They also are in sync with the formulation of paragraph (c).

2. Iran has recommended adding the word “hinders” after “impairs”. For reasons mentioned earlier, the Expert Drafting Group considers this to be a duplication and unnecessary.

3. The Holy See proposed inserting the word “intentionally” before the word “impairs”. The Expert Drafting Group is of the view that this proposal dilutes and weakens the provision.

(c) Aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, another State or an international organization to breach that State’s or that international organization’s obligations with regard to the right to development;

Commentary:

1. Cuba recommended deletion of the word “assists”. People for Successful Corean Reunification suggested addition of the words “or with reasonable expectations to have knowledge” immediately after the words “with knowledge”. Amman Center for Human Rights Studies on the other hand suggested deletion of the words “with knowledge of the circumstances of the act”. Iran in its oral statement at the ___ session of the WGRTD recommended adding the words “intent” before “knowledge”. The Expert Drafting Group notes that this sub-paragraph is based entirely on the language of articles 16-18 of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts (RSIWA),³⁶ and corresponding provisions in articles 58-60 of DARIO with respect to obligations of States to international organizations. The International Law Commission extensively considered the elements listed in these provisions as well as the ones suggested before agreeing on the precise language. The Expert Drafting Group therefore strongly recommends against tampering with the text of this sub-paragraph and suggests that it will be appropriate to submit to the wisdom of the International Law Commission for its articulation.

2. Amman Center for Human Rights Studies suggested adding the word “legal person” between the words “another State” and “or international organization”. The Expert Drafting Group however notes that the context of this sub-paragraph relates to State responsibility as articulated in RSIWA and DARIO vis-à-vis other States and international organizations. In any case, the situation indicated in the suggestion is fully covered in paragraph (a) of this draft article and is further supplemented by draft article 11.

(d) Causes an international organization of which it is a member to commit an act that, if committed by the State Party, would constitute a breach of its obligation under the present Convention, and does so to circumvent that obligation by taking advantage of the fact that the international organization has competence in relation to its subject matter.

³⁶ International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission, 2001, vol. II, Part Two.

Article 11

Obligation to protect

States Parties shall adopt and enforce all necessary, appropriate and reasonable measures, including administrative, legislative, investigative, judicial, diplomatic or others, to ensure that human or legal persons, peoples, groups, or any other State or agents that the State is in a position to regulate do not nullify or impair the enjoyment and exercise of the right to development within or outside their territories when:

Commentary:

1. China recommended deleting the words “or outside”, and Turkey has asked for clarification on the use of these terms. The Holy See as objected to the broad nature of the obligation to protect, preferring to stand by the principle of effective control. The Expert Drafting Group reads these suggestions for Article 11 (specific to the obligation to protect) as markedly contrary to the right to development and the obligations entailed thereby, especially the external and collective dimensions. As such, the Expert Drafting Group does not recommend this deletion which fundamentally alters the essence of the right to development.

2. Brazil suggested adding the word “reasonable” after “necessary” and “appropriate” to qualify the measures to be adopted and enforced by States. The Expert Drafting Group considered that “reasonable” is largely a duplication of “appropriate”. As the commentary to the 17 January 2020 Draft Convention indicated, “appropriate” signifies considerations of reasonableness, feasibility, proportionality and effectiveness. Indeed, a measure can hardly be considered appropriate if it is unreasonable. To avoid verbosity, the Expert Drafting Group does not recommend adding a third qualifier. Brazil also recommended modifying the words “to ensure” to “conducive to ensuring”. The Expert Drafting Group notes that this suggestion dilutes the provision significantly. The obligation of States to protect requires States to take measures to ensure that human rights are not violated by anyone they are in a position to regulate. As such, the Expert Drafting Group does not recommend making the suggested change.

3. Iran has recommended adding the word “hinder” between “nullify” and “impair”. For reasons spelt out earlier in the commentary, the Expert Drafting Group does not recommend making this addition.

4. UNESCO has suggested adding the words “online or offline” at the end of the sentence. The Expert Drafting Group considers that this suggestion does not fit well within the context of this paragraph.

5. The Expert Mechanism on the Rights of Indigenous Peoples has recommended deletion of the entire article on the ground that “it may not protect indigenous peoples at all, especially those living on either side of a border between two States”. It further noted that “under the pretext of protecting the ‘national’ interests of States, there is an incentive to further control and prohibit relations between members of the same indigenous community whose traditional territory is cut-off by State borders” and that “it is also common for indigenous persons having relations with members of their family or community on the other side of the border to be accused of harming the interests of the country or engaging with the intelligence of the other State. This has also led to the spread of corruption through smuggling”. The Expert Drafting Group could not agree with the Expert Mechanism’s suggestion since there is no causal relation between this provision and the circumstances described above. This provision is aimed at ensuring that States protect human beings and peoples, including indigenous peoples, from their right to development being violated by any actor that such States are in a position to regulate, within or outside their territories. For the provision to be harmful to indigenous peoples in the way suggested, it would have to be significantly misinterpreted to the effect that indigenous peoples by moving across porous borders lead to nullification or impairment of the right to development of others, and as such, the State would have a right to regulate them including criminalizing them. It is a cardinal principle of international law that treaties and their provisions must be interpreted in good

faith. Fear of abuse of a provision protecting human rights is never a reason for invalidating the provision itself. As such, the Expert Drafting Group strongly recommends against accepting the recommendation, especially given the reasons provided by way of justification.

6. The Grand Council of the Crees suggested that the word “peoples” be added after “human or legal persons”. The Expert Drafting Group accepted this recommendation in light of the language employed in draft article 7.

7. Personhood Education suggested adding the words “in accordance with obligations set forth in the present Convention” after the words “States Parties”. The Expert Drafting Group has explained previously with reference to a similar suggestion that these words are unnecessary and a duplication. The provision is aimed at setting forth a particular type of obligation.

(a) Such conduct originates from or occurs on the territory of the State Party;

(b) The human or legal person has the nationality of the State Party;

Commentary:

1. Both Cuba and Iran proposed the replacement of the word “human” with “natural”. The Expert Drafting Group did not accept these proposals, since “human person” is used in the 1986 Declaration on the Right to Development.

(c) The State Party has the requisite legal duty under either domestic or international law to supervise, regulate or otherwise exercise oversight of the conduct of the legal person engaging in business activities, including those of a transnational character.

Commentary:

1. The Expert Drafting Group heavily reformulated this provision to address concerns raised by States and non-governmental organizations and other experts. This provision now focuses on the requisite legal duty of the State, either as defined under domestic law or international law, to supervise, regulate or otherwise exercise oversight of the conduct of the legal person engaging in business activities. The ultimate lens that would determine that supervision, regulation, or oversight would be the source of law (e.g. domestic law or international law) from where the State Party’s requisite legal duty arises. The German Institute for Human Rights noted that the term “substantial business interest”, which originates from US case law and is used in the draft, remains “particularly disputed”. It also pointed out that in the August 2020 version of the draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, the language has been amended.

2. Russian Federation and Argentina did not make suggestions with relation to the language of this paragraph but raised certain concerns. Russian Federation observed that “due to the uneven level of economic development across countries and regions (the number of companies, their activity on the global market, etc.), this measure can lead to an uneven distribution of responsibility. In addition, it is unclear how States can implement such regulation, which in fact requires the interpretation of the domestic legislation of third countries. The Expert Drafting Group notes that the words “they are in a position to regulate” employed in the chapeau address the first concern raised by Russian Federation. Argentina raised a concern that the provision “contemplates the possible liability of the State for the behaviour of their nationals outside their territorial jurisdiction. This goes against the territorial jurisdiction of national laws”. IT for Change has suggested the addition of the words “and of a virtualized nature” after the words “those of a transnational character”. The reformulated provision eliminates the concerns over disparities and the scope of liability of the State for the behavior of nationals outside their territorial jurisdiction.

Article 12

Obligation to fulfil

Commentary:

1. The Expert Drafting Group notes the FAO's recommendation to differentiate the obligation to fulfil into obligations to facilitate, provide, promote. The Expert Drafting Group takes the view that the provisions in this Article 12 of the Revised Draft Convention focus on the obligation to fulfil in relation to the right to development.

1. Each State Party shall take measures, individually and through international assistance and cooperation, with a view to progressively enhancing the right to development, without prejudice to its obligations to respect and protect the right to development contained in articles 10 and 11 of the present Convention or to those obligations contained in the present Convention that are of immediate effect. States Parties may take such measures through any appropriate means, in particular through the adoption of legislative measures.

Commentary:

1. Bangladesh proposed inserting the word "fulfilling" right before the phrase "the right to development". The Expert Drafting Group is of the view that this insertion will cause syntactic confusion.

2. Saudi Arabia suggested to include in this paragraph the "right and responsibility of each State and, as far as they are concerned, each nations and people to determine freely its own objectives of social development, to set its own priorities and to decide in conformity with the principles of Charter of the UN the means and methods of their achievements without any external interference". The Expert Drafting Group notes that these elements are fully covered in the paragraphs below in this draft article. As such, they need not be repeated here.

3. The National Human Rights Institution of El Salvador has recommended the inclusion of "the commitment of the States to progressively promote the right to development, taking into consideration the protection of the environment of current and future generations". The Expert Drafting Group notes that it is not necessary to reiterate in every provision that the right to development must be promoted in a way that is sustainable. Draft article 3(f) as well as 22 are specifically focused on sustainable development and its relation with the right to development. It was also suggested that this article should include the obligation to give priority to the situation and needs of the least favoured (sic) countries and people. The Expert Drafting Group again notes that special and remedial measures for least developed countries and the marginalized persons and peoples is covered specifically in draft articles 15 and 13. As such, no repetition is necessary here. It was further recommended that reference should be made to pluralistic and transparent governance together with the active, meaningful and informed participation of the population as essential elements for the effectiveness of the right to development. These have been covered both in the preamble and in draft article 4(2).

4. The Global Forum of Communities Discriminated on Work and Descent has recommended including the words "and ensuring effective implementation" after the words "progressively enhancing the right to development". The Expert Drafting Group agrees with this suggestion.

5. Legal Resources Centre has recommended the inclusion of an encouragement or recommendation for the adoption of regional measures which contribute to the progressive enhancement of the right to development. The Expert Drafting Group agrees with the importance of regional measures, it has taken a position in draft article 2 that defines "international organizations" that the word "international" includes regional. As such, the reference in this draft article to "international assistance and cooperation" includes measures at the regional level.

6. The Grand Council of the Crees has recommended the following modifications: "Each State Party undertakes to take measures, individually and through international assistance

and cooperation, with a view to progressively enhancing the right to development, without prejudice to their [existing international human rights and other] obligations [and, in particular, their obligations] to respect and protect the right to development contained in articles 10 and 11 or to [any other] ~~those~~ obligations contained in the present Convention that are of immediate effect. States Parties may take such [additional] measures through any appropriate [and effective] means, including in particular the adoption of legislative measures". The Expert Drafting Group notes that the focus of the words "without prejudice" is to clearly indicate that the obligation to progressively enhance the right to development should not provide a justification for ignoring the obligations in the convention that are of immediate effect. It seeks to retain the validity of all obligations contained in the convention that are of immediate effect and do not permit States Parties to wriggle out under the pretext that the obligations are only to "take measures" and that the rights are to be only progressively enhanced.³⁷ The commentaries to the 17 January 2020 Draft Convention explain the rationale in depth and takes inspiration from article 4(2) of the CRPD. Considering the context, the Expert Drafting Group does not recommend including the words "existing international human rights and other obligations". Additionally, "other obligations" undertaken by States under trade or investment agreements may not necessarily be compatible with the right to development. Inclusion of the word "additional" is unnecessary. Similarly, the words "and effective" are repetitive. As explained in the commentary to draft article 11 above, the word "appropriate" includes effectiveness.

2. To this end, each State Party shall take all necessary measures at the national level, and shall ensure, inter alia, equality of opportunity for all human persons and peoples in their access to basic resources, education, health services, food, housing and employment, and in the fair distribution of income, and shall carry out appropriate economic and social reforms with a view to eradicating all social injustices.

Commentary:

1. Pakistan suggested the addition of a third paragraph to this draft article identical to article 8(1) of the 1986 Declaration on the Right to Development which stipulates that "States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices". The Expert Drafting Group agrees with this recommendation and suggests its addition as paragraph two with necessary modifications to adapt the language from a declaration to a legally binding instrument. Additionally, considering a separate dedicated provision to gender equality in draft article 16, the Expert Drafting Group suggests addressing the role of women in that provision.

Article 13

Duty to Cooperate

Commentary:

1. The Expert Drafting Group noted the comment of the Centre for Human Rights of the University of Pretoria that this duty needs to be strengthened beyond voluntary undertakings. The Expert Drafting Group notes the inherent consensual nature of cooperation, and the need to ensure that such cooperation is consistent with international law. Thus, sub-paragraphs (a) to (d) of paragraph 1 of this draft article are directly based on articles 1(3) and 55 of the Charter of the United Nations. The primary objective of this paragraph is to reiterate and reaffirm the obligations already undertaken by States therein. As such, it is important, in the view of the Expert Drafting Group, to not tamper too much with the language of the Charter of the United Nations and to modify the text only if it helps strengthen the same. At the same

³⁷ For the concept of immediate obligations, see CESCR, *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23.

time, there is no prohibition for incorporating additional paragraphs that are not present in the Charter. The suggestions proposed by South Africa, Personhood Education, and the Committee on the Rights of Persons with Disabilities to vary this language, were evaluated by the Expert Drafting Group in light of the above rationale.

2. The International Federation of Social Workers also proposed that social work should be considered as an essential service in enabling the right to development. The Expert Drafting Group is of the view that the specificity of this proposal makes its wide-ranging prescription challenging under the duty to cooperate.

3. The Expert Drafting Group also notes Pakistan's oral statement underscoring the principle of international cooperation in ensuring development and eliminating obstacles to development, such as by curbing illicit financial flows, ensuring debt sustainability, and mitigating the adverse impacts of climate change. The Expert Drafting Group is of the view that these concerns are addressed in the new provisions on sustainable development, corruption prevention, and the preamble of this Revised Draft Convention.

1. States Parties reaffirm and shall implement their duty to cooperate with each other, through joint and separate action, in order to:

(a) Solve international problems of an economic, social, cultural, political, environmental, health-related, educational, technological or humanitarian character;

Commentary:

1. China recommended modifying sub-paragraph (a) as follows: "~~Solve international problems of an~~ [Promote coordinated and sustainable] economic, [political,] social, [and] cultural [development] ~~environmental or humanitarian character;~~". The Expert Drafting Group does not take this suggestion since it entirely reformulates the original language from article 1(3) of the Charter.

2. Iran suggested modifying the word "solve" to "resolve". For the same reasons as above, the Expert Drafting Group does not recommend the same.

3. Global Forum of Communities Discriminated on Work and Descent recommended adding the word "political" in the list. The Expert Drafting Group notes that this word is not employed in article 1(3) of the Charter. Considering aspects of state sovereignty which are equally fundamental to the Charter of the United Nations and the prohibition on States and the United Nations to interfere in the political independence and matters within domestic jurisdiction of States, the Expert Drafting Group considered whether the inclusion of the word "political" might open up a slippery slope. However, in view of the words "international problems" the drafting group considers that inclusion of the word "political" may not be problematic. This is because the paragraph speaks only to problems of a political character at the international level, where the duty to cooperate is often lacking. As such, it recommends this inclusion.

4. The Expert Drafting Group accepts the recommendation of IT for Change to incorporate the word "technological". The Expert Drafting Group recognizes that when the Charter was drafted, technology did not play as important a part in the lives of human beings as it does now.

5. International Human Rights Association of American Minorities suggested that the text is not clear. However, as indicated above, the text is a reproduction, with the addition of a few elements, of article 1(3) of the Charter of the United Nations.

6. For reasons explained in the commentary to sub-paragraph (d) below, the Expert Drafting Group also recommends including the word "health".

(b) End poverty in all its forms and dimensions, including by eradicating extreme poverty;

Commentary:

1. China recommended the inclusion of a sub-paragraph (b) to the effect: "Take measures to end poverty in all its forms and dimensions, including by eradicating extreme poverty, and take efforts to address the root causes and challenges of poverty in all its forms

and dimensions, which is an indispensable requirement for sustainable development and an overarching objective of the 2030 Agenda;”. The Expert Drafting Group notes that the duty to cooperate to end poverty in all its forms and dimensions is not included in the Charter of the United Nations and can presumably be seen to be inherent in sub-paragraph (a) above. However, considering the stand-alone importance of ending poverty in the context of the world today, the Expert Drafting Group agrees that its incorporation strengthens the provision. As such, it recommends its inclusion in the general and more evolutive form suggested above.

(c) Promote higher standards of living, full and productive employment, decent work, conditions of human dignity, and economic and social progress and development;

Commentary:

1. China recommended inclusion of the words “people-centred” before “development”. To be consistent with the rest of the Revised Draft Convention in its focus of development as it pertains to human persons, groups, and peoples, the Expert Drafting Group does not prescribe the limitation of development only to the ascription, e.g. “people-centred”.

2. Cuba and Argentina recommended modifying the word “full employment” with “decent work for all”. IT for Change recommended using the terms “full employment and decent work”. CETIM suggested employing the terms “full and decent employment”. Ecuador suggested replacing the words “full employment” with “permanent work for all”. The Expert Drafting Group agrees that “decent work” is an important element to be added here and helps strengthen the provision. It does not, however, recommend eliminating “full employment” or replacing it with “permanent work for all”. The Expert Drafting Group instead recommends the words “full and productive employment and decent work” reflecting the title of SDG 8.

3. Ecuador also recommended inclusion of the words “develop and strengthen productive entrepreneurship”. The Expert Drafting Group noted the importance placed on “entrepreneurship” in SDGs 4.4 and 8.3 and considers that its inclusion strengthens the provision.

4. FAO suggested incorporating the words “consistent with the right of everyone to an adequate standard of living for themselves and their families, including the right to adequate food, clothing and housing” after “higher standards of living”. The Holy See proposed to add the word “environmental”. While normatively accurate, the Expert Drafting Group considered that qualifying the objective of “higher standards of living” with the corresponding human right in its full dimension makes the provision verbose. Additionally, it may become necessary to qualify the other elements also with corresponding human rights. As such, it does not recommend this inclusion here. The Expert Drafting Group is of the view that “conditions of human dignity” is broad enough to accommodate all of these concerns.

5. Global Forum of Communities Discriminated on Work and Descent suggested adding the words “human dignity” after “conditions of”. The Expert Drafting Group notes that although this inclusion is useful, it makes the paragraph verbose. Additionally, it is implicit in the text of the provision itself. As such, the Expert Drafting Group does not recommend making further modifications.

6. IT for Change recommended incorporation of the word “technological”, while UNESCO proposed the word “digital”. The Expert Drafting Group did not see this as necessary for the provision.

(d) Promote and encourage universal respect for human rights and fundamental freedoms for all, without discrimination of any kind.

Commentary:

1. Cuba recommended deleting the word “universal”. The Expert Drafting Group finds that this proposal weakens the provision.

2. The Expert Drafting Group accepted the recommendation of Ecuador to replace the words “on any ground” with the words “of any kind”. This ensures consistency with Article 8 of the Revised Draft Convention.

3. Iran suggested replacing the words “universal respect for human rights and fundamental freedoms” with “universal respect for right to development as human right”. The Expert Drafting Group deems this proposal as one that would narrow and weaken the provision.

4. National Human Rights Commission of Mauritius recommended listing the groups of discrimination. The Expert Drafting Group declines the recommendation, since such grounds are already listed in Article 8 of this Revised Draft Convention.

5. The Special Envoy of the UN Secretary General on Disability and Vulnerability recommended adding “social security” and “social protection” in this draft article. Amman Center for Human Rights Studies recommended adding a new paragraph to the effect: “(e) Investigate into and prosecute violations against the right to development in other State Parties, if the violation is committed by a legal person domiciled in the State Party”. The Expert Drafting Group notes that this provision relates to the duty to cooperate and hence neither of these suggestions fit well in the context of this draft article. In addition, the suggestion by Amman Center for Human Rights relates to the obligation to protect against violations by legal persons domiciled in home States and is covered fully in draft article 11.

2. To this end, States Parties have primary responsibility, in accordance with the general principle of international solidarity described in the present Convention, for the creation of international conditions favourable to the realization of the right to development for all, and shall take deliberate, concrete and targeted steps, individually and jointly, including through cooperation within international organizations and engagement with civil society:

Commentary:

1. The Expert Drafting Group did not accept China’s recommendation to replace the word “primary” with the word “major”, since “primary” is the word used in Article 3(1) of the 1986 Declaration on the Right to Development. The proposed substitution would weaken the provision.

2. For similar reasons, the Expert Drafting Group did not accept Cuba’s proposal to delete the word “international” before the phrase “conditions favourable”, and the proposal to delete the phrase “deliberate, concrete, and targeted” steps. The phrase “international conditions” appears in Article 3(1) of the 1986 Declaration on the Right to Development. The phrase “deliberate, concrete, and targeted” is significant in contextualizing the duty to cooperate, rather than permitting a de minimis effort to cooperate.

3. The Expert Drafting Group accepted Iran’s proposal to delete the phrase “recognize their” before the phrase “primary responsibility”, replacing the former with the word “have”. The Expert Drafting Group agrees that this simplifies and strengthens the provision.

4. The Expert Drafting Group noted the South Centre’s proposal to substitute “individually and through international assistance and cooperation, especially economic and technical”, for the phrase “deliberate, concrete and targeted steps, separately and jointly, including through cooperation within international organizations”. The Expert Drafting Group finds that the proposal narrows and limits the nature of steps that could be taken separately and collectively by States Parties in creating such international conditions favourable to the realization of the right to development for all.

5. The Expert Drafting Group understands the concerns raised by the German Institute of Human Rights regarding any obligations of mutual assistance narrowly construed as mandatory financial assistance to developing countries. The Expert Drafting Group’s formulation of the above provision ensures sufficient openness to the kind of steps that could be taken to create international conditions favourable to the realization of the right to development for all.

6. The Expert Drafting Group did not accept the proposal of the Global Forum of Communities Discriminated on Work and Descent about adding the word “progressive” before realization. The commentaries to the 17 January 2020 Draft Convention showed that the Expert Drafting Group avoided using the term “progressive realization” which has a

settled meaning for economic, social and cultural rights only, and thus would be associated more with the latter than also civil and political rights.

7. The Expert Drafting Group accepted the proposal of Soroptimist International to delete the phrase “as appropriate” before the phrase “engagement with civil society”.

(a) To ensure that human and legal persons, groups and States do not impair the enjoyment of the right to development;

Commentary:

1. The Expert Drafting Group did not accept the proposal of Cuba and Iran to delete the word “human” and replace it with the word “natural”. As previously discussed, the phrase “human person” is used in the 1986 Declaration on the Right to Development.

2. The Expert Drafting Group did not accept the proposal of Personhood Education to add the phrase “as the right is understood/set out in the present Convention”, since this is already evident from the text and structure of the Revised Draft Convention itself.

(b) To eliminate obstacles to the full realization of the right to development, including by reviewing international legal instruments, policies, and practices;

Commentary:

1. The Expert Drafting Group did not accept Ecuador’s proposal to replace the words “international legal instruments” with “technical legal instruments”, as well as the Grand Council of Crees’ proposed insertion of the phrase “national and” before the phrase “international legal instruments”, since this would change the thrust of this paragraph focusing on State’s external conduct, especially when they act in global or regional partnerships at the international level. It is not clear what “technical legal instruments” mean, and what is covered under that appellation. That would be closer to the Russian Federation’s objection as to the wide scope of covered legal agreements under this provision.

2. Alternatively, the Expert Drafting Group chose not to limit the scope of such international legal instruments, policies, and practices to allow for the coverage of such instruments, policies, and practices as they evolve respectively for States. It would be counter-productive and infeasible, therefore, to accept the proposal of the National Human Rights Commission of Mauritius to specify all such international instruments.

3. The Expert Drafting Group did not accept the recommendation of the Organization for Defending Victims of Violence to insert the phrase “including the unilateral coercive measures” after the phrase “right to development”, since it would not improve the provision.

(c) To ensure that the formulation, adoption, and implementation of States Parties’ international legal instruments, policies and practices are consistent with the objective of fully realizing the right to development for all;

Commentary:

1. The Expert Drafting Group did not accept the recommendation of South Africa to delete this entire provision. States are already being asked, under treaties such as the International Covenant on Economic, Social and Cultural Rights, to report on the consistency of their international agreements with obligations under the ICESCR. This paragraph is consistent with the implementation of human rights into international agreements, policies, and practices, information on which is already being requested in various reportorial mechanisms at the United Nations system.

2. All Win Network recommended adding the words “and do not interfere with the enjoyment of the right to development and human rights”. The Expert Drafting Group is of the view that these are inherent in the words “consistent with the objective of fully realizing the right to development for all” and are as such superfluous or a duplication.

(d) To formulate, adopt and implement appropriate international legal instruments, policies and practices aimed at the progressive enhancement and full realization of the right to development for all;

Commentary:

1. The Expert Drafting Group did not accept the proposal of the Global Forum of Communities Discriminated on Work and Descent to insert the phrase “and ensure” after the word “implement”, since this would not improve the provision.

(e) To mobilize appropriate technical, technological, financial, infrastructural and other necessary resources to enable States Parties, particularly in developing or least developed countries, to fulfil their obligations under the present Convention.

Commentary:

1. Argentina in its oral statement at the 21st session of the WGRTD suggested that the words “with those with few resources or with limited access to them” should be replaced with “particularly in developing countries”. It contended that this is in line with the SDGs. The Expert Drafting Group agreed with this suggestion. However, although the SDGs do reference developing countries only, the Expert Drafting Group suggests that least-developed countries also be added if full justice is to be done to the words replaced.

2. IT for Change recommended the addition of the following two sub-paragraphs:

(f) To ensure that international trade and investment regimes preserve the right of States Parties to regulate, in order that they may autonomously determine their own development destinies.

(g) To reform the international taxation regime to check tax evasion by transnational business entities that thwarts the ability of States Parties to mobilize resources necessary for advancing development goals.

The Expert Drafting Group notes that this paragraph intended to be broad, and thus the above specific proposals are not consistent with the focus and scope of the provision. Specific issues are addressed in paragraph 4 of this draft article.

3. States Parties shall ensure that financing for development and all other forms of aid and assistance given or received by them, whether bilateral, or under any institutional or other international framework, are in compliance with internationally recognized development cooperation principles and consistent with the provisions of the present Convention.

Commentary:

1. China has recommended the following modification: “States Parties undertake to ensure that financing for development, and all other forms of aid and assistance given or received by them, whether bilateral, or under any institutional or other international framework, are [in compliance with internationally recognized international development cooperation principles such as common but differentiated responsibilities] and consistent with the provisions of the present Convention”. The Expert Drafting Group agrees that inclusion of compliance with internationally recognized development cooperation principles strengthens the provision. However, it is not settled if common but differentiated responsibilities is an actual principle of international development cooperation instead of a principle in environmental law on climate change (such as that referred to in the Paris Agreement and the UN Framework Convention on Climate Change).

2. The Special Envoy of the UN Secretary General on Disability and Vulnerability recommended including “bilateral, regional and multilateral”. The Expert Drafting Group has already indicated earlier that “international” includes “regional” in this draft convention. Similarly, “multilateral” is also so included.

4. States Parties recognize their duty to cooperate to create a social and international order conducive to the realization of the right to development by, inter alia:

Commentary:

1. The Expert Drafting Group did not accept the recommendation of Cuba to replace the words “social and international order” with “democratic, just and equitable international order”, since “social and international order is the phrase used in Article 28 of the Universal Declaration of Human Rights and the third preambular paragraph of the 1986 Declaration on

the Right to Development. For the same reason, the Expert Drafting Group did not accept Personhood Education’s proposal to substitute the phrase “duty to cooperate” with “duty to promote”, and “social and international order” with “social and international environment”.

2. The Expert Drafting Group did not accept South Africa’s proposal to delete the “duty to cooperate”, since that would remove the essence of this provision.

3. China recommended adding as the first sub-paragraph below the following: “Enhancing international development cooperation and the international development cooperation pattern that features South-North cooperation as main channel and South-South cooperation as supplements, creating more equal and balanced global development partnership;”. In view of the new principle in draft article 3 related to this subject that States Parties must be guided by in interpretation and implementation of their obligations in the convention, the drafting group does not consider it necessary to reiterate the same in this draft article.

(a) Promoting a universal, rules-based, open, non-discriminatory, equitable, transparent and inclusive multilateral trading system;

Commentary:

1. China recommended that the paragraph be modified as follows: “Promoting a ~~universal~~ [World Trade Organization-centred], rules-based, open, non-discriminatory[, transparent] and ~~equitable~~ [inclusive] multilateral trading system;”. Russia suggested that the words “rules-based” be excluded from the text. It opined that “the active implementation of this concept can lead to a revision of the modern system of international law, which can create serious threats to the stability and security of international relations”. The Expert Mechanism on the Rights of Indigenous Peoples suggested elimination of the word “universal”. The Global Forum of Communities Discriminated on Work and Descent recommended that the words “and encouraging” be added after “promoting”. It also recommended adding the word “transparent”.

2. The commentaries to the 17 January 2020 Draft Convention had pointed out that the words employed in the eight sub-paragraphs sequentially reflect SDGs 17.10, 10.1, 10.5, 10.6, 10.b, 17.6, 17.7, and 10.7. It may be stressed that the language of these sub-paragraphs is a verbatim reproduction of the consensually agreed text of the 2030 Agenda and hence eliminates any scope for controversy or contest. It may finally be highlighted that none of these sub-paragraphs constitute new obligations on States. Their inclusion in the draft convention merely alludes to the fact that operationalizing the right to development for realizing the 2030 Agenda, as with any development agenda at the international level, inheres the duty to cooperate. As such, the Expert Drafting Group does not recommend modifying the language employed in these sub-paragraphs, unless they help strengthen the provisions substantially.

3. Insofar as sub-paragraph (a) is concerned, the Expert Drafting Group considers that the words “inclusive” and “transparent” strengthen the paragraph substantially, and accepts these modifications.

4. Argentina, like China, recommended the specific naming of World Trade Organization. The Expert Drafting Group notes that the multilateral trading system essentially refers to the system currently under the World Trade Organization. As such, there is no necessity of including the name of the organization. It also ensures that the Convention withstands the test of time, whatever the institutional framework is for the multilateral trading system.

(b) Implementing the principle of special and differential treatment for developing countries, in particular least developed countries, as defined in applicable trade and investment agreements;

Commentary:

1. The Expert Drafting Group accepts the Russian Federation’s observation that there is no single definition of “developing countries” in international economic law, but notes that the World Trade Organization accepts Members’ self-description of their status as either developed countries or developing countries. The clause “as defined in applicable trade and

investment agreements” leaves the determination of what “developing countries” are to said agreements.

2. The Expert Drafting Group did not accept the proposal by the Global Forum of Communities Discriminated on Work and Descent to insert the word “affirmative” after the word “special”. The special and differential treatment clause is a technical term with clear definitions under the World Trade Organization system and other regional economic agreements that follow the WTO system. There is no need to modify a settled term. For the same reason, the Modern Advocacy Humanitarian Social and Rehabilitation Association’s proposal is not accepted by the Expert Drafting Group since it deviates from the settled legal definition. Neither does the Expert Drafting Group deem it necessary to insert the proposal of the Organization for Defending Victims of Violence for the phrase “and countries targeted by unilateral coercive measures”.

(c) Improving the regulation and monitoring of global financial markets and institutions, and strengthening the implementation of such regulations;

(d) Ensuring enhanced representation and voice for developing countries, including least developed countries, in decision-making in all international economic and financial institutions, in order to deliver more effective, credible, accountable and legitimate institutions;

Commentary:

1. China recommended that the words “including the International Monetary Fund and the World Bank” be included after “financial institutions”. The Expert Drafting Group notes that the words “economic and financial institutions” are broad enough to accommodate the Bretton Woods institutions and regional development banks, but also others such as Asian Infrastructure Investment Bank and the New Development Bank, amongst others. As such, it is not necessary to specify only the Bretton Woods institutions since they are already covered in addition to others.

2. Global Forum of Communities Discriminated on Work and Descent recommended inclusion of the words “and least-developed countries”. The Expert Drafting Group notes that SDG 10.6 only employs the words “developing countries”. However, considering that the category of “least-developed countries” has its own distinct status and importance, the Expert Drafting Group will include this precise category as it will improve the provision.

3. The Grand Council of the Crees recommended adding the words “and policies” at the end. These words are inherent in the text of the paragraph and as such do not need to be added.

(e) Enhancing capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts;

Commentary:

1. The Expert Drafting Group introduced this new provision to complement Article 15 on specific and remedial measures. This language was taken entirely from Target 17.18 of Agenda 2030 on Sustainable Development.

(f) Encouraging official development assistance, financial flows and foreign investment, including through but not limited to the implementation of any existing commitments, for States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes;

Commentary:

1. Cuba recommended modifying the initial part of the text to “~~Encouraging~~ [Ensuring compliance with] official development assistance and [encouraging] financial flows”. The Expert Drafting Group notes that the language of this paragraph reflects SDG 10.b. However, the Expert Drafting Group also recognizes that SDG 17.2. reads as follows: “Developed

countries to implement fully their official development assistance commitments, including the commitment by many developed countries to achieve the target of 0.7 per cent of ODA/GNI to developing countries and 0.15 to 0.20 per cent of ODA/GNI to least developed countries; ODA providers are encouraged to consider setting a target to provide at least 0.20 per cent of ODA/GNI to least developed countries”.

2. IT for Change recommended modification of the original text to the following: “Encouraging official development assistance and financial flows, including foreign direct investment, to States where the need [for productive capacity and public digital infrastructure creation] is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes;”. The Expert Drafting Group considers these suggestions to be very specific that exclude other needs of the target countries. The open-ended nature of the text as revised is accommodative of all forms of needs including the ones suggested for insertion, and hence, the drafting group does not recommend further modifying the text. In addition, IT for Change recommended that technology transfer be specifically added. The Expert Drafting Group notes that this is already incorporated in sub-paragraph (g) of the 17 January 2020 Draft Convention and renumbered paragraph (h) of this revised draft.

3. The Expert Drafting Group does not accept the Organization for Defending Victims of Violence’s proposal to insert the phrase “and countries targeted by unilateral coercive measures”, since it does not improve the provision.

(g) Enhancing North-South, South-South, triangular and other forms of regional and international cooperation in all spheres, particularly on access to science, technology and innovation, and also enhancing knowledge-sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level and through existing and new mechanisms for global technology facilitation;

Commentary:

1. China recommended deleting the words “North-South, South-South and triangular regional and”. The Expert Drafting Group could not find any compelling reason to do so considering that these words highlight all forms of international cooperation. As such, it does not recommend tampering with the agreed language from SDG 17.6.

2. China also recommended deleting the words “and through a global technology facilitation mechanism”. The Expert Drafting Group notes that these words are drawn from SDG 17.6, however, also notes that in the 2030 Agenda, they are present in the context of the new global technology facilitation mechanism set up under the Agenda. Considering the evolutionary nature of such mechanisms and possible modifications or replacements of this specific mechanism in the future, the Expert Drafting Group agrees that modifications are in order. However, it does not recommend entirely deleting references to the global technology facilitation mechanism but modifying it in the manner suggested in the revised text above.

3. Cuba suggested that the following modification to the first part of the text: “Enhancing North-South, South-South and triangular regional and international cooperation [in all spheres, including the] ~~on and~~ access to science;”. The Expert Drafting Group agrees with this suggestion and has modified the text appropriately.

4. UNESCO recommended adding the word “culture” between “technology” and “innovation”. In view of the addition of the words “in all spheres”, this has become unnecessary.

5. The Grand Council of the Crees has recommended adding the words “including the knowledge of indigenous peoples” after the words “knowledge-sharing”. The Expert Drafting Group notes that in view of draft article 17 and to avoid verbosity in this already modified text-heavy paragraph, no further changes are necessary.

6. Women at the Table has recommended adding the following sentence at the end: “fostering development of technology that is born in the South and addresses the unique needs of the South”. The Expert Drafting Group considers that this text makes the paragraph quite verbose. In addition, the objective of this suggestion seems to be already addressed in

the paragraph. As such, in this case, the Expert Drafting Group does not recommend adding text that modifies the already agreed language of the 2030 Agenda.

(h) Enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change and extreme weather events, addressing the economic, social and environmental impacts of climate change and enhancing access to international climate finance to support mitigation and adaptation efforts in developing and least developed countries, especially those that are particularly vulnerable to the adverse effects of climate change;

Commentary:

1. Pakistan suggested a specific inclusion of the duty to cooperate to tackle climate change and its impacts in this draft article. The Expert Drafting Group agrees that its non-inclusion is a glaring gap in this article. As such, based on the suggestion from Pakistan to formulate the paragraph in terms of UN General Assembly Resolution 74/219 of 19 December 2019, the Expert Drafting Group suggests the text above. This text combines paragraphs 6, 10 and 11 of the aforesaid resolution.

(i) Promoting the development, transfer, dissemination and diffusion of environmentally sound and human rights-compliant technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed;

Commentary:

1. Grand Council of the Crees suggested adding the words “and best practices” after “sound technologies”. The Expert Drafting Group, however, does not recommend this since its inclusion might encourage transfer and dissemination of even best practices, and not just technology, for monetary returns.

2. Women at the Table recommended adding the words “and human rights compliant” after “environmentally sound”. Considering the growing concerns with technologies that intrude on human rights, the Expert Drafting Group agrees that its inclusion will strengthen the paragraph.

3. The Expert Drafting Group did not accept the proposal of the Organization for Defending Victims of Violence to insert the phrase “and countries targeted by unilateral coercive measures” after the phrase “developing countries”, since this does not improve the provision.

(j) Eliminating illicit financial flows by combating tax evasion and corruption, reducing opportunities for tax avoidance, enhancing disclosure and transparency in financial transactions in both source and destination countries and strengthening the recovery and return of stolen assets;

Commentary:

1. Pakistan recommended adding the following paragraph: “Promoting greater financial integrity and transparency to curb illicit financial flows and devise a mechanism for inclusive and legitimate global coordination to address exploitation of resources which exacerbate inequalities and instability by orchestrating a vast wealth transfer from the poorest to the richest and thus undermining the realization of human rights especially the right to development”. Centre for Human Rights, University of Pretoria also recommended inclusion of illicit financial flows in this article. The Expert Drafting Group agrees with this suggestion and recommends relying on the language of paragraphs 23 and 25 of the Addis Ababa Action Agenda for the text.

(k) Assisting developing and least developed countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and addressing the external debt of highly indebted poor countries to reduce debt distress;

Commentary:

1. Pakistan recommended adding a paragraph that addresses debt sustainability. It recommended the following text: “Ensuring debt sustainability for underpinning growth and to achieve the Sustainable Development Goals while acknowledging that debt crises are costly, disruptive, and tend to be followed by cuts in public spending, undermining the realization of the right to development including access to healthcare and education, affecting the poor and vulnerable in particular”. The Expert Drafting Group agrees that debt sustainability needs to be included in this paragraph, however, recommends using the language of SDG 17.4. This is reflected in the text above.

(l) Facilitating safe, orderly and regular migration and mobility of people, including through the implementation of planned and well managed rights-based migration policies.

Commentary:

1. Iran suggested modifying the text to: Facilitating orderly, safe, [and] regular ~~and responsible~~ migration ~~and mobility of people, including through the implementation of planned and well managed rights based migration policies~~. This is a substantial modification of the agreed language in SDG 10.7. As such, the Expert Drafting Group does not recommend this.

2. OHCHR’s Migration Unit advised that the language of the first part of the sentence be modified to “Facilitating ~~orderly~~, safe, [orderly, and] regular ~~and responsible~~ migration and mobility of people”. It opined that while the language of the original text is drawn directly from the 2030 Agenda, it should be updated to reflect the more recent and more human rights-friendly language adopted by the global community on this topic in the Global Compact on Migration”. The Expert Drafting Group agrees with this recommendation.

3. CETIM, in its oral statement at the 21st session of the WGRTD, commented that the reference to “facilitating” migration might be counterproductive for countries of the global south in view of the fact that migration flows towards developed countries when it comes to skilled workers and this might result in brain drain. The Expert Drafting Group considers that this paragraph is aimed at guaranteeing the rights of people on the move, rather than encouraging them to move. This is a fundamental aspect of the Global Compact on Migration and therefore, it is not recommended to modify this paragraph further.

Article 14

Coercive measures

Commentary:

1. China recommended retitling the article to “Unilateral coercive measures”. The Organization for Defending Victims of Violence also recommended the same. The commentaries to the 17 January 2020 Draft Convention had explained that the term “coercive measures” rather than “unilateral coercive measures” was so done to accommodate those coercive measures imposed by two or more States collectively, whether through an international organization or not, that may also be illegal under international law resulting in violation of the right to development. As such, the Expert Drafting Group recommends continuation of the title as “Coercive measures”.

2. Saudi Arabia recommended the deletion of the entire article on the ground that “unilateral coercive measures are still under discussion by the international community, especially in the light of its connection to the concept of countermeasures, which has permitted by international law”. As explained in the commentaries to the 17 January 2020 Draft Convention, in view of the fact that discussions on the precise elements of “unilateral coercive measures” are a work in progress, and to ensure coverage of all illegal coercive measures whether unilateral or by two or more States collectively, it is best to rely on agreed and long-established language. As such, this paragraph incorporates verbatim the most well-known articulation of the principle as enshrined in the UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in

accordance with the Charter of the United Nations, adopted by the UNGA in resolution 2625 (XXV) of 1970. This declaration recognizes fundamental principles firmly embedded in international law and are as such indisputable and not subject to controversy. The Expert Drafting Group therefore strongly recommends retaining the language as it is and bypassing all current efforts at defining “unilateral coercive measures”.

1. The use or encouragement of the use of economic or political measures, or any other type of measure, to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights in violation of the principles of the sovereign equality of States, the freedom of consent of States or applicable international law constitutes a violation of the right to development.

Commentary:

1. The Expert Drafting Group did not accept China’s recommendation to include the word “unilateral” before “measure”, for the same reasons indicated above.

2. Brazil recommended adding the word “unlawful” after “use of”. This paragraph establishes what constitutes the very unlawfulness of measures amounting to coercive and hence there is no need for inclusion of this word.

3. Cuba recommended adding the word “self-determination” after the word “principles of”. The Expert Drafting Group recalls that the words “in violation of the principles of the sovereign equality of States and freedom of consent” are drawn from the UN Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties, adopted by the UN Conference on the Law of Treaties in 1968 as an annex to the VCLT.³⁸ Considering the main objective of this paragraph to avoid reopening definitions and debates on the elements of coercive measures, the Expert Drafting Group strongly recommends following the precise language of these instruments. In any case, the right to self-determination is inherent in sovereign equality of States.

4. The Special Envoy of the UN Secretary General recommended adding the words “civil, social and cultural” after “political”. For reasons noted above, Expert Drafting Group does not recommend any modification in the language drawn from resolution 2625.

2. States Parties shall refrain from adopting, maintaining or implementing the measures referred to in paragraph 1.

Commentary:

1. Brazil recommends adding the word “unlawful” before “measures”. The drafting group notes that the previous paragraph establishes the unlawfulness of coercive measures and hence the suggestion is superfluous.

2. Iran recommended reformulating the entire provision as follows:

“1. States Parties shall refrain from taking, adopting, maintaining or implementing the coercive measures that may adversely affect the right to development.”

2. The use or encouragement of the use of economic, political or any other type of measure to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights in violation of the principles of the sovereign equality of States and freedom of consent constitutes a violation of the right to development.”

The Expert Drafting Group does not see any qualitative difference between the original text and the reformulated one, except the changing of order of the two paragraphs. There is no compelling reason for the reordering.

3. Qatar proposed including a third paragraph: “States Parties shall refrain from assisting or participating in the measures referred to in paragraph 1 of this Article.” The Expert Drafting Group is of the view that this proposal is superfluous, since Article 41 of the International Law Commission’s 2001 Draft Articles on the Responsibility of States for

³⁸ See, Final Act of the United Nations Conference on the Law of Treaties, A/CONF.39/26.

Internationally Wrongful Acts strictly prohibits States from recognizing or otherwise participating in illegal situations.

4. The Expert Drafting Group likewise does not accept the proposal of the Organization for Defending Victims of Violence (e.g. “States Parties shall refrain from taking, adopting, maintaining or implementing the illegal unilateral coercive measures referred to with all their extraterritorial effects, which create obstacles to trade relations among States, thus impeding the full realization of the right to development.”). As previously discussed, the Expert Drafting Group stands with widest and the most accepted formulation of this principle on coercive measures under UNGA Resolution 2625.

Article 15

Specific and remedial measures

Commentary:

1. Ecuador has recommended replacing the word “remedial” with “corrective”. The Special Envoy of the UN Secretary General on Disability and Vulnerability suggested that the more appropriate term for “special or remedial measures” is “affirmative actions”, which “legally is the correct term and the one that has been used by the UN treaty bodies during the last decade”. As the commentaries to the 17 January 2020 Draft Convention indicate, the term “special measures” is in fact used in CEDAW,³⁹ ICESCR,⁴⁰ and CERD.⁴¹ CRPD uses the term “specific measures”.⁴² None of the core human rights treaties uses the terms “remedial measures”. However, the title of draft article 15 introduces this term in addition to the commonly used “special measures” to indicate that while some right-holders and States may need “special measures” due to situations not necessarily resulting from denials of their rights or other injustices (for instance, children that are vulnerable owing to their age, or States that are vulnerable to natural hazards), some do need measures aimed at remedying historical injustices or marginalization (for instance, indigenous peoples, afro-descendants, or least developed countries with a colonial past). The essence of the right to development is that development is not a charity but a right. As such, measures which are aimed at providing assistance to those who have been denied their abilities to enjoy or realize the right to development ought not to be treated only as “special measures”, but as something they are entitled to as a matter of right. This is captured by the term “remedial measures”.⁴³ As such, the Expert Drafting Group recommends retention of the title as it is.

2. The Expert Drafting Group notes the observations of the Russian Federation in its oral statement to bolster or strengthen this provision, as well as the comments of the Holy See that no other human rights treaty refers to remedial measures. The Expert Drafting Group formulated this provision mindful of the United Nations General Assembly Resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005. Article 23 of the International Covenant on Economic, Social and Cultural Rights provides that States Parties to the ICESCR “agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions...”.

3. The Expert Drafting Group notes, but does not draw factual conclusions, from the comments of Al Haq and Al-Mezan, MAAT for Peace, as well as Finn Church Aid.

³⁹ Article 4

⁴⁰ Article 10(3)

⁴¹ Articles 1(4) and 2(2)

⁴² Article 5(4)

⁴³ The Supreme Court of United States has acknowledged the close relationship between affirmative action and remedial purpose. See, *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989).

4. The Expert Drafting Group partly accepted the proposal of the Committee on the Rights of Persons with Disabilities to indicate the title as “Specific and remedial measures”, rather than “Special and remedial measures”.

1. States Parties recognize that certain human persons, groups and peoples, owing to their marginalization or vulnerability because of race, colour, sex, language, religion, political or other opinion, nationality, statelessness, national, ethnic or social origin, property, disability, birth, age or other status, including as human rights defenders, may need specific and remedial measures to accelerate or achieve de facto equality in their enjoyment of the right to development. Specific and remedial measures can include, among others, enabling the full, effective, appropriate and dignified participation of such human persons, groups and peoples in decision-making processes, programmes and policymaking that affect their full and equal enjoyment of the right to development, without subjecting them to structural, environmental or institutional constraints or barriers.

Commentary:

1. A number of respondents recommended more specificity in the text of this paragraph. Cuba recommended the following modification: “States Parties recognize that certain ~~human~~ natural persons, groups and peoples, owing to their age, [situation of] disability, ~~marginalization~~, [or] vulnerability, ~~indigeneity~~ or minority status, ~~may require~~ [demand the adoption of] special or remedial measures to accelerate or achieve de facto equality in their enjoyment of the right to development”. Ecuador suggested adding the words “sex, gender identity or sexual orientation, condition of human mobility, ethnicity, illness or condition of minority,” after the word “vulnerability”. Egypt recommended deleting the word “vulnerability”. The Holy See recommended deletion of the entire second sentence. The German Institute for Human Rights criticized the text for “completely lacking a gender reference”. The Human Rights Commission of Mexico City expressed concern about the open-endedness of terms such as ‘vulnerability’ and the potential of being misused. The German Institute for Human Rights and the Centre for Human Rights, University of Pretoria, urged the inclusion of human rights defenders as marginalized or vulnerable. A number of respondents also requested reference to sex, gender identity and sexual orientation. Soroptimist International recommended adding “marital status” and “migration status”. Global Forum of Communities Discriminated on Work and Descent recommended including the words “descent and work based discriminated communities” after “marginalization”. FAO has recommended that the following sentence be added at the end: “States Parties shall, when the circumstances so warrant, take such measures to ensure for all the full and equal enjoyment of the right to development”. The National Alliance of Women’s Organizations UK preferred reference only to “sex”, and not “gender” as one of the prohibited grounds of discrimination, while the Centre for Human Rights, University of Pretoria preferred otherwise. The Sikh Human Rights Group wanted the expansion of other grounds of discrimination to include “cultures, traditions, customs, festivals, and/or outlooks”. Organization for Defending Victims of Violence proposed including “economic sanctions” as a prohibited ground of discrimination.

2. The Expert Drafting Group notes that in view of all these suggestions, it recommends using the language of draft article 8(1) which enlists a number of grounds for discrimination that must be prohibited. It suggests retaining the broad words “marginalization and vulnerability” but qualifying those with the forms of discrimination in draft article 8(1). It also accepts the recommendation for inclusion of “human rights defenders”. The text has accordingly been modified.

3. UNESCO has recommended adding the words “online and offline” at the end of the paragraph. For reasons already discussed earlier, the Expert Drafting Group does not consider the context of the paragraph as fitting for this inclusion.

2. States Parties recognize that developing and least developed countries, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages including of an economic, technical or infrastructural nature, may require specific and remedial measures through mutually agreed international legal instruments, policies, and practices for ensuring equal realization of the right to

development by all human persons and peoples. Such measures may, as appropriate, include:

Commentary:

1. Cuba, Iran and Argentina recommended the deletion of “vulnerable States”. Argentina contended that “we should avoid setting up new subcategories of countries that have not been agreed upon at the international level, and that may water down international cooperation for developing countries set out in the 2030 Agenda and the SDGs, for example, SDG 17”. The Expert Drafting Group agrees with this rationale to delete “vulnerable States” and recommends adding “least developed countries” as suggested by Iran, since this is indeed a separate accepted category.
2. Cuba also recommended replacing the word “enjoyment” with “realization”. In the context of States, the Expert Drafting Group agrees that the latter is a more accurate term.
3. Global Forum of Communities Discriminated on Work and Descent recommended adding the words “like racism, casteism and caste based discrimination” after “historical injustices”. The Grand Council of the Crees recommended adding “colonization” after “historical injustices”. The Expert Drafting Group considers that the term “historical injustices” is aimed at accommodating all forms of injustices including the ones suggested for inclusion. It is not necessary to list specific types of injustices in this paragraph and it is best to keep the text broad and accommodative.
4. The Grand Council of the Crees also recommended adding the words “and indigenous peoples” after “vulnerable States” in the original text. The Expert Drafting Group is of the view that “peoples” are covered and better situated in sub-paragraph 1.
5. The Holy See proposed its own sentence (e.g. “States Parties recognize that developing and vulnerable States, owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require special or remedial measures through mutually agreed international legal instruments, policies and practices for ensuring equal enjoyment of the right to development by all human persons and peoples.”). The Expert Drafting Group does not find a substantial difference in the proposal, other than in the use of the word “special” and the phrase “equal enjoyment”, which do not, in themselves, improve the content of the provision.
6. The Expert Drafting Group rejected the inclusion of the phrase “economic sanctions”, as well as the phrase “specific or remedial measures such as an effective compensation mechanism for UCM victims”, that was proposed by the Organization for Defending Victims of Violence. The proposal does not improve the content of the provision and instead causes confusion.

(a) Recognition of common but differentiated responsibilities, taking into account different national circumstances;

(b) The provision of special and differential treatment;

Commentary:

1. Global Forum of Communities Discriminated on Work and Descent recommended adding the words “like affirmative actions” at the end. The drafting group notes that special and differential treatment is a term of art employed in the context of WTO, and as such, the suggestion is not recommended for inclusion.

(c) Preferential terms on trade, investment and finance;

(d) The creation of special funds or facilitation mechanisms;

(e) The facilitation and mobilization of financial, technical, technological, infrastructural, capacity-building or other assistance;

Commentary:

1. Women at the Table recommended adding the words “that addresses the needs of those traditionally excluded from the conversation and creation of new technologies” at the

end. The Expert Drafting Group notes that this paragraph is to be read in the context of its chapeau which alludes to various forms of situations that result in exclusion from the table. As such, there is no need for inclusion of these words here.

2. The Expert Drafting Group notes the comment of the National Human Rights Commission of Mauritius that there should be more emphasis on technological assistance. The emphasis, however, will not necessarily improve the paragraph.

(f) Other mutually agreed measures consistent with the provisions of the present Convention.

Commentary:

1. Ecuador suggested addition of a new paragraph as follows: “Facilitate the ascending social development of populations in situations of vulnerability through their inclusion in the labour market and the encouragement and support for the implementation of productive enterprises”. The Expert Drafting Group notes that the context of this paragraph is specific or remedial measures at the international level for developing and least-developed countries that are disadvantaged due to the stated reasons. This suggestion by Ecuador does not fit within this context.

2. IT for Change recommended a new paragraph as follows: “The extension of the transition period for LDCs as well as ending non-violation complaints under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)”. The Expert Drafting Group notes that this very specific suggestion is an active subject of negotiation at the WTO and it would not be possible to circumvent their outcomes by means of this convention. As such, the Expert Drafting Group does not recommend such specific demands made at the WTO for inclusion in this article.

3. All Win Network recommended adding a new paragraph: “None of the above shall exempt States Parties from the duty to fully realize the right to development for all”. The Expert Drafting Group considers this suggestion to be superfluous in view of the direct reference to the right to development in the chapeau.

4. People for Successful Correean Reunification recommended the inclusion of a third paragraph to the article to the effect: “State Parties receiving special and/or remedial assistance shall, under a good faith obligation to cooperate, undertake measures with assisting State Parties to accelerate or achieve de facto equality of vulnerable groups”. It also recommended that similar paragraph be introduced in draft article 13 relating to the duty to cooperate. The Expert Drafting Group observes that draft article 13(3) already stipulates that “States Parties undertake to ensure that financing for development, and all other forms of aid and assistance given or received by them, whether bilateral, or under any institutional or other international framework, are [in compliance with internationally recognized development cooperation principles and] consistent with the provisions of the present Convention”. Since the obligations of recipients of financing and all forms of aid and assistance are already covered, there is no need for a repetition of this principle.

Article 16

Equality between men and women

Commentary:

1. Russian Federation considered it inappropriate to include article 16 “Gender equality” to the draft. It was of the view that CEDAW is devoted to this issue. Iran recommended to modify the title to “Equality of opportunities”. Alliance VITA suggested to modify the title to “Equality between men and women” to bring it in sync with CEDAW. On the other hand, a number of respondents strongly supported the contents of the draft article as well as its title and made recommendations for strengthening it, especially to include note just women and girls, but also those with non-binary or alternative gender identities. The German Institute for Human Rights observed that “it seems problematic that the draft convention (in Article 16) remains committed to an older understanding of gender equality, and thus Article 8 does not

explicitly list the prohibition of discrimination based on sexual orientation and gender identity”. Ecuador proposed to include the criterion “older women” apart from references to “women and girls”. The Philippines proposed to include “lesbian, gay, bisexual and transgender people”. Nigeria, with the support of Egypt, opposed the use of gender equality as the title, and said that language consistent with CEDAW should be used. South Africa and Panama supported the article as drafted. Modern Advocacy Humanitarian Social and Rehabilitation Association wanted new elements to the article beyond what is already covered in international instruments. The Committee on the Rights of the Child wanted explicit references to children. The Alliance Defending Freedom and CINGO opposed references to gender equality and sought to use the language in CEDAW.

2. The Expert Drafting Group notes that the objective of this draft article, as reflected in the substantive provisions, is addressing discrimination against women and girls specifically, and not gender inequality in a broader sense. The intention is to place a spotlight on compliance with obligations undertaken by States Parties under CEDAW, as indicated in the commentaries to the 17 January 2020 Draft Convention. The overall obligation of States not to discriminate on the basis of sexual orientation and gender identities are incorporated in draft articles 8 and 15(1). As such, the Expert Drafting Group agrees with the critique that the title of this draft article which speaks to gender equality is not in sync with the limited focus on women and girls in the substantive paragraphs to follow. For this reason, the Expert Drafting Group modified the title to “Equality of men and women” as drawn from the text of CEDAW. In terms of the usage of “gender equality” in the substantive paragraphs below, the National Alliance of Women’s Organizations, United Kingdom, urged that the word be eliminated in favour of an explicit reference to “all women and girls”. It opined that this change of wording strengthens the purpose of the paragraph. It further noted that “the use of the term ‘gender’ has changed over time. Its original intention was to ensure that women and girls were not excluded from roles traditionally ascribed to men and to recognise discrimination based on sex. Overtime this term has been used differently. In some cases it reduces the rights of women and girls”. In light of this valid argument, and for reasons stated above, the Expert Drafting Group also recommends eliminating references to the “gender equality” from the substantive provisions below.

1. States Parties, in accordance with their obligations under international law, shall ensure full equality for all women and men, and shall adopt measures, including through temporary special measures as and when appropriate, to end all forms of discrimination against all women and girls everywhere so as to ensure their full and equal enjoyment of the right to development.

Commentary:

1. A number of respondents, such as German Institute for Human Rights, the National Human Rights Commission of Mauritius, UNODC, the Global Forum of Communities Discriminated on Work and Descent, the Legal Resources Centre, the Amman Center for Human Rights Studies, the Fundacion para Estudio e Investigacion de la Mujer, Conscience and Peace Tax International, suggested incorporation of gender diverse persons in this provision. As indicated above, these suggestions were clearly made because of the somewhat misleading title “gender equality” and its use in the substantive provisions which limited the context only to women, girls and men. For reasons spelt out above, the Expert Drafting Group recommends retaining the focus of this draft article to equality for women and girls.

2. Cuba recommended adding the words “and empowerment” after “equality”. The Expert Drafting Group considers that the word “equality” signifies a substantive obligation on States whereas “empowerment” is a means to discharge that legal obligation within the undertaking to “adopt measures”. As such, the drafting group does not recommend adding the word “empowerment”.

3. Ecuador and the National Alliance for Women’s Organizations, United Kingdom recommended replacing the words “undertake to take” with “undertake to adopt”. The Expert Drafting Group agrees with this suggestion.

4. Ecuador also recommended replacing the word “equality” with “equity”. It opined that the global feminist movement has incorporated this term instead of “equality”. It further noted that “while gender equality is a universal legal principle, gender equity also introduces

an ethical component to ensure real equality that somehow compensates the inequality that the female gender entrains in terms of politics, representation or insertion in the labour market, among others; so that especially the condition of women with disabilities become included in all spheres of society". The Expert Drafting Group notes that it had considered the use of "equity" while preparing the 17 January 2020 Draft Convention. However, it decided not to employ this term in view of the strong exhortation by the Committee on Elimination of Discrimination Against Women, which, in its General Recommendation No. 28 on the core obligations of States Parties under article 2 of CEDAW noted that "States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention".⁴⁴ As such, the Expert Drafting Group does not recommend employing the term "equity" in this paragraph.

5. Ecuador also recommended adding the words "and violence" after "all forms of discrimination". The Expert Drafting Group observes that eliminating all forms of violence is already covered in paragraph 2, as a specific means by which discrimination can be eliminated. It would be repetitive to add the words again here.

6. Iran recommended deleting the words "full gender equality" and replacing it with "equality of opportunities permitting the full realization of human potentials for all women and men". The Expert Drafting Group has already recommended elimination of the reference to "gender". Insofar as the suggestion for the new text is concerned, these are already implicit in the words "to ensure their full and equal enjoyment of the right to development".

7. Iran also suggested that the words "in accordance with its national circumstances and priorities" be added at the end. The Expert Drafting Group does not recommend this since it significantly weakens the provision. The text should not permit a situation where national circumstances and priorities are used as a pretext to avoid taking of measures to ensure full equality between women and men.

8. Nigeria proposed replacing the phrase "gender equality" with "equality of rights for all women and men". As already indicated above, the phrase "gender equality" is already removed.

9. UNESCO recommended introducing the words "online and offline". For reasons explained earlier, the Expert Drafting Group does not consider this to be contextual.

10. Soroptimist International recommended adding the words "in all aspects of their life ensuring the realization of their civil, cultural, economic, political and social rights" at the end. The drafting group notes that these words are not necessary since the right to development cannot be realized at the cost of any human rights, as is evident from provisions in Parts I and II of the draft convention.

11. The Philippines in their oral statement at the 21st session of the WGRTD recommended revising the text to include "ensure equal and equitable access to and control over resources".

2. To that end, States Parties shall adopt appropriate measures, individually and jointly, inter alia:

Commentary:

1. The National Alliance of Women's Organizations, UK, and Soroptimist International recommended replacing the word "take" with "adopt". The Expert Drafting Group agrees with this recommendation.

2. Soroptimist International recommended replacing the words "separately and jointly" with "individually and collectively". The Expert Drafting Group recommends the words "individually and jointly" to use the language common to draft articles 19, 22 and 13(2).

⁴⁴ CEDAW/C/GC/28, para.22.

(a) To prevent and eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres online and offline, including trafficking and sexual and other types of exploitation;

Commentary:

1. Cuba and Alliance VITA recommended adding the words “including trafficking and sexual and other types of exploitation” at the end. The Expert Drafting Group agrees with this recommendation since these are part of SDG 5.2 from which the paragraph is otherwise drawn.
2. Ecuador suggested adding the word “prevent” before “eliminate”. The Expert Drafting Group agrees that this suggestion strengthens the paragraph.
3. Ecuador further recommended replacing the word “girls” with “children, adolescents, women with disabilities and older women, as holders of rights”, similar to the proposal of the Committee on the Rights of Persons with Disabilities. The Expert Drafting Group does not recommend this since all these categories are covered in the words “women and girls” employed in the 2030 Agenda and in CEDAW.
4. Turkey proposed this statement: “To eliminate, prevent and respond to all forms of violence and harmful practices against all women and girls in the public and private spheres both online and offline; to prevent and combat stereotypes and negative social norms and their manifestations in the public and private spheres; to recognize and value unpaid care and domestic work.” The Expert Drafting Group partly agrees with the first clause of this statement, and submits that the next two clauses are already covered in the above formulation and reference to “other types of exploitation”.
5. UNESCO recommends adding the words “online and offline”. The drafting group considers that the context of this paragraph permits such inclusion alongside the words “public and private spheres” and as such recommends its addition.
6. Legal Resources Centre recommended adding the words “with special focus on women belonging to marginalized sections”. The Expert Drafting Group does not recommend adding these words since there are multidimensional factors resulting in violence and harmful practices against women and in view of such intersectionality, it is not useful to stress only on women belonging to marginalized sections.
7. INGO proposed adding the phrase “including trafficking and sexual and other types of exploitation.” The Expert Drafting Group agrees with this recommendation.

(b) To ensure women’s full, equal, effective and meaningful participation and equal opportunities for leadership at all levels in the conceptualization, decision-making, implementation, monitoring and evaluation of policies and programmes in political, economic, cultural and public life, and within legal persons;

Commentary:

1. Ecuador, Global Forum of Communities Discriminated on Work and Descent and All Win Network recommended certain linguistic changes or additions to the text. In the opinion of the Expert Drafting Group, they do not make improvements to the text but are alternative ways of formulating the paragraph. The Expert Drafting Group recommends adhering to the agreed language employed in SDG 5.5.
2. UNESCO recommended adding the word “cultural” after “economic”. The Expert Drafting Group agrees that this strengthens the text.
3. National Alliance of Women’s Organizations, UK, and Soroptimist International recommended expanding the words “full and effective participation” to “full, equal, effective and meaningful participation”. They observed that this is agreed language from CSW65 paragraph 9,⁴⁵ on the priority theme, “women’s full and effective participation and decision-making in public life, as well as the elimination of violence, for achieving gender equality and the empowerment of all women and girls” and is therefore directly relevant to this

⁴⁵ E/CN.6/2021/L.3

paragraph. The Expert Drafting Group agrees that this articulation is more comprehensive and will do more to promote women's inclusion in leadership and decision-making.

4. Iran recommended adding the words "in accordance with their obligations under international law and their national law". The Expert Drafting Group notes that paragraph 1 of this draft article already recognizes that the rest of the provisions are in accordance with obligations under international law. As such, a repetition here is not necessary. The Expert Drafting Group does not recommend adding the words "national law" since domestic law may be contrary or not in harmony with these obligations.

5. The Holy See recommended insertion of the phrase "in virtue of their equal dignity and unique contributions", which does not, in the Expert Drafting Group's view, strengthen the paragraph and renders it confusing, almost as if women's full, equal, effective, and meaningful participation and equal opportunities for leadership were conditioned on their unique contributions. Likewise, CINGO's insertion of "active, free and meaningful" before the word "participation" does not strengthen the paragraph.

(c) To adopt and strengthen policies and enforceable legislation for the promotion of equality of opportunities and the empowerment of all women and girls at all levels;

Commentary:

1. Recommendations were made by some respondents to add other gender identities after "women and girls". In light of the elimination of the word "gender equality" and retention of the focus of this article on women and girls, these suggestions are no more relevant.

2. Iran recommended adding the words "of opportunities". The Expert Drafting Group agrees with this recommendation.

(d) To incorporate and mainstream gender perspectives into the formulation, adoption, and implementation of all national laws, policies and practices and international legal instruments, policies, and practices;

Commentary:

1. Ecuador recommended replacing the word "mainstream" with "incorporate". The Expert Drafting Group does not recommend replacing the words but rather employing both.

2. Iran recommended adding the words "national-led" before "gender perspectives". The Expert Drafting Group does not consider this suggestion as strengthening the provision. As such, it does not recommend the modification suggested.

(e) To ensure equal and equitable access to, and control over, the resources necessary for the full realization of the right to development by women and girls everywhere;

Commentary:

1. For reasons explained above, the drafting group considered the suggestions from some respondents for including gender diverse identities as not relevant to this draft article.

2. The Philippines in its oral comments at the 21st session of the WGRTD recommended adding the words "and control over" before "resources". The drafting group agrees with this suggestion.

3. IT for Change recommended adding the words "women's collectives and cooperatives" before "everywhere". The drafting group notes that the provision is drafted in the context of realization of the right to development by women and girls as the right-holders. Women's collectives and cooperatives are not the holders of the right to development as independent legal persons. Therefore, the suggested modification is not recommended.

4. National Alliance of Women's Organizations, UK, recommended adding the words "education and other services". Soroptimist International recommended "high quality education and services". The drafting group agrees with including the words "quality education" in line with the 2030 Agenda. It also accepts the recommendation to add "services". However, drafting group considers it better to add a separate paragraph to this effect rather than combine quality education and resources.

(f) To ensure equal and equitable access to quality education and services necessary for the full realization of the right to development by women and girls everywhere;

Commentary:

1. This addition reflects the suggestions for inclusion of education and other services in this draft article, as discussed in the commentary to the previous paragraph.

(g) To realize the women, peace and security agenda and ensure the full, effective and meaningful participation of women in the prevention and resolution of armed conflicts and in peacebuilding for the maintenance and promotion of peace and security at all levels.

Commentary:

1. National Alliance of Women's Organizations, UK, and Soroptimist International submitted identical suggestions for inclusion of the following additional paragraph: "To realize the women, peace and security agenda and recognize the important role of women in the prevention and resolution of armed conflicts and in peacebuilding to address peace and security at all levels as an essential element for the realization of the right to development". They noted that "this proposal references CSW65 paragraphs 8 & 57, and Preamble paragraph 7 of this draft convention. It seeks to emphasize the importance of gender, peace and security to the right to development and connects article 16 with article 21". The Expert Drafting Group agrees that it is important to incorporate the women, peace and security agenda in this draft article, but recommends a stronger language as suggested in the revised text above based on paragraph 57 of CSW65.

Article 17

Indigenous peoples

Commentary:

1. The Expert Mechanism on the Rights of Indigenous Peoples, FAO and Russia recommended eliminating the term "tribal" in view of the fact that the UN Declaration on the Rights of Indigenous Peoples subsumes that term within "indigenous". The Expert Drafting Group agrees with this recommendation both in the title and in the substantive paragraphs below.

2. Legal Resources Centre suggested that the words "indigenous" and "tribals" are problematic in the African context and to better reflect their realities, suggested the words "customary communities". The Expert Drafting Group does not recommend accepting this modification in light of the universal agreement over the term "indigenous" in the UNDRIP.

1. Indigenous peoples have the right to freely pursue their development in all spheres, in accordance with their own needs and interests. They have the right to determine and develop priorities and strategies for exercising their right to development.

Commentary:

1. Cuba recommended deletion of the words "economic, social and cultural development" and replacing them with "development in all spheres". The Expert Drafting Group agrees with this suggestion since it also accommodates development in the civil and political spheres, inherent in the definition of the right to development in draft article 4. The Expert Drafting Group also accepts FAO's proposal to use the phrase "in accordance with their own needs and interests". The Expert Mechanism on the Rights of Indigenous Peoples recommended adding the words "In accordance with the provisions of the Declaration on the Rights of Indigenous Peoples" at the beginning. The Expert Drafting Group does not consider this necessary or useful. The reference to the UNDRIP is obvious from the very language and the commentaries.

2. In accordance with international law, States Parties shall consult and cooperate in good faith with the indigenous and tribal peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Commentary:

1. Brazil recommended entirely replacing the paragraph with language from ILO Convention 169. The Expert Drafting Group notes that this Convention is ratified by only 23 States and contains language that is much weaker than the UNDRIP which adopts a higher threshold for rights and obligations. As such, the Expert Drafting Group recommends adhering to the language of UNDRIP, qualified by the phrase “in accordance with international law”.

2. Ecuador recommended linguistic changes to the formulation of this paragraph. The Expert Drafting Group strongly recommends adhering to the agreed language of article 19 of UNDRIP. Ecuador also recommended addition of paragraphs that are not part of the UNDRIP, which the Expert Drafting Group declined.

3. States Parties shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

Commentary:

1. The Expert Mechanism and FAO recommended incorporation of article 32 of the UNDRIP since its context is different from the previous paragraph which is limited to legislative or administrative measures in line with article 19 of the UNDRIP. The Expert Drafting Group agrees with this recommendation.

Article 18

Prevention and suppression of corruption

States Parties recognize that corruption presents a serious obstacle to the realization of the right to development. To this end, States Parties shall, individually and jointly:

- (a) Promote and strengthen measures to prevent and combat corruption;**
- (b) Promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;**
- (c) Promote integrity, accountability and proper management of public affairs and public property;**
- (d) Ensure financial integrity and transparency in international financial architecture, taxation, and transactions.**

Commentary:

1. The Expert Drafting Group introduces this new provision in this Revised Draft Convention, noting the centrality of challenges brought by corruption to the realization of the right to development. The language adopted here is drawn from Article 1 of the United Nations Convention on Corruption, with some modifications. The Expert Drafting Group also draws inspiration from Human Rights Council Resolution 47/7, The negative impact of corruption on the enjoyment of human rights, A/HRC/RES/47/7, 26 July 2021.

Article 19

Prohibition of limitations on the enjoyment of the right to development

States Parties recognize that the enjoyment of the right to development may not be subject to any limitations except insofar as they may result directly from the exercise of the limitations on other human rights applied in accordance with international law.

Commentary:

1. Iran recommended deleting all the words after “limitations”. Instead, it recommended adding the words “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”. The Expert Drafting Group considers that this latter suggestion is probably an error since it reflects the right to self-determination and is not relevant to this paragraph. Insofar as the suggestion for deletion of the latter part of the text is concerned, the drafting group does not recommend this. The commentaries to the 17 January 2020 Draft Convention discuss in detail the rationale behind the text suggested for deletion. In short, draft article 18 takes a pragmatic approach in using the words “except insofar as they may result directly from the exercise of limitations on other human rights applied in accordance with international law” to avoid prescribing any imprecise and ultimately unworkable limitations directly on the right to development but acknowledges that it may in practice still be limited if a State Party exercises limitation on some other human right in accordance with international law.

2. Saudi Arabia recommended adding the phrase “other than the restrictions stipulated in the law and are necessary to protect national security, public order, health, or morality, or the rights and freedoms of others”. The Expert Drafting Group does not recommend adding these words for reasons explained in the commentaries to the 17 January 2020 Draft Convention. The current text takes care of concerns raised by Saudi Arabia. To cite the illustration provided in the said commentaries, a limitation on the right to liberty of movement may be legally imposed by a State to protect national security or public health in accordance with the ICCPR.⁴⁶ This may also then result in limitation on the right to participate in, contribute to or enjoy development in some form or the other. This would not be a violation of the Convention.

3. The Expert Drafting Group notes the concern of the Russian Federation about the phrase “the enjoyment of the right to development may not be subject to any limitations”. However, this phrase is immediately qualified by the exception, and as such, adequately addresses the question.

Article 20

Impact assessments

1. States Parties undertake to take appropriate steps, individually and jointly, including within international organizations, to establish legal frameworks for conducting prior and ongoing assessments of actual and potential risks and impacts of their national laws, policies and practices, and international legal instruments, policies and practices, and of the conduct of legal persons that they are in a position to regulate to ensure compliance with the provisions of the present Convention.

Commentary:

1. Soroptimist International recommended replacing the word “take” with “adopt”. The Expert Drafting Group does not recommend this modification. “Adopt” is better suited for

⁴⁶ ICCPR, article 12(3).

“measures”. Changes to that effect have been made in other provisions. “Take” is better suited for “steps”.

2. States Parties shall take into account any further guidelines, best practices or recommendations that the Conference of States Parties may provide with respect to impact assessments.

Commentary:

1. Soroptimist International recommended adding the words “seek to implement” after “take into account”. The Expert Drafting Group suggests that the text be retained as it is. Best practices and recommendations are essentially advisory in nature and States Parties need to have the agency to determine their implementation in their own contexts.

2. Ecuador and the National Human Rights Institution of El Salvador recommended adding a paragraph or specifying the right to participate. The Expert Drafting Group does not consider this necessary since the words “to ensure compliance with the provisions of the present Convention” necessarily include the right to participate in and contribute to development.

3. Centre for Human Rights, University of Pretoria, recommended adding two more paragraphs as follows:

“3. States Parties and international organisations shall take all necessary steps, particularly through human rights, social and environmental impact assessments, to respect and protect human rights in all development initiatives and plans.

4. States parties shall ensure that any decision-making processes or actions regarding national development plans shall be in accordance with their human rights obligations and shall take all necessary steps to ensure that such decisions and actions do not contribute, cause, or be directly linked to human rights abuses and violations in the course of development”.

The Expert Drafting Group considers that the first suggestion is a repetition of paragraph 1. The second paragraph is covered adequately in the draft convention and in any case is better suited in other provisions considering the context of this draft article.

Article 21

Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data from official and other sources, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

Commentary:

1. Soroptimist International recommended that the words “statistical and research” be replaced with “quantitative and qualitative”. It also recommended adding the words “and use data collected by other agents of development”. The Expert Drafting Group notes that the language of this paragraph is identical to article 31 of CRPD. There is no compelling reason to modify this agreed language in a human rights treaty. Additionally, the undertaking to collect appropriate information applies to all sources.

2. UNODC proposed to include the phrase “and disseminate” after the word “collect”. The Expert Drafting Group is of the view that this changes the burdens for States Parties in regard to data collection, since dissemination is not inherent in data collection. For the same reason, including a new paragraph requiring States Parties to “comply with United Nations Fundamental Principles of Official Statistics” would be too prescriptive, and potentially a greater burden for many developing countries that might have their own data collection systems in place.

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for privacy online and offline;

Commentary:

1. UNESCO recommended adding the words “online and offline” at the end. The Expert Drafting Group agrees this is appropriate for this provision.

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with the present article shall be disaggregated, as appropriate, and used by the State Party to assess the implementation of its obligations under the present Convention and to identify and address the obstacles to the full realization of the right to development.

Commentary:

1. Ecuador, FAO and Soroptimist International suggested qualifying the disaggregation of data with specific parameters. However, the list varied in each case. The Special Envoy of the UN Secretary General on Disability and Vulnerability instead suggested referring to specific vulnerable groups such as indigenous peoples, afro-descendants, older persons etc. Cuba on the other hand recommended deletion of the entire reference to disaggregation. The National Human Rights Commission of Mauritius wanted clarification as to the components of disaggregated data. The Expert Drafting Group notes that it is impossible to get a consensus on the mandatory elements of disaggregation for incorporation in a convention. In addition, it is not sure whether a one-size-fits-all approach is ideal. For this reason, the Expert Drafting Group considers that adhering to the agreed language of article 32(2) of CRPD is the best way forward. As such, it strongly recommends retaining the words “as appropriate”.

2. China recommended the following modification: “The information collected in accordance with the present article shall be disaggregated, as appropriate, and used [by States Parties] to help to assess[, according to its laws, regulations and policies,] the implementation of States Parties² [its] obligations under the present Convention and to identify and address the [its own] obstacles to the full realization of the right to development”. The Expert Drafting Group notes that this suggestion appears to be motivated by the fear of abuse of data collected by a State Party to impede the realization of the right to development of right-holders in other States. It partly agrees with the recommendations and the modifications are reflected in the revised text above, but considers that the words “according to its laws, regulations and policies” are superfluous and inherent in the context and text of this paragraph and draft article. Insofar as the suggestion to replace “the obstacles” with “its own obstacles” is concerned, it appears to limit the obligation to address only the obstacles a State Party faces but not those that it creates for others. The Expert Drafting Group considers that this negates the external and collective dimensions of obligations of States with respect to the right to development and hence does not recommend making this modification.

3. States Parties shall assume responsibility for the dissemination of these statistics in a manner consistent with the objective of fully realizing the right to development for all.

Commentary:

1. Ecuador recommended adding a new paragraph to the effect: “Based on the compilation of data and statistics, the States Parties undertake to build public policies for the welfare of the most vulnerable groups that allow their economic inclusion and upward social mobility”. The Expert Drafting Group notes that this is unnecessary in view of the objective of statistics and data collection by States Parties as noted in paragraph 1, which is, “to enable them to formulate and implement policies to give effect to the present Convention”.

2. UNODC proposed to include the words “open and transparent” before the word “dissemination” and “data” before the word “statistics”. The Expert Drafting Group is of the view that these do not necessarily strengthen the paragraph.

Article 21

International peace and security

- 1. States Parties reaffirm their existing obligations under international law to promote the establishment, maintenance and strengthening of international peace and security in consonance with the principles and obligations contained in the Charter of the United Nations, including the peaceful settlement of disputes.**
- 2. To that end, in accordance with international law, States Parties undertake to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that the world's human, ecological, economic, and technological resources can be used for the full realization of the right to development for all.**
- 3. States Parties undertake to promote peace and inclusive societies within their territories for the full realization of the right to development for all.**

Commentary:

1. The National Human Rights Institution of El Salvador recommended that the draft article should incorporate the principles related to the right to development and human rights in general in all national and international activities related to disarmament and reconstruction after the armed conflicts, peace and democracy. The National Human Rights Commission of Nigeria noted that this draft article does not address key concerns on the obligations of states to ensure peace and security of lives and properties within their territories and their responsibility to protect civilians and other vulnerable populations in conflict and peace time. The Expert Drafting Group agrees that the article, as it stands, lacks an equal focus on the importance of promoting peace within the territories of States Parties. As such, drawing on the language of SDG 16, the Expert Drafting Group recommends the above addition. This language is broad enough to accommodate all different elements of peacebuilding.
2. Russian Federation submitted that “in the context of the NPT, both the nuclear Powers and the non-nuclear-weapon States have obligations for the non-proliferation of nuclear weapons, but not the complete disarmament”. It further noted that “the NPT regulates legal relations in the field of nuclear disarmament in the most general terms, limiting itself by establishing the “framework” of this process and not encroaching on the prerogatives of nuclear Powers conducting substantive negotiations on this issue or taking unilateral measures to limit and reduce their nuclear capabilities”. It insisted that “there is no norm in modern international law on prohibition of the possession of nuclear weapons and the use of their strategic deterrence”. In conclusion it opined that “paragraph 2 of article 21 of the draft suggests a fundamentally different approach to regulating interstate relations in the field of nuclear arms control and nuclear disarmament. We consider it expedient either to exclude it, or to limit ourselves to the wording that the parties will take all measures to fulfil their previous obligations in this area”.
3. At the outset, the Expert Drafting Group recalls that draft article 21 is necessitated in view of article 7 of the DRTD which stipulates that “All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries”. The commentaries to the 17 January 2020 Draft Convention noted that the specific undertaking incorporated in this draft article is “to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control”. This may be contrasted with article VI of the Nuclear Non-Proliferation Treaty which stipulates that “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith [...] on a Treaty on general and complete disarmament under strict and effective international control”. Although the language of “strict and effective international control” is included in paragraph 2, the main focus of the provision is

not on pursuing negotiation on a potential treaty but rather on “pursuing collective measures”. This formulation does not limit options of States to only pursuing a global treaty. The words “collective measures” indicate the reality that although the objective of general and complete disarmament undoubtedly ought to be pursued, any success therein will be dependent on collective action being taken by all armed States. A failure to comply with this provision would therefore generally be collective, and not of any individual State. In addition, the Expert Drafting Group considers that “complete and general disarmament” is a “universal principle”⁴⁷ as elaborated in the Final Document of the Tenth Special Session of the General Assembly. The text as presented does not create any new obligations for States and is entirely in sync with existing rights and obligations, including with relation to nuclear arms.

4. The Expert Drafting Group accepts the Holy See’s proposal to include the word “technological” in paragraph 2 of this draft Article 22.

Article 23

Sustainable development

States Parties, individually and jointly, undertake to ensure that:

- (a) Laws, policies and practices relating to development at the national and international levels are aimed at and contribute to the realization of sustainable development, consistent with the Parties’ obligations under international environmental law, climate change law, and human rights law;**
- (b) Their decisions and actions do not compromise the ability of present and future generations to realize their right to development;**

Commentary:

1. The Holy See proposed inserting the words “and integral” before the word “development” in subparagraph (a) of this Article 23. The Expert Drafting Group understands the Holy See’s internal use of the phrase “integral development” or “integral human development”, but finds that this phrase is idiosyncratic to the practices and laws within the Holy See and is not enshrined or recognized yet in existing international law, whether in the 1986 Declaration on the Right to Development or all other norms of international human rights law in treaties or customary international law. It may well be the case that this phrase may gain acceptance and become part of human rights law in the future – in which case the language of subparagraph (a) in referring to “human rights law” will not foreclose the possibility of considering this phrase. At this juncture, however, introducing this phrase would bring both ambiguity and confusion to the provision on sustainable development in this Article 23.

2. The Expert Drafting Group accepted Argentina’s proposal to insert the words “present and” before the word “future” in subparagraph (b) as it strengthens the provision. Subparagraph (b), as worded, also addresses the concern of CINGOs for a definition of sustainable development.

- (c) The formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable development are made fully consistent with the provisions of the present Convention and other obligations for realizing sustainable development in international law.**

Commentary:

1. Iran recommended adding the words “and based on cultural backgrounds and national circumstance of member States” at the end. The Expert Drafting Group does not recommend adding such a text that may weaken the import of the provision or provide a reason to dilute

⁴⁷ https://www.un.org/disarmament/wp-content/uploads/2017/07/A-268-2017-2_Report-OEWG-SSODIV.pdf

the obligations contained in this convention. Additionally, the provision applies to both national and international levels.

2. Saudi Arabia suggested that the article be rephrased to indicate that “nation should take the appropriate measures to ensure the implementation of the provisions of this Convention”. The Expert Drafting Group notes that this is a reiteration of the obligation in paragraph (a) and as such it is unnecessary to rephrase this paragraph.

3. The Commissioner for Fundamental Rights of Hungary suggested the following reformulation: “The formulation, adoption and implementation of all ~~such~~ laws, policies and practices aimed at realizing ~~sustainable development~~ [the present Convention] are made fully consistent with the ~~provisions of the present Convention~~ [concept of sustainable development]”. By way of justification, it was noted that this paragraph seems to give preference to the right to development over sustainable development. It was suggested that “this could be a questionable approach in an era when climate change and the loss of biodiversity – just to name two of the most pressing environmental problems – require mankind to accelerate a global shift towards a more sustainable development”. The Expert Drafting Group notes that the draft article does not create a hierarchy between the right to development and sustainable development but rather highlights the symbiotic and interdependent relation between the two. Therefore, paragraph (a) of this draft article in fact comprises the obligation of States to realize the right to development in a manner that contributes to sustainable development. Paragraph (c) consciously goes in the other direction to highlight that the mutually dependent relation.

4. Argentina recommended adding the words “and international law” at the end on the ground that “policies related to sustainable development should not only be adapted to this convention but also to all obligations under international law”. The Expert Drafting Group agrees with this suggestion but recommends the words “and other obligations for realizing sustainable development in international law”.

5. Iran recommended to include a new paragraph as follows: “Recognizing that a true sustainable development is achieved when all nations equally enjoy opportunities to thrive and prosper and when no State seizes such opportunity to the detriment of the others”. The Expert Drafting Group notes that this language is well suited for a resolution or declaration but not a legally binding instrument.

6. Pakistan suggested addition of a new paragraph to highlight the significance of international cooperation and collective responsibility in achieving the SDGs. The Expert Drafting Group, for reasons indicated earlier, does not recommend referring to the SDGs or the 2030 Agenda in the substantive provisions since these are by nature evolutionary. It is likely that new agendas will be adopted after 2030 as well as new SDGs. In any case, the obligation related to international cooperation is highlighted by the words “individually and jointly” in the chapeau of this draft article.

7. Legal Resources Centre recommended adding a new paragraph, to reflect the language of the Brundtland Commission Report of 1987, as follows: “(d) Their actions will mainstream sustainable development at all levels, integrating economic, social and environmental aspects and recognizing their interlinkages, to achieve sustainable development in all its dimensions”. The drafting group considers that the notion of sustainable development is much more multidimensional today than the focus on interlinkages between the economic, social and environmental aspects. There are political, cultural, and other aspects that have enriched the notion of sustainable development as reflected by the 2030 Agenda. As such, the Expert Drafting Group does not recommend limiting the notion of sustainable development to the one first developed in 1987.

8. The Holy See proposed the insertion of the word “integral” before the word “development”. For reasons previously discussed, the Expert Drafting Group declines the suggestion.

9. Bangladesh proposed a new paragraph (e.g. “The effective global partnership for sustainable development, based on a spirit of strengthened international cooperation and solidarity.”), which is appropriate for a resolution or declaration, but not a legally binding instrument. Similarly, the Special Envoy of the UNSG on Disability and Vulnerability’s

proposal to incorporate SDG 4.7 in Article 23 on sustainable development is very specific and fact-intensive, and would not be appropriate for a legally binding instrument.

Article 24

Harmonious interpretation

1. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention. To that end, the United Nations and its specialized agencies are under an obligation to promote the right to development.

Commentary:

1. Club Ohada Thiès suggested that the provision “does not specifically mention how the United Nations and its specialized agencies will be required to promote the law”. Additionally, it opined that it is necessary to specify how the specialized agencies should work harmoniously. The Expert Drafting Group considers these suggestions to be beyond the scope of this draft convention. The mandates of specialized agencies are governed by their own constitutions. Their relations with the United Nations are governed by specific agreements in accordance with article 63 of the Charter of the United Nations. It is adequate in this paragraph to recognize that they are under an obligation to promote the right to development.

2. The Holy See observed that “it is inappropriate in a legally binding instrument to define the obligations of another international body”. The Expert Drafting Group submits that the above formulation does not do that. When the right to development is enshrined in a human rights treaty through an approved Convention, it forms part of international human rights law, which the United Nations is obligated to promote under Article 1(3), Article 55 and 56 of the Charter of the United Nations.

2. The provisions of the present Convention shall not affect the rights and obligations of any State Party deriving from any existing international law, except where the exercise of those rights and the discharge of those obligations would contravene the object and purpose of the present Convention. The present paragraph is not intended to create a hierarchy between the present Convention and other international law.

Commentary:

1. Cuba recommended that the words “international agreements” be replaced with “international instruments”. The Expert Drafting Group assumes that this suggestion is made to accommodate obligations flowing from customary international law as well that may be reflected in instruments other than treaties. The Expert Drafting Group notes that “instruments” may include “soft law” and it would be problematic to suggest that there is no hierarchy between this convention and “soft law” instruments. Therefore, in the context of this provision, the Expert Drafting Group recommends specifically adding the words “customary international law”.

2. The Special Envoy of the UN Secretary General on Disability and Vulnerability suggested adding a new paragraph as follows: “The provisions of the present Convention shall not be interpreted in any case as impairing the human rights and obligations of State Parties enshrined in human rights treaties of the United Nations system”. The Expert Drafting Group considers that this would be a repetition of paragraph (2). Additionally, such a paragraph is not found in any of the core human rights treaties based on the principle firmly embedded in international law that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing.

Part IV

Commentary:

1. Brazil recommended deletion of the entire Part IV, while the Russian Federation recommended just providing periodic reports, conducting an independent internal assessment, but without further expert review and a complaints procedure.
2. The Expert Drafting Group strongly recommends against complete deletion. All core human rights treaties establish treaty bodies. Not having any mechanism for reviewing the effective implementation of the Convention will render it largely ineffective. Giving the authority to the Conference of States Parties to establish the implementation mechanism can address the recommendation of the Russian Federation.

Article 25

Conference of States Parties

1. A Conference of States Parties is hereby established.
2. **The Conference of States Parties shall keep under regular review the effective implementation of the Convention and any related legal instruments that the Conference of States Parties may in future adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To that end, the Conference of States Parties shall:**
 - (a) **Periodically examine reports by States Parties on the implementation of their obligations under the Convention and the obstacles that they face in the realization of the right to development, in light of the object and purpose of the Convention. In this regard, the Conference of States Parties may refer such reports to the implementation mechanism contemplated under Article 27 of the present Convention;**

Commentary:

1. The National Human Rights Commission of Mauritius suggested adding reporting periods in this provision. The Expert Drafting Group advises against doing so. As the commentaries to the 17 January 2020 Draft Convention discuss, there is no specific provision requiring States Parties to report nor is there any timeframe indicated for how periodically States Parties may report. This silence is entirely intentional and indicates that the reporting envisaged is voluntary and not mandatory. The voluntary nature of reporting under this draft convention is in view of the voluminous human rights reporting that States Parties already engage in under other human rights treaties or mechanisms, including the Universal Periodic Review mechanism. Considering that the right to development requires development to be consistent with and based on all other human rights, it is likely that States Parties may have reported already on a particular issue elsewhere, and hence, it would be prudent to leave reporting under this draft convention to the discretion and wisdom of each State Party.
 - (b) **Promote and facilitate the open exchange of information on measures adopted by States Parties to address the realization of the right to development, taking into account the differing circumstances, responsibilities and capabilities of States Parties and their respective obligations under the Convention;**
 - (c) **Promote, develop and periodically refine, in accordance with the provisions of the present Convention, the methodologies and best practices for States Parties to assess the status of the realization of the right to development;**

Commentary:

1. All Win Network recommended adding the words “and any new laws or human rights actions that develop from this day on from passing of the Convention”. The Expert Drafting Group does not recommend this. It is not for the Conference of States Parties under this convention to assess generally new laws or human rights actions. The Conference of States

Parties can do so only if they help assess the status of the realization of the right to development. That is already inherent in the broad language of paragraph (c).

2. The Expert Drafting Group notes the Philippines comment that the Conference of States Parties may also further explore appropriate and effective accountability and enforcement mechanisms. The Expert Drafting Group is of the view that such a consideration could be set in the agenda of the Conference of States Parties, without requiring inclusion of that exact language in Article 25 of this Revised Draft Convention.

3. The Expert Drafting Group notes UNODC's recommendation to include the words "and indicators" right after the phrase "best practices" in subparagraph (c). This specific measurement tool, in the view of the Expert Drafting Group, would unnecessarily bind this provision to a quantitative modality that could be outmoded in the future. It is more prudent to leave this phrase off of Article 25.

(d) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and governmental and non-governmental bodies;

Commentary:

1. China recommended adding the words "based on the principle of non-objection by States Parties". The Expert Drafting Group does not recommend this. The Conference of States Parties, in accordance with paragraph 3, has the full authority to adopt its own rules of procedure, including decision-making. As such, it is best left to the Conference of States Parties to agree on the rules for seeking the services and cooperation of and information provided by the sources referenced in this draft article.

(e) Consider and adopt regular reports on the status of implementation of the Convention, and ensure their publication;

(f) Make recommendations on any matters relevant to the implementation of the Convention, and ensure their publication;

(g) Exercise such other functions as are required for the achievement of the object and purpose, as well as the aims, of the Convention.

3. The first session of the Conference of States Parties shall be convened by the Secretary-General of the United Nations no later than six months after the entry into force of the present Convention. At its first session, the Conference of States Parties shall adopt its own rules of procedure, which shall include decision-making for matters not already stated in the Convention.

4. The Conference of States Parties shall meet in public sessions, except as otherwise determined by it, in accordance with its rules of procedure.

5. All States not party to the present Convention, specialized agencies, funds and programmes of the United Nations system, other international organizations, United Nations human rights mechanisms, regional human rights bodies, national human rights institutions and non-governmental organizations with consultative status with the Economic and Social Council may participate as observers in the public sessions of the Conference of States Parties. The Conference of States Parties may, in accordance with its rules of procedure, consider requests from, or may invite, other stakeholders to participate as observers.

Commentary:

1. International-Lawyers.Org suggested that the participation of non-governmental organizations should be guaranteed through more specific provisions in this convention and provision should be made in the treaty to ensure that the participation of non-state actors is geographically equitable. The Expert Drafting Group does not recommend any such modifications. The participation for non-governmental organizations should not be excluded simply because there happens to be less representation from any one geographical region. Anyone qualified non-governmental organization willing to participate should be permitted. It was additionally suggested that consideration should be given to the creation of a system for grants to non-governmental organizations for their participation. Setting up such systems

that require budgetary considerations is beyond the scope of what can be included in this convention.

2. Grand Council of the Crees recommended the following addition: “Procedures shall also be devised to enable the participation of indigenous peoples’ representatives”. The Expert Drafting Group agrees that participation of indigenous peoples’ representatives is important but considers that this can be ensured by receiving consultative status with the ECOSOC. Additionally, in line with the last sentence of the paragraph, requests for participation can be made to the Conference of States Parties. It is recommended that specific procedures to open up participation for specific actors and stakeholders be left to the Conference of States Parties to decide in accordance with paragraph 3 of this draft article.

3. Soroptimist International recommended removing the words “as Observers”. The justification seemed to suggest an understanding that by being observers, non-governmental organizations would not be able to participate in the processes but only observe. The Expert Drafting Group notes that the category of “observers” within the UN processes is to distinguish those who can vote and those who cannot. It does not exclude participation. Instead, the status of observers facilitates the provision of speaking time. As such, it is not recommended that the words “as observers” be removed.

4. CETIM, in its oral statements at the 21st session of the WGRTD, strongly suggested that the words “other stakeholders” should not include private companies. It noted with concern the lobbying by private companies in the United Nations system for decades and considered that permitting them to participate in the sessions of the Conference of States Parties could be detrimental. The Expert Drafting Group does not agree that participation of private companies, ipso facto, is problematic. Private companies can also play a positive role in promoting the right to development and their participation should in fact be welcome. The provision does not trigger an automatic right to private companies as “other stakeholders” to participate in the processes of the Conference of States Parties. Should a private company be voluntarily interested to contribute, it must make a request, and the Conference of States Parties can consider that request. Additionally, what procedures the Conference of States Parties may adopt for such consideration is to be developed in accordance with paragraph 3 and adequate safeguards can be incorporated therein.

6. The Conference of States Parties shall be held annually as part of the sessions on the Working Group on the Right to Development.

Commentary:

1. China recommended that the words “as part of” be replaced by “during”. The Expert Drafting Group considers that this suggestion allows the Conference of States Parties and the sessions of the Working Group to be conducted simultaneously. The commentaries to the 17 January 2020 Draft Convention provide the rationale for the words “as part of”. As indicated therein, paragraph 6 seeks to harmonize the role and mandate of the Conference of the States Parties with the existing IGWG-RTD. It is likely that some States that may not be parties to the convention may still be interested in pursuing the realization of the right to development by non-conventional means and may want to participate actively in the IGWG-RTD annual sessions. Likewise, States that are parties to the convention may also want to actively participate in the IGWG-RTD sessions. In principle, it is prudent to ensure a close working relation between the two bodies without diluting their respective mandates, roles and independence. As such, paragraph 6 stipulates that “the Conference of the States Parties shall be held annually as part of the sessions of the Open-Ended Intergovernmental Working Group on the Right to Development”. The commentaries also suggested that an ideal template could be that the first two days of the week (Monday and Tuesday) in which the IGWG-RTD annual sessions take place could be devoted to the Conference of the States Parties and the IGWG-RTD could be held for three days thereafter (Wednesday to Friday). Since both are, in principle, open public sessions, this format will ensure the best working relation between the two bodies. Alternatively, the Conference of the States Parties could take place on the last two days of the preceding week (Thursday and Friday of the week before), although this may not be as financially efficient. For these reasons, the Expert Drafting Group does not recommend replacing the words “as part of” with “during”.

7. Special sessions of the Conference of States Parties shall be held at such other times as it may deem necessary, or upon the request of any State Party, in accordance with its rules of procedure.

8. The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, the Working Group on the Right to Development and the high-level political forum on sustainable development.

Commentary:

1. The Special Envoy of the UN Secretary General on Disability and Vulnerability suggested adding a provision for participation in the “Meeting of the Chairpersons of the UN Human Rights Treaty Bodies” which is an important and formal occasion in the area of human rights, and in addition, is the direct channel to reach the human rights treaty bodies. The Expert Drafting Group does not consider this to be necessary. The participation in such meetings would be automatic, however, it will need to be decided by the Conference of States Parties whether the participation will be by the Chairperson of the Conference or by the Chair of the Implementation Mechanism.

2. The Holy See’s proposal of referring to “other relevant bodies of the UN” is well-taken, but for this purpose, it is deliberate on the part of the Expert Drafting Group to require reportorial transmittal to key entities within the UN that would have the greatest stake in examining the status of realization of the right to development. If such entities become *functus officio*, then the obligation to transmit such reports will not necessarily subsist without amendment of this provision.

Article 26

Protocols to the Convention

- 1. The Conference of States Parties may adopt protocols to the present Convention.**
- 2. The text of any proposed protocol shall be communicated to States Parties at least six months before consideration.**
- 3. The requirements for entry into force shall be established by that instrument.**
- 4. Decisions under any protocol shall be taken only by the States Parties to the protocol concerned.**

Commentary:

1. The Expert Drafting Group notes the Philippines’ comment concerning multi-stakeholder agreements, but nevertheless submits that this proposal is best left to the prospective Conference of States Parties. All Win Network recommended adding the word “solely” before “to the protocol concerned”. The Expert Drafting Group considers this unnecessary and repetitive.

Article 27

Establishment of an implementation mechanism

- 1. At its first session, the Conference of States Parties shall establish an implementation mechanism to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention.**

Commentary:

1. International-Lawyers.Org suggested that the implementation mechanism should be created by the treaty itself and not left to the first session of the Conference of States Parties.

It also recommended that this mechanism could be modelled on the committees currently found in other core human rights treaties. Recommendations for stipulating the number of experts were also made by the Catholic Inspired NGOs and the National Human Rights Commission of Mauritius. The commentaries to the 17 January 2020 Draft Convention had indicated the rationale behind the provision. While the provision requires establishment of an independent mechanism, it does not provide for any details in terms of how many members it shall comprise. This is aimed at providing flexibility to the Conference of the States Parties to make its own determination dependent on factors such as number of ratifications by the first session and the available secretarial and financial resources. However, the commentaries strongly suggested that the Conference of the States Parties takes special care to avoid duplication. In particular, States Parties should take into account the recent establishment of the expert mechanism by the Human Rights Council through resolution A/HRC/42/L.36 adopted on 27 September 2019 “to provide the Council with thematic expertise on the right to development in searching for, identifying and sharing with best practices among Member States and to promote the implementation of the right to development worldwide”.⁴⁸ This expert mechanism comprises five independent experts to serve for a three-year period with the possibility of being re-elected for one additional period.⁴⁹ The commentaries strongly recommended that States Parties mandate the same expert mechanism established under resolution A/HRC/42/L.36 to also act as the implementation mechanism under the draft convention. This will avoid duplication of efforts, fragmentation of the law, and conflicting interpretations, and will also ensure best use of human and financial resources.

2. Soroptimist International suggested adding “monitoring, review” before “the implementation and promotion”. For reasons explained above, the Expert Drafting Group does not recommend this since the monitoring and reviewing role, to a large extent, is also with the Conference of States Parties. It is best to avoid this language in paragraph 1 and specify the roles in paragraph 3 below.

3. Alliance Defending Freedom (ADF) and CINGO respectively proposed their own implementation mechanisms and reportorial mechanisms. The Expert Drafting Group submits that this decision is for the Conference of States Parties.

2. The implementation mechanism shall consist of independent experts, consideration being given to, inter alia, gender balance and equitable geographic representation as well as to an appropriate representation of different legal systems.

Commentary:

1. The Expert Drafting Group reformulated this provision to take into account comments of Cuba, Iran, Pakistan, the Special Envoy of the UNSG on Disability and Vulnerability, the National Human Rights Commission of Mauritius, Alliance Defending Freedom International, and the Committee on the Rights of Persons with Disabilities. The insertion of the words “inter alia” provides flexibility in considering other possible bases of representation necessary as may be determined by the Conference of States Parties.

3. The implementation mechanism shall:

(a) Adopt general comments or recommendations to assist in the interpretation or implementation of the provisions of the Convention;

Commentary:

1. Personhood Education recommended deletion of the word “interpretation”. The Expert Drafting Group does not recommend this. All human rights treaty bodies play an important role in giving content to the provisions in various treaties by interpreting them in their general comments and recommendations.

(b) Review obstacles to the implementation of the Convention at the request of the Conference of States Parties;

Commentary:

⁴⁸ Paragraph 29.

⁴⁹ For full details of the structure, see A/HRC/42/L.36, adopted on 27 September 2019, paragraph 29-34.

1. China recommended the following change: “Review obstacles to the implementation of the Convention at [the request of all States Parties at] the Conference of States Parties”. The Expert Drafting Group declines the recommendation, since the Conference has full authority to determine its own rules of procedures as well as those of the implementing mechanism. Whether the request for review of obstacles envisaged in this paragraph should be made with consensus or any form of majority at the Conference, should be left for the Conference to decide.

2. All Win Network recommended adding the words “and shall oversee any obstacle and work with the State Party to ensure implementation” at the end. The Expert Drafting Group does not recommend this at all. The suggested words create an oversight mandate for the implementation mechanism which goes much beyond its objectives.

(c) Review requests by rights holders to comment on situations in which their right to development has been adversely affected by the failure of States to comply with their duty to cooperate, as reaffirmed and recognized under the present Convention;

Commentary:

1. China and Iran suggested deletion of this entire paragraph so that the implementation mechanism would not have such a mandate. Russian Federation raised concern regarding the fact that the paragraph provides the implementation mechanism the opportunity to consider situations of violations of rights under the convention not only in relation to States Parties, but also third States not participating in this Convention. It further observed that “We believe, however, that this rule should be critically evaluated in light of article 34 of the 1969 Convention, which contains a general rule that “a treaty does not create either obligations or rights for a third State without its consent”. It is our understanding that, having assumed the general obligation to cooperate under international law, the State – not being a party to the future Convention – did not give its consent to the consideration of any communication regarding itself by the implementation mechanism”.

2. In relation to the above, the commentaries to the 17 January 2020 Draft Convention had noted that “the mandate contemplated here is not that of a typical complaint procedure by right-holders against their States for individually failing to realize their right to development obligations internally. The mandate to “review requests” is limited to those situations of violations which result from the failure of States to comply with “their duty to cooperate”. This focus on violations by States of their duty to cooperate is a significant value-added over existing mechanisms under the current core human rights treaties that do not focus on this aspect. The commentaries also explained that the term “States” rather than “States Parties” employed in sub-paragraph (c) is intentional so as to permit the implementation mechanism to also review situations of violations of rights under this convention resulting from failure by a non-Party State or States, either separately or jointly with States Parties, to comply with the general duty to cooperate under international law. The words “as reaffirmed and recognized under the present Convention” reflect the language of draft article 13 and reinforce the existence of the duty to cooperate both under general international law and under this draft convention. The drafting group notes that the paragraph does not create a complaints mechanism at all where the State is a respondent, and its consent might become necessary. Rather the focus here is on the implementing mechanism “commenting” on situations where States fail in their duty to cooperate resulting in the right to development of the right-holders being adversely affected. The scope of these comments should be understood in the context of the following words in paragraph 1 – “facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention”. This language excludes any process of naming and shaming. Comments can relate to observations and suggestions on facilitating the discharge of the duty to cooperate by States in a manner that helps realize the right to development better. Finally, the precise scope and procedures with respect to this paragraph can be decided by the Conference of States Parties, which has the discretion to shape them in the manner necessary. As such, the Expert Drafting Group retains this paragraph.

3. Cuba recommended deleting the word “adversely”. The Expert Drafting Group does not see the deletion as improving the provision.

4. All Win Network recommended adding a new paragraph as follows: “Hold quadrennial review sessions of compliance by States Parties, accompanied by shadow reports by civil society to seek ways of coming to grips with challenges encountered”. The Expert Drafting Group declines this recommendation. The mandate to decide on the procedures to be followed by the Implementing Mechanism is best left with the Conference of States Parties for reasons discussed earlier.

(d) Undertake any other functions that may be vested by the Conference of States Parties.

4. The Conference of States Parties shall adopt rules of procedure for the operation of the implementation mechanism.

Part V

Article 28

Signature

1. The present Convention shall be open for signature by all States and international organizations at United Nations Headquarters in New York as of _____.

Article 29

Consent to be bound

1. The present Convention shall be subject to ratification, approval or acceptance by signatory States.

Commentary:

1. Cuba recommended deletion of “approval or acceptance”. The Expert Drafting Group could not find any reason why these means of signifying consent to be bound by a treaty recognized in the Vienna Convention on the Law of Treaties should be eliminated.

2. Notwithstanding the obligations of international organizations existing under international law and the present Convention, the consent of signatory international organizations to be bound by the present Convention shall be expressed through an act of formal confirmation.

3. The present Convention shall be open for accession by any State or international organization that has not signed the Convention.

Article 30

International organizations

Commentary:

1. China and Iran recommended deletion of this article. The effect of this would be to exclude international organizations from having the possibility to be parties to the convention. Russian Federation was of the view that “based on the specific subject of the treaty, it will be appropriate to refer only to the States among the subjects responsible for its implementation, since they have primary responsibility to ensure the rights of their population. Moreover, it is not typical for human rights international treaties to consider international organizations as its parties”.

2. The commentaries to the 17 January 2020 Draft Convention provided the rationale behind inclusion of international organizations as possible parties. Draft article 29 corresponds almost identically to article 44 of the CRPD, with the difference that the latter covered only regional integration organizations whereas the present draft article applies to the broader category of international organizations. The CRPD is unique among all existing core human rights treaties, in that, it permits regional integration organizations to join as Parties. The justification for a legally binding instrument on the right to development permitting not just regional integration organizations but international organizations in general is strong. Regional integration organizations have a direct correlation with the subject matter of this draft convention. Indeed, the objectives of regional integration cannot in general be delinked from development. But, the same can also be said about many international organizations, including international financial institutions, other specialized agencies and related organizations of the United Nations, as well as independent ones such as the WTO.⁵⁰ Clearly, therefore, there is significant value in international organizations being able to join as Parties to the convention. The Expert Drafting Group thus urges retention of this Article.

1. International organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.

2. References to “States Parties” in the present Convention shall apply to such organizations within the limits of their competence.

3. For the purposes of article 30, paragraph 1, and article 31, paragraphs 2 and 3, any instrument deposited by an international organization shall not be counted.

4. International organizations, in matters within their competence, may exercise their right to vote in the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization may not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 31

Entry into force

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.

2. For each State or international organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 32

Reservations

1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.

2. Reservations may be withdrawn at any time.

Commentary:

⁵⁰ The banks among the Bretton Woods institutions are “development banks” and the WTO’s institutional objective, as noted in the commentary to draft article 22, includes sustainable development.

1. The Expert Drafting Group introduces this new provision to eliminate and foreclose any possible ambiguity as to the status of reservations that could be entered with respect to this Convention. Paragraphs 1 and 2 are wholly derived from the 1969 Vienna Convention on the Law of Treaties.

Article 33

Amendments

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties that have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of the present article that relates exclusively to articles 24, 25 and 26 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article 34

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 35

Dispute settlement between States Parties

Any dispute between two or more States Parties with respect to the interpretation or application of the present Convention that has not been settled by negotiation may, upon agreement by the parties to the dispute, be referred to the International Court of Justice for a decision.

Commentary:

1. China recommended deletion of this article. Russian Federation noted that if this approach is adopted, it will create a potential risk that a significant number of cases related to the obligations of private companies will be sent to the Court. The drafting group notes that the provision is drafted in the most non-controversial manner. It does not require parties

to accept compulsory jurisdiction of the ICJ. Instead, it prescribes that the dispute “may” be referred to the ICJ for decision, but “only upon agreement by parties to the dispute”. This cooperative approach rather than a traditional adversarial approach to dispute settlement, even though it is in the context of adjudication, is entirely in sync with the duty to cooperate enshrined throughout the draft convention. In addition, inter-State complaints regarding violations of the right to development are likely to relate to matters of inter-State relations in areas such as trade, finance, investment, or the environment, amongst others, which may be covered by specific dispute settlement mechanisms under special regimes or agreements. As such, pragmatism and the objective of avoiding fragmentation of dispute settlement procedures dictates that parties agree mutually before a dispute is brought before the ICJ under this draft convention. In light of this, the concern raised by Russian Federation simply does not arise. If the relevant States parties do not agree to refer the dispute to the ICJ, there will be no case subject to litigation there.

2. On the other hand, International-Lawyers.Org recommended that the provision make reference to the ICJ compulsory. For reasons stated above, this is not possible or feasible in the context of this convention.

Article 36

Accessible format

The text of the present Convention shall be made available in accessible formats.

Article 37

Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article 38

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

Annex

Revised draft convention on the right to development in tracked changes

Preamble

The States Parties to the present Convention,

~~*PP1 Acknowledging that the realization of the right to development is a common concern of humankind,*~~ [moved to PP13]

~~*PP2 Concerned at the existence of serious obstacles to the realization of the right to development constituted, inter alia, by poverty, inequality within and across countries, climate change, colonization, neo colonization, forced displacement, racism, conflicts, aggression and threats against national sovereignty, national unity and territorial integrity, and the denial of other human rights,*~~ [moved to PP14]

~~*PP3 Emphasizing that the right to development is an inalienable human right of all human persons and peoples, and that equality of opportunity for development is a prerogative both of nations and of individuals who constitute nations,*~~ [moved to PP15]

~~*PP4 Recognizing that development is a comprehensive economic, social, cultural, civil and political process that aims at the constant improvement of the well being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,*~~ [moved to PP16]

~~*PP5 Reaffirming the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all civil, cultural, economic, political and social rights, including the right to development,*~~ [moved to PP18]

~~*PP6 Recognizing that the realization of the right to development constitutes both the primary end and the principal means of sustainable development, and that the right to development cannot be realized if development is not sustainable,*~~ [moved to PP19]

~~*PP7 Considering that peace and security at all levels is an essential element for the realization of the right to development and that such realization can, in turn, contribute to the establishment, maintenance and strengthening of peace and security at all levels,*~~ [moved to PP20]

~~*PP8 Recognizing that good governance and the rule of law at both the national and international levels is essential for the realization of the right to development, and that such realization is vital for ensuring good governance and the rule of law,*~~ [moved to PP21]

*PP1 Guided by all the purposes and the principles of the Charter of the United Nations, especially those relating to the achievement of international cooperation in solving international problems of an economic, social, cultural, **environmental** or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all, without distinction of any kind,*

*PP2 Recalling the obligation of States under **articles 1(3), 55 and 56 of the Charter of the United Nations** to take joint and separate action in cooperation with the Organization for the promotion of higher standards of living, full employment and conditions of economic and social progress and development; solutions of international economic, social, health and related problems; international cultural and educational cooperation; and universal respect for, and observance of, human rights and fundamental freedoms for all, without distinction **as to race, sex, language or religion** of any kind,*

~~*PP3 Considering Reaffirming*~~ that, under the provisions of the Universal Declaration of Human Rights, everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized, and that everyone, as a member of society, is entitled to the realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the

economic, social and cultural rights indispensable for her or his dignity and the free development of her or his personality,

PP4 Recalling the provisions of all human rights treaties, **as well as other international instruments, including** the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas,

PP5 Reaffirming the Declaration on the Right to Development, adopted by the General Assembly on 4 December 1986,

PP6 Recalling the reaffirmation of the right to development in several international declarations, resolutions and agendas, including the Rio Declaration on Environment and Development ~~of 1992~~, the Vienna Declaration and Programme of Action ~~of 1993~~, the Cairo Programme of Action of the International Conference on Population and Development ~~of 1994~~, the Copenhagen Declaration on Social Development and ~~the~~ Programme of Action of the World Summit for Social Development ~~of 1995~~, the Beijing Declaration and Platform for Action ~~of 1995~~, **the Rome Declaration on World Food Security of the World Food Summit**, the United Nations Millennium Declaration ~~of 2000~~, **the Durban Declaration and Programme of Action**, the Monterrey Consensus of the International Conference on Financing for Development ~~of 2002~~, **the Declaration of Principles and Plan of Action adopted at the World Summit on the Information Society, the Tunis Agenda for the Information Society, the 2005 World Summit Outcome of 2005**, the United Nations Declaration on the Rights of Indigenous Peoples ~~of 2007~~, the outcome document of the high-level plenary meeting of the General Assembly on the Millennium Development Goals ~~of 2010~~, the **Istanbul Programme of Action for the Least Developed Countries for the Decade 2011–2020**, the outcome documents of the thirteenth session of the United Nations Conference on Trade and Development, **held in 2012**, the outcome document of the United Nations Conference on Sustainable Development **entitled** “The future we want” ~~of 2012~~, the quadrennial comprehensive policy review of operational activities for development of the United Nations system ~~of 2012~~, the SIDS Accelerated Modalities of Action (SAMOA) Pathway ~~of 2014~~, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development ~~of 2015~~, the 2030 Agenda for Sustainable Development and the Sustainable Development Goals ~~of 2015~~, the Paris Agreement on climate change ~~of 2015~~, the Sendai Framework for Disaster Risk Reduction 2015–2030 ~~of 2015~~ ~~and~~, the New Urban Agenda, adopted at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III), ~~of 2016~~, **and the outcome documents of the fourteenth session of the United Nations Conference on Trade and Development.**

PP7 Reaffirming the objective of making the right to development a reality for everyone, as set out in the Millennium Declaration, adopted by the General Assembly on 8 September 2000,

PP8 Recalling the multitude of resolutions adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council on the right to development,

PP9 Recalling also , in particular, **General Assembly** resolutions 48/141 of **20 December 1993**, ~~7 January 1994 adopted by the General Assembly~~, in which the Assembly established the Office of the United Nations High Commissioner for Human Rights, with a mandate to promote and protect the realization of the right to development and to enhance support from relevant bodies of the United Nations system for that purpose, ~~resolution~~ 52/136 of 12 December 1997, in which the Assembly affirmed that the inclusion of the Declaration on the Right to Development in the International Bill of Human Rights would be an appropriate means of celebrating the fiftieth anniversary of the Universal Declaration of Human Rights, and ~~resolution~~ 60/251 of 15 March 2006, in which the Assembly established the Human Rights Council, deciding that its work should be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights, ~~civil, political, economic, social and cultural rights~~, including the right to development,

PP10 Bearing in mind Taking note of the regional human rights instruments and the subsequent practices relating thereto that specifically recognize and reaffirm the right to development, including the African Charter on Human and Peoples’ Rights ~~of 1984~~, the

Inter-American Democratic Charter of 2001, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Arab Charter on Human Rights of 2004, the Human Rights Declaration of the Association of Southeast Asian Nations of 2012, the American Declaration on the Rights of Indigenous Peoples of 2016, and the Abu Dhabi Declaration on the Right to Development of 2016, adopted by the Independent Permanent Human Rights Commission of the Organization of Islamic Cooperation,

PP11 Bearing in mind also Taking note also of the obligations of States pertaining to integral development in the Charter of the Organization of American States of 1948, and to progressive development in the ~~Inter~~-American Convention on Human Rights of 1969,

PP12 Taking into consideration Considering the various international instruments adopted for realizing sustainable development, including in particular the 2030 Agenda for Sustainable Development, which affirm that sustainable development must be achieved in its three dimensions, namely, economic, social and environmental, in a balanced and integrated manner and in harmony with nature,

PP13 Acknowledging that the realization of the right to development is a common concern of humankind, **[moved from PP1]**

PP14 Concerned at the existence of serious obstacles to the realization of the right to development ~~comprising~~ **constituted**, inter alia, by poverty **in all its forms and dimensions, including extreme poverty, hunger, inequality in all forms and manifestations** within and across countries, climate change, **health emergencies and health crises**, colonization, neo-colonization, forced displacement, racism, **discrimination**, conflicts, **foreign domination and occupation**, aggression, and threats against national sovereignty, national unity and territorial integrity, **terrorism, crime, corruption, all forms of deprivation affecting the subsistence of peoples**, and the denial of other human rights, **[moved from PP2, as amended]**

PP15 Emphasizing that the right to development is an inalienable human right of all human persons and peoples, and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations, **[moved from PP3]**

PP16 Recognizing that development is a comprehensive **civil, cultural, economic, environmental, political, and social, cultural, civil and political** process that is aimed at the constant improvement of the well-being of the entire population and of all **peoples and individuals** on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom, **[moved from PP4, as amended]**

PP17 Acknowledging that development is understood not simply in terms of economic growth, but also as a means to widening people's choices to achieve a more satisfactory intellectual, emotional moral and spiritual existence rooted in the cultural identity and the cultural diversity of peoples,

PP18 Reaffirming the universality, indivisibility, interrelatedness, interdependence and mutually reinforcing nature of all civil, cultural, economic, political and social rights, including the right to development, **[moved from PP5]**

PP19 Recognizing that the realization of the right to development constitutes ~~both the primary end and the principal~~ **an important end and an integral** means of sustainable development, and that the right to development cannot be realized if development is not sustainable, **[moved from PP6, as amended]**

PP20 Considering that peace and security at all levels is an essential element for the realization of the right to development and that such realization can, in turn, contribute to the establishment, maintenance and strengthening of peace and security at all levels, **[moved from PP7]**

PP21 Recognizing that good governance, **accountability** and the rule of law ~~at both the national and international levels is essential for the realization of the right to development, and that such realization is vital for ensuring good governance and the rule of law~~ **at all levels, including the national and international levels, and the realization of the right to development are mutually reinforcing, [moved from PP8, as amended]**

PP22 Recognizing also that the human person and peoples are the central subjects of the development process, and that development policy should therefore make them the main participants and beneficiaries of development,

PP23 Recognizing further also that all human persons and peoples are entitled to a national and global environment conducive to just, equitable, **and** participatory ~~and human-centred~~ development, **centred on human persons and peoples**, respectful of all human rights,

PP24 Bearing in mind Acknowledging that States have the primary responsibility, through cooperation, **including engagement with civil society**, for the creation of national and international conditions favourable to the realization of the right to development,

PP25 Recognizing that every organ of society at the national or ~~the~~ international level has a duty to respect the human rights of ~~individuals and peoples~~ **all**, including the right to development,

PP26 Concerned that, despite the adoption of numerous resolutions, declarations and agendas, the right to development has not yet been effectively operationalized,

PP27 Convinced that a comprehensive and integral international convention to promote and secure the realization of the right to development, through appropriate and enabling national and international action, is ~~now~~ essential,

Have agreed as follows:

Part I

Article 1

Object and purpose

The object and purpose of the present Convention is to promote and ensure the full, equal and meaningful enjoyment of the right to development by every human person and all peoples everywhere, and to guarantee its effective operationalization and full implementation at the national and international levels.

Article 2

Definitions

For the purposes of the present Convention:

(a) “Legal person” means any entity that possesses its own legal personality under domestic or international law and is not a human person, a people or a State;

(b) “International organization” means an organization established by a treaty or other instrument governed by international law and possessing its own international legal personality; international organizations may include, in addition to States, other entities as members;

(c) “Working Group on the Right to Development” means the entity established by the Commission on Human Rights in its resolution 1998/72 of 22 April 1998, as endorsed by the Economic and Social Council in its decision 1998/269 of 30 July 1998;

(d) “High-level political forum on sustainable development” means the entity established pursuant to the outcome document of the United Nations Conference on Sustainable Development (~~Rio+20~~) of 2012, as endorsed by **the** General Assembly **in its** resolution 66/288 of 27 July 2012 and supplemented by Assembly resolution 67/290 of 9 July 2013.

Article 3

General principles

To achieve the object and purpose of the present Convention and to implement its provisions, the Parties shall be guided by, inter alia, the principles set out below:

(a) ~~Human person and people~~ **Development centred development on the human person and peoples:** the human person and **peoples** are the central subjects of development and ~~should~~ **must** be the active participants and beneficiaries of the right to development;

(b) Universal principles common to all human rights: the right to development should be realized in a manner that integrates the principles of ~~accountability, equality, non-discrimination,~~ empowerment, participation, ~~non-discrimination, equality and transparency,~~ **accountability, equity, subsidiarity, universality, inalienability, interdependence and indivisibility;**

(c) ~~Human rights-based approach to development:~~ **as development is a human right and should be realized as such and in a manner consistent that is indivisible from and interrelated and interdependent with and based on all other human rights;** **the laws, policies and practices of development, including development cooperation must be normatively anchored in a system of rights and corresponding obligations established by international law.**

(d) **Contribution of development to the enjoyment of all human rights:** development, as described in the present Convention, is essential for the improvement of living standards and the welfare of human persons and peoples and contributes to the enjoyment of all human rights.

(e) **Principles of international law concerning friendly relations and cooperation among States:** The realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations,

(f) Self-determined development: **development is determined by individuals and peoples as rights holders.** The right to development and the right to self-determination of peoples are integral to each other and mutually reinforcing;

(e-g) Sustainable development: development ~~cannot~~ **must** be sustainable ~~if achieved in its realization undermines the right to development,~~ **three dimensions, namely, economic, social and environmental, in a balanced and integrated manner and in harmony with nature. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations;** and the right to development cannot be realized if development is unsustainable;

(f-h) ~~The~~ Right to regulate: the realization of the right to development entails the right for States Parties, on behalf of ~~their peoples~~ **the rights holders,** to take regulatory or other related measures to achieve sustainable development on their territory; **in accordance with international law, and consistent with the provision of the present Convention;**

(g) ~~International~~ (i) **National and international** solidarity: the realization of the right to development requires an enabling national and international environment created through a spirit of **cooperation and** unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals **everywhere.** This principle includes the duty to cooperate **with complete respect for the principles of international law;**

(h-j) **South-South cooperation as a complement to North-South Cooperation:** South-South cooperation is not a substitute for, but rather a complement to, North-South cooperation, and hence should not result in the reduction of North-South cooperation or hamper progress in fulfilling existing official development assistance commitments;

(k) Universal duty to respect human rights: everyone has the duty to respect **all** human rights, including the right to development, **in accordance with international law;**

(l) Right and responsibility of individuals, **peoples,** groups and organs of society to promote and protect human rights: **in accordance with international law,** everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of the right to development at the national and international levels. **Individuals, peoples,** groups, institutions and non-governmental organizations also have an

important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the right to development can be fully realized.

Part II

Article 4

Right to development

1. Every human person and all peoples have the inalienable right to development by virtue of which they are entitled to participate in, contribute to and enjoy ~~economic, social, civil,~~ cultural, ~~civil and~~ **economic, political and social** development that is ~~consistent~~ **indivisible from and interdependent and interrelated** with ~~and based on~~ all other human rights and fundamental freedoms.

2. Every human person and all peoples have the right to active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom.

Article 5

Relationship with the right of peoples to self-determination

1. The right to development implies the full realization of the right of all peoples to self-determination.

2. All peoples have the right to self-determination by virtue of which they freely determine their political status and freely pursue the realization of their right to development.

3. All peoples may, in pursuing the realization of their right to development, freely dispose of their natural wealth and resources based upon the principle of mutual benefit, **sustainable development** and international law. In no case may a people be deprived of its own means of subsistence. **Nothing in the present Convention shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.**

4. The States Parties to the present Convention, including those having responsibility for the administration of Non-Self-Governing Territories, shall promote the realization of the right to self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations **and international law.**

5. States shall take resolute ~~steps~~ **action** to prevent and eliminate massive and flagrant violations of the human rights of persons and peoples affected by situations such as those resulting from apartheid, all forms of racism and ~~racial~~ discrimination, colonialism, ~~foreign~~ domination and occupation, aggression, ~~foreign~~ interference and threats against national sovereignty, national unity and territorial integrity, threats of war and the refusal to ~~otherwise~~ recognize the fundamental right of peoples to self-determination.

6. Nothing contained in the present Convention shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples, and thus possessed of a government representing the whole people belonging to the territory, without distinction of any kind.

Article 6

Relationship with other human rights

1. States Parties reaffirm that all human rights, including the right to development, are universal, **inalienable**, interrelated, interdependent, indivisible and equally important.

2. States Parties agree that the right to development is an integral part of human rights and should be realized in conformity with the full range of civil, cultural, economic, political and social rights.

Article 7

Relationship with the ~~general duty~~ responsibility of everyone to respect human rights under international law

Nothing in the present Convention may be interpreted as implying for any human or legal person, people, group or State any right to engage in any activity or perform any act aimed at the destruction, **nullification or impairment** of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention. To that end, States Parties agree that all human and legal persons, peoples, groups and States have the general duty under international law to refrain from participating in the violation of the right to development.

Part III

Article 8

General obligations of States Parties

1. States Parties ~~undertake to~~ **shall** respect, protect and fulfil the right to development for all, without discrimination of any kind on the basis of race, colour, sex, ~~gender~~, language, religion, political or other opinion, **nationality, statelessness**, national, ethnic or social origin, property, disability, birth, age or other status, in accordance with obligations set forth in the present Convention.

2. **States Parties shall cooperate with each other in ensuring development and eliminating obstacles to development, encouraging full observance and realization of all human rights.**

~~2.3.~~ States Parties shall ensure that public authorities and institutions at all levels act in conformity with the present Convention.

4. States Parties recognize that each State has the right, on behalf of its peoples, and also the duty to formulate, adopt and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realization. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to cooperation, aid, assistance, trade or investment, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Convention **and international law.**

Article 9

General obligations of international organizations

Without prejudice to the general duty contained in article 7, States Parties agree that international organizations also have the obligation to refrain from conduct that aids, assists, directs, controls, or coerces, with knowledge of the circumstances of the act, a State or another international organization to breach **any obligation that the State or the latter organization may have with regard to the right to development** ~~that State's or that other international organization's obligations.~~

Article 10

Obligation to respect

States Parties ~~undertake to~~ **shall** refrain from conduct, whether expressed through law, policy or practice, that:

(a) Nullifies or impairs the enjoyment and exercise of the right to development ~~within or outside their territories;~~

(b) Impairs the ability of another State or **an** international organization to comply with that State's or that international organization's obligations with regard to the right to development;

(c) Aids, assists, directs, controls or coerces, with knowledge of the circumstances of the act, another State or **an** international organization to breach that State's or that international organization's obligations with regard to the right to development;

(d) Causes an international organization of which it is a member to commit an act that, if committed by the State Party, would constitute a breach of its obligation under the present Convention, and ~~the State Party~~ does so to circumvent that obligation by taking advantage of the fact that the international organization has competence in relation to its subject matter.

Article 11

Obligation to protect

States Parties shall adopt and enforce all necessary ~~and~~, appropriate, **and reasonable** measures, including administrative, legislative, investigative, judicial, diplomatic or others, to ensure that human or legal persons, **peoples**, groups or any other State or **its agents that the State is they are** in a position to regulate do not nullify or impair the enjoyment and exercise of the right to development within or outside their territories when:

- (a) Such conduct originates from or occurs on the territory of the State Party;
- (b) The human or legal person has the nationality of the State Party;

(c) **The State Party has the requisite legal duty under either domestic or international law to supervise, regulate, or otherwise exercise oversight of the conduct of the legal person conducting engaging in** business activities, including those of a transnational character, ~~is domiciled in the State Party, by virtue of having its place of incorporation, statutory seat, central administration or substantial business interests in that State Party.~~

Article 12

Obligation to fulfil

1. Each State Party ~~undertakes to~~ **shall** take measures, individually and through international assistance and cooperation, with a view to progressively enhancing the right to development, without prejudice to **its their** obligations to respect and protect the right to development contained in articles 10 and 11 **of the present Convention** or to those obligations contained in the present Convention that are of immediate effect. States Parties may take such measures through any appropriate means, including in particular **through** the adoption of legislative measures.

2. To this end, each State Party shall take all necessary measures, at the national level, and shall ensure, inter alia, equality of opportunity for all human persons and peoples in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income, and shall carry out appropriate economic and social reforms with a view to eradicating all social injustices.

~~2. States Parties recognize that each State has the right, on behalf of its peoples, and also the duty to formulate, adopt and implement appropriate national development laws, policies and practices in conformity with the right to development and aimed at its full realization. To that end, States Parties undertake to refrain from nullifying or impairing, including in matters relating to cooperation, aid, assistance, trade or investment, the exercise of the right and discharge of the duty of every State Party to determine its own national development priorities and to implement them in a manner consistent with the provisions of the present Convention.~~

Article 13

Duty to cooperate

1. States Parties reaffirm and ~~undertake to~~ **shall** implement their duty to cooperate with each other, through joint and separate action, in order to:

- (a) Solve international problems of an economic, social, cultural, **political**, environmental, **health-related, educational, technological** or humanitarian character;
- (b) **End poverty in all its forms and dimensions, including by eradicating extreme poverty;**

~~(b c)~~ Promote higher standards of living, full **and productive** employment, **decent work**, ~~and~~ conditions of **human dignity**, **and** economic and, social progress and development;

~~(e) Promote solutions of international economic, social, health and related problems, and to promote international cultural and educational cooperation;~~

(d) Promote and encourage universal respect for human rights and fundamental freedoms for all, without discrimination ~~on~~ **of any ground kind**.

2. To this end, States Parties ~~recognize their~~ **have** primary responsibility, **in accordance with the general principle of international solidarity described in the present Convention**, for the creation of international conditions favourable to the realization of the right to development for all, and ~~undertake to~~ **shall** take deliberate, concrete and targeted steps, ~~separately~~ **individually** and jointly, including through cooperation within international organizations, and ~~as appropriate, in partnership~~ **engagement** with civil society:

(a) To ensure that human and legal persons, groups and States do not impair the enjoyment of the right to development;

(b) ~~To ensure that~~ **eliminate** obstacles to the full realization of the right to development ~~are eliminated in all~~, **including by reviewing** international legal instruments, policies and practices;

(c) To ensure that the formulation, adoption and implementation of ~~all~~ **States Parties'** international legal instruments, policies and practices are consistent with the objective of fully realizing the right to development for all;

(d) To formulate, adopt and implement appropriate international legal instruments, policies and practices aimed at the progressive enhancement and full realization of the right to development for all;

(e) To mobilize appropriate technical, technological, financial, infrastructural and other necessary resources to enable States Parties, particularly ~~those with limited availability of or access to these resources~~ **in developing or least developed countries**, to fulfil their obligations under the present Convention.

3. States Parties ~~undertake to~~ **shall** ensure that financing for development, and all other forms of aid and assistance given or received by them, whether bilateral, or under any institutional or other international framework, are **in compliance with internationally recognized development cooperation principles and** consistent with the provisions of the present Convention.

4. States Parties recognize their duty to cooperate to create a social and international order conducive to the realization of the right to development by, inter alia:

(a) Promoting a universal, rules-based, open, non-discriminatory ~~and~~, equitable, **transparent and inclusive** multilateral trading system;

(b) Implementing the principle of special and differential treatment for developing countries, in particular least developed countries, **as defined in accordance with relevant applicable trade and investment** agreements;

(c) Improving the regulation and monitoring of global financial markets and institutions, and strengthening the implementation of such regulations;

(d) Ensuring enhanced representation and voice for developing countries, **including least developed countries**, in decision-making in ~~all global~~ international economic and financial institutions, in order to deliver more effective, credible, accountable and legitimate institutions;

(e) **Enhancing capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts;**

~~(e)~~ **(f)** Encouraging official development assistance ~~and~~, financial flows, ~~including~~ **and** foreign direct investment, **including through but not limited to the implementation of any existing commitments, for** ~~to~~ States where the need is greatest, in particular least developed countries, African countries, small island developing States and landlocked developing countries, in accordance with their national plans and programmes;

~~(f)~~ **(g)** Enhancing North-South, South-South ~~and~~, triangular **and other forms of** regional and international cooperation ~~on and~~ **in all spheres, particularly on** access to science, technology and innovation, and **also** enhancing also knowledge-sharing on mutually agreed terms, including through improved coordination among existing mechanisms, in particular at the United Nations level, and through **existing and new mechanisms for** a global technology facilitation ~~mechanism~~;

(h) Enhancing adaptive capacity, strengthening resilience, and reducing vulnerability to climate change and extreme weather events, addressing the economic, social and environmental impacts of climate change, and enhancing access to international climate finance to support mitigation and adaptation efforts in developing and least-developed countries, especially those that are particularly vulnerable to the adverse effects of climate change;

~~(g)~~ **(i)** Promoting the development, transfer, dissemination and diffusion of environmentally sound **and human rights-compliant** technologies to developing countries on favourable terms, including on concessional and preferential terms, as mutually agreed;

(j) Eliminating illicit financial flows by combating tax evasion and corruption, reducing opportunities for tax avoidance, enhancing disclosure and transparency in financial transactions in both source and destination countries, and strengthening the recovery and return of stolen assets;

(k) Assisting developing and least developed countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and addressing the external debt of highly indebted poor countries to reduce debt distress;

~~(h)~~ **(l)** Facilitating ~~orderly, safe, regular and responsible~~ **safe, orderly and regular** migration and mobility of people, including through the implementation of planned and well-managed rights-based migration policies.

Article 14

Coercive measures

1. The use or encouragement of the use of economic **or** political **measures**, or any other type of measure, to coerce a State in order to obtain from it the subordination of the exercise of its sovereign rights in violation of the principles of the sovereign equality of States ~~and~~ **the freedom of consent of States or applicable international law**, constitutes a violation of the right to development.

2. States Parties shall refrain from adopting, maintaining or implementing the measures referred to in paragraph 1.

Article 15

~~Special or~~ Specific and remedial measures

1. States Parties recognize that certain human persons, groups and peoples, owing to their ~~age, disability~~, marginalization, **or** vulnerability, ~~indigeneity or minority~~ **because of race, colour, sex, language, religion, political or other opinion, nationality, statelessness, national, ethnic or social origin, property, disability, birth, age or other status, including as human rights defenders** may ~~require special or~~ **need specific and** remedial measures to accelerate or achieve de facto equality in their enjoyment of the right to development. **Specific and remedial measures can include, among others, enabling the full, effective, appropriate, and dignified participation of such human persons, groups, and peoples in decision-making processes, programmes and policy-making, that affects their full and equal enjoyment of the right to development without subjecting them to structural, environmental, or institutional constraints or barriers.**

2. States Parties recognize that developing and ~~vulnerable States~~, **least developed countries** owing to historical injustices, conflicts, environmental hazards, climate change or other disadvantages, including of an economic, technical or infrastructural nature, may require **specific and special** or remedial measures through mutually agreed international legal instruments, policies and practices for ensuring equal ~~enjoyment~~ **realization** of the right to development by all human persons and peoples. Such measures may, as appropriate, include:

- (a) Recognition of common but differentiated responsibilities, taking into account different national circumstances;
- (b) The provision of special and differential treatment;
- (c) Preferential terms on trade, investment and finance;
- (d) The creation of special funds or facilitation mechanisms;
- (e) The facilitation and mobilization of financial, technical, technological, infrastructural, capacity-building or other assistance;
- (f) Other mutually agreed measures consistent with the provisions of the present Convention.

Article 16

Gender equality **Equality between men and women**

1. States Parties, in accordance with their obligations under international law, shall ensure full ~~gender~~ equality for all women and men, and ~~undertake to take~~ **shall adopt** measures, including through temporary special measures as and when appropriate, to end all forms of discrimination against all women and girls everywhere so as to ensure their full and equal enjoyment of the right to development.

2. To that end, States Parties ~~undertake to take~~ **shall adopt** appropriate measures, ~~separately~~ **individually** and jointly, inter alia:

(a) To **prevent and** eliminate all forms of violence and harmful practices against all women and girls in the public and private spheres **online and offline, including trafficking and sexual and other types of exploitation;**

(b) To ensure women's full ~~and~~, **equal**, effective **and meaningful** participation and equal opportunities for leadership at all levels in the conceptualization, decision-making, implementation, monitoring and evaluation of policies and programmes in political, economic, **cultural** and public life, and within legal persons;

(c) To adopt and strengthen policies and enforceable legislation for the promotion of ~~gender~~ equality **of opportunities** and the empowerment of all women and girls at all levels;

(d) To **incorporate and** mainstream gender perspectives in the formulation, adoption and implementation of all national laws, policies and practices and international legal instruments, policies and practices;

(e) To ensure equal and equitable access to **and control over the** resources necessary for the full realization of the right to development by women and girls everywhere.

(f) **To ensure equal and equitable access to quality education and services necessary for the full realization of the right to development by women and girls everywhere.**

(g) **To realize the women, peace and security agenda and ensure the full, effective and meaningful participation of women in the prevention and resolution of armed conflicts and in peacebuilding for the maintenance and promotion of peace and security at all levels.**

Article 17

Indigenous and tribal peoples

1. Indigenous ~~and tribal~~ peoples have the right to freely pursue their ~~economic, social and cultural~~ development **in all spheres, in accordance with their own needs and interests.** They have the right to determine and develop priorities and strategies for exercising their right to development.
2. **In accordance with international law,** States Parties shall consult and cooperate in good faith with the indigenous and tribal peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
3. **States Parties shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.**

Article 18

Prevention and suppression of corruption

States Parties recognize that corruption represents a serious obstacle to the realization of the right to development. To this end, States Parties shall, individually and jointly:

- (a) **Promote and strengthen measures to prevent and combat corruption in accordance with the relevant rules and principles contained in multilateral and regional agreements on corruption.**
- (b) **Promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;**
- (c) **Promote integrity, accountability and proper management of public affairs and public property; and**
- (d) **Ensure financial integrity and transparency in international financial architecture, taxation and transactions.]**

Article ~~18~~ 19

Prohibition of limitations on the enjoyment of the right to development

States Parties recognize that the enjoyment of the right to development may not be subject to any limitations except insofar as they may result directly from the exercise of limitations on other human rights applied in accordance with international law.

Article ~~19~~ 20

Impact assessments

1. States Parties undertake to take appropriate steps, individually and jointly, including within international organizations, to establish legal frameworks for conducting prior and ongoing **assessments** ~~assessment~~ of actual and potential risks and ~~impact~~ **impacts** of their national laws, policies and practices and international legal instruments, policies and practices, and of the conduct of legal persons **that** ~~which~~ they are in a position to regulate to ensure compliance with the provisions of the present Convention.
2. States Parties shall take into account any further guidelines, best practices or recommendations that the Conference of States Parties may provide with respect to impact assessments.

Article ~~20~~ 21

Statistics and data collection

1. States Parties undertake to collect appropriate information, including statistical and research data **from official and other sources,** to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

(a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for privacy **online and offline**;

(b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with the present article shall be disaggregated, as appropriate, and used ~~to help~~ **by the State Party** to assess the implementation of ~~States Parties'~~ **its** obligations under the present Convention and to identify and address the obstacles to the full realization of the right to development.

3. States Parties shall assume responsibility for the dissemination of these statistics in a manner consistent with the objective of fully realizing the right to development for all.

Article ~~21~~ 22

International peace and security

1. States Parties reaffirm their existing obligations under international law to promote the establishment, maintenance and strengthening of international peace and security in consonance with the principles and obligations contained in the Charter of the United Nations, including the peaceful settlement of disputes.

2. To that end, **in accordance with international law**, States Parties undertake to pursue collective measures with the objective of achieving general and complete disarmament under strict and effective international control so that the world's human, ecological ~~and~~, economic **and technological** resources can be used for the full realization of the right to development for all.

3. States Parties undertake to promote peace and inclusive societies within their territories for the full realization of the right to development for all.

Article ~~22~~ 23

Sustainable development

States Parties, individually and jointly, undertake to ensure that:

(a) Laws, policies and practices relating to development at the national and international levels **are aimed at** ~~pursue~~ and contribute to the realization of sustainable development, **consistent with States Parties' obligations under international environmental law, climate change law, and human rights law**;

(b) Their decisions and actions do not compromise the ability of **present and** future generations to realize their right to development;

(c) The formulation, adoption and implementation of all such laws, policies and practices aimed at realizing sustainable development are made fully consistent with the provisions of the present Convention **and other obligations for realizing sustainable development in international law**.

Article ~~23~~ 24

Harmonious interpretation

1. Nothing in the present Convention shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Convention. To that end, the United Nations and its specialized agencies are under an obligation to promote the right to development.

2. The provisions of the present Convention shall not affect the rights and obligations of any State Party deriving from any existing international ~~agreements~~ **law**, except where the exercise of those rights and **the discharge of those** obligations would contravene the object and purpose of **the present** ~~this~~ Convention. The present paragraph is not intended to create a hierarchy between the present Convention and other international ~~agreements~~ **law**.

Part IV

Article 24 25

Conference of States Parties

1. A Conference of States Parties is hereby established.
2. The Conference of States Parties shall keep under regular review the effective implementation of the Convention and any related legal instruments that the Conference of States Parties may in future adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention. To that end, the Conference of States Parties shall:
 - (a) Periodically examine reports by States Parties on the implementation of their obligations under the Convention and the obstacles that they face in the realization of the right to development, in the light of the object and purpose of the Convention. In this regard, the Conference of States Parties may refer such reports to the implementation mechanism contemplated under article 26 of the present Convention;
 - (b) Promote and facilitate the open exchange of information on measures adopted by States Parties to address the realization of the right to development, taking into account the differing circumstances, responsibilities and capabilities of States Parties and their respective obligations under the Convention;
 - (c) Promote, develop and periodically refine, in accordance with the provisions of the present Convention, the methodologies and best practices for States Parties to assess the status of realization of the right to development;
 - (d) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and governmental and non-governmental bodies;
 - (e) Consider and adopt regular reports on the status of implementation of the Convention, and ensure their publication;
 - (f) Make recommendations on any matters relevant to the implementation of the Convention, including, inter alia, the adoption of protocols or amendments;
 - (g) Exercise such other functions as are required for the achievement of the object and purpose, as well as the aims, of the Convention.
3. The first session of the Conference of States Parties shall be convened by the Secretary-General of the United Nations no later than six months after the entry into force of the present Convention. At its first session, the Conference of States Parties shall adopt its own rules of procedure, which shall include decision-making for matters not already stated in the Convention.
4. The Conference of States Parties shall meet in public sessions, except as otherwise determined by it, in accordance with its rules of procedure.
5. All States not party to the present Convention, specialized agencies, funds and programmes of the United Nations system, other international organizations, United Nations human rights mechanisms, regional human rights bodies, national human rights institutions, and non-governmental organizations with consultative status with the Economic and Social Council may participate as observers in the public sessions of the Conference of States Parties. The Conference of States Parties may, in accordance with its rules of procedure, consider requests from, or may invite, other stakeholders to participate as observers.
6. The Conference of States Parties shall be held annually as part of the sessions of the Working Group on the Right to Development.
7. Special sessions of the Conference of States Parties shall be held at such other times as it may deem necessary, or upon the request of any State party, in accordance with its rules of procedure.
8. The Conference of States Parties shall transmit its reports to the General Assembly, the Economic and Social Council, the Human Rights Council, the Working Group on the Right to Development and the high-level political forum on sustainable development.

Article ~~25~~ 26

Protocols to the Convention

1. The Conference of States Parties may adopt protocols to the present Convention.
2. The text of any proposed protocol shall be communicated to States Parties at least six months before **consideration** ~~such a session~~.
3. The requirements for the entry into force of any protocol shall be established by that instrument.
4. Decisions under any protocol shall be taken only by the States Parties to the protocol concerned.

Article ~~26~~ 27

Establishment of an implementation mechanism

1. At its first session, the Conference of States Parties shall establish an implementation mechanism to facilitate, coordinate and assist, in a non-adversarial and non-punitive manner, the implementation and promotion of compliance with the provisions of the present Convention.
2. The implementation mechanism shall consist of independent experts, consideration being given to, **inter alia, gender balance and equitable geographical distribution, geographic representation as well as to an appropriate representation of the different forms of civilization and of the principal legal systems and balanced gender representation.**
3. The implementation mechanism shall:
 - (a) Adopt general comments or recommendations to assist in the interpretation or implementation of the provisions of the Convention;
 - (b) Review obstacles to the implementation of the Convention at the request of the Conference of States Parties;
 - (c) Review requests by rights holders to comment on situations in which their right to development has been adversely affected by the failure of States to comply with their duty to cooperate, as reaffirmed and recognized under the present Convention, **within the mandate established for this purpose by the Conference of States Parties;**
 - (d) Undertake any other functions that may be vested by the Conference of States Parties.
4. The Conference of States Parties shall adopt rules of procedure for the operation of the implementation mechanism.

Part V

Article ~~27~~ 28

Signature

The present Convention shall be open for signature by all States and international organizations at United Nations Headquarters in New York as of _____.

Article ~~28~~ 29

Consent to be bound

1. The present Convention shall be subject to ratification, approval or acceptance by signatory States.
2. Notwithstanding the obligations of international organizations existing under international law and the present Convention, the consent of signatory international organizations to be bound by the present Convention shall be expressed through an act of formal confirmation.
3. The present Convention shall be open for accession by any State or international organization that has not signed the Convention.

Article 29 30**International organizations**

1. International organizations shall declare, in their instruments of formal confirmation or accession, the extent of their competence with respect to matters governed by the present Convention. Subsequently, they shall inform the depositary of any substantial modification in the extent of their competence.
2. References to “States Parties” in the present Convention shall apply to such organizations within the limits of their competence.
3. For the purposes of article 30, ~~paragraph~~ (1) and article 31, ~~paragraphs~~ (2) and (3), any instrument deposited by an international organization shall not be counted.
4. International organizations, in matters within their competence, may exercise their right to vote ~~at in~~ the Conference of States Parties, with a number of votes equal to the number of their member States that are Parties to the present Convention. Such an organization may not exercise its right to vote if any of its member States exercises its right, and vice versa.

Article 30 31**Entry into force**

1. The present Convention shall enter into force on the thirtieth day after the deposit of the twentieth instrument of ratification or accession.
2. For each State or international organization ratifying, formally confirming or acceding to the Convention after the deposit of the twentieth such instrument, the Convention shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 32**Reservations**

- 1. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.**
- 2. Reservations may be withdrawn at any time.**

Article 34 33**Amendments**

1. Any State Party may propose an amendment to the present Convention and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties that have accepted it.
3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with paragraph 1 of the present article that relates exclusively to articles 24, 25 and 26 shall enter into force for all States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment.

Article ~~32~~ 34

Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article ~~33~~ 35

Dispute settlement between States Parties

Any dispute between two or more States Parties with respect to the interpretation or application of the present Convention that has not been settled by negotiation may, upon agreement by the parties to the dispute, be referred to the International Court of Justice for a decision.

Article ~~34~~ 36

Accessible format

The text of the present Convention shall be made available in accessible formats.

Article ~~35~~ 37

Depositary

The Secretary-General of the United Nations shall be the depositary of the present Convention.

Article ~~36~~ 38

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Convention shall be equally authentic.

In witness thereof, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.
