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Addressing the Challenges of Creating a Global AI Architecture

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Context and Challenges

This submission was written in response to a technical note, “Moving towards a Global Architecture for AI,” based on the third recommendation of ‘Shift 6’ of the United Nations (UN) High-Level Advisory Board (HLAB) report entitled “A Breakthrough for People and the Planet.”¹ It addresses the challenges of creating a global architecture dedicated to setting standards for artificial intelligence (AI).

The UN can serve as a catalyst and help reduce the diversity of regulation at a global scale. The creation of a global architecture tasked with defining global technical standards for the use of AI is both timely and critical. There are a multitude of initiatives in the field of AI and keeping track of them is a complex task. The future framework of AI is at risk of being affected by fragmentation. This can be attributed to four causes.

(i)

There is a plurality of definitional approaches towards the regulation of AI at a global scale, not to mention several controversies that divide scientists and experts. The challenges are not solely of a legal nature, as shown by the concerted or isolated efforts of international organizations to establish a single definition.²

(ii)

Initiatives led by international organizations are sometimes aimed more at regulating the processes that rely on AI than AI itself. As a result, there is a wide range of recommendations related to, among other things, autonomous vehicles, facial recognition, robotics, machines, cybersecurity, and algorithms.³ AI is mentioned in instruments whenever stakeholders consider that these objects, tools, or processes are related.

(iii)

The purpose of the initiatives vary from one forum to another: some aim to establish a ‘safety framework’ (or a ‘trust framework’) in the implementation of AI-based processes, while others encourage or commit designers to provide a certain number of ‘guarantees’ to users, or even to abide by a ‘compliance’⁴ framework.

(iv)

Finally, initiatives developed at an international level tend to have specific goals, whether they define rules and good practices in terms of integrity, transparency, compliance, or simply prohibit the use of AI. States and international organizations are intertwined in a network of concerted initiatives and instruments intended to provide a framework for AI. The following international organizations contribute substantially to defining an international legal framework applicable to AI: the UN, UNESCO, International Telecommunication Union (ITU), World Intellectual Property Organization, World Health Organization, the European Union, Organisation for Economic Co-operation and Development (OECD), and the World Bank Group, among others.

Key Role of the UN and Issues for Attention

The UN is an international organization with a universal and generalist purpose, whose activity in the field of AI is mainly handled outside its main bodies (such as the Security Council and General Assembly). Subsidiary bodies, ad hoc committees, or experts tend to explore the AI field under the aegis of the UN, while awaiting the development of a multistakeholder body called for several years ago by the UN Secretary-General, António Guterres.⁵

1 See: High-Level Advisory Board on Effective Multilateralism (HLAB), A Breakthrough for People and Planet: Effective and Inclusive Global Governance for Today and the Future (New York: United Nations University, 2023).

2 Sofia Samoil, Montserrat López Cobo, Emilia Gómez, Giuditta De Prato, Fernando Martínez-Prato, and Blagoj Delipetrev AI Watch: Defining Artificial Intelligence: Towards an Operational Definition and Taxonomy of Artificial Intelligence, JRC Technical Reports (Luxembourg: Publications Office of the European Union, 2020), p. 97.

3 See, for example, Parliamentary Assembly of The Council Of Europe, Legal Aspects concerning “Autonomous Vehicles,” Resolution 2346 (2020); Advisory Committee of the Convention for the protection of persons against automated processing of personal data, Facial Recognition: State of Play and Challenges, Nov. 13, 2019, T-PD(2019)05rev; World Commission On The Ethics Of Scientific Knowledge And Technology, Report on Robotics, Nov. 13, 2019, T-PD(2019)05rev; World Commission On Ethics Of Scientific Knowledge And Technology, COMEST Report on the Ethics of Robotics (Paris: UNESCO, 2017), SHS/YES/COMEST-10/17/2 REV; OECD, Artificial Intelligence, Machine Learning and Big Data in Finance: Opportunities, Challenges and Implications for Policy Makers, (Paris: OECD, 2021); OECD, Artificial Intelligence in Society (Paris: OECD, 2019).

4 Yannick Meneceur, Analyse des principaux cadres supranationaux de régulation de l’intelligence artificielle. De l’éthique à la conformité, 2021, https://lestempselectriques.net/ANALYSE_IA.pdf.

5 United Nations General Assembly, Digital Cooperation Action Plan: Implementing the Recommendations of the High-Level Panel on Digital Cooperation Report of the Secretary-General, Resolution A/74/821, adopted by the General Assembly at the 74th session, United Nations, 29 May 2020, A/74/821.

The UN is the most appropriate forum for leading and coordinating international efforts applicable to the design, development, and responsible use of AI. The UN is currently involved in a number of coordinated projects thanks to inter-institutional cooperation mechanisms (for example programmes initiated by the specialized agencies of the UN such as AI for Good which federates around forty institutions under the leadership of the ITU⁶). The objective of such cooperation processes is to rationalize the global regulation of AI and promote an exchange of experience rather than competition. Cooperation between institutions also contributes, at least theoretically, to preventing the fragmentation of a legal framework applicable to AI.⁷ However, there are a few issues that need to be taken into account in the context of building a global UN-led architecture dedicated to AI.

Fostering Coordination With Regional Organizations

Although the UN is the most suitable organization to lead a global effort on AI, regional organizations such as the European Union, African Union, and Council of Europe, among others, should not be overlooked. Their activity in this area is uneven but substantial. A global approach to regulating AI could be opposed by regional approaches which reflect region-specific historical or cultural constructions, common values, characteristics, or concerns. For instance, the African Union Commission (AUC) has launched several initiatives that complement those UNESCO has dedicated specifically to the regulation of AI in Africa.⁸ The AUC intends to grasp the substantial impact of AI for the digital transformation of African States and promotes a common African position in this area.⁹ It seems legitimate that regional organizations are incentivized to develop legal frameworks that consider their specific interests, and the emergence of specific regional regulations and/or local rules in certain regions should be

expected. However, global forums such as the UN should anticipate the risks that regional initiatives may pose, and promote inter-institutional cooperation, especially since AI actors are likely to carry out their activities from different regions of the world. Taking stock of regional initiatives in the context of building a global architecture is essential to avoid a situation where the legal framework applicable to AI develops in silos and gives rise to divergent initiatives.

Addressing Human Rights

Any project involving AI processes should not be implemented without taking into account their impact on human rights, the rule of law, and the democratic values enshrined in the UN Charter and related legal instruments.¹⁰ Business innovation concerns should be matched with the systematic use of impact assessments and critical risk assessments when developing technological tools and digital processes that may infringe on human rights. Similarly, national security concerns or public order considerations should not justify disproportionate infringements on individual rights.

To date, there is no specific framework for digital activities that is truly universal in scope, covering, for example, the protection of personal data or automated decision-making processes. There is a real threat that the lack of a unique framework could be leveraged by some States to exploit digital tools for the purpose of monitoring individuals and restricting their rights. However, despite the lack of a universal digital-specific instrument, resorting to pre-existing legal instruments is a reliable way to protect individual and community rights in the digital sphere. Indeed, in practice, a majority of UN Member States recognize the application of pre-existing rules of international law to technological processes, including those derived from inter-

⁶ See "About," AI for Good, last accessed 30 August 2023, <https://aiforgood.itu.int/about-ai-for-good/>.

⁷ See for example the collaboration between the European Commission and the OECD: Vincent Van Roy, Fiammetta Rossetti, Karine Perset, and Laura Galindo-Romero, *AI Watch - National strategies on Artificial Intelligence: A European perspective* (Luxembourg: Publications Office of the European Union, 2021).

⁸ "African ICT Ministers pledge to support implementation of Windhoek +30 declaration," UNESCO, 10 November 2021, <https://fr.unesco.org/news/ministres-africains-tic-sengagent-soutenir-mise-oeuvre-declaration-windhoek-30>; "Forum on Artificial Intelligence in Africa," UNESCO, 13 December 2018, <https://en.unesco.org/artificial-intelligence/africa-forum>; "Bengueri Declaration (Final Declaration of the Forum on Artificial Intelligence in Africa)," UNESCO, 13 December 2018, https://en.unesco.org/sites/default/files/ai_outcome-statement_africa-forum_fr.pdf.

⁹ "Sharm el-Sheikh Declaration by African Ministers in Charge of Communications and Information Technology and Systems," African Union Executive Council, 26 October 2019, https://au.int/sites/default/files/decisions/37590-2019_sharm_el_sheikh_declaration_-_stc-cict-3_oct_2019_ver2410-10pm-1rev-2.pdf. See also the work of the African Commission on Human and People's Rights: <https://achpr.au.int/en>.

¹⁰ Fabio Cristiano, Dennis Broeders, François Delerue, Frédéric Douzet, Aude Géry (eds.), *Artificial Intelligence and International Conflict in Cyberspace* (New York: Routledge, 2023).

national law instruments (including the United Nations Charter, International Covenants of 1966, and regional charters for the protection of human rights). International human rights law is the most obvious and most visible way of addressing AI processes, whether it be to regulate the activities of public actors (States, local authorities, international organizations) or those of private actors (companies, non-profit organizations).

In this respect, it is vital for a UN-led architecture to recognize that human rights, as enshrined in relevant legal instruments, also apply to AI. The relevant practice and guidance from UN treaty bodies, such as the Human Rights Committee, and experts should be considered.¹¹

References to human rights could spark objections from a number of States, particularly those that are generally opposed to global human rights initiatives and tend to cast doubt on the values that the UN embodies. However, linking global AI standards to human rights instruments is essential, irrespective of this perceived risk. Indeed, even though regional conventions for the protection of human rights (the European, African, and Inter-American Conventions on Human Rights) do not protect the same rights or bearers, each refers in its preamble to the Universal Declaration of Human Rights and the United Nations Charter (and by extension, the 1966 international covenants on human rights). As a result, UN practice might influence the way regional courts assess AI-based processes, and as acknowledged in legal doctrine, there exists a 'normative catalogue' of rights that is common to several regions across the globe; in other terms, a common core of rights enshrined in the majority of regional legal systems.¹² Clarifying the impact of AI on human rights at an international level will have a performative and driving effect on the protection of human rights at a regional level.

Creating a Global Architecture

Several bodies, including the High Level Advisory Board on Effective Multilateralism, have called for the establishment of a Global Commission on Just and Sustainable Digitization. However, there are a number of challenges that are critical with regard to the nature and functioning of this forum.

Creating a Forum Rather Than a New International Organization

The creation of the proposed Global Commission has several benefits. It rules out the idea of creating a fully-fledged international organization dedicated to digital issues. It also avoids an over-specialization in the AI sphere, in favour of a structure encompassing digital issues in general. This type of forum is generally able to operate beyond the constraints of formal cooperation mechanisms specific to international organizations, allowing for some form of political coordination and fostering standard-setting.

There are, however, several issues to be considered. For example, will it be possible to establish means of cooperation with other institutional bodies of the UN for the sake of streamlining, and will the Global Commission only be a consultation forum or will it be empowered to generate standards for both governments and the private sector? Ideally, these questions should be answered in the affirmative, taking into account the need for technicality, efficiency, and promptness. A Global Commission could simultaneously serve as a forum for harmonizing positions and defining standards and best practices, on the basis independent expertise. While the creation of such a forum does not require the drafting of a constitutive charter, the drafting of statutes will be necessary to address these issues and help define the bodies (secret-

¹¹ See for example, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression. Artificial Intelligence technologies and implications for freedom of expression and the information environment*, 29 Aug. 2018, A/73/348.

¹² L. Burgorgue-Larsen, *Les trois cours régionales des droits de l'homme – in contexte* (Paris : Pedone, 2023).

ariat, working groups, committees) that will ensure its successful operation.

Promoting Inclusive Participation

Should the Commission be created, care must be taken not to replicate the mistakes of other digital governance structures. The Commission will lack legitimacy if it leaves out certain States, particularly those of the Global South, as well as civil society. A lack of representation of all stakeholders would prompt States to fall back on regional approaches, or create alternative forums. Addressing specific regional concerns regarding the use of AI is a key part of a UN-led architecture.

Developing Control and Follow-Up Mechanisms

If the proposed body is to define standards, follow-up mechanisms will need to be put in place to monitor the measures taken by the relevant stakeholders. These mechanisms should be shaped while taking into consideration the Global Commission's composition and the extent of governmental involvement. Setting up an enforcement mechanism is very likely to guarantee regulation of AI design and its development and use. However, it is also the approach that is the most likely to generate resistance from States, to the point where it could deter them from participating voluntarily in the process.

The implementation of *control and monitoring* mechanisms based on reporting commitments by stakeholder (such as the mechanisms implemented by financial institutions, the International Atomic Energy Agency, the OECD, or human rights treaty bodies) is a more consensual option.

The purpose of control is to exercise close supervision

over the activities of an institution or one of its bodies, in order to ensure that they are carrying out their functions properly. Different types of control could be envisioned: ex officio/systematic control and so-called 'contentious' control exercised on the basis of complaints, which involves verification of the facts and conformity by independent experts. It enables the "supervision of the execution by States of international norms ... which the latter have undertaken to execute ... most often ... on the basis of complaints."¹³

The purpose of monitoring would be to consider the behaviour of an identified operator periodically and for a given period of time, and then to draw the consequences, either of the non-conformity of this behaviour with a specific standard, or of the failure to implement expected behaviour.

Such mechanisms could function thanks to periodic reporting by States and industry actors. In order to streamline parallel international processes, the proposed Global Commission, or one of its bodies, could draw on the pre-existing resources and reports of UN treaty bodies, or on the work carried out by national regulation authorities.

Forging Ties With Other Bodies and Organizations

Another way of streamlining the work of the proposed Commission is to explore the role that could be played by national regulatory authorities in charge of technological activities. Given their expertise and local proximity to stakeholders, they should be associated with the work of any proposed UN structure, be consulted, and encouraged to communicate any useful information. The identification of national or regional contact points, already in charge of AI-related missions, is a prerequisite. Coordination with relevant civil society and industry organizations would also be key.

¹³ Jean Salmon (ed.), *Dictionnaire de droit international public* (Brussels : Bruylant, 2001). Translated from French.

Supporting Independent Research

In our view, the involvement of the Secretary-General's Scientific Advisory Board (and its network), as proposed in the HLAB report, should be encouraged. Independent research is essential to assess the negative impacts of AI on individual well-being and the rule of law, as well as the environment, health, and the economy. The definition of safeguards can only be based on reliable recommendations from recognized, independent experts. Ethical thinking on AI is not enough; it must also be conducted in the legal field. Independent, multidisciplinary research is essential to inform the decisions and activities of UN institutions. This research should be supported by governments and businesses alike.

The Way Forward: Engaging Civil Society and the Private Sector

For an architecture dedicated to the global regulation of AI to be successful, the private sector and civil society must be involved both upstream of its development and during its operation. Civil society and private sector players can contribute to the proposed Commission's effectiveness, thanks to their experience and reach, and provide the Commission with legitimacy in fulfilling its mandate. In addition to regular dialogue mechanisms that can be organized periodically to promote exchanges with civil society, a wide range of Participation procedures can be envisioned. The Commission could also draw on the work of ad hoc or permanent commissions and working groups, to enable regular or ongoing consultations. International climate change institutions could offer inspiration (for example the activities of the Subsidiary Body for Scientific and Technological Advice, the Subsidiary Body for Implementation, and several ad hoc working groups of

the UNFCCC which contributed to shaping and implementing relevant guidelines thanks to their respective expertise).

Prior to the creation of a global architecture dedicated to AI, it is essential to consult all stakeholders: civil society, particularly in the Global South, industry actors, national and local regulatory authorities, scientists, and experts. Such consultation could take place on a 'public notice-and-comment' basis. This involves a double approach: on the one hand, all interested parties are notified that a process is underway to draw up new rules; on the other, all interested parties are given the opportunity to provide information, suggestions, and reactions. The aim of such a dynamic is to enable under-represented or abstract interests to be taken into account through the involvement of different categories of stakeholders. We strongly recommend organizing consultations with communities particularly affected by AI activities, which would have an important voice in the activities of the new Commission.

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