GLION
HUMAN RIGHTS
DIALOGUE
2023

PLACING NEW AND EMERGING
TECHNOLOGIES AT THE SERVICE OF
HUMAN RIGHTS AND DEMOCRACY:
WHAT ROLE FOR THE HUMAN RIGHTS
COUNCIL AND ITS MECHANISMS?

PERMANENT MISSION OF THE
REPUBLIC OF KOREA IN GENEVA

UNIVERSAL RIGHTS GROUP

Glion IX

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The ninth Glion Human Rights Dialogue (Glion IX), organised by the Permanent Mission of the Republic of Korea to the United Nations in Geneva and the Universal Rights Group was held on 25-26 May 2023 and focused on the topic: 'Placing new and emerging technologies at the service of human rights and democracy - what role for the Human Rights Council and its mechanisms?'

The interrelationship between science, technology (i.e., the application of scientific knowledge to the world around us), and the fundamental human dignity of individuals and communities has been a focus of the modern human rights movement since its birth in the late 1940s. Today, the urgency of that discussion is more important than ever, as new and emerging technologies (NETs) increasingly affect all facets of human life, bringing with them the potential to strengthen the promotion and protection of human rights, but also, at the same time, presenting several complex risks and challenges to human rights where those technologies are misused.

The Glion IX retreat followed the publication, in December 2022, of a policy report[1] by the Permanent Mission of the Republic of Korea, the Universal Rights Group (URG), and the Seoul National University AI Policy Initiative (SAPI), which highlighted this important 'paradox' in the context of new and emerging technologies, namely that the same technologies can have both positive and negative impacts on human rights.

NETs can – and already do – promote our collective enjoyment of human rights (for example, by facilitating access to information, and the enjoyment of the rights to quality healthcare and education, or by assisting persons living with disabilities to participate equally in civic life), and can help protect human rights (for example, by helping to effectively monitor human rights situations through secure communication among human rights activists, remote sensing, satellite imagery, data forensics, etc.).

At the same time, NETs can also cause potential and actual human rights harm, for example by facilitating discrimination based on race, gender, or other protected characteristics, by enabling discriminatory surveillance through biased algorithms, by spreading hate speech and disinformation, or by allowing online sexual harassment and other crimes to proliferate on difficult-to-regulate digital platforms. These two elements - the positive and the negative, the human rights promoting, as well as the human rights threatening - should be addressed together in order to move away from the polarising dichotomy in which this issue is often framed, and to move instead towards a more nuanced, holistic, and comprehensive approach to the relationship between technology and rights.

'TECHNOLOGY IS NOT NEUTRAL'

If technology is not neutral, and if there is a consistently foreseeable risk of bad or ignorant actors deploying technology for less-than-noble ends, the burning question becomes how can we – diplomats at the Human Rights Council, civil society representatives, UN experts, and technology companies - do everything in our power to make it more likely than not that technologies are beneficial to individuals, communities, and humanity, while minimising and countering some of their inherent potential to do harm? Is there a method by which technologies, especially new and emerging technologies, can be 'hard wired' to serve pro-social causes that respect, protect, and fulfil human rights?

To prevent the relationship between technology and human rights from becoming a trade-off, it is vital to address the distance or disconnect that exists between the technology and human rights communities, and between their respective policy spaces. There is also a need for clear guidance (for technology companies, including start-ups, as well as for governments) on how the human rights framework can be applied to the design, development, and operation of NETs, while at the same time raising awareness and convincing stakeholders of the added value of integrating human rights into decision-making at the technological and policy levels.

In their 2022 policy report, the Permanent Mission of the Republic of Korea, URG, and SAPI proposed such a method, which they termed the Human Rights-Based Approach to New and Emerging Technologies (HRBA@Tech, for short). This was, in essence, an easy-to-use (for technology companies large and small, as well as for national and international policymakers) human rights-based checklist of steps to be taken during the conception, design, deployment, and operation of NETs, to ensure that they do not end up harming human rights but are rather placed at their service. The HRBA@Tech model is presented merely as a starting point for possible future work, to be taken forward by, for example, a newly created Special Procedures mandate of the Human Rights Council.

Against this backdrop, Glion IX sought to provide an informal and neutral 'Chatham House' space for all key stakeholders (including governments, technology company representatives, UN officials, independent experts, human rights defenders, and civil society) to consider several important themes/sub-themes, each designed to mobilise the Human Rights Council (Council) and the wider UN human rights system to ensure that NETs are placed at the service of human rights and democracy.

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REPORT OF THE NINTH GLION HUMAN RIGHTS DIALOGUE

This report on Glion IX is divided into three parts, with each part broadly following the three main themes/sub-themes covered during the retreat (in the opening plenary, three breakout groups, and closing plenary).

Part one examines the interlinkages between technology, human rights, and democracy, and takes stock of the work of the Council and the wider UN human rights system in responding to challenges and opportunities in this field.

Part two provides reflections on existing normative guidance and frameworks, both regulatory and self-regulatory, that help promote and ensure a rights-based approach to the conception, design, roll-out, and operation of NETs.

Finally, part three considers what further roles the Council and its mechanisms, and the wider UN human rights system, can play in placing NETs at the service of human rights and democracy.

Each part of the report includes a brief situation analysis, followed by a summary of the main issues discussed and ideas put forward at Glion IX. The report is an informal document summarising (in a non-attributable manner) some of the key ideas developed during the Glion retreat. The document does not represent the positions of the Republic of Korea nor of any of the participants but is rather a non-exhaustive collection of ideas generated during the discussions.

TECHNOLOGY, HUMAN RIGHTS, DEMOCRACY, AND THE ROLE OF THE HUMAN RIGHTS COUNCIL AND THE UN HUMAN RIGHTS SYSTEM: TAKING STOCK AND LEARNING LESSONS

WHERE ARE WE TODAY?

The relationship between technology and human rights represents a paradox: on the one hand technology provides opportunities for social innovators to advance the cause of universal values and accelerate sustainable development, while on the other hand its potential misuse represents a significant and perpetual threat to human rights and democracy.

The COVID-19 pandemic provides a perfect illustration of this paradox. While new technologies ensured continued access to healthcare, education, voting booths, work, and public services, and provided an invaluable space for the continued exercise of democratic rights such as freedom of expression and of opinion, as well as for continued inter-personal communication, their accelerated deployment also meant, for example, that those who lacked access to such technologies were left further behind, thereby exacerbating existing inequalities.

Digital transformation touches all aspects of life and is accelerating at great speed, fuelled by progress in computing power, connectivity, and the increasing availability of data and capacities to process it. This includes democratic governance and democratic participation. Digital transformation promises to improve the efficiency, effectiveness, and openness of government, and to increase public accountability and civil participation. At the same time, digital technologies pose risks to democracy and governance, in particular with regards to online hate speech and disinformation, privacy, data protection and undue surveillance, to name just a few.

To take just two examples, disinformation about the integrity of electoral processes or outcomes can (and has) create civic unrest, reduce society's faith in democracy and democratic institutions, and undermine the civil and political rights of all individuals in society, especially those who are already politically and socially marginalised. Likewise, hate speech, which can and does spread online at astonishing speed, not only violates the rights of targeted individuals (e.g., members of religious, ethnic, or racial minorities, or women and girls), but also tears at the fabric of democratic societies, creating divisions and effectively excluding certain groups from a country's democratic and political life. For example, according to a recent report by The Economist Intelligence Unit, 38% of women have experienced online gender violence, while 85% have witnessed digital violence against other women.

On the other hand, heavy-handed regulatory responses to these challenges, repressive legislation, and algorithmic content moderation raise the risk of silencing legitimate expression. Moreover, NETs are being increasingly deployed to repress, censor, silence, harass or surveil, in a clear affront to established democratic and human rights norms.

The Council and the wider UN human rights system have regularly considered the human rights implications of new and emerging technologies and offered guidance on a vast number of issues. Over the last few years, that attention has intensified to meet the increasing number of challenges posed by rapid technological innovation.

Notwithstanding, for a long time these efforts remained largely piecemeal (i.e., focused either on a single right or single technology). That began to change in 2019, with the adoption of resolution 41/11[2] led by the Republic of Korea, Austria, Brazil, Denmark, Morocco and Singapore on 'New and emerging technologies and human rights,' which sought to address the human rights implications of NETs in a comprehensive and holistic manner through a multi-stakeholder approach. The resolution (thereafter presented biennially) mandated a landmark report by the Council's Advisory Committee on 'the possible impacts, opportunities and challenges of new and emerging digital technologies with regard to the promotion and protection of human rights.' This included a 'mapping of relevant existing initiatives by the UN' as well as recommendations on how the 'human rights opportunities, challenges and gaps arising from new and emerging digital technologies could be addressed by the Council and its Special Procedures and subsidiary bodies in a holistic, inclusive and pragmatic manner.' The report was presented to the Council at its 47th session in June 2021[3].

In a follow-up resolution (47/23)[4] adopted in July 2021, the core group requested OHCHR to convene two expert consultations to discuss the relationship between human rights and technical standard-setting processes for new and emerging digital technologies and the practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies.

Most recently, at the 53rd session in June/July 2023 (after the Glion IX retreat, and taking on board some of the ideas generated thereat), the Council adopted resolution 53/29[5] which focused on the implications for human rights and democracy (both positive and negative) of artificial intelligence and, *inter alia*, included operative paragraphs:

- Calling for greater multi-stakeholder collaboration to address the impacts, opportunities, and challenges of NETs with regard to the promotion and protection of human rights, (one way to facilitate this goal is the establishment of a multi-stakeholder platform).

- Calling upon OHCHR to develop system-wide guidance on human rights due diligence and impact assessments in the use of new technologies – in order to eventually help all States, including developing States, place human rights at the centre of relevant regulatory frameworks.

- Requesting OHCHR to prepare a 'mapping report' to understand what the UN human rights system is already doing in the field of technology and human rights, especially at a normative level (i.e., what guidance to States and technology companies already exists?), identify gaps in that work (again, especially at a normative level), and make recommendations on how to address those gaps (e.g., by developing universal guidance framework(s) to help States and technology companies ensure that as new technologies are designed and deployed they serve to support human rights and not harm them, and by establishing relevant mechanisms to help the development or enforcement of these frameworks).[6]

- Recognising the importance of 'bridging digital divides' and of international support for 'capacity-building initiatives to enhance understanding, knowledge and skills relating to the human rights implications of new and emerging digital technologies.'

- Requesting OHCHR to scale-up its capacity-building support to States, especially at national and regional levels, to help them ensure that digital technologies work for rather than against human rights.

KEY QUESTIONS

Participants at Glion IX were encouraged to discuss, *inter alia*, the following questions:

1. 'Technology is not neutral' I: How can NETs serve/have served to promote and protect human rights and strengthen democracy?

2. 'Technology is not neutral' II: How can NETs be used/have been used to undermine the enjoyment of human rights and weaken popular trust in democracy?

3. What has the Human Rights Council done so far in the field of NETs and human rights, to respond to challenges and optimise opportunities, and how effective has it been?

4. What should be the ultimate objective of the work of the Council in the area of NETs? What do States need and what do technology companies need from the UN human rights system?

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ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

'Technology is not neutral'

- Participants broadly agreed that technology is not neutral and that even if NETs are designed to serve a virtuous purpose, they can be subverted or misused to harm human rights and/or democracy. Moreover, one participant noted that 'technologies with undeniable individual benefits can have negative social impacts, while others that serve societal advancement can do so at the expense of individuals and their rights.'

- That said, one speaker noted that it could be argued that technology 'is inherently neutral' – it is the human users (including State representatives) of a given technology who are not neutral, and who chose to deploy it for good or for ill.

- Another speaker agreed, and urged the international community to reject the notion of 'tech determinism' i.e., the sense, almost, that technology is developing itself (what the speaker referred to as the 'mirage of autonomous technological revolution'), and that this rapid technological change is inevitably and predominantly shaping society. Instead, we should understand the situation as one of 'multiple different actors and interests competing in the highly political space of digital technology.'

- While most agreed that, indeed, 'technology is not neutral,' some argued that different technologies can be placed on a 'sliding scale' between those (e.g., medical technology) that are always/nearly always used to support human rights, those, such as social media, that were designed to promote human rights but which are often mis-used (by individuals or States) to undermine rights, and those technologies, such as surveillance technologies

that are 'inherently and systematically contrary to human rights.' One speaker urged States to place moratoria on the use of technologies in the latter group, until such a time that international rules have been put in place on their use.

- Two other 'provisos' to the general rule that 'technology is not neutral' (i.e., in addition to the determinant nature of human agency) raised at Glion IX were as follows. First, it is often very difficult for the creators/designers of new technologies to 'see all ends' – i.e., what the consequences of that technology might be. Social media platforms were again offered up as an example. When such platforms began to emerge, it would have been impossible (even if a universal human rights guidance framework had been available at the time) to foresee all their implications for 'individual psychology and group sociology' and for 'human attitudes, behaviours, and biases.' The second is that NETs 'often entail a series of trade-offs' between good and bad, and at different levels. For instance, between privacy and security.

- Regarding the latter point, a number of participants explained that this demonstrates the limits of regulation. There will always be some negative implications of NETs for some human rights. What is equally important, therefore, is to focus on 'empowering good faith users rather than merely seeking to curtail bad faith ones,' and to educate people in how to use technology, especially digital technology, in a way that respects the rights of others.

NETs at the service of human rights

- During the discussions, participants provided a number of examples of the potential benefits of NETs for the **promotion of human rights.**

- In the case of **civil and political rights**, for example, the use of video conferencing in courts can improve access to justice, and help protect the rights of vulnerable groups such as children.

- In the case of **economic and social rights**, for example, online access to public services can help bridge socio-economic and rural-urban divides. Notwithstanding, others warned that even here, the story is not a simple one. Older people, persons with disabilities, or people with lower levels of education may find it harder to access public services if access to those services has been moved online. Another speaker mentioned the reports of the former Special Rapporteur on extreme poverty, Philip Alston, who has shown that the automation/digitalisation of public services can lead to further discrimination due to biases embedded in algorithms[7].

- Linked with promoting economic and social rights, various speakers also pointed to ways in which NETs are helping drive progress towards the **Sustainable Development Goals**. Examples shared included the use and exchange of data by epidemiologists and researchers working in the field of global public health, or the use of predictive models by climate scientists to enhance agricultural productivity by helping farmers make better-informed decisions for their crop.

- Turning to the **protection of human rights**, it was pointed out that NETs are increasingly being used by members of the human rights community, including human rights defenders, to access and share information, to create open databases for research, transparency and accountability, and to use encrypting services to secure critical information. Participants also highlighted how certain technologies, like virtual private networks (VPNs), enable freedom of expression and opinion by allowing citizens to bypass government firewalls and network censorship systems.

The use of NETs to undermine the enjoyment of human rights

- While there was consensus that NETs have an immense potential to contribute to the realisation of human rights, participants also referred to the risks and challenges they pose. The discussion focused on three challenges in particular: equality and discrimination; hate speech and disinformation; and the use of technology to supress civil and political rights.

> The discussion focused on three challenges in particular:
> 1. Equality and discrimination;
> 2. Hate speech and disinformation; and
> 3. The use of technology to supress civil and political rights.

- Regarding the first, participants concurred that NETs can mirror and perpetuate entrenched and systematic patterns of **discrimination** based on race, gender, social class, sexual orientation, age, and disability that are already present in the physical world. This is facilitated by biases built into search engine algorithms, both implicitly and explicitly. Some explained that such in-built biases have served to promote **hate speech**, and the spread of extremist ideologies. Others spoke of a worrying increase in racial, religious and other hatred, partly because individuals feel empowered by the relative anonymity of the internet. Unfortunately, hatred online frequently translates into real-world discrimination and violence.

- The spread of **disinformation** was widely mentioned as another example of the misuse of NETs, whether on the part of individuals (e.g., politicians), authoritarian governments (e.g., to sway democratic elections elsewhere), or organised crime. Many argued that this phenomenon will only continue to grow, aided by the development of artificial intelligence and techniques like so-called 'deepfake' photos/videos designed to deceive users and thereby, for example, influence elections or justify military aggression.

- Along similar lines, participants addressed the 'weaponisation' of NETs, for example by creating a **'surveillance society,'** and/or restricting access to NETs - and specifically the Internet - to suppress the enjoyment of civil and political rights 'through the erection of **firewalls** and the use of **Internet shutdowns**.' This is somewhat different to the first two examples, as such technologies are often explicitly designed to supress human rights, including freedom of expression and opinion, freedom of movement, the right to privacy, freedom of assembly, and access to information, in order to help governments, especially authoritarian governments, quash dissent, control society and crack down on civil society.

- It was noted that many of these phenomena (e.g., disinformation in political campaigns, surveillance of political opponents, targeting of human rights defenders online) often require or at least benefit from collaboration between State actors/politicians and the **private sector**, especially technology companies. While recognising the truth of this, one private sector representative explained that technology companies often have little choice but to provide user information to authoritarian governments, otherwise they will be prevented from operating in the country concerned.

NETs and democracy

- As with human rights, participants recognised that NETs can be placed at the service of democracy, potentially helping to reinvigorate a country's democratic and civic life. However, too often, malign actors (whether individuals or foreign States) have been quickest to seize on the opportunities presented by NETs to undermine democratic processes and institutions, and popular trust in democracy itself.

- Participants identified several scenarios in which NETs have served in the promotion of democracy, such as the development of **voter registration** and instant **fact-checking** technologies. Participants also pointed out how social media and encrypted communication systems allow for the spread of information and the sharing of political opinions.

- While agreeing with these boons to democratic society, other speakers opined that proponents of democracy have so far only 'scratched the surface' in terms of how to mobilise and leverage technology, especially digital technology, to help reinvigorate democratic life in countries around the world, following years of 'democratic retreat.' For example, safe and secure **'digital democratic spaces'** could be created by public institutions (i.e., rather than the private sector) where citizens can debate political issues of the day, interact with elected politicians, and, perhaps, even hold senior government officials to account.

- Unfortunately, while democrats around the world have been relatively slow to seize on the opportunities for democratic renewal presented by NETs, malign actors (whether, for example, election candidates or foreign governments) have been both fast and innovative in the ways in which they seized on the opportunities presented by NETs.

- Domestically, participants referred to politicians, especially populist politicians in democratic countries, who have been quick to understand the power of **'big data' gathered (or stolen) from voters**, and which can be used to orchestrate micro-targeted online election campaigns – playing on the hopes or fears of voters at an individual, personal level, and equally quick to understand how social media algorithms work so they can be manipulated to quickly spread **disinformation about election outcomes** to those easily swayed by, for example, conspiracy theories. Moreover, **online hate speech** is increasingly being used by populists to target minority groups and groups in vulnerable situations (e.g., migrants) as a means of strengthening their electoral appeal. In response, some speakers at Glion IX did point out that national authorities have become better at trying to contain such online disinformation campaigns (e.g., 'stop the steal')[8] – but admitted that 'it is a very difficult task.'

- It was pointed out that the aforementioned challenges posed by NETs to democracy are generally only reported in the international press when they occur in developed States or established democracies. However, the misuse of NETs to subvert democracy and trust in democracy is **increasingly a problem in developing countries too** – and often they have far fewer resources to combat it.

- In terms of foreign interference in democracies and elections using NETs, speakers noted that autocracies are increasingly leveraging digital technology to influence election outcomes and/or to undermine voters' faith in democracy itself. In this sense, one participant argued that **technology has been 'weaponised' by autocracies to undermine democracies**, and democratic governments are so focused on dealing with such attacks (in addition to dealing with domestic disinformation and hate speech) that 'they have failed to think about how technology could be mobilised to reinvigorate democratic society.'

- Participants acknowledged that democracy generally, and its interlinkages with NETs in particular, has not been an issue of particular focus at the Council. Notwithstanding, one explained that the past few years have seen a number of joint statements starting to explore these issues.

Taking stock of the Council's work on NETs

- There was a prevailing consensus among participants that the Council has done extensive work in the field of NETs and human rights, focusing mostly on their impacts on vulnerable and at-risk groups. The broad range of resolutions adopted by the Council, mostly by consensus, combined with the 'enormous corpus of work by Special Procedures' in this field, show how this work has mushroomed over recent years.

- Participants welcomed, in particular, the fact that this evolving work, especially the Council's resolutions and reports on 'NETs and human rights,' have focused on both the **risks and opportunities** proffered by NETs, and have highlighted the importance of **'a multi-stakeholder approach.'** The 2021 resolution on NETs was described as a 'gamechanger' for introducing a regulatory and risk-based approach to product development and orientation.

- Notwithstanding, some pointed out that the Council's work on technology and human rights has tended to be fragmented between multiple resolutions and Special Procedures mandates – e.g., on privacy, the internet, freedom of expression online – and has failed to sufficiently address critical themes such as the digital divide and digital democracy. These speakers therefore argued in favour of a **dedicated Special Procedures mandate on digital technology and human rights** or NETs and human rights. According to proponents, this would help the Council 'draw together the different strands of work done in this space,' 'consider NETs in a more comprehensive and holistic manner,' and 'engage more effectively with non-State actors such as technology companies.'
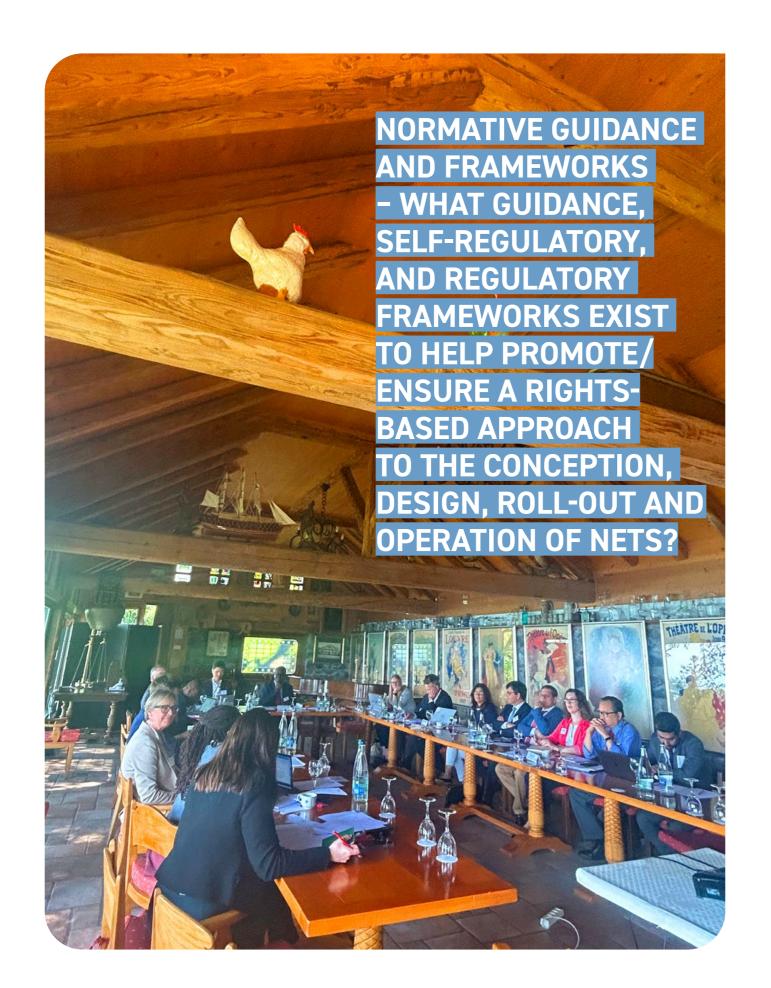
- Others disagreed, however, pointing to the importance of the Council's current efficiency drive. As a compromise, one person proposed the creation of a **temporary group of experts** who could, for example, lead on the elaboration of universal human rights norms for technology.

- In addition to the possible creation of a new mandate, there was also support during the discussions for the establishment of **a regular space at the Council** to bring together States, technology companies, civil society, and UN experts to discuss key issues at the interface of human rights and technology.

What should be the priority now for the HRC?

- Participants pointed to two key (interlinked) challenges for the Council in its past and future efforts to address the human rights implications, both positive and negative, of NETs. First, States cannot manage those implications on their own. They can only do so in **cooperation with technology companies**, including start-ups. Second, the pace of technological change is so (increasingly) fast that it is very difficult for States to regulate effectively – including in order to protect human rights. It is therefore important for the Council to **'get ahead of the curve'** by developing human rights norms (preferably a single set of universal norms) that can guide the private sector, researchers, and other 'technologists' as they conceive, design, develop, and roll-out new technologies, (and that can guide governments as they begin to regulate those new technologies), and for Council member States to engage/cooperate with 'technologists' in both the development and the implementation of those universal human rights standards.

- A representative from the private sector remarked that technology companies are often portrayed as not caring about human rights, or even as deliberately designing technology to work against human rights. He argued that, in his experience, this is generally not the case. Though the priority of companies is of course profit, 'and in the case of start-ups, survival,' most would like their technology to promote rather than harm human rights. But they are not human rights experts so do not know what this means in practical terms. What would be helpful 'and welcomed by large parts of the industry,' he said, is **clear (and preferably universal) guidance** on how to take a rights-based approach throughout the life cycle of a new technology.

- Another participant from the private sector agreed, and predicted that the technology sector would be pleased to cooperate with the Council and its mechanisms in the development of such human rights standards, 'for example, through a **consultation and testing process**' similar to that which preceded the adoption of the UN Guiding Principles on Business and Human Rights.

- The same speaker suggested that such cooperation would help ensure that whatever standards or guidelines are eventually adopted by the Council would be taken up and used by the industry. He also opined that experiences from the business community could be usefully fed into the Council's work on technology. For example, perhaps the Council could create a mandate for a **'human rights red team'** – borrowing a practice used by technology start-ups where 'red teams' are often set up to challenge the design teams and find possible flaws in the technology.

- Building on these ideas, participants concluded that the Council should consider developing '**future-proof guidelines**' based on a single, simplified set of universal human rights norms that apply throughout the entire lifecycle of NETs and that are simple and easily accessible to all stakeholders, especially private companies (including SMEs). A '**group of independent experts**,' perhaps with private sector participation, might be set up to help elaborate those guidelines.

NORMATIVE GUIDANCE AND FRAMEWORKS – WHAT GUIDANCE, SELF-REGULATORY, AND REGULATORY FRAMEWORKS EXIST TO HELP PROMOTE/ ENSURE A RIGHTS-BASED APPROACH TO THE CONCEPTION, DESIGN, ROLL-OUT AND OPERATION OF NETS?

WHERE ARE WE TODAY?

As recently highlighted by High Commissioner Türk, 'the human rights architecture of the last three decades has grown up with digital technology'[9] and has thus been able to consistently provide guidance on how to balance the risks and benefits of NETs. 'Today, it is critical that we effectively deploy this architecture so that humanity can enjoy the opportunities of technological progress, while managing the frightening risks,' he said, arguing that while 'ethical considerations can and must guide us, (…) they are simply not sufficient. Human rights give us the universal and binding framework to shape concrete regulatory solutions, going beyond what ethics alone can do.'

At the same time, he stressed that 'the private sector must be a constructive and positive force. The companies that develop, rely on, and deploy technologies bear an enormous responsibility to respect human rights.' He therefore called for the UN Guiding Principles on Business and Human Rights to serve as a blueprint to help companies in these processes, notably by conducting human rights due diligence and risk management, establishing grievance mechanisms that provide remedy to affected people, and by allowing researchers to access data in a manner that respects user privacy.

The international community has been multiplying its efforts to provide guidance to all stakeholders on how to address NETs, either in a technology-specific or more transversal manner. For example, UNESCO has developed a 'Recommendation on the Ethics of Artificial Intelligence,' which aims to help States adopt a consensual universal framework of principles and actions to guide legislative and policy efforts regarding artificial intelligence[10]. Meanwhile, OHCHR has developed the 'B-Tech' project to provide companies with guidance on how the UN Guiding Principles on Business and Human Rights apply in the context of new technologies. In parallel, States are increasingly taking steps to regulate NETs, while private companies and other stakeholders continue to develop self-regulatory frameworks. The latter, however, tend

to be based on ethical considerations which, as noted by the High Commissioner for Human Rights, offer a weaker framework than international human rights law. It is therefore an opportune moment to take stock of the extent to which human rights norms are, in fact, being integrated into international, regional and national-level policy/regulatory responses and corporate self-regulation, with a view to identifying what more can be done to ensure human rights-based approaches to NETs.

KEY QUESTIONS

Participants at Glion IX were encouraged to discuss, *inter alia*, the following questions:

1. How effective have existing and emerging ethical or human rights guidance frameworks (e.g., HRBA@Tech) been in promoting a rights-based approach to NETs?

2. How well have existing and emerging self-regulatory frameworks and processes (e.g., Facebook's rights-based content moderation standards and Oversight Board) aligned with a rights-based approach to NETs?

3. How effective have existing and emerging regulatory frameworks and processes (e.g., in France, Germany, EU, Singapore) been in promoting a rights-based approach to NETs?

4. How effective have existing and emerging initiatives by international organisations (e.g., UNESCO's recommendations on AI) been in promoting a rights-based approach to NETs?

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

Taking stock of existing human rights guidance for NETs

- A first point of discussion centered on whether or not the rapid pace of technological advancement requires a new approach to providing human rights guidance to NETs or can continue to rely on the traditional approach of simply asserting that 'the same rights apply online as offline.'

- Most speakers argued that there is no need to 'reinvent the wheel' and that the key is the **implementation of existing frameworks**, notably the UNGPs. Participants pointed to the tendency of the human rights community 'to always discuss the development of new standards, rather than focus on implementation of existing ones.' It was also argued that it may not be an appropriate time to negotiate new standards given the current geopolitical context and considering the urgency of ensuring a coherent and effective governance framework for NETs. One participant stated that any discussions around a new legally binding instrument would be extremely premature, especially given the ongoing difficulties (nearly a decade into negotiations) of agreeing a new treaty on business and human rights.

- Nevertheless, there was a broad acknowledgement that there is a need to clarify how existing international human rights standards apply in the case of NETs, and to consolidate that understanding in the form of **human rights normative guidance** for both governments (to help them better regulate NETs) and technology companies (to guide them as they design and roll-out new technologies, including digital technologies).

- Pursuant to the foregoing, many proposed that the Council initiate a **mapping exercise** to understand what normative clarity and guidance already exists

/ has already been elaborated. That should include looking at what the Council has already done (e.g., through resolutions), what Special Procedures and Treaty Bodies have already done (e.g., through thematic report and general comments), what OHCHR has done, what other international organisations have done, what academics and think tanks have done, and – crucially – what technology companies have already done (i.e., self-regulatory frameworks).

- Regarding the latter, a number of participants said that, while some technology companies have taken important strides to apply human rights standards to their work (e.g., Facebook/Meta), it is nonetheless the case that it is very difficult for most companies, especially start-ups, to know what the international human rights standards are that relate to their work, never mind actually applying those standards. It is therefore important, they said, to '**translate international human rights law into a language that technologists and businesses can understand,**' and 'that can be applied to business processes/decision-making, and to the full cycle of technology development.'

- Several participants argued that the strength of the human rights-based approach to NETs is that it is anchored in States' legal obligations and that it cuts across different cultures. What is most important, therefore, is for States to regulate NETs based on their human rights obligations and commitments.

- Others, while acknowledging that States are the primary duty-bearers and thus must regulate technology companies, nevertheless drew attention to the rapid evolution of new technologies, and

argued that governments will forever be playing 'catch-up.' It is therefore equally important for human rights guidance to be provided direct to technologists, so that they can apply it as they design, develop, and roll-out new technologies.

- Another participant spoke of the challenges of applying human rights to NETs. In particular, she pointed to the fact that the 'fast pace of technological change challenges our very understanding of human rights.' As an example, she pointed to social media and how it 'has changed the way we understand the right to privacy, as a growing part of the global population is ready to live in public.' Another agreed, pointing out that 'social media has also caused a shift in our understanding of the threshold between hate speech and legitimate free speech.' A further speaker noted that new technologies have even led to the emergence of new rights, and as an example referenced the European Court of Justice's recognition of the 'right to be forgotten' in the digital world[11].

- A further challenge posed by technology to human rights is that, especially in the case of digital technology, 'it does not respect borders,' whereas 'human rights law is about a State's obligations towards people living within its national jurisdiction.' In the case of digital technology, 'one State's failure to properly regulate technology (e.g., the development of spyware) might lead to violations in other States.' Therefore, 'the cross-border nature of digital technology requires a global response.'

- On the issue of 'new rights,' another participant argued that human rights guidance to-date 'has largely failed to address inequalities and the various

digital divides.' They therefore suggested the Council lead on the development of '**a new right to connectivity or to access the internet.**'

- Finally, there was disagreement at Glion IX as to whether any further human rights guidance to NETs should take 'a broad or narrow approach.' On the one hand, several people argued it was important to develop 'cross-border guidance that would be holistic, simple, and easy-to-use for companies of all sizes.' Proponents of this approach argued that human rights guidance should focus more on business processes and the cross-cutting nature of the lifecycle of technology. Others, however, argued that it is important for additional human rights guidance 'to dig deeper into the implications of specific technologies on human rights.' They challenged the usefulness of the overarching definition of NETs, arguing that such a broad scope obfuscates the necessarily different approaches (regulatory and self-regulatory) that need to be taken to different types of technology. It makes no sense, they argued, to think about human rights in the context of, say, artificial intelligence, in the same way as we think about the human rights risks and benefits of, say, medical technologies.

> In the case of digital technology, 'one State's failure to properly regulate technology might lead to violations in other States.' Therefore, 'the cross-border nature of digital technology requires a global response.'

How effective has UN and other international guidance been so far?

- There was broad agreement that the Council and its mechanisms have been 'both fast and nimble' in the ways in which they have confronted the challenges and opportunities posed by NETs.

- At one level, participants pointed to the value of the Council's work to develop and adopt the **UN Guiding Principles (UNGPs)** on business and human rights. They agreed that while the UNGPs have been successful 'in ushering in a business and human rights revolution by moving away from corporate social responsibility towards more systematic consideration of the harms of corporate activities, there is still much work to be done to ensure responsible business conduct.' Another speaker agreed, noting 'how the UNGP's 'smart mix' of measures had been instrumental in responding to the 21st Century need for a governance paradigm shift away from a State-centric model and towards a polycentric model of responsibility.' Others criticised the UNGPs, however, suggesting that they are not legally binding and are therefore a case of simply 'preaching to the converted.' What is more, he continued, while the UNGPs are well known in Geneva and New York, and among some large multinationals, they are not 'known, understood or applied' by a majority of companies operating in a majority of UN member States. It was noted, for example, that 'no one in Silicon Valley talks about human rights; they talk of ESG or sustainability.'

- Many participants, irrespective of their views on the relative value or the UNGPs, argued that their utility in terms of responding to the challenges and opportunities posed by NETs is severely limited. 'All the UNGPs say to businesses,' noted one, 'is that they should respect all human rights.' 'That is simply not specific enough to help guide technology companies, especially SMEs, about what they should and should not do.'

- Notwithstanding, it was widely acknowledged that a long-term value of the UNGPs is that they have promoted the concept of '**human rights due diligence**' in business decision-making. This is potentially very important in the case of technology companies, it was argued, especially if those companies had a single, universal human rights guidance framework against which to 'test' their business decisions or new products.

- Another benefit of human rights due diligence, noted another participant, is that it promotes 'a shift from a compliance mindset, which is reactive in nature and depends on the regulatory context in the country of operations,' to a 'human rights-risk based analysis that meaningfully considers the impacts of corporate activities on the enjoyment of human rights.'

- Various speakers also called for the normative work of the Council and its mechanisms in the field of human rights and NETs to be consistent with similar work being done in or by other fora/organisations (e.g., the Global Digital Compact, UNESCO Guidance, the Secretary-General's Code of Conduct). This is important so that governments and businesses can rely on a single, unified point of reference. Many expressed concern at 'the multiplication of initiatives on NETs across different fora' which leads to confusion and duplication.

- One business representative argued that the most useful guidance from a corporate perspective comes from OHCHR's '**B-Tech' project**[12]. They expressed appreciation for the project's practical approach to communicating with businesses on the standards that are expected of them, as well as for 'technology-specific guidance to policymakers in drafting regulation.' Such initiatives, it was noted, help move investors away from a 'generic checklist' approach, typically associated with ESG guidance, towards a more holistic and contextual assessment of human rights risks that takes into consideration a product's end use.

How effective has regulation been?

- Participants at Glion IX shared information on various **efforts to regulate the impacts of technology** on the enjoyment of human rights, including the EU's Digital Services Act[13] and the (yet to be adopted – at the time of the retreat) AI Act, the UK's Online Safety Bill[14], and other sector- or technology-specific domestic regulatory efforts (e.g., in the Philippines). There were mixed views on the effectiveness of these initiatives, partly because they are all very recent. Notwithstanding, one participant argued that early regulatory attempts, such as the EU's General Data Protection Regulation[15], had not been as effective as hoped, notably due to the procedural approach prioritised (e.g., notice and choice policies). He noted that, generally speaking, privacy violations have increased in parallel with the emergence of such regulatory interventions.

- Many others disagreed with this latter view, however, arguing that the most effective regulatory responses are procedural ones, notably 'those focused on mandating **human rights due diligence** rather than imposing a list of prohibited behaviour with associated sanctions.' To be effective, 'regulation has to be sufficiently flexible to accommodate the rapidly evolving technological context.' In particular, the probable future adoption of the 'EU Directive on Corporate Sustainability Due Diligence'[16] and its mandating of human rights due diligence for large corporations operating in the EU was hailed as a 'game-changer.' Other mandatory human rights due diligence laws (e.g., in France and Netherlands) and mandatory disclosure requirements (e.g., in the UK and California) were likewise highlighted as significant positive developments.

- Overall, there was a sense of an increasing demand for regulation, notably on the part of social media companies. However, one speaker lamented that there is still a lack of regulation on issues that are 'already out there and where the guardrails that are in place, particularly in human rights sensitive areas, are simply insufficient' (e.g., surveillance technology and facial recognition relying on artificial intelligence).

- Notwithstanding, many participants also cautioned against focusing too much on regulatory responses, given the scale and speed of change and the natural tendency of regulation to take a 'bounding approach that responds to issues.'

- Participants also identified regulatory asymmetries, arguing, for example, that standards are often developed by the global North, and may not always be applicable or have the same effects in the **global South**. They therefore cautioned against transposing regulatory models and instead encouraged 'iterative, context specific approaches that encourage companies to constantly re-examine their policies and approaches.'

- Urging more cooperation between jurisdictions, therefore, one speaker pointed to research showing that current approaches to the regulation of AI in the US, EU and China are '90-95% identical.'

- Several participants also highlighted the challenges associated with ensuring regulation itself is human rights compliant. They lamented the increasing use of regulation to compel businesses to be complicit in human rights violations, for example by requiring them to hand over personal data.

> To be effective, 'regulation has to be sufficiently flexible to accommodate the rapidly evolving technological context.'

- One business representative encouraged governments to make use of '**regulatory sandboxes**,' whereby businesses are able to explore and experiment with new and innovative products under a regulator's supervision, as well as policy prototyping programmes to iteratively test legislative governance models.

- All participants agreed that regulations should be developed in full consultation with technology companies and with communities likely to be affected by the technology in question
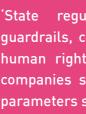
- Finally, various participants encouraged governments, when considering regulatory responses, to learn lessons from other corporate sectors, such as the application of the precautionary principle in the pharmaceutical industry, disclosure of information to consumers in the food industry, or mandatory warnings in the alcohol and tobacco industries.

How effective has self-regulation been?

- A significant portion of the discussion focused on self-regulatory frameworks such as **Meta's human rights policy and its independent Oversight Board**. Participants heard of the impact of the Oversight Board's quasi-judicial function in orienting Meta's content moderation policies. Given the enormous number of appeals it receives (more that 2.5 million), the Board tries to focus on emblematic cases that can have the most impact and serve a quasi-jurisprudential function. Since the Board's creation in 2020, they have selected 42 cases and issued 36 binding decisions (six are still pending). They have further issued 187 policy recommendations, to which Meta is obliged to respond.

- However, one participant argued that while Meta is a relatively rare example of a corporation that has committed to adhering to human rights standards and has invested significant resources to do so, most self-regulatory corporate efforts are ethics-based and selective.

- Participants also expressed concern that companies may simply try to 'evade their human rights responsibilities, if given too much leeway to self-regulate.' They noted that private sector actors are typically subject to different concerns and considerations (namely market demands), and human rights may not always be a top priority.

- Another participant acknowledged the benefits of self-regulatory frameworks as a 'good first step,' but cautioned against complacency, highlighting that ultimately only States can establish regulatory frameworks that apply to all companies.

- Many others, however, said that effective 'policy mixes' to promote and protect rights in the context of rapid technological change must necessarily include self-regulation. 'State regulation should provide the guardrails, consistent with its international 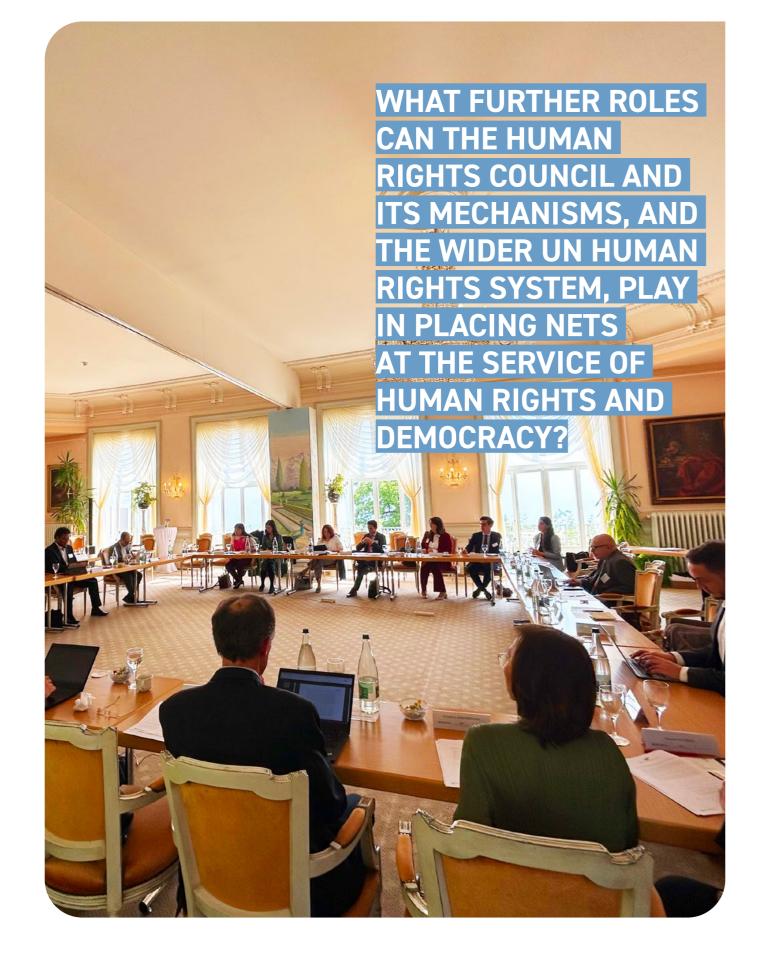human rights obligations, and technology companies should self-regulate within the parameters set by those guardrails.' The same speaker said 'it is simply not realistic to expect States to micro-manage something as vast as the internet. Facebook alone receives billions of posts every day. How can any government police that? In reality, only Meta can do so, and even then it is challenging.' Others pointed to the benefits of self-regulation efforts, including: they do not curtail innovation; they can adapt to specific sector or corporation contexts (i.e., 'are more nimble'); and civil servants often do not have the necessary technical expertise to correctly calibrate regulation.

- One speaker shared his experience of working with a company to develop their **ethics-based AI policy**, noting that the process took four years, and considerable effort 'to bake the policy into the company's design and roll-out processes.' It required the company to invest significant time and resources and 'was premised on senior management buy-in to ensure all corporate stakeholders engaged with the process and accepted the result.' They explained that such a process would be impossible for SMEs, and thus the UN should help them by 'developing normative guidance that is easily accessible and deployable.' Another suggested that the Human Rights Council could also consider establishing a mechanism to help technology companies self-regulate to promote and protect human rights. For example, a **new type of Special Procedures mechanism** that could visit companies, at their request, and 'test' NETs against international human rights standards,

- Finally, participants pointed to the value of cross-industry self-regulatory efforts as an effective means of ensuring a level-playing field, while creating mutual accountability and communities of practice. For example, the Global Network Initiative[17] was highlighted as an effective initiative aimed at upholding the rights of platform users against overbroad, unlawful government takedowns or data requests.

'State regulation should provide the guardrails, consistent with its international human rights obligations, and technology companies should self-regulate within the parameters set by those guardrails.'

WHAT FURTHER ROLES CAN THE HUMAN RIGHTS COUNCIL AND ITS MECHANISMS, AND THE WIDER UN HUMAN RIGHTS SYSTEM, PLAY IN PLACING NETS AT THE SERVICE OF HUMAN RIGHTS AND DEMOCRACY?

WHERE ARE WE TODAY?

While the international community has been grappling with the implications of technological innovation for decades, with some more predisposed to optimism at the potential to further social progress and others more concerned about NETs' negative societal implications, the rapid pace of ongoing digital transformations has heightened awareness of the need for an overarching governance framework to address the myriad positive and negative implications of NETs for societies, individuals and their rights.

The UN in general, and the human rights pillar in particular, therefore have a major role to play in terms of clarifying, building consensus on, and raising awareness of how universal human rights norms and principles apply to the new realities ushered in by technological advancements, notably in the digital space.

In his 2021 report 'Our Common Agenda[18],' the UN Secretary-General highlighted seven key topics for digital cooperation at the UN, namely connectivity, data protection, human rights online, discriminatory and misleading content, artificial intelligence regulation, the digital commons as a global public good, and internet fragmentation. To address these issues, he proposed a Global Digital Compact (GDC), facilitated by the UN Tech Envoy, to be agreed at the Summit of the Future in September 2024.

In a recent statement during consultations on the GDC's thematic area 'human rights online[19],' the High Commissioner for Human Rights, Volker Turk, made clear that 'there is no need to reinvent the wheel.' 'Grounding the Global Digital Compact in an existing and legally binding framework is simply common sense,' he said, adding that this would also 'facilitate consultations with member States on [the GDC's] content.' 'We must ensure,' he continued, 'that this resilient framework of human rights is applied to the new challenges of the digital age.' Finally, he argued that human rights law, standards and principles 'provide guidance on all the thematic areas in

the call for submissions to the Compact' and stressed that 'it is inadequate to have human rights as a separate topic.'

In this sense, the GDC is emblematic of the fragmentation that has characterised international responses to NETs, with issues of connectivity and the digital divide being addressed separately from those regarding data flows and protection, internet governance or online content issues. To address the human rights dimensions of all these areas, there is a need to identify avenues for mainstreaming human rights into the work of other UN agencies (e.g., ITU, UNCTAD) and international fora (WSIS, IGF), while ensuring a coherent and holistic human rights-based approach to NETs across the UN.

Increasingly, some States have begun exploring avenues to promote a more integrated approach. For example, with resolution 47/23, the Council requested OHCHR to 'convene an expert consultation to discuss the relationship between human rights and technical standard-setting processes for new and emerging digital technologies' and 'submit a report thereon, reflecting the discussions held in an inclusive and comprehensive manner, to the Human Rights Council at its fifty-third session.'

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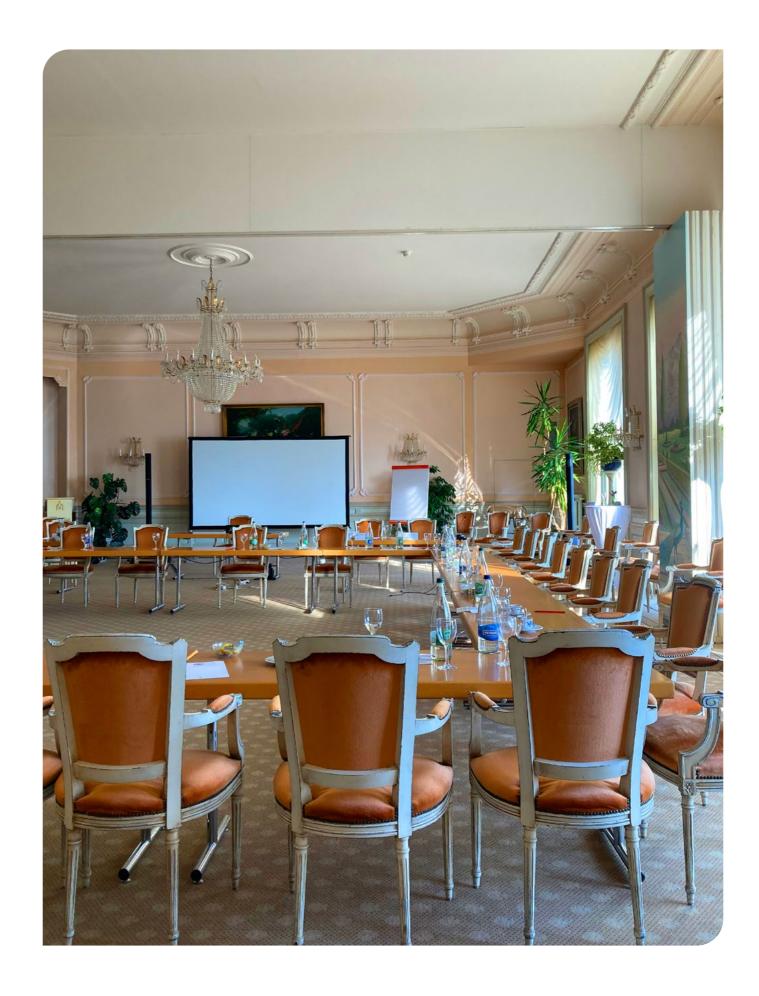
At the same time, ensuring that technologies respect and work to enhance the enjoyment of human rights around the world requires cooperation between all relevant stakeholders. In particular, it requires building partnerships between governments, civil society, and the private sector, especially technology companies, to enable mutual understanding of the relationship between human rights and the development and deployment of NETs. It is therefore important to assess how the Council and the wider human rights system can act as such a multistakeholder forum, while promoting a holistic, inclusive, comprehensive, and easy-to-use approach to NETs and human rights. One possibility that could be explored is the establishment, at the Council, of a regular platform where stakeholders might come together to share experiences, lessons learnt, and good practices, and thereby build mutual trust and encourage cooperation. Each of these Council platforms might focus on a different theme: for example, AI, social media, hate speech, election interference, women's rights, the digital divide, and social inclusion.

By acting as conveners, well-respected 'norm-translators,' and capacity-builders, the Council and its mechanisms, in coordination with other international organisations and intergovernmental fora, can and must play an essential role in fostering a climate of mutual trust, understanding and collaboration between States, technology companies, civil society and other relevant stakeholders, thereby translating the universal norms and principles underlying international human rights law into language and practical guidance that can be readily understood and applied by business operations. At the same time, the Council, including via the kind of platform mentioned above, can also act as a relay for information from technologists, so that State representatives, in Geneva and in capitals, can base decision-making on a clear technical understanding of the operation and application of NETs.

KEY QUESTIONS

Participants at Glion IX were encouraged to discuss, *inter alia*, the following questions:

1. What role for the Human Rights Council in promoting a human rights-based, holistic, inclusive, and comprehensive approach to new and emerging technologies and human rights, working towards providing an easy-to-use, easily accessible, universal human rights guidance framework for the design, development, and operation of NETs, for the benefit of governments, technology companies and, ultimately, societies?

2. What can the Council and its mechanisms do to work more coherently and efficiently towards promoting a rights-based approach, including by helping create space for regular dialogue between governments, technologists, and other stakeholders on the application of and movement towards a rights-based approach to NETs, and, potentially, by establishing a new Special Procedures mandate to knit together the different threads of work and debate in this area?

3. What can the Council and the wider UN human rights system do to help address the digital divide, including the gender divide?

4. How can the Council work in coordination with other relevant parts of the UN (e.g., the ITU, the Secretary-General's Envoy on Technology) to help ensure a consistent and effective UN approach to NETs, human rights, and democracy?

ISSUES FOR REFLECTION AND OPPORTUNITIES FOR CHANGE

What more can the Council do to promote a human rights-based approach to NETs?

- While participants agreed that the Council has so-far 'done a 'good job' in responding to the human rights implications (both positive and negative) of NETs, there was also a clear sense at Glion IX that a lot more needs to be done, especially in terms of 'operationalising' the Council's evolving understanding about the relationship between NETs and human rights, and having an impact on-the-ground (especially by influencing government regulation and by influencing the work of technology companies).

- One speaker explained that the road to real impact, on the part of the Council, has three stages. First, the body must **better understand the relationship between human rights and NETs** - what are the positive and negative impacts of technology on rights, and how can international human rights obligations and principles be applied to ensure that technology serves a public good and does not harm individuals or societies? There was broad agreement at Glion IX that, in terms of this first stage, the Council has been 'ahead of the curve' and has done a considerable amount of work, looking at the issue from numerous angles. Second, the Council should distil this corpus of work into some form of **universal normative guidance**, that is accessible to and can be used by all States (developed and developing) to help shape policymaking and regulation, and by all technology companies, including start-ups. The Council is yet to embark on this stage (in other, similar, cases, such as for human rights and the environment, or human rights and business, the Council assigned such a norm clarification / norm-setting role to a newly established Special Procedures mandate – normally an Independent Expert). And third, once it is clear what governments and the private sector *should do* to ensure that NETs are placed

at the service of human rights, it will be important to establish **implementation mechanisms** (e.g., a cross-regional working group made up, perhaps, of human rights experts and technology experts) and/or **implementation 'spaces'** (e.g., the aforementioned platform bringing together States, UN experts, and technology companies for regular dialogue and cooperation). Another speaker added that **existing mechanisms** (e.g., Treaty Bodies, the UPR, and existing Special Procedures mandates) can also play a key role in supporting implementation.

- Regarding stage one, a speaker argued that the Council and its mechanisms 'have already produced hundreds of **reports**, each containing multiple recommendations on how to apply a human rights-based approach to NETs.' A representative of 'big tech' agreed, pointing to examples of the work done by the Special Rapporteur on freedom of expression, notably regarding disinformation, as well as OHCHR's reports on privacy[20], the Committee on the Rights of the Child's General Comment 25[21], and the Rabat Plan of Action[22], as 'helpful guidance coming from the human rights system.' The speaker encouraged the Council to 'continue providing such clarification on the application of human rights standards to the digital world,' yet urged States to 'do it shorter, do it quicker.'

- Regarding stage two, one speaker made clear that any such **normative guidance** must be 'single, universal, simple, short and cross-cutting.' Another agreed, especially emphasising the 'single, universal' point, on the grounds that 'there are more than a hundred human rights and ethical guidance frameworks already out there, and thus 'it is difficult for tech companies, especially SMEs, to see the wood for the trees.' On the same theme, a

speaker from the private sector cautioned against 'elaborating *additional* norms' and said that what is important now is to translate existing 'clunky diplomatic frameworks' (e.g., OHCHR reports, Council resolutions, Special Procedures reports) 'into **action-orientated rubrics**' that can be taken up by technologists. He argued that 'given the large and complex systems that technology companies (especially, in his case, social media companies) are dealing with, any guidance must be simple and easy-to-apply, and must help companies assess human rights risks (and trade-offs) as part of due diligence.'

- Regarding stage three, several State representatives noted that the Council is perfectly placed to provide a **'space' for governments**, technology companies, and NGOs to meet and discuss common challenges and joint solutions.' A further proposal was for such a space to be used 'to profile good corporate practice on human rights, as well as to assess existing regulatory responses and lessons learnt.' Others had a different vision, suggesting a **Council platform on technology and human rights** 'would be a good place to name and shame corporate actors.' Others argued that such a space (e.g., a regular Council platform on technology and human rights) could also help the international community identify those technologies that are 'inherently harmful for human rights' (e.g., spyware) and thus about which the Council should consider calling for moratoriums.

- Regarding the possibility of establishing a **working group or other Special Procedures mandate** to promote compliance with any established human rights norms, another participant noted that 'while Special Rapporteurs have, to-date, mainly focused on engaging with States, there is no reason why a new mandate could not undertake visits to technology companies, and provide recommendations to those companies to better respect and promote human rights.'

- There was broad agreement that, to be effective, the Council's work (especially phases two and three) must necessarily **involve technology companies, including SMEs.** Otherwise, not only would any universal normative guidance framework not be relevant or accessible to technology companies, but there would be very little chance they would feel any sense of 'ownership' and thus a responsibility to use/implement it. Elaborating on this point, one participant spoke of 'the enormous amount of noise' on these subjects, generated by diplomats, UN officials, and academics, but said that much of this is contained within different 'echo chambers' and is more focused on theory rather than practical applicability.

- Another speaker agreed that the elaboration of any kind of universal human rights guidance framework for NETs must involve collaboration between States and technology companies, but cautioned that this creates a **'creativity challenge'** for the Council, which is not used to working closely with the private sector (except in the context of the UN's work on business and human rights). This challenge is exacerbated, she said, by a **'trust deficit'** between States and technology companies, and the fact that the two communities 'speak different languages.' She therefore urged the Council to 'innovate' in identifying new ways of working.

- Many emphasised the importance of stage three, saying 'the focus must be on **implementation and corporate accountability,** and on raising awareness, promoting understanding, and securing compliance (on the part of States and companies) with any human rights-technology guidance developed by the Council.

- As noted above, participants at Glion IX were keen to draw attention to the potential of the **existing UN human rights mechanisms** to support implementation and 'improve corporate accountability.' In that regard, one speaker pointed to the Independent International Fact-Finding Mission on Myanmar's report[23] on Meta's complicity in human rights violations in the country as 'a watershed moment that kickstarted the company's move towards developing a human rights policy.' She argued that Special Procedures should be encouraged 'to increasingly monitor and report on business respect for human rights.' Another agreed with this point, and repeated an earlier comment that 'Special Procedures are quite able to do corporate visits to assess human rights compliance and can also send communications to companies on situations of concern.' Building on this idea, one participant suggested a 'joint visit to Meta, by the Special Rapporteur on freedom of expression, the Special Rapporteur on privacy, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on violence against women, and the Special Rapporteur on racism, to evaluate the company's content moderation policies.'

- Others commented that the Council 'must not forget about the **UN Guiding Principles,** which already offer a framework to hold companies accountable against their human rights responsibilities.'

- Continuing on the theme of implementation (i.e., phase three), a number of developing State representatives urged the Council to **do more to help the global South** to develop 'human rights-based regulatory regimes for technology companies, especially digital technology companies,' through 'human rights technical assistance and capacity-building projects undertaken under the Council's agenda item 10 or by OHCHR.' A representative from OHCHR said that the Office does receive such requests yet often struggles to respond due to resource constraints. 'Perhaps,' he said, 'States making requests under agenda item 10 could be a good way forward.'

How can the Council and wider UN make better use of NETs?

- Several speakers made the point that in addition to working to ensure that NETs work for, rather than against, human rights, the Council and the wider human rights system should themselves make better use of technology to assist in the fulfilment of its mandate to promote and protect human rights around the world.

- One highlighted the enormous potential for NETs to improve the **accessibility of the Council and its work.** Another spoke of the various possibilities opened up by AI. For example, it could make it easier to identify and manage recommendations on a given subject or directed to a certain State. Perhaps AI could also make it possible to 'join the dots' between recommendations and implementing actions at national level, and facilitate periodic reporting back to the mechanisms. A representative from OHCHR presented its programme of 'digital transformation,' which includes 'increasing information management and analytical capacity.'

- Another speaker, however, called on OHCHR to 'lead by example' as it pursues this digital transformation, by implementing a rights-based approach. 'OHCHR should also carry out human rights due diligence as its develops digital tools across its operations,' he said.

> The possible mechanism that was the main focus of the discussions was a new thematic Special Procedures mandate.

Should the Council establish a new mechanism?

- There was significant debate over the question of whether or not the Council should establish a new mechanism to address the human rights implications of NETs. While some spoke against creating a new mechanism, mainly on the grounds that it would run counter to the Council's ongoing **efficiency drive,** many others were open to the idea in principle but cautioned that it is important to clarify what a new mechanism would do – what would be its objectives? Would it be purely normative (e.g., lead on the elaboration of a universal human rights guidance framework for NETs), or should it also play a role in promoting the implementation of those standards at ground-level?

- The possible mechanism that was the main focus of the discussions was a **new thematic Special Procedures mandate.**

- Several speakers argued that the Council should begin by establishing a thematic **Independent Expert** mandate (which have a predominantly normative function). Such a mandate would be charged with collating and distilling all the work done by the Council, OHCHR and the human rights mechanisms on the subject of human rights and NETs, as well as work undertaken by other parts of the UN, regional organisations, national governments, technology companies, civil society, and academia. The Independent Expert would thus act as a central international focal point to clarify how human rights norms relate to NETs (one speaker noted that 'at present, the overall picture is fragmented across different Special Procedures mandates, institutions, and organisations'). Once the Independent Expert has completed this norm clarification exercise, building on and consolidating the Council's considerable body of existing work in this area, it would be possible for the mandate-holder to propose some form of **universal guidance framework**, such as Guiding Principles or Framework Principles. According to one participant, 'Independent Experts are ideally placed to undertake this kind of work – indeed, it is what the mechanism is designed to do.'

- Another speaker added that 'once this normative work is complete, the mandate could be 'upgraded' to a **Special Rapporteur**, who would work with States and technology companies to promote the take-up and implementation of those standards.'

- A State representative proposed, instead, a different type of Special Procedures mandate: a **Working Group**. This would have the advantage of including mandate-holders from all regions (meaning developing countries would also have a stake in the mechanism). Again, a Working Group could start by undertaking the aforementioned norm clarification and norm setting process, and then later could focus on pushing States and technology companies to apply those norms/standards. Another speaker added that perhaps the Council should be innovative and for the first time **allow representatives from the private sector (technology companies) to be members of the Working Group**. This would help secure 'business buy-in.'

- Another State representative pointed to a further strength of the Special Procedures mechanism: their ability to undertake **country missions**, and thus speak directly to national regulators and to technology companies. 'It is difficult to get human rights norms into Silicon Valley,' he said, 'it is much easier to get a mandate-holder there.' Another possible strength, highlighted during the discussions, 'is the ability of Special Procedures mandates to promote the mainstreaming of human rights norms (as they related to NETs) across the UN system.'

- Again, speakers urged the Council to be innovative and creative. Perhaps a new mandate, instead of only visiting countries, and reporting back to the Council with recommendations to the State concerned, could also undertake **missions to different technology sectors** (across different countries), compare their policies and processes against the established human rights normative guidance framework, and issue recommendations to those sectors or even to individual companies.

- Another idea floated at Glion IX was to establish a Special Procedures mandate (e.g., a Working Group) that would mimic the 'red teams' established by technology companies and visit technology companies to 'test' ideas, processes, and designs against international human rights standards. Again, such a 'UN red team' could be made up of both human rights and technology experts.

- Others suggested that it is not necessary to establish a permanent Special Procedures mandate, that would exist for at least six years, and very probably much longer. Instead, the Council could mandate a **panel of experts** that would sit for one or two years and undertake the aforementioned norm clarification and norm setting exercise. The panel of experts established to clarify the Council's prevention mandate was offered as an example and precedent. Again, this should be cross-regional and include both human rights and technology experts.

- Another idea was for the Council, through the next resolution on human rights and NETs, to request OHCHR to appoint **technology and human rights advisors**, to work at its regional offices and advise States. These new posts would be resourced from the UN regular budget. This model is based on the recently appointed racial discrimination advisors, also mandated by a Council resolution.

> Perhaps the Council should be innovative and for the first time allow representatives from the private sector (technology companies) to be members of the Working Group. This would help secure 'business buy-in.'

How can the Council better address the digital divide?

- Several participants pointed to the shortcomings of the Council in 'addressing the **digital divide** within and between States.' They also lamented the excessive focus on civil and political rights when considering the implications of new and emerging technologies, and urged the Council to adopt 'a **development lens** in relevant discussions.'

- For example, it was argued that while there is a lot of attention on the positive impacts of NETs on education (especially during the COVID-19 health pandemic), there has been far less recognition of the fact that the expansion of digital technologies in the education sector can also serve to increase the divide between rich and poor, and those who have access to the internet and those who do not. They also noted that increasing deployment of digital technologies in education has facilitated the expansion of private actors, raising concerns about the commercialisation of education and the reduced availability of quality of public education. 'This is one example of how technology can harm human rights and deepen inequality, when stakeholders ignore the development dimension and the digital divide.'

How to improve multistakeholder cooperation at the Council?

- Discussions repeatedly addressed the need to bridge human rights and technological expertise through cross-fertilisation, so that human rights experts know more about technology and businesses better understand human rights. One proposal was to **establish a platform at the Council** to bring governments, companies, UN entities (e.g., OHCHR, WHO, ITU) and civil society regularly together to discuss specific opportunities and challenges, share information and good practice, and identify common solutions. It was stressed that such a platform should look at both the good, stories where technology has contributed to the enjoyment of human rights, but also the negative – the major human rights challenges posed.

- Speakers discussed how cooperation and engagement across a wide range of corporate stakeholders is key to addressing the human rights challenges in the business sector, and should include engagement with developers, board members, corporate executives, investors (including international finance institutions), venture capitalists, compliance officers, privacy officers, general counsels, marketing teams, products teams, amongst others.

- Several participants also spoke of the unique role that the Council can play in bringing in voices of civil society and digital rights activists from the **global South** who are often excluded from discussions on NETs.

- There were also, however, some concerns about what exactly the role of the private sector should be in these discussions. Some participants, though they agreed the private sector should not be ignored, took issue with the thought of the private sector being given an equal seat.

How can Council work in coordination with other relevant parts of the UN?

- On several occasions, participants stressed the need to ensure **better coordination amongst various parts of the UN** that are working on new and emerging technologies, with a view to strengthening policy coherence and overcoming fragmented approaches and duplication of efforts. Speakers highlighted work being done by UN entities such as ITU, UNCTAD, ISO, WIPO, the WHO, the WTO, amongst others, as well as ongoing discussions in fora such as the WSIS and the IGF. They stressed the need to break the silos and expressed hope that the Global Digital Compact process could help promote an integrated policy approach.

- In this regard, participants pointed to the convening power of the Council as a subsidiary body of the GA and highlighted the efforts of the core group on new and emerging technologies and human rights for their efforts to improve **cooperation between ITU and OHCHR** through resolution 47/24. One ITU representative explained how the resolution has already fostered a closer relationship between OHCHR and ITU, resulting in greater integration of human rights in discussion around technical standard setting. Another example of cooperation was provided in the collaboration between ITU and the Human Rights Committee in the elaboration of new standards.

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GLION IX
HUMAN RIGHTS
DIALOGUE
2023

working together to protect universal human rights

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