



General Assembly

Distr.: General
7 September 2022

Original: English

Human Rights Council

Advisory Committee

Twenty-eighth session

8–12 August 2022

Agenda item 4

Report of the Advisory Committee on its twenty-eighth session

Report of the Advisory Committee on its twenty-eighth session

Rapporteur: Buhm-Suk **Baek**



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I. Action taken by the Advisory Committee at its twenty-eighth session

28/1. Impact of new technologies for climate protection on the enjoyment of human rights

The Human Rights Council Advisory Committee,

Recalling Human Rights Council resolution 48/14 of 8 October 2021, in which the Council requested the Human Rights Council Advisory Committee to conduct a study and to prepare a report, in close cooperation with the Special Rapporteur on the promotion and protection of human rights in the context of climate change, on the impact of new technologies for climate protection on the enjoyment of human rights, and to submit the report to the Council at its fifty-fourth session,

Recalling also that, at its twenty-seventh session, the Advisory Committee established a drafting group, currently composed of Buhm-Suk Baek, Milena Costas Trascasas (Chair), Ajai Malhotra, Javier Palummo, Patrycja Sasnal (Rapporteur), Vassilis Tzevelekos and Frans Viljoen,

1. *Takes note* of the outline of the study submitted by the drafting group to the Advisory Committee at its twenty-eighth session;
2. *Notes* that the drafting group and the full Advisory Committee held meetings to discuss the topic, and takes note of the views expressed thereon by Member States and other stakeholders;
3. *Welcomes* the input received from Member States and other stakeholders in response to the note verbale and questionnaire circulated after the twenty-seventh session of the Advisory Committee;
4. *Also welcomes* the participation of external experts in the discussion, and notes that the discussion has provided valuable input that will assist the drafting group in its task;
5. *Further welcomes* the briefing by the Chair and the Rapporteur of the drafting group on the meetings on the impact of new technologies for climate protection on the enjoyment of human rights held in the intersessional period, including a seminar, with representatives of indigenous peoples;
6. *Requests* the drafting group to submit a draft report to the Advisory Committee at its twenty-ninth session, taking into account the above-mentioned input from stakeholders and the discussions held at the current session;
7. *Encourages* stakeholders to continue to contribute to the work already under way.

*5th meeting
12 August 2022*

[Adopted without a vote.]

28/2. Advancement of racial justice and equality

The Human Rights Council Advisory Committee,

Recalling Human Rights Council resolution 48/18 of 11 October 2021, in which the Council requested the Human Rights Council Advisory Committee to prepare a study in which it examined patterns, policies and processes contributing to incidents of racial discrimination and made proposals to advance racial justice and equality, which should be firmly anchored in the fulfilment of the 2030 Agenda for Sustainable Development and the attainment of its Goals, in consultation where possible with the Office of the United Nations High Commissioner for Human Rights and the international independent expert mechanism to advance racial justice and equality in law enforcement established by the Council in its resolution 47/21, and to present the study to the Council at its fifty-fourth session,

Recalling also that, at its twenty-seventh session, the Advisory Committee established a drafting group, currently composed of Nurah Alamro, Buhm-Suk Baek, Nadia Amal Bernoussi, Lazhari Bouzid, Milena Costas Trascasas, Xinsheng Liu, Ajai Malhotra, Javier Palummo, Dheerujlall Seetulsingh, Catherine Van de Heyning (Chair) and Frans Viljoen (Rapporteur),

1. *Takes note* of the outline of the study submitted by the drafting group to the Advisory Committee at its twenty-eighth session;

2. *Notes* that the drafting group and the full Advisory Committee held meetings to discuss the topic, and takes note of the views expressed thereon by Member States and other stakeholders;

3. *Welcomes* the participation of the representatives of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement, the Permanent Forum of People of African Descent and the Office of the United Nations High Commissioner for Human Rights and of external experts in the discussion, and notes that the discussion provided valuable input that will assist the drafting group in its task;

4. *Decides* to seek input by means of a note verbale in which it requests stakeholders, including Member States, international and regional organizations, United Nations bodies and mechanisms, the Committee on the Elimination of Racial Discrimination, the Office of the High Commissioner, United Nations agencies, funds and programmes within their respective mandates, national human rights institutions, civil society organizations, the private sector and academic institutions, to submit information on patterns, policies and processes, and other measures, such as legislation, leading to incidents of racial discrimination, and to make proposals to advance racial justice and equality by 10 October 2022;

5. *Requests* the drafting group to submit a draft report to the Advisory Committee at its twenty-ninth session, taking into account the replies received pursuant to the above-mentioned note verbale and the discussions held at the current session;

6. *Encourages* stakeholders to continue to contribute to the work already under way.

*5th meeting
12 August 2022*

[Adopted without a vote.]

28/3. Research proposals and reflection paper

The Human Rights Council Advisory Committee,

Recalling paragraph 77 of the annex to Human Rights Council resolution 5/1 of 18 June 2007 and Council resolution 16/21 of 25 March 2011,

Having considered the research proposals and reflection paper presented by members of the Advisory Committee at its current session in the context of its discussions on new priorities and potential research proposals to be submitted to the Human Rights Council for its consideration, and welcoming the inputs received from Member States and non-governmental organizations during the aforementioned discussions,

1. *Decides* to submit for consideration of and approval by the Human Rights Council the following updated research proposals:¹

(a) Assessing the human rights implications of neurotechnology: towards the recognition of neurorights;

(b) Human rights implications of the use of new and emerging digital technologies developed in the military domain used for law enforcement and security purposes;

¹ At its twenty-seventh session, the Advisory Committee submitted previous versions of the two research proposals to the Human Rights Council; see A/HRC/AC/27/2, annex III.

2. *Also decides* to include, pursuant to rule 17 of the Advisory Committee's rules of procedure, the updated concept notes for the aforementioned research proposals in the annex to its report on its twenty-eighth session;

3. *Requests* Nadia Bernoussi to prepare, on the basis of her reflection paper and taking into account the discussions held at the current session, a research proposal on the theme "Climate change and the rights of the child", for consideration at its twenty-ninth session.

*5th meeting
12 August 2022*

[Adopted as orally revised without a vote.]

28/4. Review of methods of work

The Human Rights Council Advisory Committee,

Recalling paragraph 82 of the annex to Human Rights Council resolution 5/1 of 18 June 2007 and paragraph 35 of Council resolution 16/21 of 25 March 2011,

Recalling also its closed meeting on 11 August 2022 to review its methods of work,

1. *Takes note* of the discussion papers on enhancing the engagement of the Advisory Committee with non-governmental organizations and civil society, increasing the visibility of the Committee's work, and the Committee's engagement with academia, including its network of Academic Friends, presented by the respective focal points;

2. *Welcomes* the consultations held in the intersessional period with groups of Member States, in collaboration with the regional coordinators for the Human Rights Council;

3. *Decides* to hold virtual consultations in 2023 in the intersessional period with groups of Member States, in collaboration with the regional coordinators for the Human Rights Council;

4. *Also decides* to entrust the focal point, Milena Costas Trascasas, to seek input from non-governmental organizations on their engagement with the Committee, and requests her to prepare a reflection paper on enhancing the engagement of the Committee with non-governmental organizations and civil society, to be discussed at its twenty-ninth session;

5. *Further decides* to hold a meeting with non-governmental organizations during its twenty-ninth session, allowing also for their remote participation to ensure broader and diverse engagement of those stakeholders;

6. *Requests* the focal point, Catherine Van de Heyning, to prepare a reflection paper on enhancing the visibility of the Committee's work, taking into account the discussions held at the current session;

7. *Decides* that drafting groups should consider preparing a communication strategy upon the submission of reports and studies to the Human Rights Council with a view to raising awareness about them;

8. *Also decides* to continue to consider ways to engage with the academia and research institutions on the basis of an updated discussion paper to be prepared by the focal point, Vassilis Tzevelekos.

*5th meeting
12 August 2022*

[Adopted without a vote.]

II. Adoption of the agenda and organization of work

A. Opening and duration of the session

1. The Human Rights Council Advisory Committee, established pursuant to Human Rights Council resolution 5/1 of 18 June 2007, held its twenty-eighth session from 8 to 12 August 2022 at the United Nations Office at Geneva. The Chair of the twenty-seventh session, Patrycja Sasnal, opened the session.
2. At the 1st meeting, on 8 August 2022, the Vice-President of the Human Rights Council, Katharina Stasch, made an opening statement.
3. At the same meeting, the Chief of the Human Rights Council Branch of the Office of the United Nations High Commissioner for Human Rights (OHCHR) made a statement on behalf of the Secretary-General.
4. Also at the same meeting, participants observed a minute of silence in memory of the late members of the Advisory Committee, José Augusto Lindgren Alves and Iurii Alexandrovich Kolesnikov, and for victims of human rights violations around the world.
5. At the same meeting, statements were made by representatives of observer States (see annex II).

B. Composition of the Advisory Committee

6. The current composition of the Advisory Committee and the term of membership of each expert are as follows:² Nurah Alamro (Saudi Arabia, 2024); Buhm-Suk Baek (Republic of Korea, 2023); Nadia Amal Bernoussi (Morocco, 2023); Lazhari Bouzid (Algeria, 2022); Milena Costas Trascasas (Spain, 2022); Xinsheng Liu (China, 2022); Ajai Malhotra (India, 2023); Itsuko Nakai (Japan, 2022); Javier Palummo (Uruguay, 2022); Patrycja Sasnal (Poland, 2023); Dheerujlall Seetulsingh (Mauritius, 2023); Vassilis Tzevelekos (Greece, 2024); Catherine Van de Heyning (Belgium, 2023); and Frans Jacobus Viljoen (South Africa, 2024).

C. Attendance

7. The session was attended by members of the Advisory Committee and observers for States Members of the United Nations, as well as by intergovernmental organizations and non-governmental organizations.
8. All current members of the Advisory Committee participated in the session, with the exception of Itsuko Nakai, who was excused.

D. Meetings

9. At its twenty-eighth session, the Advisory Committee held five plenary meetings and five closed meetings.

E. Adoption of the agenda

10. At its 1st meeting, on 8 August 2022, the Advisory Committee adopted its agenda (A/HRC/AC/28/1).³

² Terms of office expire on 30 September of the year in parentheses. Four seats are currently vacant (one for African States, one for Eastern European States and two for Latin American and Caribbean States). Elections to fill all vacant seats will be held at the fifty-first session of the Human Rights Council (12 September–7 October 2022).

³ For the list of documents issued for the twenty-eighth session, see annex I.

F. Organization of work

11. At its 1st meeting, the Advisory Committee adopted the draft programme of work prepared by the secretariat.

III. Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions

A. Impact of new technologies for climate protection on the enjoyment of human rights

12. At its 2nd meeting, on 9 August 2022, the Advisory Committee held, pursuant to Human Rights Council resolution 48/14, a discussion on the impact of new technologies for climate protection on the enjoyment of human rights. In that context, a number of panellists made presentations to the Committee: the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry, and Climate Geoengineering Organizer at the Indigenous Environmental Network, Panganga Pungowiyi. During the ensuing discussion, statements were made by members of the Committee, representatives of observer States, and representatives of non-governmental organizations (see annex II). The Special Rapporteur and Ms. Pungowiyi made concluding remarks.

13. At its 5th meeting, on 12 August 2022, the Chair of the drafting group on the impact of new technologies for climate protection on the enjoyment of human rights, Ms. Costas Trascasas, introduced a draft text (A/HRC/AC/28/L.1). The draft text was adopted without a vote (for the text as adopted, see sect. I, action 28/1, above).

B. Advancement of racial justice and equality

14. At its 3rd meeting, on 10 August 2022, the Advisory Committee held, pursuant to Human Rights Council resolution 48/18, a discussion on patterns, policies and processes contributing to incidents of racial discrimination and proposals to advance racial justice and equality, which should be firmly anchored in the fulfilment of the 2030 Agenda for Sustainable Development and the attainment of its Goals. In that context, a number of panellists made presentations to the Committee: member of the Permanent Forum of People of African Descent, Epsy Campbell Barr, and member of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement, Tracie L. Keesee. A representative of the Anti-Racial Discrimination Section of the Rule of Law, Equality and Non-Discrimination Branch of OHCHR also gave a presentation on the work of the Office on this topic. During the ensuing discussion, statements were made by members of the Committee, representatives of observer States and a representative of a non-governmental organization (see annex II). Ms. Keesee and the representative of the Anti-Racial Discrimination Section of the Rule of Law, Equality and Non-Discrimination Branch made concluding remarks.

15. At its 5th meeting, on 12 August 2022, the Chair of the drafting group on advancement of racial justice and equality, Ms. Van de Heyning, introduced a draft text (A/HRC/AC/28/L.2). The draft text was adopted without a vote (for the text as adopted, see sect. I, action 28/2, above).

IV. Implementation of sections III and IV of the annex to Human Rights Council resolution 5/1 of 18 June 2007, and of section III of the annex to Council resolution 16/21 of 25 March 2011

A. Review of methods of work

16. On 11 August 2022, in a closed meeting, the Advisory Committee held discussions on its methods of work. The Committee discussed issues relating to raising awareness about

and increasing the visibility of its work, its engagement with non-governmental organizations and its interaction with academic friends of the Committee.

17. At its 5th meeting, on 12 August 2022, the Chair introduced a draft text (A/HRC/AC/28/L.4), sponsored by all the Advisory Committee members. The draft text was adopted without a vote (for the text as adopted, see sect. I, action 28/4, above).

B. Agenda and annual programme of work, including new priorities

18. On 11 August 2022, in a closed meeting, the Advisory Committee held discussions on new priorities, reflection papers and potential research proposals it could make to the Human Rights Council.

19. At its 4th meeting, on 12 August 2022, the Advisory Committee held a discussion on the following research proposals presented by its members and decided to submit them to the Human Rights Council for its consideration and approval (see annex III):

- Human rights implications of the use of new and emerging digital technologies developed in the military domain used for law enforcement and security purposes
- Assessing the human rights implications of neurotechnology: towards the recognition of neurorights

20. At the same meeting, members of the Advisory Committee presented a reflection paper on the theme of:

- Climate change and the rights of the child

21. Also at the same meeting, during the ensuing discussion, presentations were made by Stephanie Hermann, Neurorights Foundation; Marcello Ienca, expert in biomedical ethics; and Ricardo Chavarriaga, expert in computational neuroscience. At the same meeting, statements were made by members of the Advisory Committee, representatives of observer States, a representative of an intergovernmental organization and a representative of a non-governmental organization (see annex II).

22. At its 5th meeting, on 12 August 2022, the Chair introduced a draft text (A/HRC/AC/28/L.3), sponsored by all members of the Advisory Committee, with oral revisions of the title of the draft action, the second preambular paragraph, paragraph 1(b), and the addition of a paragraph 2 bis. The draft text was adopted as orally revised without a vote (for the text as adopted, see sect. I, action 28/3, above).

C. Appointment of members of the Working Group on Communications

23. In accordance with paragraphs 91 to 93 of the annex to Human Rights Council resolution 5/1, the Advisory Committee appoints five of its members, one from each regional group, with due consideration to gender balance, to constitute the Working Group on Communications. In the event of a vacancy, the Advisory Committee is to appoint an independent and highly qualified expert from the same regional group. Since there is a need for independent expertise and continuity with regard to the examination and assessment of communications received, the independent and highly qualified experts of the Working Group are appointed for three years. Their mandate is renewable only once.

24. The members of the Working Group on Communications were last appointed by the Advisory Committee at its twenty-third and twenty-sixth sessions, and in the intersessional period in 2022.⁴

25. The Working Group has four upcoming vacancies, owing to the demise of Mr. Kolesnikov (Eastern European Group) in May 2022, the resignation of Ms. Salmon (Group of Latin America and the Caribbean) in July 2022, and the expiry of the terms of Mr. Bouzid (African Group) and Mr. Liu (Asia-Pacific Group) due on 30 September 2022. The Advisory

⁴ See A/HRC/AC/23/2, paras. 25–27; A/HRC/AC/26/2, paras. 23–26; and A/HRC/AC/27/2, paras. 24–26.

Committee decided, at its 4th meeting, on 12 August 2022, to appoint Mr. Malhotra, Mr. Palumbo, Ms. Sasnal and Mr. Seetulsingh to the Working Group as of 1 October 2022.

26. At the same meeting, the Advisory Committee decided to appoint Ms. Sasnal to replace Mr. Kolesnikov for the 30th session of the Working Group of Communications (15–19 August 2022).

V. Report of the Advisory Committee on its twenty-eighth session

27. At the 5th meeting, on 12 August 2022, the Rapporteur of the Advisory Committee presented the draft report on the twenty-eighth session. The Committee adopted the draft report ad referendum and entrusted the Rapporteur with its finalization.

28. At the same meeting, the Rapporteur made closing remarks. Statements were also made by members of the Advisory Committee (see annex II).

29. Also at the same meeting, the Chair made final remarks and declared the twenty-eighth session of the Advisory Committee closed.

Annex I**Documents issued for the twenty-eighth session of the Advisory Committee****Documents issued in the general series**

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/28/1	1	Provisional agenda and annotations
A/HRC/AC/28/2	4	Report of the Advisory Committee on its twenty-eighth session

Documents issued in the limited series (actions)

<i>Symbol</i>	<i>Agenda item</i>	
A/HRC/AC/28/L.1	2 (d)	Impact of new technologies for climate protection
A/HRC/AC/28/L.2	2 (e)	Advancement of racial justice and equality
A/HRC/AC/28/L.3	3 (b)	Research proposals and reflection paper
A/HRC/AC/28/L.4	3 (a)	Review of methods of work

Annex II

List of speakers

<i>Agenda item</i>	<i>Meeting and date</i>	<i>Speakers</i>
1. Adoption of the agenda and organization of work	1st meeting 8 August 2022	Observer States: Bolivia (Plurinational State of), Venezuela (Bolivarian Republic of)
2. Requests addressed to the Advisory Committee stemming from Human Rights Council resolutions		
(d) Impact of new technologies for climate protection on the enjoyment of human rights	2nd meeting 9 August 2022	<p>Panellists: Ian Fry (Special Rapporteur on the promotion and protection of human rights in the context of climate change), Panganga Pungowiya (Climate Geoengineering Organizer, Indigenous Environmental Network)</p> <p>Members: Buhm-Suk Baek, Nadia Amal Bernoussi, Lazhari Bouzid, Ajai Malhotra, Patrycja Sasnal (Rapporteur), Vassilis Tzevelekos</p> <p>Observer States: China, India, Panama</p> <p>Non-governmental organizations: Center for International Environmental Law (CIEL), Sikh Human Rights Group</p>
(e) Advancement of racial justice and equality	3rd meeting 10 August 2022	<p>Panellists: Epsy Campbell Barr (member of the Permanent Forum of People of African Descent), Tracie L. Keesee (member of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement)</p> <p>Members: Nurah Alamro, Nadia Amal Bernoussi, Ajai Malhotra, Dheerujlall Seetulsingh, Catherine Van de Heyning, Frans Jacobus Viljoen (Rapporteur)</p> <p>Observer States: China, India, South Africa</p> <p>Non-governmental organizations: Sikh Human Rights Group</p>
3. Implementation of sections III and IV of the annex to Human Rights Council resolution 5/1 and of section III of the annex to Council resolution 16/21		

(b) Agenda and annual programme of work, including new priorities	4th meeting 12 August 2022	<p>Panellists: Stephanie Hermann (Neurorights Foundation); Marcello Ienca (expert in biomedical ethics); Ricardo Chavarriaga (expert in computational neuroscience)</p> <p>Members: Nadia Amal Bernoussi, Milena Costas Trascasas, Ajai Malhotra, Javier Palummo, Dheerujlall Seetulsingh, Catherine Van de Heyning</p> <p>Observer States: Greece, Panama, Uruguay</p> <p>Intergovernmental organisations: University of Peace</p> <p>Non-governmental organizations: Sikh Human Rights Group</p>
(c) Appointment of members of the Working Group on Communications	4th meeting 12 August 2022	
4. Report of the Advisory Committee on its twenty-eighth session	5th meeting 12 August 2022	Members: Buhm-Suk Baek (Rapporteur), Lazhari Bouzid, Xinsheng Liu, Dheerujlall Seetulsingh

Annex III

Research proposals

I. Human rights implications of the use of new and emerging digital technologies developed in the military domain used for law enforcement and security purposes

A. General approach

1. In recent decades, human rights bodies have had an increasing interest in regulating the use of new and emerging digital technologies developed for military purposes. It is essential to have a comprehensive understanding of the characteristics of such technologies if the above-mentioned bodies are to keep pace with current and expected developments affecting human rights.¹

2. Consequently, the legal and human rights implications of new and emerging digital technologies developed for military purposes and used in scenarios other than armed conflict should be investigated. To this end, it is important to analyse the legal bases for their use, in addition to identifying the mechanisms and institutions that should regulate them.

3. In many cases, these technologies are not illegal in themselves. In other cases, however, a careful analysis of applicable standards could actually lead to considering their prohibition.² In all cases, a set of clear and public principles that frame their use, particularly in the light of new developments and the multiplication of actors (including non-State actors) that acquire them, must be defined.³

4. These technologies can facilitate activities that may involve human rights violations and hinder proper investigation of situations as a result of being applied in settings that do not ensure transparency in their use.

5. In the framework of the present proposal, the regulatory implications of the use of certain surveillance technologies and of remote-controlled weapons systems for military purposes (such as unmanned aircraft, armed drones, remote-operated semi-autonomous weapons, and fully autonomous weapons) would be studied.

6. These aspects relating to the context of armed conflict have already been addressed in the work of the United Nations; the work of the open-ended Group of Governmental Experts related to emerging technologies in the field of lethal autonomous weapons systems is a good example of it.⁴ Some efforts have been made to address the issue from the perspective of international human rights law, in particular in relation to the right to life, contemporary forms of racism, racial discrimination, xenophobia and related intolerance or counter-terrorism, among others.⁵ The proposed study will consider these precedents and provide new information as part of a comprehensive and practical approach.

7. The scenarios for the use of the new technologies to be considered will include law enforcement operations, monitoring and securing border spaces, and the fight against

¹ See A/HRC/44/38.

² See A/71/372.

³ A/HRC/34/61.

⁴ See Amandeep S. Gill, "The role of the United Nations in addressing emerging technologies in the area of lethal autonomous weapons systems", available at <https://www.un.org/en/un-chronicle/role-united-nations-addressing-emerging-technologies-area-lethal-autonomous-weapons>.

⁵ See A/65/321, A/68/382, A/68/389, A/71/372, A/75/590, A/HRC/23/47, A/HRC/25/59, A/HRC/26/36, A/HRC/28/38, A/HRC/34/61 and A/HRC/44/38.

organized crime and terrorism. The possibility of employing such technologies in these scenarios may involve specific human rights risks, which will be specifically addressed.

8. For example, the use of autonomous military technologies strengthens the connection between immigration, national security and the increasing criminalization of migration. As documented by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the European Border and Coast Guard Agency (Frontex) has been testing unpiloted military-grade drones for surveillance and interdiction of boats with migrants and refugees hoping to reach European shores, which might have been used to promote the forcible return of refugees and migrants across a border without taking into account the circumstances of the individuals and without allowing them to apply for asylum or appeal.⁶ In addition, several studies and reports have highlighted the risks of the use of increasingly hard-line and intrusive technologies, such as drones and various border control mechanisms (for example, remote sensors and autonomous surveillance towers).⁷

B. Objective of the research proposal

9. The purpose of the study will be to examine the potential implications of new and emerging digital technologies developed for military purposes, that are used in settings other than armed conflict, and to outline the associated problems, as well as to discuss initiatives to monitor or regulate these technologies.

C. Timeline

10. The Human Rights Council could consider adopting a resolution on the present proposal at its fifty-first session. The Advisory Committee could therefore submit the report to the Council for consideration at its fifty-seventh or fifty-eighth session. The proposed timeline would allow the Committee to discuss the topic and prepare the report during its twenty-ninth, thirtieth, thirty-first, thirty-second, and thirty-third sessions.

II. Assessing the human rights implications of neurotechnology: towards the recognition of neurorights

A. Introduction

1. A new generation of neurotechnologies is rapidly developing. Increasingly promoted as a necessary development to be pursued for the good of humanity, such technologies are paving the way to an incredibly lucrative business that might contribute to widen power asymmetries.⁸ Advances in research are being fuelled by large quantities of public and private

⁶ A/HRC/48/76, para. 14.

⁷ Ibid., para. 15. See also Panagiotis Loukinas, “Drones for border surveillance: multipurpose use, uncertainty and challenges at EU borders”, *Geopolitics*, vol. 27, No. 1 (2022), pp. 89–112; Bruno Oliveira Martins and Maria Gabrielsen Jumbert, “EU border technologies and the co-production of security ‘problems’ and ‘solutions’”, *Journal of Ethnic and Migration Studies*, vol. 48, No. 6 (2022), pp. 1430–1447; Raluca Csernatoni, “Constructing the EU’s high-tech borders: FRONTEX and dual-use drones for border management”, *European Security*, vol. 27, No. 2 (2018), pp. 175–200; Human Rights Watch, “Frontex failing to protect people at EU borders” (2021), available at www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders; and Petra Molnar, *Technological Testing Grounds: Migration Management Experiments and Reflections from the Ground Up*, EDRi and Refugee Law Lab, 2020, available at <https://edri.org/wp-content/uploads/2020/11/Technological-Testing-Grounds.pdf>.

⁸ *Human Augmentation – The Dawn of a New Paradigm, A strategic implications project*, United Kingdom Ministry of Defence, May 2021.

funding allocated to “brain” initiatives.⁹ This massive scale of global investment is prompting a new technological race where States, businesses and other stakeholders are staking out their positions.¹⁰ Even if many technologies are currently in an experimental phase, experts warn that we must be prepared for this to change very quickly.¹¹

2. In coming years, neurotechnology will help to improve cognitive capacities by connecting the brain directly to digital networks. This will require not only the systematic collection of neural data but the decoding of thoughts deriving from the individual’s neural activity. The unquestionable medical benefits that such advances might bring should not, however, obscure the risk that they pose.¹² Neurotechnology allows a far greater degree of access to and manipulation of neural processes, and its unregulated commercialization and use pose an unprecedented threat to the ability of individuals to govern freely their own behaviour. Indeed, these technologies have the potential of irreversibly damaging or disrupting the delicate balance of the human psyche already seen by the ancient Greeks as the container of the “human soul”.

B. State of progress in neurotechnologies

3. Advances in this field allow for new and sophisticated ways of human-machine interfacing. Today, the term “neurotechnologies” refers to any electronic device, method or process conceived to give access to the neuronal activity of the human brain, including the capacity to record, interfere or modify brain activity. These applications allow for a two-way connection (brain-computer interfaces) between the individual’s central nervous system (brain and spinal cord) and an electronic system. The aim is to collect information on the activity of neurons containing a representation of brain activity (neural data). In this context, the human brain appears to be a kind of “hard disk” containing documents and memories that can be consulted and saved in an external device. A disk or a computer can thus be used to access, explore, delete or even modify them.

4. A clear distinction should be made between innovations that are oriented towards public health and developed for medical purposes and those that generally pursue human augmentation through “memory enhancement” or “cognitive engineering”.

5. Some of the above-mentioned innovations are clearly oriented towards the medical field and are already being used for the prevention, diagnosis and treatment of neurological disorders (Parkinson’s, dementia, stroke, major depressive disorder). In these cases, the technologies applicable are usually invasive and involve the implantation of electrodes that stimulate or modulate the patient’s brain activity; the technologies are, however, generally sufficiently regulated in national legislation.

6. The technologies raising the greatest concern are those being developed outside the medical field and offered to the general public for memory enhancement purposes in healthy people; low-cost non-invasive neuromodulation applications designed to optimize brain performance in a variety of cognitive tasks can already be purchased on the Internet. Other applications that will soon become available are used with portable accessories, such as wireless headphones and helmets allowing users to carry out daily activities while decoding brain waves and allowing remote control of smartphones. Beyond “neurogaming”, other proposed applications, such as “neuromarketing” and “neurolaw”, are being developed in a

⁹ Current developments are being driven by a number of large global neuroscience initiatives, including the United States-based Brain Research through Advancing Innovative Neurotechnologies (BRAIN) initiative, the European Union Human Brain Project, and other coordinated research projects being implemented around the world, including in Australia, Canada, China, Japan and the Republic of Korea.

¹⁰ Between 2010 and 2014, the number of patents doubled from 800 to around 1,600 annually. Most of them are however awarded to private inventors outside medical device companies.

¹¹ Although neurotechnologies now allow brain data to be recorded with great precision, researchers are still working to fully understand these signals. See Geneva Science and Diplomacy Anticipator (GESDA), “Memory enhancement and cognitive engineering”, Scientific Anticipatory Brief (available at <https://gesda.global/scientific-anticipatory-briefs/>), 2020.

¹² A/76/380, para. 6.

complete legal vacuum. There is also a significant risk that these technologies may be used for security or military purposes, including by non-State actors.

7. The widespread availability of these technologies would inevitably lead to the creation of large amounts of highly sensitive neurological data, raising the question of who should have access to such information, and for what purpose. Furthermore, in the long run, the progressive normalization of these devices may contribute to the erosion of certain aspects that are at the core of the very concept of the human being, such as the individual's mental privacy, cognitive liberty and individual autonomy. The threat to an individual's control over the neurocognitive dimension also has the potential to alter the very functioning of society.¹³

C. Lack of adequate regulation

8. The continued and unregulated development of certain neurotechnologies poses a number of ethical, legal and societal questions that ought to be addressed. Devices based on these technologies are being rapidly developed and commercialized in an environment where responsible innovation cannot be taken for granted. Furthermore, in a globalized market, national attempts to regulate neurotechnologies might not be sufficient. To date, only a few States have enacted legislation specifically aimed at protecting mental integrity and indemnity (Chile) or have prompted amendments to include neurodata in personal data protection laws (Brazil, Colombia, Spain).¹⁴ It seems, however, that isolated and fragmented national initiatives alone cannot cover all existing and potential challenges. Even in the United States of America, where a patchwork of laws does exist, the provision of effective protection against misuses remains questionable.¹⁵

9. At the international level, different organizations have begun to reflect on this topic from different angles. In 2022, the Organisation for Economic Co-operation and Development (OECD) approved a recommendation on responsible innovation in neurotechnology, whereby certain challenges posed by neurotechnologies are anticipated. In December 2021, a report of the International Bioethics Committee of the United Nations Educational, Scientific and Cultural Organization (UNESCO) addressed more specifically the ethical and legal aspects. More recently, specialized committees on bioethics and neurotechnologies of the Council of Europe and the Inter-American Commission on Human Rights held discussions on neurotechnologies from a human rights perspective.¹⁶

10. The United Nations system itself has dealt with this topic in a very preliminary manner. In 2021, in the report of the General-Secretary *Our Common Agenda*, neurotechnology is mentioned as a frontier human rights issue that will require an update or the clarification of the applicable human rights framework and standards with a view to preventing harm in digital and technology spaces. In a recent report, the Neurorights Foundation called upon the United Nations Organization to play a leading role globally in embracing these innovations while protecting human rights and ensuring the ethical

¹³ This can also contribute to reinforcing totalitarian dynamics or authoritarian processes through, for example, intrusive surveillance, unconsented assessment or the manipulation of brain states and/or behaviour. At the same time, it has been argued that neurotechnologies may introduce new grounds for discrimination as a consequence of the gap that would be created between a sort of "cognitive elite" and those who cannot afford those technologies.

¹⁴ Chile has enshrined a right to neuroprotection in its Constitution and would be developing legislation for neuroprotection as well.

¹⁵ Karen S. Rommelfanger, Amanda Pustilnik and Arleen Salles, "Mind the gap: lessons learned from neurorights", *Science & Diplomacy*, 28 February 2022.

¹⁶ On 21 June 2022, the Commission held a public audience on "Human rights and neurotechnologies. See also Declaration of the Inter-American Juridical Committee on Neuroscience, Neurotechnologies and Human Rights: New Legal Challenges for the Americas. On 9 November 2021, the Council of Europe and OECD co-organized a round table discussion on the theme "Neurotechnologies and human rights framework: do we need new rights? (www.coe.int/en/web/bioethics/round-table-on-the-human-rights-issues-raised-by-the-applications-of-neurotechnologies). See also Marcello Ienca, "Common human rights challenges raised by different applications of neurotechnologies in the biomedical field", Council of Europe, October 2021.

development of neurotechnology.¹⁷ To our knowledge, however, the Secretary-General's statement has not triggered any specific follow-up action.

11. The United Nations is in the best position to launch a public, transparent and inclusive debate among States, civil society and other stakeholders on the issue of neurotechnologies, which to date has been addressed only at the expert level. In this context, the Human Rights Council has a significant role to play and the Advisory Committee may provide significant support. Given its role as a think tank, the Committee is best placed to assess the human rights impact of these technologies and to make recommendations for action to Member States.

D. A new challenge for human rights

12. From a human rights perspective, it has been argued that existing instruments are ill-equipped to face these new challenges.¹⁸

13. Experts suggest that a new set of rights should be recognized with a view to introducing normative specifications relating to the protection of the person's cerebral and mental domain, which includes individual mental integrity and identity. Here the question is whether such protection should be introduced as a set of new human rights norms or rather of standards of application or interpretation of existing rights, while reinforcing the applications of the principles on business and human rights and other specific initiatives in parallel.

14. Such an assessment requires a careful and balanced analysis of the new norms that are being proposed as rights. It is true that specific standards may be needed to ensure protection against interference and misuse of certain mental aspects, such as cognitive freedom, mental privacy, mental integrity and psychological continuity.¹⁹ Equal access to neurotechnology for medical purposes has also been promoted, together with the access of individuals to justice and adequate accountability mechanisms. There are, however, other many more disputable interpretations, such as the claim that a right to fair access to "mental augmentation" should be recognized.²⁰

E. Objective of the research proposal

15. The study proposed by the Advisory Committee would provide an overview of the main human rights implications of neurotechnology by focusing on the legal, ethical and societal consequences of the different applications currently being developed, particularly outside the medical domain. An exhaustive analysis of the existing framework will also contribute to the identification of relevant norms, applicable principles and standards, as well as of gaps and challenges.

16. The report will include an assessment of the need and opportunity of recognizing an additional set of rights, in particular neurorights. It will explore the type of normative instrument that could be developed, while also considering other alternatives, such as the possibility of interpreting in an evolving manner the most relevant rights. To conclude, the report will also address the question of how to build a coherent system of governance and accountability.²¹

¹⁷ See Jared Genser, Stephanie Herrmann and Rafael Yuste, *International Human Rights Protection Gaps in the Age of Neurotechnology*, Neurorights Foundation, May 2022, p. 50.

¹⁸ See Avi Asher-Schapiro, "'This is not science fiction', say scientists pushing for 'neuro-rights'", Reuters, 4 December 2020.

¹⁹ See in particular Marcello Ienca and Roberto Andorono, "Towards new human rights in the age of neuroscience and neurotechnology", *Life Sciences, Society and Policy*, vol. 13, No. 5 (2017).

²⁰ See Diego Borbón and Luisa Borbón, "A critical perspective on neurorights: comments regarding ethics and law", *Frontiers in Human Neuroscience*, October 2021, vol. 15, p. 2.

²¹ Marcello Ienca, Roberto Andorno, Ricardo Chavarriga and others, "Towards a governance framework for brain data", *Neuroethics*, 3 June 2022.

17. Such a study would foster States' understanding of the human rights implications of this complex issue, and allow the inclusion of this topic in the agenda of the Human Rights Council. A public discussion on the topic is timely and urgently needed, to identify the kind of actions that should be undertaken in the future to prevent these technologies from being used for purposes that run counter to the principles and objectives of the Universal Declaration of Human Rights and the Charter of the United Nations.

F. Timeline

18. The present research proposal updates and replaces the one put forward by the Advisory Committee at its twenty-seventh session. The Committee reiterates its request to Council Member and observer States to work towards the adoption of a thematic resolution providing for a mandate to develop a study on this topic.

19. The Advisory Committee stands ready and has the necessary expertise to continue discussions with a view to submitting a report on the human rights impact of neurotechnology to the Human Rights Council at either its fifty-sixth or fifty-seventh session.
