

# Agreement on Agriculture Re-Imagined

## Underlying Principles

Working Paper No. 01/2025  
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This Working Paper resulted from a process of co-creation and is based on the consolidated expertise of

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For more information on the Agreement on Agriculture Re-Imagined Project, visit the project websites:

[https://www.cde.unibe.ch/research/projects/agreement\\_on\\_agriculture\\_reimagined/index\\_eng.html](https://www.cde.unibe.ch/research/projects/agreement_on_agriculture_reimagined/index_eng.html)

<https://www.iatp.org/agreement-agriculture-reimagined>

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## **Credits**

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**Principle:**

- *A fundamental truth or proposition that serves as the foundation for a system of belief or behaviour or for a chain of reasoning.*
- *A general scientific theorem or law that has numerous special applications across a wide field.<sup>1</sup>*

## Background and Context

### Agreement on Agriculture (AoA) Re-Imagined (ReI) – The Project

The Agreement on Agriculture (AoA) Re-Imagined (ReI) project recognizes that there is an urgent need to transform the global food and agriculture trade regime, so that it incentivizes a diversity of fair, sustainable and healthy food and agriculture systems. The project brings together an interdisciplinary, international team of experts who are developing a set of trade rules and practices to support and incentivize resilient global food security. They are articulating these in a Model Treaty, the text of which will be refined and finalized through a series of workshops and mock negotiations with stakeholders from around the world. The resulting AoA ReI Model Treaty will be offered as a heuristic to inspire bold thinking and inject energy into transforming the international food and agriculture trade regime.

The project is based on the observation that the main multilateral framework governing international agriculture trade is still the World Trade Organization (WTO) Agreement on Agriculture (AoA), even though it was designed over forty years ago and is increasingly ill-suited to the realities of today's world. Negotiations have been underway to reform the AoA for years, but not only is there no outcome in sight, the negotiations do not propose the fundamental changes that the world so urgently needs. Yet there is an appetite within trade and agriculture policy circles to test and apply new ideas about how to improve trade and trade-related rules so as to enable fairer, sustainable and healthier outcomes. And as multilateral trade governance is fragmenting and political developments in a number of countries are shaking the foundations of international cooperation, fresh ideas, concepts and approaches are increasingly being sought to rebuild or replace the current system with the public interest in mind.

The AoA ReI project considers that at least some food and agriculture trade is beneficial, and acknowledges the importance of a multilateral framework. It considers that agricultural trade rules need a profound reconfiguration,<sup>2</sup> a fundamental overhaul. It is not seeking environmental or social adjustments or exceptions to the current agriculture trade regime, nor does it ask how trade or trade agreements can contribute to addressing problems such as

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<sup>1</sup> Definitions from the Oxford English Dictionary and Encyclopedia.com.

<sup>2</sup> McGreevy SR, Rupprecht CDD, Niles D. *et al.* 2022. Sustainable agrifood systems for a post-growth world. *Nature Sustainability* 5: 1011–1017. <https://doi.org/10.1038/s41893-022-00933-5>.

natural resources degradation, erosion of biodiversity, or poverty. Rather, the project's purpose is to shift the boundaries of our political and economic imagination and to open the way to a different intellectual paradigm. It offers a space to fundamentally Re-Imagine what food and agriculture trade should look like, what the rules governing it should do and what principles it should be based on.

## Purpose and structure of this Working Paper

The rules for trade-related aspects of the food and agriculture system the AoA ReI project aspires to will be set out in a legal text, founded on a number of principles. The purpose of this Working Paper is to identify, define and express these principles. It presents how the project team has approached the identification and articulation of principles, and ensures that no points are lost between the framing of principles to the articulation of actual textual provisions in the Model Treaty.

The first drafts of this Working Paper outlined principles for the AoA ReI project team members to consider, and served as a basis for discussions in the project team meetings. This, finalized, version sets out considerations underlying the principles proposed for inclusion in the Model Treaty. Part 1 of this Working Paper presents the purpose and sources of the principles on which the project is based, as well as some challenges to bear in mind. Part 2 sets out the process by which principles for inclusion have been identified, looking also to the steps required to finalize the Model Treaty's article on Principles. Part 3 gives the background to the principles proposed for inclusion, as well as proposed wording. Annexes set out a categorization of relevant principles with some sources, and examples of Principles articles in other international treaties.

# Principles in the AoA ReI Project

*"Principles are designed to be general high-level ideas, occupying a high moral ground that can apply broadly to many organisational situations."<sup>3</sup>*

## Purpose and scope of project principles

The purpose of identifying principles for the AoA ReI project is twofold. First, it was important to identify the commonalities amongst team members in terms of overall foundations and objectives of the AoA ReI project. This was done in February–September 2024 through an earlier version of this Working Paper and discussions in project team meetings, including in a two-day Hackathon in March 2024. Secondly, after the principles

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<sup>3</sup> Axon S. 2024. Unveiling Understandings of the Rio Declaration's Sustainability Principles: A Case of Alternative Concepts, Misaligned (Dis)Connections, and Terminological Evolution. *Sustainability* 16(6). <https://doi.org/10.3390/su16062600>.

underpinning the project had been identified, the focus shifted to the task of identifying and articulating the principles to be included in the Model Treaty.

The project team decided that the Model Treaty will have an article entitled “Principles.” Similarly to the Preamble, the purpose of a Principles article is to help resolve ambiguities and ensure consistency in treaty interpretation.<sup>4</sup> Unlike the Preamble, however, the Principles article is part of the operative text of the treaty, is legally binding and has a direct impact on how the treaty's provisions are applied and interpreted. Some of the Treaty's operative articles may repeat, operationalize, or provide further detail on the principles set out in the dedicated article.

Consistent with international legal practice, the Principles article will outline the underlying values, norms and guidelines that govern the interpretation and application of the treaty.<sup>5</sup> The article will provide direction for the application of the operative articles of the Model Treaty. It will help bridge any gaps between different treaty provisions, ensure coherent application of the treaty and may serve as an interpretative tool.<sup>6</sup>

## Challenges in identifying treaty principles

A challenge inherent in the exercise of identifying guiding principles lies in the framing: the principles to be included must be framed in a way that is sufficiently precise to guide application, yet sufficiently broad to apply to the overall objective the Model Treaty is seeking to achieve as well across different provisions of the Treaty.

Some principles (e.g. sustainable development) are well-established: their application to the ReI AoA endeavour seems obvious and they are easy to gather support for. The risk though, is precisely that their appeal is due to their general or open-ended nature. Their overly broad definition comes at the expense of their usefulness to guide application of treaty provisions.

Conversely, in seeking to be precise and exhaustive, there is a temptation to name a long list of principles, which carries other risks. The more a principle is expressed in specific terms, the less it may apply as a general, guiding principle across different aspects of the Model Treaty. And the longer the list, the more any omissions may stand out.

Another challenge is adaptability. The principles must be capable of adapting to economic, environmental and social factors that prevail in a specific context, whilst also being of sufficiently general application to guide policy and treaty interpretation.<sup>7</sup> Differentiation between measures that the Model Treaty deems acceptable or unacceptable must be based

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<sup>4</sup> Klabbers J. 2023. *International Law (4th ed)*. Cambridge: Cambridge University Press.

<sup>5</sup> The AoA ReI project team drafted the Preamble as a response to the question “what motivated us to Re-Imagine the rules that govern food and agriculture trade?”

<sup>6</sup> See e.g. Crawford J. 2019. *Brownlie's Principles of Public International Law (9th ed)* Oxford: Oxford Academic; Koskeniemi M. 2006. *From Apology to Utopia: The Structure of International Legal Argument*. Cambridge: Cambridge University Press.

<sup>7</sup> Giger M, Musselli I. 2023. Could global norms enable definition of sustainable farming systems in a transformative international trade system? *Discover Sustainability* 4(18). <https://doi.org/10.1007/s43621-023-00130-0>.

not only on norms agreed upon at the international level, but also contextual considerations.<sup>8</sup> In other words, each principle should be able to be applied in a way suited to a specific measure, a particular context, and other relevant factors, whilst clearly setting a direction to guide treaty application.<sup>9</sup>

Many of the factors that the Model Treaty addresses are complex and interconnected. The project team bears this in mind, whilst recognizing that it is impossible to express the full complexity of links between different aspects of the food system in any single principle or treaty provision.

The project team is cognizant that some principles or Model Treaty provisions may clash or collide and that there will be a need for treaty application and interpretation in this situation. Section 2 of this Working Paper addresses this question in more detail.

## Sources of project principles

The project draws on a wide range of sources to identify the applicable principles. This was done in team work together before and during the March 2024 hackathon, based on the draft Scoping Paper,<sup>10</sup> the draft legal framework template<sup>11</sup> as well as an early version of this Working Paper.

A primary source is public international law, particularly human rights law, environmental law and law relating to international trade. Given that some of the relevant foundational international law principles such as State sovereignty, international cooperation or the duty to prevent<sup>12</sup> do not provide sufficient guidance for the system transformation that we think is needed, we turned to other sources of principles, looking at those used in the fields of agro-ecology, ecology, economics, international policy, sustainability studies and other disciplines. We considered established, new and emerging principles in each of these fields. We agreed to not distinguish between substantive and procedural principles. Figure 1 sets out an example of links between international environmental law substantive and procedural principles.

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<sup>8</sup> Giger and Musselli specify that measures must address the most important social, economic, and environmental dimensions using clear objectives and indicators.

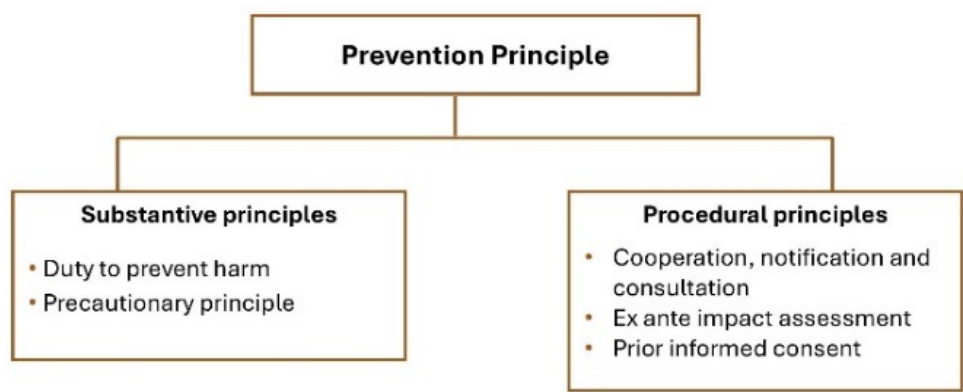
<sup>9</sup> International Legal Expert Group on Trade-Related Climate Measures and Policies. 2023. [Principles of International Law Relevant for Consideration in the Design and Implementation of Trade-Related Climate Measures and Policies](#). TESS Forum on Trade, Environment and the SDGs. Report.

<sup>10</sup> Manduna C. et al. 2024. *AoA ReI Factual Scoping Paper*. Internal working document, on file with the author.

<sup>11</sup> AoA ReI Project. 2023. *Draft Legal Framework Template*. Internal working document, on file with the author.

<sup>12</sup> American Bar Association. 2019. [10 Key Principles in International Environmental Law](#).

**Figure 1 – Substantive and procedural principles**



Source: The Author, drawing on Dupuy PM., Viñuales J. 2018. *International Environmental Law* (2nd ed). Cambridge University Press.

The process of identifying principles brought to light one of the key strengths of our project: its interdisciplinary nature. Looking to a range of disciplines and their guiding principles help ensure that we choose and define those that best correspond to our project’s objective. Table 1 illustrates two fields’ different expressions of key principles relevant to a global resilient food system.

**Table 1 – Principles by which growth and post-growth metabolisms operate, arranged by category**

	Economic principles	Social-ecological principles	Allocative principles	Institutional principles	Relational principles
Growth metabolism	Efficiency	Extraction	Accumulation	Private ownership	Control
Post-growth metabolism	Sufficiency	Regeneration	Distribution	Commons	Care

Source: McGreevy SR, Rupprecht CDD, Niles D. et al. 2022.

# Determining the Principles to Include

## The process

The project team agreed to include a dedicated Article setting out the principles guiding the application of the Model treaty. Some of the principles that they wish to reflect will also be set out in the Preamble, to indicate the objectives that motivate the project. Others will be operationalized in the text, thus further defining the scope, content and applicability of the principles. For example, the principle that Parties have the sovereign right and the duty to protect and enhance resilient, diversified food systems will be expressed in an operative article of the Model Treaty.

As noted, the project team considered a number of principles that it wanted to guide the development and content of the Model Treaty, through an iterative series of discussions. A large set of principles identified as relevant to the AoA ReI project are presented in a table in



Annex I below. The table groups the principles under headings that make sense from a legal perspective, as ultimately the principles will be included in legal form in the Model treaty. Some principles appear under different headings, indicating their broader or more versatile nature. The Annex I table also sets out contextual considerations and notes some assumptions and connotations related to the relevant principles.

In the process of identifying the principles to include, the project team distinguished between observations and principles. For instance, they wanted to recognize the importance of favouring the co-existence of a diversity of food and agricultural systems, which is an observation. As this is also a motivation and objective for this project, it will be captured in a Preambular paragraph. Principles 1 and 2 cover this observation and objective. The project team recognizes that these two Principles are far broader than just safeguarding a diversity of food and agriculture systems. Principle 1 is the obligation to respect human rights. Human rights law *inter alia* lays down a right of persons belonging to ethnic, religious or linguistic minorities to the practice and enjoyment of their own culture<sup>13</sup> and emerging human rights law requires States to take appropriate measures to support peasant seed systems, and promote the use of peasant seeds and agrobiodiversity.

The project team discussed whether principles should be simply listed, in a way similar to Article 7 of the UN Convention on the Law of the Sea, or whether they should be articulated in treaty obligation language, as in the UN Framework Convention on Climate Change. (These two articles are reproduced in Annex II below). Given the novel combination of principles from different sources that this Model Treaty is proposing, it was decided to express the principles in the form of treaty obligations.

Other elements that the project team had in mind when crafting the principles and other parts of the Model treaty are the international law principle that the specific rule (*lex specialis*) prevails over the general rule, and the Vienna Convention on the Law of Treaties' specification that the Parties' intent, if ascertainable, will override "normal" (usual) meaning of the text of a treaty.

## Balance between principles

An important factor that the project team considered is the question of inconsistent application of principles, or the possibility for trade-offs between different principles. The team sees all the Model Treaty principles as being of equal weight and importance. Their mutual supportiveness and cumulative application is necessary for the Model Treaty to be able to deploy its intended effects. The project teams this mutual supportiveness as existing across time. This point is addressed under Principle 1.

To reduce the scope for one principle to be applied at the expense of another, the Model Treaty will specify that the principles are to be applied cumulatively, indicating that in determining their policy choices, governments must consider all of the Treaty principles.

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<sup>13</sup> See for instance International Covenant on Economic, Social and Cultural Rights, Article 27; Convention on the Rights of the Child, Article 30. See also Human Rights Committee. 1994. *General comment No. 23(50) Article 27: Rights of Minorities*. UN Doc. CCPR/C/21/ Rev.1/Add.5.

The team recognized that when it is impossible for a Party to respect all the Model Treaty principles, the different principles must be balanced in a consistent and transparent way. For treaty implementation, they articulated the principle that the Party must choose the option that is the least damaging for global resilient food security, in a manner akin to the trade principle of “least trade restrictive.”<sup>14</sup> That principle has developed to guide determination of whether a measure that is *prima facie* incompatible with WTO law can be considered “necessary” – and thus acceptable under WTO law.<sup>15</sup>

The team also emphasized the importance of requiring a Party unable to cumulatively respect all the principles, to demonstrate how and why inconsistent principles are weighted against others. An operative paragraph of the Model Treaty is envisaged to require countries to explain why they are derogating from treaty obligations and principles. This explanation could be provided in a regular review mechanism similar to the WTO’s Trade Policy Review, or through a notification mechanism.

### Proposed wording

In their actions to achieve the objectives of this treaty and to implement its provisions, Parties shall be guided by the principles set out in this article. These principles shall be applied cumulatively, in a mutually supportive and coherent manner. In cases where different policy choices are available, Parties shall choose the option that they can demonstrate as being the least damaging for global resilient food security.

### Next steps

As noted above, successive versions of this Working Paper have served as a basis for the core team to consider whether to include a dedicated article on principles in the Model Treaty and, once that had been established, what principles to articulate. Once work is well advanced on the operative parts of the Model Treaty, the project team will reconsider whether all the principles that have been identified as important find expression within the text.

This version of the Working Paper sets out the proposed wording of the principles. Some of the principles may find expression in operative provisions and some may be reworded for consistency with other treaty provisions as the Model Treaty text moves towards finalization. In other words, the final text of the Principles article may differ from what is set out in Section 3 of this Working Paper.

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<sup>14</sup> Sykes AO. 2003. The Least Restrictive Means. *The University of Chicago Law Review*, 70(1), 403–419. <https://doi.org/10.2307/1600566>

<sup>15</sup> See e.g. WTO. 2007. *DS332: Brazil — Measures Affecting Imports of Retreaded Tyres*. [Panel and Appellate Body Reports](#). Take for instance a measure that falls under the scope of the WTO Agreement on Technical Barriers to Trade. To be permissible under WTO law, the state must prove, among other requirements, that it is “necessary” to achieve a “legitimate policy objective,” that it is based on “international standards” and that there is no other, less trade restrictive, option to achieve the policy objective. See also Oeschger A, Bürgi Bonanomi E. 2023. [PPMs Are Back: The rise of new sustainability-oriented trade policies based on process and production methods](#). IISD Policy Brief.

# Model Treaty Principles

## Principle 1:

### *Respect human rights and implement the sustainable development goals*

#### Discussion

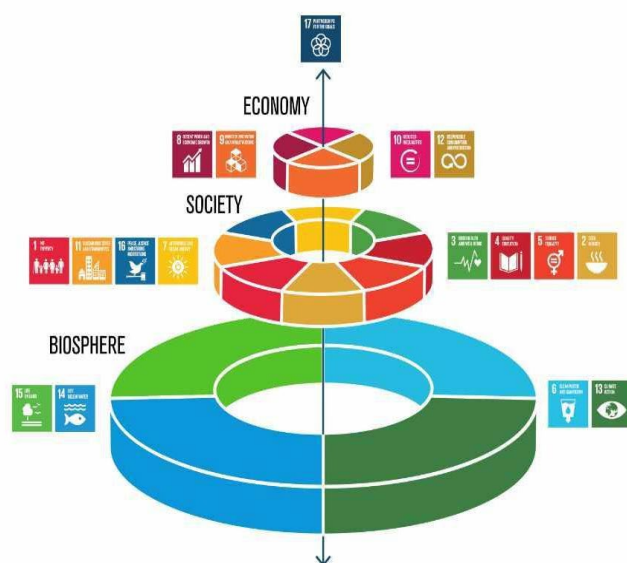
There is overall agreement within the AoA ReI project team that any rules, policies or measures flowing from the Model treaty should be consistent with international human rights law and with sustainable development, particularly the Sustainable Development Goals. The project team discussed whether to refer to specific elements of human rights law, such as the right to food, peasants' rights or agricultural workers' rights. The right to food is particularly relevant as it mandates the need to take account of cultural and social factors, of considering its application in relation to other public policy and human rights objectives (e.g. health), and the need to consider the long-term impact (e.g. on the environment) of food-related policies. Various other human rights principles also support the Model Treaty's objectives, including the extra-territorial nature of human rights obligations<sup>16</sup> and the fact that human rights requires that States take account of the impacts of an existing or proposed measure, paying particular attention to the measure's impacts on the most vulnerable or marginalized sectors of the population.

The project team was in general agreement about the need to refer to sustainability as a central principle. However all acknowledged that the term is used so generally and so broadly that it can be emptied of its meaning and enable actions that do not favour the profound transformation economic systems change that the project has at its heart. Indeed, sustainable development can be interpreted in such a way as to validate behaviour which we consider inconsistent with the objective of realization of resilient global food security, and with other foundational principles of the AoA ReI project, such as the need to rectify power imbalances such as between big corporate actors and small-scale farmers. With this in mind, the project team acknowledged the usefulness of the "wedding cake" approach, illustrated below in Figure 2. This captures how all the sustainable development goals (SDGs) are directly or indirectly connected to sustainable and healthy food. It shows that rather than being seen as separate parts, the social, economic, and ecological development aspects of the SDGs should be seen as embedded parts of the biosphere. (See also *Principle 3: Humans in Nature* and *Principle 5: Inclusive sustainable prosperity and a wellbeing economy*) Reference to the SDGs is included even though the framework may be replaced by a new one in 2030.

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<sup>16</sup> Extra-territorial obligations (ETOs) are that States have obligations in relation to their acts and omissions, within or beyond their territory, that have effects on the enjoyment of human rights outside of their territory.

**Figure 2: The SDGs Wedding Cake**

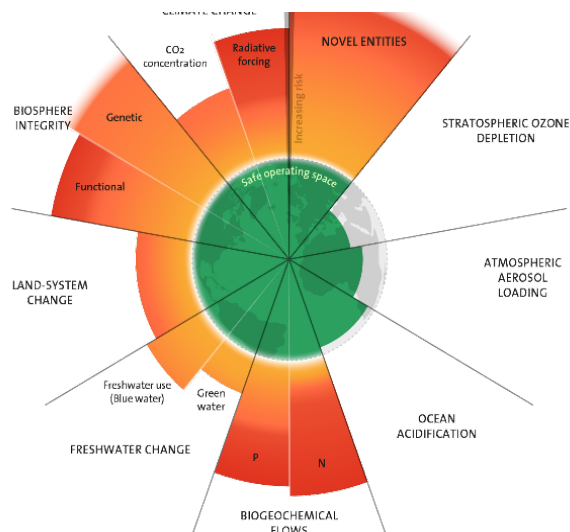


Source: Stockholm Resilience Centre.

The project team noted that any measure that the Model treaty mandates, allows or proscribes must address ecological, social, and economic objectives, bearing in mind short-term and long-term impacts. The importance of respecting planetary boundaries<sup>17</sup> and social minima, portrayed in Figures 3 and 4, also came up in discussions. The team noted that referring to the planetary boundaries framework had the advantage of simultaneously recognizing a broad spectrum of environmental impacts of agricultural trade policies, and that these impacts are interlinked. The human rights framework that this Principle refers to provides guidance on the required social minima.

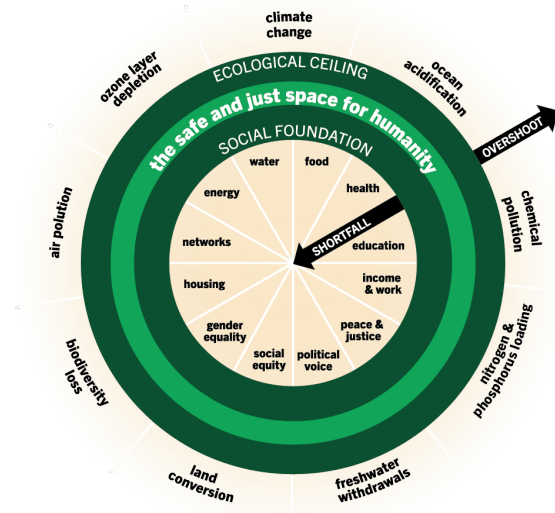
<sup>17</sup> Terms to be defined in the Model Treaty's *Article 4 – Definitions and Use of Terms*.

**Figure 3: 2023 update to the planetary boundaries**



Source: Azote for Stockholm Resilience Centre, based on analysis in Richardson et al. 2023.

**Figure 4: Living in the safe and just space between the planetary boundaries and social minima**



Source: Raworth K. 2017. Doughnut Economics.

## Proposed wording

In order to achieve the objective(s) of this Treaty, Parties shall be guided by the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law, as well as the Sustainable Development Goals and international environmental law. A Party may not invoke the provisions of this Treaty to infringe or limit the enjoyment of human rights guaranteed by their domestic laws or protected under international law.

## Principle 2:

### *Resilient global food security*

#### Discussion

The project team devoted significant attention to the central question of how to ensure sustainable and diverse food and agriculture systems, resilient food and agriculture systems, food security, healthy diets and similar concepts. Team members acknowledge that agriculture and food fulfil economic, social, cultural, nutritional, health and environmental functions; functions which complement one another and are equally important to achieving global resilient food systems. Whilst the team used different words to capture these concepts, all agree that the agricultural and food diversity that we want the Model treaty to favour implies a diversity of ecosystems and diversity of activities, knowledge, and expressions, including food and agricultural biodiversity; a diversity of agricultural forms and rural

landscapes; a diversity of agricultural and food practices, methods, techniques and technologies, including modes of food production, storage, processing, transport, marketing, distribution, preparation and preservation; a diversity of food cultures and heritages, including food values, habits and practices; and a diversity of knowledge relating to agriculture and food, including traditional, local and indigenous knowledge; and a diversity of agricultural products and foods.<sup>18</sup>

Team members noted the importance of diverse and diversified food systems and often gravitated back to the concept of resilient global food security.<sup>19</sup> They noted that the concept builds on the UN/FAO definition of food security, adding four essential elements: consonance of policy across scales (local, regional, global), democratic accountability beyond borders, capacity for adaptive governance and reflexive learning, and accountability. The team acknowledged that the concept of resilient global food systems includes the concept of supporting access to healthy and nutritious food.

The team further discussed the principle that food be characterized as a commons, recognizing the international dimension of this, which would recognize food, or global resilient food systems as a common concern of humanity, a principle that is already recognized in international environmental law.<sup>20</sup> The principle of food as a commons rather than a commodity already informs many approaches to land management and access to food. The project team was in general agreement with agroecology actors in saying that it follows from recognizing food as a common concern that “food businesses become partners in polycentric governance of a common-pool resource.”<sup>21</sup>

The project team emphasized that trade measures should encourage positive externalities and discourage negative externalities, and that they should incentivize sustainable agricultural production and resilient global food systems. It confirmed that building and supporting resilient local food and agriculture systems is the primary focus of the Model Treaty. In other words trade and trade measures should support and not undermine resilient and diverse local food systems; local food systems should be strengthened before turning to trade.

Team members also noted disagreement with some connotations of the word “resilient.” This has been used by private business actors in the context of intensive agriculture and the use of fertilizers, as in “climate-resilient crops,” underscoring the desirability of clarifying the

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<sup>18</sup> Elements taken from Parent G, Ignaccetti T. 2023. *Proposal for an International Convention on Agricultural and Food Diversity and Sustainability*.

<sup>19</sup> Murphy SME. 2021. *Resilient Global Food Security and the World Trade Organization: An Assessment of Adaptive Governance*. PhD Thesis. Vancouver: University of British Columbia.

<sup>20</sup> See for instance the 1992 United Nations Framework Convention on Climate Change and the 2015 Paris Agreement, which both recognize climate change as a common concern of humankind, and the 1992 Convention on Biological Diversity which recognizes biological diversity as a common concern of humankind. Cottier and Ahmad say that the legal concept of common concern of humankind addresses different levels of action in relation to global problems. Recognition of a subject as a common concern of humankind triggers an enhanced duty to negotiate and cooperate, and also a firm obligation for each State to address the problem domestically, including if necessary by regulatory means. Under specific circumstances, the concept also supports the use of unilateral trade measures against free riding or the refusal of states to cooperate.

<sup>21</sup> McGreevy et al. *supra* n. 2.

AoA ReI’s understanding of this term in a Use of Terms or Definition article in the Model Treaty.

### **Proposed wording**

The Parties recognize that resilient global food security is a common concern of humanity. They will design their trade policies and measures to support resilient and diverse local food systems and favour access to healthy and nutritious diets.

## **Principle 3:**

### ***Humans as Nature***

#### **Discussion**

The need to limit environmental harms came up at a number of junctures in the project. At moments we referred to the need to reduce carbon emissions, in other contexts we named the importance of ensuring that trade-related policies permitted measures in favour of biological and genetic diversity, or of favouring soil health. In order to ensure consistency we decided to refer to the concept of Planetary Boundaries, as noted above in the discussion of Principle 1. In other words, we agreed that planetary boundaries and social minima should guide what trade rules, policies and measures should be allowed. We discussed how trade measures should allow and favour regenerative agriculture, and enable environmental resilience.

In some discussions, we noted the influence on environmental law of Indigenous ontologies and ecology, such as Indigenous ontologies of Mother Earth, enshrined in the constitutions of several countries from the Global South. We also noted emerging legal constructs in European and other countries’ law, such as the rights of nature, collective domains or rural commons. Several of the AoA ReI core team referred to the IPBES “living as nature” framework and to the Convention on Biological Diversity “living in harmony with nature” framework. This chimes with the SDGs wedding cake approach referred to above.

The concept of sufficiency, which, in addition to recognizing “nonhuman agencies on their own terms” “supersedes the growth-driven logic of efficiency, which prioritizes agricultural yields and economic profit over land access and stewardship”<sup>22</sup> reflects our consideration of the need to reduce overconsumption and food waste. Moreover, we discussed how the principle of avoiding environmental harms must be recognized as an international obligation, consistent with the principle of Common Concern.

### **Proposed wording**

Parties recognize that humans and all our activities are part of nature, and therefore strive to keep their activities within planetary boundaries. Trade measures will be designed to favour environmental regeneration and to minimize environmental harms.

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<sup>22</sup> McGreevy et al. *supra* n. 3.



## **Principle 4:**

### ***Do no harm***

#### **Discussion**

The project team agreed that “do no harm” would be a foundational principle of the Model treaty. It follows from this and from the principle that global resilient food systems are a common concern of humankind that Parties should not harm these systems, nor the natural foundations on which they are based.

Avoiding doing harm requires that harmful activities be prevented, consistently with the international environmental law principle of Prevention. The Precautionary Principle, according to which “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation” may also apply.

The principle of accountability also flows from the do-no-harm principle: if harm is caused, the person or entity that caused the harm must be held accountable, including for harm caused abroad. It must be noted that the principle of accountability has two aspects. One, that focuses on process or conduct is covered under Principle 7 below. The aspect of accountability that this principle addresses requires having mechanisms to hold a person or entity responsible, or answerable, for consequences of policies or actions. It requires effective and accessible mechanisms for redress and remedies if harm ensues.

Principle 1 and human rights’ extra-territorial obligations will in some situations apply. The do-no-harm principle necessarily requires that actors consider the possible impacts of their proposed measures and policies before implementing them. This also flows from Principle 1 emphasis on human rights, which directs consideration to be paid to the most vulnerable and marginalized, those who are generally overlooked by international trade policy.

This principle will be further developed in one of the Model treaty’s operative paragraphs, possibly with the proviso that “significant” harm be avoided. The wording proposed here joins the do no harm principle with the principle of sovereignty which is a centrepiece of international law, as well as with Principle 1.

#### **Proposed wording**

Parties have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to define and implement their own food and agriculture policies, and the responsibility to ensure that their policies and activities within their jurisdiction or control do not limit other States’ capacity to define and implement their own food and agriculture policies, and do not cause harm to other States or to areas beyond the limits of national jurisdiction.



## Principle 5:

### *Inclusive sustainable prosperity and a wellbeing economy*

#### Discussion

The project centres different dimensions of inequality and power imbalances, including differences in economic power within and between countries, and the structural factors that enable historical injustices to persist. Team members agree that we want to address and eliminate such inequalities, and so touched on a number of principles and approaches that seek to do so. This principle regards economic policy, the next principle focuses on private actors and redressing power inequalities between countries.

Team members also agreed that current economic policies tend to incentivize environmentally and socially harmful behaviours, making it harder to implement policies in favour of global resilient food security. Team discussions revealed scepticism about a number of economic concepts. In particular, it was recognized that economic growth should not be the main or sole objective of food and agriculture trade and that it should not be assumed that market forces alone can provide optimal outcomes from food and agriculture trade. In this alone, the project is a departure from the WTO's approach. The Agreement on Agriculture for instance states in its Preamble that WTO Members' long-term objective is to establish a fair and market-oriented agricultural trading system.<sup>23</sup> Relatedly, the core team challenged the principle (assumed or explicitly stated in most international trade agreements) that increased consumption is something to be strived for. Many of the project team are of the view that feel the Model Treaty should be centred around the idea of resilience of local and global food systems, rather than around the concept of comparative advantage. The AoA ReI project is attentive to the need to reduce structural social inequities and for agricultural trade policies to be redistributive by design.<sup>24</sup>

Project team members concurred with a number of economic principles that challenge mainstream economic assumptions and with which the AoA ReI project tends to agree. "Inclusive prosperity"'s "inclusive" modifier demands that the whole distribution of outcomes be considered, not simply the average, and that prosperity be broadly considered, including non-pecuniary sources of well-being, from health to climate change to political rights.<sup>25</sup> "Wellbeing Economy" requires appreciation of – and acting in accordance with – the reality that the economy is a subset of society and of nature, and that it must be designed to serve social and environmental goals, rather than be positioned or perceived as an objective in its own right.<sup>26</sup> A wellbeing economy pursues human and ecological wellbeing instead of material growth. The concept is gaining support amongst policymakers, business, and civil society with several national governments having adopted the wellbeing economy

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<sup>23</sup> WTO. 1994. *Agreement on Agriculture*, Preamble.

<sup>24</sup> Raworth K. 2017. *Doughnut Economics – Seven ways to think like a 21<sup>st</sup> century economist*. Raworth writes that the "...core of the 20<sup>th</sup> century model [is] redistribution of income afterwards, through progressive taxes and other means. The distributive concept of the 21<sup>st</sup> century is about designing our activities in such a way that they share the value from the start, instead of redistributing it afterwards."

<sup>25</sup> Naidu S Rodrik D and G Zucman. 2019. *Economics for Inclusive Prosperity: An Introduction*.

<sup>26</sup> Wellbeing Economy Alliance. (website, no date). [What is a Wellbeing Economy?](#)

as their guiding framework to design development policies and assess social and economic progress.<sup>27</sup>

The concepts of social reproduction and care were noted as relevant here and also to Principles 1, 2, 3 and 7. Social reproduction is understood here to encompass all the activities and processes necessary to sustain and perpetuate life and society, such as caring for children or the land. Food systems – and the interplay between food production (often made possible by unpaid labour), marketisation and access – are constituent elements of the social reproduction of life. Acknowledging it enables us to de-invisibilise<sup>28</sup> much of the unpaid work and ecosystem services essential to human life.

### Proposed wording

Parties shall design their food and agriculture trade policies to meet the objectives of inclusive sustainable prosperity and a wellbeing economy, and shall measure their progress by reference to inclusive sustainable prosperity and wellbeing economy indicators.

## Principle 6:

### *Redressing power inequalities*

#### Discussion

In the context of the AoA ReI project's clear objective to address different dimensions of power inequalities two areas stand out: (1) the market power of private corporations, pointing to the need to address the very unequal economic and power structures within the agriculture sector and (2) inequalities between countries and the need to redress historical and structural power inequalities.

Regarding the former, team members discussed the need to address market concentration, noting the principle of distribution, which prevents concentration and overaccumulation and addresses historic injustices that underly and are still perpetuated through contemporary agrifood systems, such as usurpation of Indigenous lands and other legacies of colonialism and imperialism. This principle addresses the international trade and domestic policies that undermine family- and community-scale production and facilitate industry concentration around the world.<sup>29</sup> The Model Treaty will address structural social inequities and ecological exploitation that are at the core of industrial agrifood systems,<sup>30</sup> for instance through a dedicated article limiting Abusive Exercise of Market Power.

Many project team members felt that the concept of “Fair and equitable sharing of benefits” makes sense in the AoA ReI context. This principle, usually used in the context of genetic

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<sup>27</sup> Fioramonti L, Coscieme L Costanza R *et al.* (2022) Wellbeing economy: An effective paradigm to mainstream post-growth policies? *Ecological Economics* 192.

<sup>28</sup> Mezzadri A *et al.* 2024. The social reproduction of agrarian change: Feminist political economy and rural transformations in the global south. An introduction, *Journal of Agrarian Change*, <https://doi.org/10.1111/joac.12595>.

<sup>29</sup> McGreevy *et al.* 2022. *Supra* n. 2.

<sup>30</sup> *Op.cit.*, page 1012.

resources, could apply *per se* to the genetic resources aspects of agriculture trade.<sup>31</sup> In addition, it could be applied more broadly to address economic and power dynamics in global value chains. Peasant farmers, small-scale producers or agricultural workers in agriculture value chains tend to be the least remunerated, whilst the big conglomerates earn the lion's share of the profits.

Decolonization and political ontology and epistemic justice discourses challenge the dominance of “Euro-modern ontology” over other ontologies, and also add further granularity to the question of who benefits from export trade within a country, highlighting *inter alia* the racialized nature of trade in agriculture. Discussions touched on whether team members wanted to call out – or even propose restructuring – the currently exploitative power relationship and the unequal exchange that has dominated the global South's economic engagement with former colonisers. Some felt doing so in other contexts (notably the CBD) have not been fruitful. Others felt that this project should emphasize this point.

Project members also considered other ways to address and redress inequalities between countries, noting *inter alia* the principle of common but differentiated responsibilities and whether to include the principle of Special and Differential Treatment (SDT) in some form.<sup>32</sup> Some of the group considered that the Model treaty would treat each Party according to its means and needs with the view of achieving substantive equality, thus no longer requiring the concept of SDT. The Model Treaty will seek to capture the distinction between countries at different levels of development, recognizing unequal and evolving power dynamics amongst Parties. Choosing the term the Model Treaty uses and its definition will include a determination of grounds for differentiation between Parties' obligations. Others considered that SDT remains an important tool for ensuring flexibility and policy space, and called for the Model Treaty to reinvigorate the concept, given that over the years it has been reduced to all countries assuming the same obligations but with different time frames for implementation, and has been further reduced to a best endeavour obligation.

The proposed wording does not directly pick up all the points discussed under this principle, as the Model Treaty will include separate operative articles on market concentration and on the different types of trade measures open to different types of Parties.

### **Proposed wording**

In accordance with the principle of non-discrimination, Parties shall take measures to ensure substantive equality within countries consistently with human rights law and with a particular attention to limiting market concentration and extreme wealth inequality. Parties shall take measures to ensure substantive equality between countries in accordance with their common but differentiated responsibilities and respective capabilities.

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<sup>31</sup> See Union for Ethical BioTrade. 2013. *Fair and equitable benefit sharing – Manual for the assessment of policies and practices along natural ingredient supply chains*.

<sup>32</sup> Irene Musselli's input paper to the project's factual scoping paper sets out the concept of Modulated Special and Differential Treatment. On file with the author.

## **Principle 7:**

### ***Participation and Accountability***

#### **Discussion**

The project team agrees that enhancing the livelihoods of people in rural areas is a project objective, as is the need to support diverse food and agricultural systems and those who wield the least power in the current system, such as small-scale farmers and fishers, peasant farmers or Indigenous farmers. The words equity and inclusivity came up frequently as the team conceptualized and drafted Model Treaty provisions, as did the need for broad, democratic and meaningful participation in the formulation and application of food and agricultural trade policies.

Linked to that, the project team emphasized the importance that those who design and implement food and agriculture trade policy be accountable to local and national constituencies for food and agriculture policy, asserting the central role of democracy<sup>33</sup> and the need to include the notion of community agency.

As noted under Principle 4 above, the principle of accountability has two aspects. This Principle focuses on process or conduct, reminding us that the process of policy-making is as important as the outcome.

#### **Proposed wording**

Parties shall design their food policy and agricultural trade policies bearing in mind the need to support the food and agricultural systems of peasants, Indigenous peoples and local communities and to strengthen Indigenous and rural communities. They shall ensure active, free, effective, meaningful and informed participation of individuals and groups in decision-making processes relating to food and agriculture trade.

## **Principle 8:**

### ***International cooperation and governance***

#### **Discussion**

International cooperation and adequate governance mechanisms are central to this project. In addition to concepts mentioned under the headings of the Principles above, the project team's deliberations addressed concepts such as regional solidarity and cooperation, effective global cooperation, adaptive governance (a set of rules and institutions with inbuilt ability to respond to changing circumstances and complexity), multi-scalar governance mechanisms (which allow for the coexistence of production and trade mechanisms (informal and formal, local and global), and respect economic, ecological and cultural specificities). These will primarily be given effect to by the Model Treaty's operative provisions and are therefore not developed in detail in this principle.

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<sup>33</sup> Murphy S. 2021. *supra*.

## Proposed wording

The Parties shall cooperate to achieve global resilient food systems in a spirit of international solidarity.

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# Annex I – Table

Principle	Sustainability	Accountability	Participation	Prevention (of harm)	Wellbeing
<b>Has main roots in:</b>	Human rights law Environmental Law	International Law Human rights law Environmental law (Polluter pays principle)	Human rights law Environmental law	Human rights law Environmental law	Wellbeing economy movement Environmental economics
❖ <b>Closely related principle</b>	❖ Resource use consistent with regenerative approaches / Regeneration / Resilience	International Trade Law	❖ Inclusion ❖ Transparency ❖ Agency	❖ Duty to monitor ❖ Duty to regulate in the public interest ❖ Precautionary principle	❖ Sufficiency ❖ Dignity ❖ Healthy
≠ <b>Antagonistic principle or possible tension</b>	❖ Intergenerational aspects ❖ Sustainable access (to resources/to food) ❖ Sustainable Development ❖ Adaptive capacity (of rules and policies)	❖ Rule of law ❖ Transparency ❖ Right / duty to regulate in the public interest			❖ Inclusive prosperity (Rodrik et al.) / Distribution ❖ Sustainable food security (Laval) ❖ Regeneration ❖ Adaptive capacity (of rules and policies)
<b>Other considerations</b>	Sustainable prosperity (term used as an alternative to “growth”)  So overused that it has lost meaning, e.g. “sustainable growth” = an oxymoron.  Wedding cake/ hierarchical formulation of SDGs	Engages with the question of power  Need international accountability/ across borders	Can play a role in policies’ adaptive capacity  Can play a role in countering elite/corporate capture of trade policy (linking with the political economy of trade diplomacy)	Need to define harm to what (Humans? (which humans?) Nature? Something else? See below: Indivisibility)  Precludes paying to offset harm done or expected  Requires ex ante impact assessment	❖ Just transition ≠ Growth / economic growth ≠ Efficiency  Sustainable prosperity (term used as an alternative to “growth”)



Principle	Universality	Indivisibility	Non-discrimination	Cooperation	Sovereignty	Diversity
<b>Roots in:</b>	Human rights Environmental law	Ecosystems thinking Human rights	Human Rights International Trade	Public international law Environmental law Human rights	Public international law	Agroecology Human rights
❖ <b>Closely related principle</b>  ≠ <b>Antagonistic principle or possible tension</b>	❖ Global justice ❖ Multilateralism ❖ Interdependence ❖ Extra-territorial human rights obligations ❖ Minimum social standards ❖ Common concern  ≠ Multiscalar consonance	❖ Cannot pick and choose amongst certain human rights ❖ “living as nature frame” (IPBES 2022) ❖ Distribution ❖ Commons	❖ Substantive Equality ❖ Special & Differential treatment ❖ Common but differentiated responsibilities ❖ Equity & Fairness ❖ Distribution ❖ Most-favoured nation treatment ❖ National treatment ❖ Level playing field	❖ Solidarity ❖ Rights and obligations from duty-bearers and rights-holders. ❖ Commons (food as a commons, as a global commons, or as a common concern of humanity)  ≠ Reciprocity (in trade) ≠ Competitive advantage	❖ Policy space ❖ Subsidiarity ❖ Adaptive governance ❖ Interdependence ❖ Multilateralism	❖ Distribution ❖ Commons ❖ Regeneration  ≠ Efficiency ≠ Comparative advantage ≠ Competitive advantage
<b>Other considerations</b>	≠ Subsidiarity ≠ Policy space  Some issues can only be dealt with at a global level		Different meaning depending on whether in Human Rts or Intl Trade  If we keep the principle, refer to arbitrary discrimination as to be avoided  Keep in mind the distinction between <i>de jure</i> & <i>de facto</i> discrimination		Need to clarify possible tension with Global Commons / Common Concern of Humanity  Cf also Universality	



# Annex II

## Examples of Objectives and Principles articles

### **Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) (2023)**

#### **Article 2 - General objective**

The objective of this Agreement is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term, through effective implementation of the relevant provisions of the Convention and further international cooperation and coordination

#### **Article 7 - General principles and approaches**

In order to achieve the objectives of this Agreement, Parties shall be guided by the following principles and approaches:

- (a) The polluter-pays principle;
- (b) The principle of the common heritage of humankind which is set out in the Convention;
- (c) The freedom of marine scientific research, together with other freedoms of the high seas;
- (d) The principle of equity and the fair and equitable sharing of benefits;
- (e) The precautionary principle or precautionary approach, as appropriate;
- (f) An ecosystem approach;
- (g) An integrated approach to ocean management;
- (h) An approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the role of the ocean in climate;
- (i) The use of the best available science and scientific information;
- (j) The use of relevant traditional knowledge of Indigenous Peoples and local communities, where available;
- (k) The respect, promotion and consideration of their respective obligations, as applicable, relating to the rights of Indigenous Peoples or of, as appropriate, local communities when taking action to address the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction;

- (l) The non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment;
- (m) Full recognition of the special circumstances of small island developing States and of least developed countries;
- (n) Acknowledgement of the special interests and needs of landlocked developing countries.

## **Regional Comprehensive Economic Partnership Agreement (RCEP) 2020**

### **Article 1.3: Objectives**

The objectives of this Agreement are to:

- (a) establish a modern, comprehensive, high-quality, and mutually beneficial economic partnership framework to facilitate the expansion of regional trade and investment and contribute to global economic growth and development, taking into account the stage of development and economic needs of the Parties especially of Least Developed Country Parties;
- (b) progressively liberalise and facilitate trade in goods among the Parties through, inter alia, progressive elimination of tariff and non-tariff barriers on substantially all trade in goods among the Parties;
- (c) progressively liberalise trade in services among the Parties with substantial sectoral coverage to achieve substantial elimination of restrictions and discriminatory measures with respect to trade in services among the Parties; and
- (d) create a liberal, facilitative, and competitive investment environment in the region, that will enhance investment opportunities and the promotion, protection, facilitation, and liberalisation of investment among the Parties.

➔ RCEP does not have an article on Principles.

## **Minamata Convention on Mercury (2013)**

### **Article 1 – Objective**

The objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

➔ The Minamata Convention does not have an article on Principles.

## **Cartagena Protocol on Biosafety (2003)**

### **Article 1 – Objective**

In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

➔ The Cartagena Protocol does not have an article on Principles.

## **ILO Convention (No. 190) concerning the elimination of violence and harassment in the world of work (2019)**

### **III. CORE PRINCIPLES**

#### **Article 4**

1 Each Member which ratifies this Convention shall respect, promote and realize the right of everyone to a world of work free from violence and harassment.

2. Each Member shall adopt, in accordance with national law and circumstances and in consultation with 'representative employers' and workers' organizations, an inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work. Such an approach should take into account violence and harassment involving third parties, where applicable, and includes:

- (a) prohibiting in law violence and harassment;
- (b) ensuring that relevant policies address violence and harassment;
- (c) adopting a comprehensive strategy in order to implement measures to prevent and combat violence and harassment;
- (d) establishing or strengthening enforcement and monitoring mechanisms;
- (e) ensuring access to remedies and support for victims;
- (f) providing for sanctions;
- (g) developing tools, guidance, education and training, and raising awareness, in accessible formats as appropriate; and
- (h) ensuring effective means of inspection and investigation of cases of violence and harassment, including through labour inspectorates or other competent bodies.

3. In adopting and implementing the approach referred to in paragraph 2 of this Article, each Member shall recognize the different and complementary roles and functions of

governments, and employers and workers and their respective organizations, taking into account the varying nature and extent of their respective responsibilities.

## **Article 5**

With a view to preventing and eliminating violence and harassment in the world of work, each Member shall respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation, as well as promote decent work.

## **Article 6**

Each Member shall adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

## **UN Framework Convention on Climate Change (1992)**

### **ARTICLE 3 – PRINCIPLES**

In their actions to achieve the objective of the Convention and to implement its provisions, the Parties shall be guided, inter alia, by the following:

1. The Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof.
2. The specific needs and special circumstances of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those Parties, especially developing country Parties, that would have to bear a disproportionate or abnormal burden under the Convention, should be given full consideration.
3. The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost. To achieve this, such policies and measures should take into account different socio-economic contexts, be comprehensive, cover all relevant sources, sinks and reservoirs of greenhouse gases and adaptation, and comprise all economic sectors. Efforts to address climate change may be carried out cooperatively by interested Parties.

4. The Parties have a right to, and should, promote sustainable development. Policies and measures to protect the climate system against human-induced change should be appropriate for the specific conditions of each Party and should be integrated with national development programmes, taking into account that economic development is essential for adopting measures to address climate change.

5. The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.