Multilateral organisations

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In January 2020, Google Chief Executive Officer (CEO) Sundar Pichai made waves when he declared that 'there is no question in my mind that artificial intelligence needs to be regulated', and called 'international alignment critical'.[1]

International alignment on AI policy is important, not only to curb the risks that AI poses to human rights but also to make the most of the benefits that AI can deliver. For starters, to the extent that 'values-by-design' approaches impact software and hardware engineering,[2] global technical interoperability is necessary for inherently global technologies to function and succeed.

The goal of this chapter is to briefly highlight some of the most critical intergovernmental AI policy initiatives currently underway. Most deal in high-level, generally applicable principles rather than being tailored to the context of AI use in legal or other professional contexts. But a sense of the worldwide efforts taking place in this area should be relevant to all professionals who have an interest in anticipating the future of technological progress, incoming regulation and possible liability while leveraging the ethical use of AI as a competitive advantage.

1. Organisation for Economic Co-operation and Development (OECD)

The OECD's Principles on Artificial Intelligence – the first intergovernmental standards on AI – were adopted by 42 countries on 22 May 2019.[3]

Although these principles are meant to apply across all sectors, the possibility of overlap with other professional regulation is acknowledged by the preamble, which 'underlines' that 'certain existing regulatory and policy frameworks already have relevance to AI, including those related to… responsible business conduct'.[4]

Contained in the OECD Council Recommendation on AI, the principles are delivered in two sections. The first section, 'principles for responsible stewardship of trustworthy AI', elaborates on five 'complementary value-based principles':

1 Sundar Pichai, 'Why Google Thinks We Need to Regulate AI', *Financial Times* (London, 20 January 2020), see www.ft.com/content/3467659a-386d-11ea-ac3c-f68c10993b04 accessed 2 July 2020.

2 Virginia Dignum, Matteo Baldoni, Cristina Baroglio, Maurizio Caon, Raja Chatila, Louise Dennis, Gonzalo Génova, et al, 'Ethics by Design: Necessity or Curse?' (2018) In Proceedings of the 2018 AAAI/ACM Conference on AI, Ethics, and Society, New Orleans, LA, US 60–66, see https://doi.org/10.1145/3278721.3278745 accessed 2 July 2020.

3 OECD, 'OECD Principles on Artificial Intelligence', see www.oecd.org/going-digital/ai/principles accessed 2 July 2020.

4 OECD, 'Recommendation of the Council on Artificial Intelligence' (2019), see https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449 accessed 2 July 2020.

1. inclusive growth, sustainable development and wellbeing;

2. human-centred values and fairness;

3. transparency and explainability;

4. robustness, security and safety; and

5. accountability.

The second section, 'national policies and international cooperation for trustworthy AI', explicates five 'recommendations' for signatories:

1. investing in AI R&D;

2. fostering a digital ecosystem for AI;

3. shaping an enabling policy environment for AI;

4. building human capacity and preparing for labour market transformation; and

5. international cooperation for trustworthy AI.

The OECD Committee on Digital Economy Policy is responsible for monitoring the implementation of these recommendations, as well as the development of more practical guidance through fostering international dialogue at the OECD AI Policy Observatory.[5]

Although OECD recommendations are not binding, they 'are highly influential', and in the past, have formed the starting point for government negotiations on national legislation – as seen by the influence of the OECD Privacy Guidelines on privacy legislation worldwide.[6]

The influence of the OECD's recommendations is also instantiated by two other intergovernmental pacts on the responsible development and use of AI.

G20

In June 2019, the Group of Twenty (G20) issued the 'Osaka Leaders' Declaration' on the digital economy. Along with pushing for concepts like cross-border 'Data Free Flow with Trust', the G20 committed to a 'human-centred approach to AI' and welcomed the 'non-binding' G20 AI principles, which are drawn from the OECD principles.[7]

5 OECD, 'Artificial Intelligence', see www.oecd.org/going-digital/ai accessed 10 July 2020.

6 OECD, 'OECD Principles on Artificial Intelligence', see www.oecd.org/going-digital/ai/principles accessed 10 July 2020.

7 Government of Canada, Global Affairs, 'G20 Osaka Leaders' Declaration', see www.international.gc.ca/world-monde/international_relations-relations_internationales/g20/2019-06-29-g20_leaders-dirigeants_g20.aspx?lang=eng accessed 29 June 2019.

The Global Partnership on Artificial Intelligence

The Global Partnership on Artificial Intelligence (GPAI) stems from a pledge by Canada and France to bridge the theory and practice of 'a vision of a human-centric artificial intelligence'.[8] GPAI was inspired in part by the Intergovernmental Panel on Climate Change (IPCC) to develop global governance of AI.[9] Founding GPAI parties, including the United States, Australia, France, Germany, Mexico, the Republic of Korea, Singapore, Slovenia, the United Kingdom, India, Italy and the European Union,[10] have pledged to 'support the responsible and human-centric development and use of AI in a manner consistent with human rights, fundamental freedoms, and our shared democratic values, as elaborated in the OECD Recommendation on AI'.[11]

Hosted by the OECD in Paris, GPAI will focus its initial efforts on four working group themes: (1) responsible AI; (2) data governance; (3) the future of work; and (4) innovation and commercialisation, as well as on the use of AI to assist with Covid-19 economic recovery. GPAI Multistakeholder Experts Group Plenary meetings will be hosted annually.[12]

2. The United Nations

The UN is engaged in AI-related activities across the entire organisation,[13] but the following are stand-out efforts at global coordination to secure the beneficial use of AI, in particular to achieve the Sustainable Development Goals (SDGs).

UN Educational, Scientific and Cultural Organisation (UNESCO)

In 2019, UNESCO commenced a two-year project to 'elaborate the first global standard-setting instrument on ethics of artificial intelligence'. This project builds on the Preliminary Study on Ethics of Artificial Intelligence produced by UNESCO's World Commission on the Ethics of Scientific Knowledge and Technology (COMEST). That study suggested that UNESCO's approach could complement the OECD's at international level, but 'with a focus on aspects that are generally neglected such as culture, education, science and communication'.[14]

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8 Innovation, Science and Economic Development Canada, Joint Statement from Founding Members of the Global Partnership on Artificial Intelligence, see www.canada.ca/en/innovation-science-economic-development/news/2020/06/joint-statement-from-founding-members-of-the-global-partnership-on-artificial-intelligence.html accessed 14 June 2020.

9 See https://ourworld.unu.edu/en/why-we-need-an-intergovernmental-panel-for-artificial-intelligence accessed 14 June 2020.

10 Formal ascension pending. See n 7 above.

11 See n 8 above.

12 *Ibid*.

13 ITU, UN Activities on Artificial Intelligence (AI) (2019), see www.itu.int/dms_pub/itu-s/opb/gen/S-GEN-UNACT-2019-1-PDF-E.pdf accessed 14 June 2020.

14 COMEST, 'Preliminary Study on the Ethics of Artificial Intelligence', see https://unesdoc.unesco.org/ark:/48223/pf0000367823 accessed 14 June 2020.

UNESCO, in collaboration with Member States and other partners, aims to produce a recommendation for adoption by the UNESCO General Conference in 2021.[15]

International Telecommunications Union (ITU)

The ITU is a specialised UN agency for information and communications technology (ICT). A public–private membership that includes 193 Member States and over 900 companies, universities, and international and regional organisations, its functions include developing ICT policies and internationally interoperable technical standards.

Although technical standard setting may convey a sense of neutrality, this disguises an intense commercial and geopolitical struggle to control the future of AI.[16] Worldwide acceptance of one's proposed technical standard, especially when that standard tracks a company's proprietary technology, allows that company or country to reap commercial rewards and set the norms for the development use of AI; the emergence of global standards 'not only impacts the power of nation-states, but also changes the power of corporations'.[17]

Although two private regulatory standard networks – the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC) – are the leading bodies for standard setting in digital technologies, the ITU is the only treaty-based organisation with Member States.[18] More so than ISO, IEC, and prominent industrial associations and consortia like the Institute of Electrical and Electronics Engineers (IEEE), the ITU's standards are notable for being driven by corporate and national interests outside North America and the EU. The standards that it produces are particularly influential in the developing world.[19]

Relevant ITU focus groups include the ITU Group on Machine Learning for Future Networks and on AI for Autonomous and Assisted Driving.[20] In line with China's strategy to become the world's standards supplier, Chinese companies have been

15 UNESCO, 'Elaboration of a Recommendation on the Ethics of Artificial Intelligence', see https://en.unesco.org/artificial-intelligence/ethics accessed 27 February 2020.

16 Alan Beattie , 'Technology: How the US, EU and China Compete to Set Industry Standards', *Financial Times* (London, 24 July 2019) www.ft.com/content/0c91b884-92bb-11e9-aea1-2b1d33ac3271 accessed 26 July 2020.

17 Aynne Kokas, 'Cloud Control: China's 2017 Cybersecurity Law and its Role in US Data Standardization', see https://ssrn.com/abstract=3427372 or http://dx.doi.org/10.2139/ssrn.3427372 accessed 26 July 2020.

18 Jeffrey Deng, 'Balancing Standards: U.S. and Chinese Strategies for Developing Technical Standards in AI', The National Bureau of Asian Research (NBR), see www.nbr.org/publication/balancing-standards-u-s-and-chinese-strategies-for-developing-technical-standards-in-ai accessed 10 July 2020.

19 Yuan Yang, Madhumita Murgia, and Anna Gross, 'Chinese Tech Groups Shaping UN Facial Recognition Standards' *Financial Times* (London, 1 December 2019), see www.ft.com/content/c3555a3c-0d3e-11ea-b2d6-9bf4d1957a67 accessed 10 July 2020.

20 ITU, 'International Standards for an AI-Enabled Future' (ITU News, 6 July 2020), see https://news.itu.int/international-standards-for-an-ai-enabled-future accessed 10 July 2020.

particularly active in the ITU, gaining acceptance for their standards proposals in the areas of facial recognition and other types of visual surveillance.[21]

The ITU also convenes the AI for Good Global Summit, the 'leading UN platform for global and inclusive dialogue on AI', which collaborates with public and private bodies, as well as over 37 UN agencies to 'identify strategies to ensure that AI technologies are developed in a trusted, safe and inclusive manner, with equitable access to their benefits'.[22] Finally, it hosts an 'AI repository' to gather information on AI-related projects that aim to advance progress on the UN SDGs.

UN Convention on Certain Conventional Weapons (CCW)

The UN Convention on Certain Conventional Weapons (CCW) has been discussing the regulation of emerging lethal autonomous weapons systems (LAWS), with the UN Secretary-General repeatedly calling on states to conclude a new international treaty to ban 'killer robots'.[23] But with military powers such as the US, China, the UK and Russia opposed, substantive progress has stalled.[24]

UN Centre for Artificial Intelligence and Robotics (UNICRI)

Launched in 2015, UNICRI's aim is to 'enhance understanding of the risk-benefit duality of Artificial Intelligence and Robotics through improved coordination, knowledge collection and dissemination, awareness-raising and outreach activities'.[25]

3. EU

The EU's AI policy development is included in this chapter because EU policy precedent has proved highly influential globally. The process by which regulatory globalisation is caused by the extraterritorial influence of the EU's laws has become known as the 'Brussel's Effect'.[26]

The General Data Protection Regulation (GDPR) achieved the 'Brussels Effect' through the territoriality provisions of the GDPR under Article 3, which clarify that the GDPR's provisions apply to the processing of personal data of data subjects who are in the EU by a controller or processor not established in the EU. Further, by conditioning personal data law transfers out of the EU on an 'adequacy' assessment – where 'adequate'

21 See n 19 above. 19.

22 AI for Good Global Summit 2020, see https://aiforgood.itu.int accessed 10 July 2020.

23 'Autonomous Weapons That Kill Must Be Banned, Insists UN Chief' (UN News, 25 March 2019), see https://news.un.org/en/story/2019/03/1035381 accessed 10 July 2020.

24 Zelin Liu, and Michael Moodie, 'International Discussions Concerning Lethal Autonomous Weapon Systems', see https://fas.org/sgp/crs/weapons/IF11294.pdf accessed 10 July 2020.

25 UNICRI Centre for Artificial Intelligence and Robotics, The Hague, The Netherlands www.unicri.it/in_focus/on/UNICRI_Centre_Artificial_Robotics accessed 10 July 2020.

26 Anu Bradford, *The Brussels Effect* (Oxford University Press, 2020) 25–66, see https://doi.org/10.1093/oso/9780190088583.003.0003 accessed 10 July 2020.

means 'essentially equivalent'[27] – the EU secured leverage to demand that its international trading partners replicate its policy vision. Many jurisdictions have taken the GDPR as a starting point for designing their own legislation.[28]

Any AI policy coming from the EU can be expected to at least attempt to exert similar global influence. Indeed, in its February 2020 proposal for a new AI regulatory framework for AI (see below) the European Commission declared that it 'is paramount that the requirements are applicable to all relevant economic operators providing AI-enabled products or services in the EU, regardless of whether they are established in the EU or not'.[29]

The EU has been prolific in its development of AI policy initiatives, considering that the absence of a common European framework for addressing the challenges created by AI risks fragmenting the internal market.[30]

In April 2018, 25 European countries signed the Declaration of Cooperation on Artificial Intelligence, which underscores the importance of cooperation to resolve ethical and legal questions.[31]

In March 2018, the European Commission established a High-Level Expert group to develop ethical guidelines for trustworthy AI, which were published in April 2019.[32]

The guidelines aim to provide a starting point for the discussion of 'trustworthy AI in Europe'; that is, AI that is (1) lawful; (2) ethical; and (3) robust. In order to do so, the first chapter expands on developing AI systems that comport with the ethical principles of respect for human autonomy, prevention of harm, fairness and explicability. The second chapter provides guidance on how these principles can be met, through requirements such as:

- human agency and oversight;
- technical robustness and safety;
- privacy and data governance;
- transparency;

27 European Commission, 'Questions & Answers on the Japan Adequacy Decision', see https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_422 accessed 10 July 2020.

28 Paul Schwartz, 'Global Data Privacy: The EU Way' (2019) 94 NYU Law Review.

29 European Commission, White Paper on Artificial Intelligence: A European Approach to Excellence and Trust (2 February 2020), see https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf.

30 OECD, 'AI Strategies and Policies in European Union', see https://oecd.ai/dashboards/countries/EuropeanUnion accessed 2 July 2020.

31 European Commission, 'EU Member States Sign up to Cooperate on Artificial Intelligence' (10 April 2018), see https://ec.europa.eu/digital-single-market/en/news/eu-member-states-sign-cooperate-artificial-intelligence accessed 2 July 2020.

32 European Commission, 'Ethics Guidelines for Trustworthy AI', see https://ec.europa.eu/futurium/en/ai-alliance-consultation accessed 2 July 2020.

- diversity, non-discrimination and fairness;
- societal and environmental wellbeing; and
- accountability.

These EU principles apply to 'stakeholders' – a group that includes 'deployers' – that is, public or private organisations that use AI systems within their business processes and to offer products and services to others. Deployers 'should ensure that the systems they use and the products and services they offer meet the requirements' set out in the EU principles.

In February 2020, the European Commission published a White Paper on AI, 'A European Approach to Excellence and Trust' (the 'White Paper on AI') and *Report on the safety and liability implications of artificial intelligence, the internet of things and robotics.*[33]

Apart from considering ways in which current EU legislation could be amended to account for the liability challenges presented by AI, in the White Paper on AI, the European Commission proposes a new regulatory framework for AI. In order to achieve the EU's aim of developing trustworthy AI while avoiding disproportionate burdens to small and medium-sized enterprises (SMEs) and others, the European Commission is of the opinion that a risk-based approach should be followed. The requirements contained in a new AI regulatory framework would therefore just mandatorily apply only to 'high risk' AI activity.

Under the European Commission's proposed definition, AI should be considered 'high risk' where: (1) it is employed in a sector where, given the characteristics of the activities typically undertaken, significant risks can be expected to occur – for example, healthcare, transport and energy; and (2) the AI application in the sector in question is, in addition, used in such a manner that significant risks are likely to arise (not every use of AI in the selected sectors necessarily involves significant risks).

AI that is considered 'high risk' will be subject to mandatory legal requirements, to be further specified through standards in the following proposed areas:

- training data;
- data and record-keeping;
- information to be provided;
- robustness and accuracy;
- human oversight; and

33 European Commission, *Report on the safety and liability implications of artificial intelligence, the internet of things and robotics*, see https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0064&from=en 2 July 2020.

- specific requirements for certain particular AI applications, such as those used for purposes of remote biometric identification.

As proposed, this regulatory framework would be implemented and monitored by a new European governance structure on AI consisting of a framework for cooperation of national competent authorities. The consultation period for the paper closed on 14 June 2020.

Conclusion

The intergovernmental efforts described above could validly be critiqued as overly vague 'ethics-washing',[34] with minimal substantive influence on behaviour. Others think that AI policy is best left to the private sector alone.[35] But Pichai, at least, would appear to disagree. Without minimising the considerable work that needs to be done in operationalising these myriad principles and developing ways to verify compliance, even these high-level efforts should not be simply dismissed. We have seen in the past how 'soft law' has led to transformed 'hard law' – as with the influence of the OECD privacy principles on privacy legislation around the world. And in an area as economically and geopolitically fraught as the future of AI development, any degree of cooperation towards the mission of steering AI towards good should inspire some hope for the future.

34 Karen Hao, 'In 2020, Let's Stop AI Ethics-Washing and Actually Do Something' (MIT Technology Review, 27 December 2019), see www.technologyreview.com/2019/12/27/57/ai-ethics-washing-time-to-act accessed 2 July 2020.

35 Notable examples of corporate AI ethics statements have been produced by companies like Google, Microsoft, IBM and Sony. The World Economic Forum, which boasts 1,000 of the world's top companies as its members, also has its own AI project, Shaping the Future of Technology Governance, which, among other things, aims to reimagine regulation for the age of AI, see www.weforum.org/platforms/shaping-the-future-of-technology-governance-artificial-intelligence-and-machine-learning accessed 2 July 2020.