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Toward an International Agenda to Protect the *Forum Internum*

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Key Points

- Our inner freedom is threatened by the fast pace and ubiquitous nature of technological and scientific developments specifically designed to get inside our heads.
- Freedom of thought (which includes the right to keep our thoughts private, the right not to have our thoughts manipulated and the right not to be penalized for our thoughts alone) is the key to our technological future.
- To guide technological development, we must understand the threats to freedom of thought in the digital age.
- The manipulation of our minds, whatever the technology used, undermines peace and democracy around the world, shaking the foundations of the UN Charter. The United Nations should establish practical frameworks to guarantee our absolute right to freedom of thought, now and for the future.

Introduction

In the twenty-first century, new developments in technology are increasingly being designed to get inside our minds and change the way we think. From the ways social media keeps our eyes glued to our screens and uses data collected about us to understand and manipulate us, to brain-computer interfaces designed to create a seamless two-way connection between our minds and machines, our freedom of thought is under threat.

The rights to freedom of thought, conscience and belief, along with the right to freedom of opinion, are enshrined in numerous international, regional and domestic human rights laws¹ but have often been overlooked in the field of digital rights.² The rights have external aspects when thoughts or opinions are manifested or expressed, and those aspects of the rights are familiar in discussions around freedom of expression or freedom of religion or belief. But it is the need for a framework to protect the internal aspect of these rights, the “*forum internum*,”

1 For example, articles 18 and 19 in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR) and similar provisions in regional instruments.

2 The UN special rapporteur on freedom of religion and belief’s report on freedom of thought in 2021 was the first special rapporteur report dedicated to the topic (see UN General Assembly 2021). See also Alegre (2022).

About the Author

Susie Alegre is a CIGI senior fellow and an international human rights lawyer. She is an associate at Doughty Street Chambers in the United Kingdom. Susie has specific expertise in human rights and technology, in particular, the emerging application of the right to freedom of thought in the digital context, a topic explored in depth in her book *Freedom to Think: The Long Struggle to Liberate Our Minds* (Atlantic Books, 2022). She has advised international organizations, civil society and the private sector on the application of human rights law to emerging technology and artificial intelligence, and the human rights implications of the digital environment in a range of spheres, including disinformation, elections, child safety online, security and the armed forces.

With 25 years of experience, Susie has worked on a wide range of human rights and rule of law issues for domestic and international organizations, including the Equality and Human Rights Commission, the European Union Delegation to Uganda, the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights, and UN and regional bodies. Her experience includes advising on issues such as human rights and counterterrorism, anticorruption, human rights institutions, human rights and climate change, small island jurisdictions, border controls and EU law, among others. She also holds judicial and oversight roles in the United Kingdom and internationally.

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that is the focus of this policy brief.³ If, rather than looking at the technology and ways to mitigate its negative impacts, the perspective on navigating our future relationship with technology is turned around to foster a protected space for inner freedom around which technological innovation may be allowed to develop, we may see different and clearer solutions emerge.

What Is the *Forum Internum*?

Our thoughts, feelings and opinions are all formed and changed in our inner world, influenced by the information, relationships and experiences we receive from and share with the world around us. This inner world is known as the *forum internum*, and it is a space that is protected absolutely in international law⁴ because it is our inner lives that make us human.

The right to freedom of thought has three key elements:

- the right to keep our thoughts private;
- the right not to have our thoughts manipulated; and
- the right not to be penalized for our thoughts alone.

Importantly, attempts to get inside our minds do not need to be successful to violate the right. Attempts to manipulate our minds and punishment based on inferences about our thoughts and opinions may equally amount to a violation of the *forum internum*.

Once we choose to share our thoughts, opinions and ideas with the world, there may be legal consequences. But the line between our inner and outer worlds is increasingly blurred by technology that makes inferences about our thoughts and emotions, such as emotion recognition technology, or technology that is designed to change how

³ See also Alegre (2021) for an in-depth analysis of the right to freedom of thought itself.

⁴ See UN Office of the High Commissioner for Human Rights (UN OHCHR) (1993).

we think, feel and, ultimately, behave, such as behavioural micro-targeting in political campaigns. Other rights such as privacy, data protection and freedom of expression offer windows into our minds and, in the technological age, they have so far been serving as the gatekeepers for our rights to inner freedom and as the focus of much of the discussion around human rights and technology. But as we consider our future relationship with technology and innovation in a range of different spheres, from social media to emotional artificial intelligence (AI), brain-computer interfaces and cognitive enhancement, we need to look beyond these rights. What we need now is an effective international framework to protect the rights at the heart of the technological revolution — our rights to freedom in the *forum internum*.

Why Is the *Forum Internum* under Threat Now?

The desire to get inside the human mind — to understand, to judge and, ultimately, to control other people's inner lives — is not new. Science, religion and those in power down the centuries have made inferences about the thoughts and beliefs of individuals and groups and sought to manipulate or punish. This was seen most devastatingly with the consequences of Nazi propaganda and the horrors of the Second World War, which led to the birth of the modern human rights framework. But what has changed in recent years is the pace and ubiquitous nature of technological and scientific developments that are specifically designed to get inside our heads.

Emotional AI is designed to read our thoughts to predict whether we are thinking about committing a crime.⁵ Persuasive technology is designed to keep our eyes fixed to our screens for profit.⁶ Neuroscience claims to read our political opinions from our brains.⁷ Digital or neurological evidence is used to prove states of mind in legal

proceedings. Researchers claim to be able to read our sexual orientation or political opinion from biometric data,⁸ harking back to long-discredited techniques such as physiognomy. And an increasing focus on emotional monitoring in health-related technology, whether in the mental health sphere or in the tracking of women's biological cycles, all raise concerns.⁹ It is not necessarily the technology itself that is the problem, but the purpose for which it is being designed or used.

Technology that is designed to read human beings' inner lives and to change them raises serious concerns about the effective protection of the *forum internum* — and this technology is everywhere.

In the international sphere, discussions on human rights and technology have been mixed up, in many cases, with debates about ethics, blurring the lines between law and guidance.¹⁰ Other perspectives claim that we do not have the rights we need to address the new challenges of technology.¹¹ Human rights law is underpinned by ethics, but we must be wary of letting new ethical frameworks undermine the existing legal protections¹² at a time when human rights are under threat globally.

Many of the ethical concerns thrown up by new technologies, such as threats to human agency or autonomy, the erosion of mental privacy and the idea of "neurorights" (rights that are aimed at protecting the brain and its activity), are essentially limitations on our inner freedom. It does not matter the type of technology involved — it is what it is designed to do that matters. Rights such as privacy, freedom of expression, and information and data protection operate as gateway rights to bolster the right to this inner freedom. Human rights are universal, inalienable and indivisible and the rights to freedom of thought and opinion in the *forum internum* are protected absolutely in human rights law. Viewed from this perspective, there is no need for new rights.

5 See, for example, Du and Maki (2019).

6 See, for example, Williams (2018).

7 See, for example, Schreiber et al. (2013).

8 See the research of Michal Kosinski on sexual orientation and political opinion inferences through facial photographs: www.michalkosinski.com/research.

9 For an extensive analysis of case examples, see Alegre (2022).

10 See, for example, International Bioethics Committee (2021) and Organisation for Economic Co-operation and Development (n.d.).

11 See, for example, Ienca and Adorno (2017) and the work of the NeuroRights Foundation that focuses on perceived gaps in the existing framework.

12 See, for example, Bublitz (2022) and Lighthart and Bublitz (2022).

But there is a need to focus on and understand what these rights mean for our technological future. For this, we need a holistic, international approach to the protection of our absolute rights to freedom in the *forum internum* to inform and guide humanity's future relationship with technology.

Given the global nature of the challenge, the United Nations is the obvious forum for developing a strategic approach to protecting our inner freedom, the key to what it means to be human in the twenty-first century.¹³

A Multitude of Frameworks

There are many frameworks at the UN level where issues related to freedom in the *forum internum* are being discussed; however, while they touch on the issue, they look at it from differing perspectives and there is not yet a holistic approach.

Current frameworks, including a UN special envoy on technology,¹⁴ and the UN Secretary-General's *Roadmap for Digital Cooperation* (UN Secretary-General 2020) and strategy on new technologies (UN Secretary-General 2018), focus on the technology itself. The United Nations Educational, Scientific and Cultural Organization's (UNESCO's) International Bioethics Committee¹⁵ and its Universal Declaration on Bioethics and Human Rights,¹⁶ and the OHCHR thematic work on the human rights implications of technology,¹⁷ including the B-Tech Project,¹⁸ look at the issues from a wider human rights lens. Other UN agencies with relevant work streams and

strategies addressing the potential and challenges of digital innovation include UNICEF,¹⁹ the United Nations Development Programme²⁰ and the United Nations Office on Drugs and Crime.²¹

In terms of human rights-focused analysis, several UN special rapporteurs have highlighted these issues in recent thematic reports, such as:

- “Freedom of religion or belief” report of the special rapporteur on freedom of religion or belief;²²
- “Report on freedom of expression, states and the private sector in the digital age” of the special rapporteur on the promotion and protection of the right to the freedom of opinion and expression;²³
- “Disinformation and freedom of opinion and expression” report of the special rapporteur on the promotion and protection of the right to freedom of opinion and expression;²⁴ and
- “Right of everyone to the enjoyment of the highest attainable standard of physical and mental health” report of the special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²⁵

UN special procedures provide powerful analysis of the ways in which rights, including the rights to freedom of thought and freedom of opinion, are, or may be, threatened, and their recommendations are valuable in that they indicate direction. But their ability to drive change institutionally is limited by the nature of their appointment as independent, unremunerated experts. And the high-level strategic focus guided by the Secretary-General's office is currently on the technology rather than on the human aspect of inner freedom. This can create the impression that we need to run to keep up with the overwhelming advance of technological

13 The 2021 report on freedom of thought of the UN special rapporteur on freedom of religion or belief, Ahmed Shaheed (UN General Assembly 2021), along with the reports of UN special rapporteurs on freedom of opinion and expression in recent years that touch on freedom of opinion in the digital sphere, opens the door to concerted UN action.

14 See www.un.org/techenvoy/.

15 See 2022 recommendations on neurotechnology: <https://en.unesco.org/news/unescos-international-bioethics-committee-recommendations>.

16 See <https://en.unesco.org/themes/ethics-science-and-technology/bioethics-and-human-rights>.

17 See, for example, the 2021 report “The right to privacy in the digital age” (UN Human Rights Council 2021a).

18 See www.ohchr.org/en/business-and-human-rights/b-tech-project.

19 See www.unicef.org/globalinsight/digital-technology.

20 See <https://digitalstrategy.undp.org/>.

21 See www.unodc.org/unodc/en/terrorism/expertise/new-technologies-and-innovation.html.

22 See UN General Assembly (2021).

23 See UN Human Rights Council (2016).

24 See UN Human Rights Council (2021b).

25 See UN Human Rights Council (2020).

innovation, trying desperately to mitigate the human consequences of its inevitable march.

But what if the perspective is turned around to map out the protected space we need for inner freedom, around which technological innovation may be allowed to develop? We may see different and clearer solutions emerge.

The rights to freedom of thought and freedom of opinion in the *forum internum* give a strong legal framework with absolute protection for our inner freedom in international law, but what is needed now is a clear understanding of what those rights mean in the twenty-first century and what tools we need to protect them now and in the future.²⁶

Charting a Path to Effective Protection

The UN Secretary-General's report *Our Common Agenda* highlights both international law and justice and cooperation as key priorities for the future (UN Secretary-General 2021). In practice, this work includes the "application of human rights online and to frontier issues and new technologies" along with the need for a "global road map for the development and effective implementation of international law" (ibid., 6). The proposed Global Digital Compact has human rights at its core. A pathway toward protection of the *forum internum* should be a key component of this framework.

Where a practice feels wrong, but we cannot find adequate frameworks to challenge it, the right to inner freedom as protected in international human rights law can provide a springboard from which to develop new legislation and regulation that allow us to make the right real and effective in the modern context. To make that happen, there are several options at the UN level for using both existing and new tools to bring about change and meet the challenges we face in the twenty-first century. These include the following possibilities.

The Precautionary Principle and the *Forum Internum*

UNESCO, along with its advisory body, the World Commission on the Ethics of Scientific Knowledge and Technology, developed a working definition of the "precautionary principle" that is found in many international instruments relating to scientific developments and in the environmental field:

When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. *Morally unacceptable harm* refers to harm to humans or the environment that is

- threatening to human life or health, or
- serious and effectively irreversible, or
- inequitable to present or future generations, or
- imposed without adequate consideration of the human rights of those affected.

The judgement of *plausibility* should be grounded in scientific analysis. Analysis should be ongoing so that chosen actions are subject to review.

Uncertainty may apply to, but need not be limited to, causality or the bounds of the possible harm.

Actions are interventions that are undertaken before harm occurs that seek to avoid or diminish the harm. Actions should be chosen that are proportional to the seriousness of the potential harm, with consideration of their positive and negative consequences, and with an assessment of the moral implications of both action and inaction. The choice of action should be the result of a participatory process. (World Commission on the Ethics of Scientific Knowledge and Technology 2005, 14)

Technological developments that are designed to interfere with our freedom of thought fall clearly within the scope of potentially leading to a "morally unacceptable harm." The Council of Europe's Ad hoc Committee on Artificial Intelligence has explored how a "precautionary

²⁶ While academics are beginning to grapple with these issues, they are not yet reflected sufficiently at the policy level. For recent academic literature in this field see Bitz and Bublitz (2022).

approach” might be applied to new and emerging AI, which could have significant impact on human rights (Council of Europe 2020). It is now time to ensure that the precautionary principle is rigorously applied to ongoing high-risk developments in the field of technology. This could require giving the precautionary principle legally enforceable weight in legislative frameworks that govern new and emerging technology with implications for freedom of thought.

Given the speed of technological change and advancement in this area and the complex legal and ethical issues, there may also be a need for a dedicated interdisciplinary body capable of providing robust oversight of scientific and technological developments that have the potential to interfere with our minds. Such a body could provide appropriate legal and policy responses to meet the changes as they happen to ensure that the precautionary principle is applied in practice to protect the future of humanity.

A Special Envoy on the Protection of the *Forum Internum*

The broad range of technological innovations and scientific developments that touch on freedom in the *forum internum*, combined with the fundamental importance of the issue for the future of humanity, merits the creation of a special envoy or a special representative of the Secretary-General on the protection of the *forum internum* to bring together the diverse frameworks and plot a course forward. The UN Secretary-General currently has a special envoy on technology, and the earlier appointment of John Ruggie as special representative on business and human rights allowed for the development of the UN Guiding Principles on Business and Human Rights and a related focus on these issues.

A special envoy appointed to change the strategic focus from the technology to the protection of inner freedom could provide new and effective responses to the challenges we face. Such a mandate could recommend new developments to strengthen the existing legal framework building on the work of UN special rapporteurs. They could inform and provide constructive challenge from a human-centric perspective to the focus of the special envoy on technology. Starting from the point of human inner freedom rather than responding to the discrete threats would allow for a

holistic approach, taking account of developments in technology, medicine and other fields from both a legal and a technical perspective.²⁷

A New General Comment

The Human Rights Committee develops the meaning of the ICCPR through general comments. General Comment No. 22 on article 18 notes that the article “distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief” (UN OHCHR 1993, para. 3).

The general comment dates back to 1993; therefore, while it provides clarity on the absolute nature of this aspect of the rights, it does not elaborate on what that means in the context either of neurotechnology or of AI driven by behavioural science. Similarly, there is little development of the right to freedom of opinion in the digital context, as opposed to the right to freedom of expression as protected under article 19 of the ICCPR. This does not mean that the rights are not capable of embracing these challenges, just that the contours of protection have not yet been explicitly drawn. As the UN special rapporteur on freedom of religion and belief, Ahmed Shaheed, recommended in his report on freedom of thought, a new general comment would help to make the practical nature of the protection clearer in a modern context (UN General Assembly 2021).

The UN Committee on the Rights of the Child General comment No. 25 on children’s rights in relation to the digital environment includes a paragraph elaborating on the right to freedom of thought, conscience and religion:

62. States parties should respect the right of the child to freedom of thought, conscience and religion in the digital

²⁷ For example, neurotechnology designed to detect dishonesty has implications for freedom of thought both in technical terms and in the legal contexts in which it may be deployed.

environment. The Committee encourages States parties to introduce or update data protection regulation and design standards that identify, define and prohibit practices that manipulate or interfere with children’s right to freedom of thought and belief in the digital environment, for example by emotional analytics or inference. Automated systems may be used to make inferences about a child’s inner state. They should ensure that automated systems or information filtering systems are not used to affect or influence children’s behaviour or emotions or to limit their opportunities or development.

63. States parties should ensure that children are not penalized for their religion or beliefs or have their future opportunities in any other way restricted.... (UN Committee on the Rights of the Child 2021, 11)

Given the relative absence of analytical and jurisprudential development of the rights to freedom in the *forum internum* contained in articles 18 and 19 of the ICCPR and the scale of the modern technological threat to those rights, the time is right for a new general comment to focus on these aspects of the right, to define their scope and to make clear the types of activity that must never be permitted as they would amount to a violation of an absolute right.²⁸

A New Convention on Freedom of Thought?

The development of a convention to protect freedom in the *forum internum* would not create new rights. Rather, as we see with conventions related to other absolute rights, such as the prohibition on slavery²⁹ and the prohibition on torture, inhuman or degrading

treatment or punishment,³⁰ a convention could establish clear practical obligations on states for the protection of the right.

The right to freedom in the *forum internum* is already protected absolutely in international human rights law at the UN level through the rights to freedom of thought, conscience and belief and the right to freedom of opinion in the Universal Declaration of Human Rights and the ICCPR. There is no need for a new right to meet the modern challenges. However, these rights have been largely neglected since they were enshrined in law, and the practical obligations on states to protect them, both domestically and globally, are underdeveloped. In light of the urgency of the threats these rights face today and the international nature of those threats, a new convention clarifying the practical protections needed to guarantee freedom in the *forum internum* could be a useful tool.

Conclusion

Technology will shape our human future. We are at a crossroads where we need to decide how to ensure that humanity is at the heart of that future. We are often distracted by the technological detail of new innovations and advances, but we need to focus on the human, not the machine, in the equation. This means building on existing human rights frameworks with an interdisciplinary approach that brings together scientists, technologists, philosophers and lawyers to understand what our rights to freedom of thought and opinion mean globally in the twenty-first century and how they can be protected through international law and policy.

The erosion of our inner freedoms is not just a threat to individual rights. The use of big data and behavioural science in political behavioural micro-targeting in elections and the rise of “neuropolitics” shows that accessing our minds is not only personal — it is political, and may profoundly affect the future direction of our societies. The spread of online disinformation and its capacity to

28 See calls for a new general comment in the 2021 report on freedom of thought of the UN special rapporteur on freedom of religion and belief (UN General Assembly 2021).

29 Slavery Convention, 25 September 1926, UNTS 212 (entered into force 9 March 1927), online: <www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>.

30 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, UNTS 1465 (entered into force 26 June 1987), online: <www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

distort the understanding of grave threats such as the COVID-19 pandemic or climate change shows that we need our inner freedom protected if we are to meet the wider existential challenges we face. Innovations in brain-computer interfaces are increasingly making the leap from medical uses to consumer or military deployment, with the potential to change what it means to be human.

The manipulation of our minds, whatever the technology used, undermines peace and democracy around the world, shaking the foundations of the UN Charter. Guaranteeing our inner freedom while embracing the global technological revolution goes to the heart of what the United Nations was created for³¹ and reflects the UN Secretary-General's priorities in the report *Our Common Agenda* (UN Secretary-General 2021). We need to take concrete steps now to protect the human capacity for innovation, creativity and kindness for the future, and the United Nations should lead the way.

31 See United Nations (1945, chapter 1).

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