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# General Assembly Background Guide

Frank Heber, René Nissen



# Staff-Team

## **Frank Heber (President)**

Frank is currently studying International Relations, Economics and Public Law in his fifth B.A. semester at the University of Erfurt. He has participated in several MUN Conferences, the biggest one being the 2018 National MUN Conference in New York City, USA. Furthermore, he completed an internship where he worked with a foreign affairs working group of the German parliament.

## **René Nissen (Vice President)**

René is currently studying Communications Sciences and International Relations at the University of Erfurt. He has special interest in media rights and NGOs' public policy work and has already worked with foundations and international civil society which are active in the sector. After attending numerous conferences as a delegate, he is now in the tutoring team of Erfurt's MUN family.

## **Gina Butros (Rapporteur)**

## **Alexander Bausenwein (Rapporteur)**

## **Jenny Peters (Rapporteur)**

Dear Delegates,

it is a great honor to welcome you to the General Assembly (GA) of Erfurt Model United Nations 2019. Your staff for the conference will be Frank Heber, René Nissen, Gina Butros, Alexander Bausenwein and Jenny Peters.

This year the General Assembly will discuss:

- I. Protection of Journalists in Armed Conflicts
- II. The Right to Privacy in the Digital Age

The General Assembly is one of the United Nations' main organs and is a key element towards equality, stable diplomatic relations and the maintenance of international peace and security. Additionally, the GA is also most important in reaching global consensus in economic and social questions and other central issues that the international community faces. The GA inter alia discusses any questions within the scope of the United Nations (UN) Charter and evaluates reports, which are issued by the other principal organs established under the Charter or created by the GA's own subsidiary bodies. Moreover, the GA passes recommendations on international issues within its competence and on general principles of cooperation for maintaining international peace and security. However, the committee also advises Member States on the improvement of human development, decent livelihoods, health and safety. Consequently, the GA has the power to draw attention to certain issues that may have not been discussed extensively by the UN or to address new pressing aspects of topics the international community has already worked on. Therefore, it is from utmost importance that delegates understand the GA's role, capabilities and mandate in the given discussion.

Providing an overview on your committee and the topics at hand, this Background Guide will help you prepare for this year's conference. In doing so, it will give you comprehensive insights in the committee and both topics. Additionally, it will also help you focus your further research on the most relevant aspects. We encourage you to delve into your countries' policies and their positions concerning the topics at hand thoroughly. When preparing for the conference, please keep in mind the mandate of the General Assembly.

If you have any questions regarding the conference or your preparation for the General Assembly, please do not hesitate to contact [mun@uni-erfurt.de](mailto:mun@uni-erfurt.de).

Sincerely,

Frank Heber, René Nissen, Gina Butros, Alexander Bausenwein and Jenny Peters

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## **ABBREVIATIONS**

ACHPR	African Commission on Human and Peoples' Rights
ACLU	American Civil Liberties Union
APEC	Asia-Pacific Economic Cooperation
AU	African Union
CoE	Council of Europe
CPJ	Committee to Protect Journalists
ECHR	European Court of Human Rights
ECOSOC	Economic and Social Council
EU	European Union
GA	General Assembly
GDPR	General Data Protection Regulation
HRC	United Nations Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICT	Information and Communication Technologies
ICJ	International Criminal Court
IFJ	International Federation of Journalists
NGO	Non-Governmental Organisation
PMF	Popular Mobilization Forces
SC	Security Council
SDGs	Sustainable Development Goals
TAS	Thematic Action Streams
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UN OHCHR	United Nations Office of the High Commissioner for Human Rights

# COMMITTEE OVERVIEW

## History

The United Nations (UN) was officially founded October 24, 1945 after the collapse of the League of Nations and two devastating world wars.<sup>1</sup> 150 states met at the United Nations Conference on International Organization in 1945 in San Francisco (USA) to create and establish the United Nations Charter.<sup>2</sup> The Charter states the main purposes of the UN:

- “To maintain international peace and security (...)
- To develop friendly relations among nations based on the principle of equal rights and self-determination of peoples (...)
- To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion
- To be a centre for harmonizing the actions of nations in the attainment of these common ends”.<sup>3</sup>

With the creation of the UN, six main organs were founded: The Security Council (SC), the General Assembly (GA), the Secretariat, the Economic and Social Council (ECOSOC), the Trusteeship Council and the International Court of Justice (ICJ).<sup>4</sup>

## Governance, Structure and Membership

The General Assembly is the “main deliberative, policymaking and representative organ of the UN”.<sup>5</sup> The GA is the only organ which represents all 193 Member States<sup>6</sup> as stated in the UN Charter. The Committee is based on the principle: “one country, one vote” to guarantee the equality of all Member States. Not addressed in the Charter but developed by practice is the possibility for non-state nations, intergovernmental organizations, and non-governmental organizations (NGOs) to acquire an observer status, which means that they are allowed to participate in the GA’s plenary sessions but are not allowed to vote.<sup>7</sup> This status is now given to the Holy See, Palestine, the European Union (EU), and more than 70 NGOs.

The GA consists of six subcommittees, which deal with different topics. The First Committee deals with questions concerning disarmament and international security, the Second Committee deals with economic and financial questions, while the Third Committee addresses social, humanitarian and cultural affairs. Additionally, the Fourth Committee handles questions of special politics and decolonization, the Fifth Committee is concerned with administrative and budgetary issues and the Sixth Committee is concentrating on legal matters.<sup>8</sup> The GA convenes in regular annual sessions which start the third week of September and last for one year.<sup>9</sup> Officially, the GA is in session during the entire year. Its main work

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<sup>1</sup> UN, *History of the United Nations*, 2016.

<sup>2</sup> Ibid.

<sup>3</sup> UN, *Charter of the United Nations, 1945, Ch. I, Article 1.*

<sup>4</sup> UN, *Main Organs*, 2016.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Permanent Mission of Switzerland to the United Nations, *The PGA Handbook: A Practical Guide to the United Nations General Assembly*, 2011, p. 30.

<sup>8</sup> UN, *The General Assembly. Main Committees*, 2016.

<sup>9</sup> UN, *Charter of the United Nations, 1945, Ch. IV, Article 20.*

period, however, is between mid-September and mid-December and is called the General Debate.<sup>10</sup>

Decisions are normally made by simple majority except for “important questions” such as budgetary questions, the maintenance of international peace and security and the election of the non-permanent members of the Security Council and the members of the Economic and Social Council. These questions require a two-third majority. Usually, decisions are made unanimously to illustrate the consensus within the GA and between the Member States.<sup>11</sup>

## Mandate, Function and Powers

The Articles 10 to 17 of the UN Charter determine the mandate, the function and the power of the General Assembly. Especially the Articles 10 and 11 enable the GA to “discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of the organs provided for in the present Charter”.<sup>12</sup> One of the most prominent topics discussed in recent years has been the establishment and implementation of the 2030 Sustainable Development Goals (SDGs). Moreover, the GA adopts a plethora of resolutions each year on each of the topics on the floor. However, resolutions adopted by the GA are not legally binding upon the Member States.

Furthermore, the GA follows and promotes “the general principles of co-operation in the maintenance of international peace and security” and may draw the attention of the Security Council to situations that could be threatening international peace and security.<sup>13</sup> However, the GA is not allowed to deal with questions that are currently under discussion in the Security Council. Only if the Security Council finds itself in a deadlock due to the veto or the threat of a veto by one of the permanent Member States, the GA may take action to promote peace.<sup>14</sup>

## Recent sessions and current priorities

The theme for the general debate of the 73rd session of the General Assembly is “Making the United Nations relevant to all people: global leadership and shared responsibilities for peaceful, equitable and sustainable societies”.<sup>15</sup> The general debate was held from 24 September to 1 October 2018, with world leaders expressing their support for the present theme and the Secretary-General calling for a renewed commitment to a rules-based order.<sup>16</sup>

## Conclusion

Both topics at hand can enforce the idea of the 73rd session’s theme “*Making the United Nations relevant to all people: global leadership and shared responsibilities for peaceful, equitable and sustainable societies*”. It is about the responsibility of every single state and the international community to ensure peaceful societies. Indeed, providing the protection of

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<sup>10</sup> Permanent Mission of Switzerland to the United Nations, *The PGA Handbook: A Practical Guide to the United Nations General Assembly*, 2011, p. 14.

<sup>11</sup> UN, *Charter of the United Nations*, 1945, Ch. IV, Art. 18.

<sup>12</sup> *Ibid.*, Ch. IV, Art. 10.

<sup>13</sup> *Ibid.*, Ch. IV, Art. 11.

<sup>14</sup> *Ibid.*, Ch. IV, Art. 12.

<sup>15</sup> UN, *Arrangements for the high-level meetings and the general debate of the seventy-third session of the General Assembly (A/INF/73/4)*.

<sup>16</sup> UN, *Secretary-General Calls for Renewed Commitment to Rules-Based Order, Reformed, Reinvigorated, Strengthened Multilateral System, as General Debate Opens*.

journalists in armed conflicts prevents or documents violations of international humanitarian law, paving the way for a peaceful and educated society. By asserting the human right to privacy in the digital age, states prove that they take their shared responsibility towards their citizens and all peoples seriously and make the UN relevant to all peoples.

## **Bibliography**

Permanent Mission of Switzerland to the United Nations. (2011). *The PGA Handbook. A practical guide to the United Nations General Assembly*. Retrieved September 15, 2018, from [https://www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisation/Uno/UN-ga-handbook\\_en.pdf](https://www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisation/Uno/UN-ga-handbook_en.pdf)

United Nations. (1945). *Charter of the United Nations*. Retrieved September 15, 2018, from <http://www.un.org/en/documents/charter/index.shtml>.

United Nations. (2016). *History of the United Nations*. Retrieved September 15, 2018, from <http://www.un.org/en/sections/history/history-united-nations/index.html>.

United Nations. (2016). *Main Organs*. Retrieved September 15, 2018, from <http://www.un.org/en/sections/about-un/main-organs/index.html>.

United Nations. (2016). *General Assembly of the United Nations. Main Committees*. Retrieved November 1, 2016, from <http://www.un.org/en/ga/maincommittees/index.shtml>.

United Nations. (2018). *Arrangements for the high-level meetings and the general debate of the seventy-third session of the General Assembly (A/INF/73/4)*. Retrieved September 29, 2018, from <http://undocs.org/A/INF/73/4>.

United Nations. (2018). *Secretary-General Calls for Renewed Commitment to Rules-Based Order, Reformed, Reinvigorated, Strengthened Multilateral System, as General Debate Opens*. Retrieved September 29, 2018, from <https://www.un.org/press/en/2018/ga12062.doc.htm>.

# I. PROTECTION OF JOURNALISTS IN ARMED CONFLICT

## Introduction

Journalists play a crucial role in covering armed conflict since the early beginnings of mass communication. However, war journalism's duty and implications have changed significantly. While before the mid-20<sup>th</sup> century journalism served to manipulate public opinion and create support for war-mongering governments, during and after World War II journalism slowly began to serve more liberal and higher goals.<sup>17</sup> Since then war journalism was – and is to this day – more and more understood to facilitate, inter alia, the human rights of freedom of expression and right to information. While exercising their own human rights, journalists make sure that every human being can access the information necessary to express themselves. War journalism is thereby connected to the rights to freedom of speech and expression. This argument is therefore the legally accepted justification for journalists to be in conflict zones, reporting on what happens in regions of ongoing war.<sup>18</sup> It thereby enables growth of more educated societies, while also fulfilling the function of a “watch dog” in armed conflict.<sup>19</sup> Consequently, it thereby further creates possibilities to discuss violent conflicts in different fora, such as civil society or national and international political discourse. Thus, attacking journalists is a guaranteed way of curtailing the access to information and creating uncertainty and insecurity within populations.<sup>20</sup> Consequently, also foreign readers and political actors remain in oblivion of whatever happens in the warzone and thus are affected as well.<sup>21</sup>

## Problems and Danger War Journalists Encounter

### Dangers of the battlefield

War journalists are often subject to several evident dangers and threats. They are, by definition, reporting on war, which is only possible from the front lines of an armed conflict.<sup>22</sup> Therefore, war journalists often find themselves very close to the middle of the battlefield, making them subjects to the harrowing violence in armed conflict and possible victims of lost bullets, crossfires and random explosions.<sup>23</sup>

Albeit the inherent insecurity that is inherently attached to their duty, the *International Federation of Journalists* (IFJ) stressed in its *Draft International Convention on the Safety and Independence of Journalists and other Media Professionals* that war journalists need to be protected in a way that makes sure that they can practice their profession safely.<sup>24</sup> Indeed, they are not taking active part in the hostilities but are civilians with the professional duty to report. From a legal perspective, as will be laid out, war journalists are protected in the same way civilians are – even if they accompany the armed forces as “embedded journalists”.<sup>25</sup> Yet, those laws have little effect on situations on the battlefield.

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<sup>17</sup> Morris, *The Pen & the Sword: A Brief History of War Correspondents*, 2016.

<sup>18</sup> UNESCO, *Freedom of Information and the Press*, 2006.

<sup>19</sup> Rathnayake, *Protection of Journalists in Armed Conflicts: An International Law Perspective*, 2017.

<sup>20</sup> Ibid.

<sup>21</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> IFJ, *Draft International Convention on the Safety and Independence of Journalists and other Media Professionals*, n.d.

<sup>25</sup> Ibid.



## Deliberate attacks

Indeed, the *Committee to Protect Journalists'* (CPJ) data on 2017 journalist killings indicates that war journalists' deaths are not always accidents but rather the outcome of deliberate attacks.<sup>26</sup> These can be executed by both state and non-state actors. Yet, even though terror groups and paramilitary actors can potentially attack war journalists, especially states endanger journalists with incidents aimed at keeping reports hidden from the enemy or the world, thereby merely silencing noisy journalists or frightening others.<sup>27</sup> Additionally, attacks on journalists' freedom of expression can take many shapes, such as targeted killings, arbitrary detention or kidnapping, government prosecutions or confiscation and destruction of filmed material or possessions.<sup>28</sup> In recent years, the countries subject to armed conflict were largely led by oppressive governments with low regard for the freedom of expression or freedom of the press.<sup>29</sup> Legal exceptions to the freedoms that are provided in the international human rights law are used in some of those countries to limit the liberties and rights of war journalists. Indeed, in some countries journalists are being prosecuted on the grounds of anti-terrorism or national security laws.<sup>30</sup> The aim is to discourage (war) journalists from exercising their profession.<sup>31</sup>

## The challenge of Impunity

In 2017, 68 journalists were killed.<sup>32</sup> Yet, only in two cases the perpetrator has been identified and legal proceedings have been made.<sup>33</sup> This shows that impunity is common, which consequently leads to devastating atmospherical effects, especially discouraging journalists from using their rights and reporting on and uncovering atrocities committed in armed conflict.<sup>34</sup> The main causes for impunity are, firstly, the inability of national legal systems to persecute crimes against journalists and, secondly, the overall nonappearance of journalist safety regulations in national legal systems.<sup>35</sup> Further, perpetrators are often government or military officials themselves, who are in the capacity to stop legal action before it even begins.<sup>36</sup> All in all, the lack of political will remains a central factor causing situations of impunity since not all states are concerned with media freedom and even proactively install restrictive media laws.<sup>37</sup> While foreign journalists still have a better chance of receiving partial or even full justice due to international outrage and diplomatic relations, justice is not served in most cases.<sup>38</sup>

## International Legal Framework

Within the international framework, no legally binding definition of a "journalist" has been established. One possible definition can be found in Article 2 (a) of the Draft Articles of an *International Convention for the Protection of Journalists Engaged in Dangerous Missions in*

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<sup>26</sup> CPJ, *Killed: 2017, 2017a*.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Campbell, *Under Cover of Security, Governments Jail Journalists*, 2013.

<sup>31</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>32</sup> IFJ, *End Impunity Campaign*, 2017.

<sup>33</sup> Ibid.

<sup>34</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

*Areas of Armed Conflict* – due to lacking consensus on the formulation however, they were never formally agreed upon after the Secretary-General presented them to the GA for discussion.<sup>3940</sup> Article 2 (a) states:

“The word ‘journalist’ shall mean any correspondent, reporter, photographer, and their technical film, radio and television assistants who are ordinarily engaged in any of these activities as their principal occupation and who, in countries where such activities are assigned their particular status by virtue of laws, regulations or, in default thereof, recognized practices, have that status (by virtue of the said laws, regulations or practices).”<sup>41</sup>

War journalists are therefore under Article 2 understood as journalists who are on professional duty reporting in areas of armed conflict.<sup>42</sup> As it is the pertinent law for violent conflict, even though the vocabulary of Armed Conflict usually is not used in the Human Rights context but rather in International Humanitarian Law, armed conflict does influence some Human Rights.<sup>43</sup>

### **International Human Rights Law: Human Rights and legal attempts to undermine them**

Both the 1948 *Universal Declaration of Human Rights*<sup>44</sup> (UDHR) and the *International Covenant on Civil and Political Rights*<sup>45</sup> (ICCPR) explicitly mention the Right to Freedom of Expression. Article 19 of the ICCPR states “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”<sup>46</sup> Even though Human Rights are generally awarded to all human beings regardless of the circumstances, the international community has decided to limit the scope of certain human rights in certain situations. Article 4 of the ICCPR is an emergency clause which, alas under strict conditions, enables states to unilaterally derogate from human rights listed in the covenant.<sup>47</sup> It is meant as an “exceptional and temporary measure”<sup>48</sup> that is only applicable in the case of a public emergency threatening the existence of the state.<sup>49</sup> The Human Rights Committee, which is the specifying body to the ICCPR, explains that this state is not met by definition in times of armed conflict.<sup>50</sup> It clearly points to the proportionality principle which entails that only those measures may be used that are strictly necessary in the fight for state stability.<sup>51</sup> Furthermore, Article 4 states clear exemptions from the emergency clause which prevent the derogation of “core human rights”.<sup>52</sup> These exemptions, inter alia, include the

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<sup>39</sup> UN Docs, *Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict*, 1975.

<sup>40</sup> ICRC, *The protection of journalists engaged in dangerous professional missions*, 1983.

<sup>41</sup> UN Docs, *Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict*, 1975.

<sup>42</sup> Ibid.

<sup>43</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>44</sup> UN, *Universal Declaration of Human Rights*, 1948.

<sup>45</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/21/2200A)*, 1966.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> UN Human Rights Committee, *General Comment No. 29 on Article 4*, 2001.

<sup>51</sup> Ibid., Paragraph 4.

<sup>52</sup> Ibid., Paragraph 13.

prohibition against taking of hostages, abductions or unacknowledged detention.<sup>53</sup> Governments can therefore not use Article 4 of the ICCPR to remove or kill war journalists while justifying these actions with state safety and survival.<sup>54</sup> Article 4 of the ICCPR is considered customary international law and therefore binds all states, regardless of their membership status to the treaty.<sup>55</sup>

There is, however, the possibility to restrict the scope of Art. 19 ICCPR. The Article's paragraph 3 states that restrictions to the right to freedom of expression are permitted, inter alia, for the protection of national security or of public order.<sup>56</sup> The restriction, however, must be laid down in written national law and must also be compatible with the provisions of the ICCPR.<sup>57</sup>

In its *General Comment No. 34*, the Human Rights Committee has warned that attacks on journalists are not compatible with the permitted restrictions that Art. 19 ICCPR puts in place.<sup>58</sup> The Committee argues that restricting democratic use of the freedom of expression is not justified and journalists informing the public never harm "state security".<sup>59</sup> Nevertheless, armed conflicts are, by definition, highly intense and, consequently, nations often are affected by war journalists' reportings.<sup>60</sup> Consequently, it is easy for governments to persuade the public or even courts that restrictions of journalists' freedom of expression apply to safeguard the nation.<sup>61</sup> Indeed, the case of two Swedish journalists who were jailed in Ethiopia after reporting on civil unrest in 2012 and only released on a pardon after admitting to terrorist allegations shows that countries still do not abide by the provisions in place to protect journalists.<sup>62</sup>

But war journalists must not only be protected from illicit arrest or other obvious restrictions of the freedom of expression. Reporting on armed conflict, journalists are often subject to dangers that are much more existential. This becomes obvious when observing the protection International Humanitarian Law seeks to provide.

### **International Humanitarian Law: War journalists' legal status in armed conflict**

Even though clearly not combatants, journalists in armed conflict often face the same risks as armed forces.<sup>63</sup> Often, they accompany military personnel in combat as "embedded journalists" to be able to enter areas where civilians otherwise would be prohibited access. This, however, means they must wear military uniforms, which complicates their distinction from combatants significantly.<sup>64</sup> Indeed, war journalists are accredited and protected by the armed forces, which technically makes them war correspondents protected under Art. 4 of the Third *Geneva Convention*. Yet, the Article also grants journalists the same legal status as

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<sup>53</sup> UN Human Rights Committee, *General Comment No. 29 on Article 4*, 2001, Paragraph 13.

<sup>54</sup> *Ibid.*

<sup>55</sup> ISPI Istituto per gli Studi di Politica Internazionale, *WP 7 – Customary Law as a Instrument for the Protection of Human Rights*, 2006.

<sup>56</sup> UN General Assembly, *International Covenant on Civil and Political Rights (A/RES/21/2200A)*, 1966.

<sup>57</sup> *Ibid.*

<sup>58</sup> UN Human Rights Committee, *General Comment No. 34 on Article 19*, 2011.

<sup>59</sup> *Ibid.*

<sup>60</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>61</sup> *Ibid.*

<sup>62</sup> Campbell, *Under Cover of Security, Governments Jail Journalists*, 2013.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

citizens, even though they are a member of the armed forces upon accreditation.<sup>65</sup> Summarising, war journalists obtain the status of a war correspondent while also gaining the right to be treated and protected like civilians, meaning they must never become targets of war activities: nobody is allowed to harm, kill or torture them.<sup>66</sup> It is, however, not always reasonable to expect the enemy to know that war correspondents are among the fighting troops.<sup>67</sup> Consequently, closely following a military unit engaged in action and wearing clothing resembling an uniform inevitably means that journalists will incur the same risks that soldiers face, even though the reporters do not lose the right to be protected and treated like civilians.<sup>68</sup>

With Art. 79 of the *Additional Protocol I* of the *Geneva Conventions*, “freelance journalists” - meaning those journalists who are not necessarily officially accredited by armed forces - see themselves explicitly mentioned in international humanitarian law for the first time.<sup>69</sup> Specifically, Art. 79 secures that “Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians”.<sup>70</sup> This applies to both international and non-international armed conflict and thus gives war journalists the protection otherwise granted persons not partaking in hostilities in any meaningful way.<sup>71</sup>

### United Nations System

*Resolution 1738* adopted by the United Nations Security Council (SC) in 2006 is the most important soft law on the safety of journalists in armed conflict until now.<sup>72</sup> There, the SC condemned all intentional attacks against journalists in areas of armed conflict and reiterated their civilian status.<sup>73</sup> The council also explicitly mentioned the provisional protection of media infrastructure and the responsibility of the state to end impunity.<sup>74</sup> Additionally, resolution 1738 also asked the UN Secretary-General to include the item in its reports on the ‘protection of civilians in armed conflict’.<sup>75</sup> The SC’s firm stance on the protected status of war journalists has been confirmed by its resolutions concerning Syria and Somalia in 2012<sup>76</sup> and 2013.<sup>77</sup>

Moreover, the SC adopted *resolution 2222* on the protection of Journalists in 2015.<sup>78</sup> The SC, which underscored the urgency and importance of the protection of journalists, condemned all abuses and violations committed against journalists, including killings, kidnappings and hostage taking.<sup>79</sup> The SC stressed that “impunity for crimes committed against journalists, media professionals and associated personnel in armed conflict remains a significant challenge to their protection and that ensuring accountability for crimes committed against them is a key element in preventing future attacks.”<sup>80</sup>

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<sup>65</sup> ICRC, *III Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949*, 1949.

<sup>66</sup> Ibid.

<sup>67</sup> ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949: Commentary of 1987*, 1987.

<sup>68</sup> Ibid.

<sup>69</sup> ICRC, *Protocols Additional to the Geneva Conventions of 12 August 1949*, 1977.

<sup>70</sup> Ibid., Art. 79(1).

<sup>71</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>72</sup> UN Security Council, *S/RES/1738*, 2006

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> UN Security Council, *S/RES/2042*, 2012a.

<sup>77</sup> UN Security Council, *S/RES/2093*, 2013a.

<sup>78</sup> UN Security Council, *S/RES/2222*, 2015.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

The resolution additionally called for unconditional release of journalists taken hostage and urged all governments to ensure accountability for crime against media professionals.<sup>81</sup> It also, for the first time, affirmed that UN peacekeeping missions, where appropriate, should include information on specific acts of violence against journalists and associated personnel in situation of armed conflict within their mandatory reports.<sup>82</sup>

The United Nations Educational, Scientific and Cultural Organisation (UNESCO) urged Member States in its *resolution 29* to prosecute the perpetrators of attacks against journalists and advised to have no statute of limitations for such crimes.<sup>83</sup> In the First Decision of UNESCO's International Programme for the Development of Communication the responsibility of states was reiterated. Additionally, Member States were asked to voluntarily provide information on how they prosecute such cases and how they thereby fight impunity.<sup>84</sup> The United Nations Human Rights Council's (HRC) *resolution 21/12* on the safety of journalists explicitly states that the council condemns all attacks on journalists, among which are "torture, extrajudicial killings, enforced disappearances and arbitrary detention, as well as intimidation and harassment".<sup>85</sup> The resolution further underlines that states need to legally prevent incidents that threaten journalists' safety and monitor, condemn and prosecute them.<sup>86</sup> Finally, the UN Human Rights Council additionally encourages "voluntary protection programmes for journalists".<sup>87</sup>

## Regional Legal Framework

### African Union

Article 9 of the *African Commission on Human and Peoples' Rights' (ACHPR) African Charter on Human and Peoples' Rights* (established June 1981) includes the right to receive information and to free expression.<sup>88</sup> As this article is less elaborate than comparable provisions of other regional or international human rights treaties, it does not describe how the right must be interpreted or how broad the scope of the article is.<sup>89</sup> Applying Article 75 of the *African Charter on Human and Peoples' Rights*, which allows reservations to the rights granted by the charter, one reservation has been made regarding Article 9.<sup>90</sup> Egypt interpreted the first paragraph, namely the right to receive information, as only allowing for the right to receive "such information as could be obtained within the limits of the Egyptian laws and regulations", which clearly affects the right of a war journalist to spread information.<sup>91</sup> The ACHPR further adopted *resolution 166* on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa.<sup>92</sup> Member States are therethrough

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<sup>81</sup> UN Security Council, *S/RES/2222*, 2015.

<sup>82</sup> Ibid.

<sup>83</sup> UNESCO, *Resolution 29 "Condemnation of violence against journalists"*, 1997.

<sup>84</sup> UNESCO, *Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 26<sup>th</sup> session*, 2008.

<sup>85</sup> UN Human Rights Council, *Safety of Journalists (A/HRC/RES/21/12)*, 2012.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> ACHPR, *African Charter on Human and Peoples' Rights*, 1981.

<sup>89</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>90</sup> International Human Rights and Development in Africa, *Statement on the Reservations made by Egypt to the African Charter on Human and Peoples' Rights*, 2011.

<sup>91</sup> Ibid.

<sup>92</sup> ACHPR, *Resolution 166 on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa*, 2010.

encouraged to abide by and investigate possible violations of human rights, while journalists are acknowledged to have a responsibility to be credible and avoid harm.<sup>93</sup>

### Americas

The 1969 *American Convention on Human Rights* Article 13's protection of the right to freedom of expression is very similar to the way the UDHR, the ICCPR and the *European Convention on Human Rights* strive to protect journalistic freedoms.<sup>94</sup> The explicit prohibition of indirect means of limiting the right to freedom of expression is a significant difference to other frameworks, though.<sup>95</sup> By clearly affirming the wide scope of the prohibition this provision strengthens the position of war journalists.<sup>96</sup> There are no reservations to Article 13 of the *American Convention of Human Rights*.<sup>97</sup> The *Inter-American Commission on Human Rights* has adopted the *Declaration of Principles on Freedom of Expression*. This declaration proclaims the targeting of "social communicators" illegal and stresses the states' responsibility of to prevent, investigate and punish incidents, as well as to ensure compensation to victims.<sup>98</sup>

### European Union

On the European level, the *European Convention on Human Rights* grants an extensive right to expression.<sup>99</sup> Additionally, the *Declaration on the Protection of Journalists in Situations of Conflict and Tension* of the Committee of Ministers of the Council of Europe (CoE) stresses the importance to protect journalists and journalism. Establishing the Declaration, the CoE also committed itself to investigating which measures for the protection of journalists could be taken by the Council.<sup>100</sup> Moreover, in its comprehensive *resolution 1438*, the Parliamentary Assembly of the CoE stressed the importance of compulsory safety training for war correspondents.<sup>101</sup> The resolution also asks the military to asks that the military may only limit freedom of expression if an embedded journalist's reporting would jeopardize ongoing military operations.<sup>102</sup> Additionally, the resolution includes a recommendation that "the media should declare publicly that no financial payments [...] will be made to kidnappers and that political statements made by kidnapped journalists are [...] without any value".<sup>103</sup> Moreover, also the European Parliament's *Resolution on the Freedom of the Press and Media in the World* concludes that, although the European Union should lead by example, a comprehensive strategy for the protection of journalists in regions of conflict is lacking.<sup>104</sup> It additionally calls for sustainable funding for the safety of journalists and a better support for 'local capacity-building'.<sup>105</sup>

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<sup>93</sup> ACHPR, *Resolution 166 on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa*, 2010.

<sup>94</sup> OAS, *American Convention on Human Rights*, 1969.

<sup>95</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> OAS, *Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights*, 2000.

<sup>99</sup> Council of Europe, *European Convention on Human Rights*, 1953.

<sup>100</sup> Council of Europe, *Declaration on the protection of journalists in situations of conflict and tension*, 1996.

<sup>101</sup> Council of Europe, *Resolution 1438 on freedom of the press and the working conditions of journalists in conflict zones of the Parliamentary Assembly of the Council of Europe*, 2005.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> European Parliament, *Resolution on the freedom of press and media in the world*, 2013.

<sup>105</sup> Ibid.

## Role of the International System

### National Implementation

The SC has emphasized that, to protect national sovereignty, mainly the Member States are responsible for protecting the safety of journalists.<sup>106</sup> Attempts to comply with international rules and the fact that journalists' situations have been largely unaffected by latest efforts have stimulated some states to consider new means of protection:<sup>107</sup>

To avoid interference like corruption especially on the local level, Mexico has adopted a law in 2012 that allows the federal attorney to take over jurisdiction over local cases where the press is the victim.<sup>108</sup> In Somalia, there have been efforts to install a special "Commission of Inquiry" if high-scale attacks must be investigated.<sup>109</sup> The National Union of Somali Journalists has therefore lobbied for an "Independent Commission of Inquiry" which should be aimed to "investigate the killings of journalists and other violent attacks against them".<sup>110</sup> In a similar sense, the SC can request the Secretary-General for international commissions of inquiry.<sup>111</sup> Examples are inter alia the *International Commissions of Inquiry in Syria and Libya*, which are mandated by the HRC to address human rights violations and which documented serious attacks against war journalists.<sup>112</sup> In another approach worth being looked at, Iraq facilitated an agreement between journalists and security forces.<sup>113</sup> The agreement has been a clear sign of commitment by both the government and the media: It includes a joint code of conduct, as well as workshops for both journalists and security forces.<sup>114</sup>

### Trans- and International Opportunities

Efforts to comply with international Human Rights Law can also be detached from national jurisdiction to overcome national legislative deficits. As of now, three regional human rights courts have been established: the *European Court of Human Rights*, the *Inter-American Court of Human Rights* and the *African Court of Justice and Human Rights*.<sup>115</sup> Affected individuals can seek justice by appealing the courts in a complaints procedure in all three of the regional legal frameworks, which also have the competence to issue interim measures. Both the *Inter-American Commission on Human Rights* and the *African Commission on Human and Peoples' Rights* have established Special Rapporteurs for the protection and monitoring of the freedom of expression.<sup>116</sup>

### Measures on UN level

Following *resolution 1738* of the SC, the annual reports of the Secretary-General to the GA on the "Protection of Civilians" have reiterated that journalists, since they hold civilian status in armed conflict, need certain protection.<sup>117</sup> The HRC has established several Special

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<sup>106</sup> UN Security Council, *Press release of the 6917th Meeting of the United Nations Security Council*, 2013b.

<sup>107</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>108</sup> O'Connor, *In Mexico, a movement and a bill against impunity*, 2013.

<sup>109</sup> Reporters without borders, *"Impunity: War on Somalia's Journalists" – a NUSOJ report*, 2012.

<sup>110</sup> *Ibid.*

<sup>111</sup> Centre for Law, Justice and Journalism at City University London, *The Initiative on Impunity and the Rule of Law: A Policy Research and Advocacy Project on the Safety and Protection of Journalists: A Responsibility for the World*, 2011.

<sup>112</sup> *Ibid.*

<sup>113</sup> International Media Support, *New agreement to boost safety of Iraqi journalists*, 2014.

<sup>114</sup> *Ibid.*

<sup>115</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>116</sup> *Ibid.*

<sup>117</sup> UN Security Council, *Report of the Secretary-General on the protection of civilians in armed conflict*, 2012b.

Rapporteurs relevant to the safety of war journalists.<sup>118</sup> They focus on thematic or country-specific issues and are mandated to perform country visits, monitor abuses, write reports and release recommendations.<sup>119</sup> Not specifically but implicitly concerned with the situation of war journalists are, firstly, the Special Rapporteur on extrajudicial, summary or arbitrary executions, secondly, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and thirdly the Special Rapporteur on the situation of human rights defenders.<sup>120</sup>

### Case Study: Arkan Sharifi in Iraq

On the morning of October 30, 2017, journalist Arkan Sharifi was stabbed to death by eight masked attackers in front of his family in northern Iraq's city of Daquq.<sup>121</sup> Mr. Sharifi had fled the area when the Iraqi-led Popular Mobilization Forces (PMF) seized Daquq, which resulted in public unrest, and only returned four days before the incident.<sup>122</sup> Before assaulting him, the perpetrators identified themselves as PMF members and asked Mr. Sharifi whether he works as a cameraman for Kurdistan TV, which he affirmed.<sup>123</sup> Kurdistan TV, which is affiliated to the Kurdistan Democratic Party, had been reporting clashes between Kurdish Peshmerga forces and the PMF, as well as killings and kidnappings allegedly carried out by the PMF in Kirkuk.<sup>124</sup> After locking his wife and children in a room, the assailants stabbed Mr. Sharifi 40 times and repeatedly went out and fired their guns to scare neighbours and passers-by away from trying to help Mr. Sharifi's wife and children.<sup>125</sup> It is suspected that Mr. Sharifi was killed both to prevent him from reporting on the PMF's activities and to scare his colleagues and like-minded spirits away from doing the same.<sup>126</sup>

### Conclusion

It becomes clear that states' unwillingness to effectually grant journalists protection remains one of the biggest challenges to freedom of expression in armed conflict. Deliberate attacks are fairly common practice and impunity allows perpetrators to continue harassing or killing journalists. The reasons are diverse, and solutions lie in the responsibility of the national states. Especially the incapacity or pure lack of political will to persecute crimes are therefore key problems that need to be solved. Consequently, the international community must point out deficiencies and offer comprehensive instruments, as well as solve the challenge of national governments' unwillingness to comply with international mechanisms. It is, however, not enough to only stimulate states without providing a practical guidance on how to implement existing international law and end impunity.<sup>127</sup> National cooperation on the regional, inter- and transnational level is essential to give states a broader and better-informed view on the importance of the topic and on possible measures, as well as effective and workable practices to protect journalists.<sup>128</sup>

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<sup>118</sup> UN OHCHR, *Human Rights Bodies*, n.d.

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> CPJ, *Arkan Sharifi*, 2017b.

<sup>122</sup> *Ibid.*

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> *Ibid.*

<sup>127</sup> Fournier, *The Protection of Journalists in Armed Conflict*, 2014.

<sup>128</sup> *Ibid.*



## Further Research

To prepare themselves for this topic, delegates should focus on the following questions:

- Having in mind national sovereignty, what can be done by the international community to make national legislators and governments better the legal situation of journalists and implement existing implementation benevolently?
- What can the GA do to make sure perpetrators are held responsible for their actions?
- What are possible incentives that could be pointed out to restrictive countries to persuade them to grant their citizens, and especially journalists, the right to freedom of expression?
- What can the GA do to help journalists protect themselves against the dangers on the battlefield?

## Bibliography

African Commission on Human and Peoples' Rights. (1981). *African Convention on Human and Peoples' Rights*. Retrieved October 07, 2018, from [http://www.achpr.org/files/instruments/achpr/banjul\\_charter.pdf](http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf).

African Commission on Human and Peoples' Rights. (2010). *Resolution 166 on the Deteriorating Situation of Freedom of Expression and Access to Information in Africa*. Retrieved October 07, 2018, from <http://www.achpr.org/sessions/47th/resolutions/166/>.

Campbell, M. (2013). *Under Cover of Security, Governments Jail Journalists*. Retrieved October 03, 2018, from <http://cpj.org/2013/02/attacks-on-the-press-misusing-terror-laws.php>.

Centre for Law, Justice and Journalism at City University London. (2011). *The Initiative on Impunity and the Rule of Law: A Policy Research and Advocacy Project on the Safety and Protection of Journalists: A Responsibility for the World*. Retrieved October 07, 2018, from [https://www.city.ac.uk/\\_\\_data/assets/pdf\\_file/0017/106424/CLJJ-Impunity-Report.pdf](https://www.city.ac.uk/__data/assets/pdf_file/0017/106424/CLJJ-Impunity-Report.pdf).

Council of Europe. (1953). *European Convention on Human Rights*. Retrieved October 07, 2018, from [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

Council of Europe. (1996). *Declaration on the protection of journalists in situations of conflict and tension*. Retrieved October 07, 2018, from <https://wcd.coe.int/ViewDoc.jsp?id=550547&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383>.

Council of Europe. (2005). *Resolution 1438 on freedom of the press and the working conditions of journalists in conflict zones of the Parliamentary Assembly of the Council of Europe*. Retrieved October 07, 2018, from <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=17326&lang=EN>.

Committee to Protect Journalists. (2017a). *Killed: 2017*. Retrieved 18 October 2018, from <https://cpj.org/data/killed/2017/>.

Committee to Protect Journalists. (2017b). *Arkan Sharifi*. Retrieved 18 October 2018, from <https://cpj.org/data/people/arkan-sharifi/index.php>.

European Parliament. (2013). *Resolution on the freedom of press and media in the world*. Retrieved October 07, 2018, from <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0274&language=EN>.

Fournier, L. (2014). *The Protection of Journalists in Armed Conflict*. Retrieved 01 October 2018, from [https://lib.ugent.be/fulltxt/RUG01/002/162/977/RUG01-02162977\\_2014\\_0001\\_AC.pdf](https://lib.ugent.be/fulltxt/RUG01/002/162/977/RUG01-02162977_2014_0001_AC.pdf)

International Committee of the Red Cross. (1949). *III Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949*. Retrieved October 04, 2018, from [http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32\\_GC-III-EN.pdf](http://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.32_GC-III-EN.pdf).

International Committee of the Red Cross. (1977). *Protocols Additional to the Geneva Conventions of 12 August 1949*. Retrieved October 04, 2018, from [https://www.icrc.org/eng/assets/files/other/icrc\\_002\\_0321.pdf](https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf).

International Committee of the Red Cross. (1983). *The protection of journalists engaged in dangerous professional missions*. Retrieved 18 October 2018, from <https://www.icrc.org/eng/resources/documents/article/review/review-1983-p3.htm>.

International Committee of the Red Cross. (1987). *Protocol Additional to the Geneva Conventions of 12 August 1949: Commentary of 1987*. Retrieved October 04, 2018, from <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=CBD4507E8159EBE1C12563CD00436EC4>.

International Federation of Journalists. (2017). *End Impunity Campaign*. Retrieved October 07, 2018, from <http://www.ifj.org/regions/asia-pacific/end-impunity-campaign/>.

International Federation of Journalists. (n.d.). *Draft International Convention on the Safety and Independence of Journalists and other Media Professionals*. Retrieved 18 October 2018, from [http://www.ifj.org/fileadmin/user\\_upload/Draft\\_Convention\\_Journalists\\_E.pdf](http://www.ifj.org/fileadmin/user_upload/Draft_Convention_Journalists_E.pdf).

International Human Rights and Development in Africa. (2011). *Statement on the Reservations made by Egypt to the African Charter on Human and Peoples' Rights*. Retrieved October 07, 2018, from <https://www.ihrda.org/2011/04/3033/>.

International Media Support. (2014). *New agreement to boost safety of Iraqi journalists*. Retrieved October 07, 2018, from <https://www.mediasupport.org/new-agreement-to-boost-safety-of-iraqi-journalists/>.

Morris, R. (2016). *The Pen & the Sword: A Brief History of War Correspondents*. Retrieved October 02, 2018, from <https://warfarehistorynetwork.com/daily/military-history/the-pen-the-sword-a-brief-history-of-war-correspondents/>.

Rathnayake, R. (2017). *Protection of Journalists in Armed Conflict: An International Law Perspective*. Retrieved from <https://ouslj.sljol.info/articles/10.4038/ouslj.v12i2.7403/galley/3463/download/>.

Reporters without borders. (2012). *"Impunity: War on Somalia's Journalists" – a NUSOJ report*. Retrieved October 07, 2018, from <https://rsf.org/en/news/impunity-war-somalias-journalists-nusoj-report>.

Organisation of American States. (1969). *American Convention on Human Rights*. Retrieved October 07, 2018, from <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

Organisation of American States. (2000). *Declaration of Principles on Freedom of Expression*. Retrieved October 07, 2018, from <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=26&lID=1>.

O'Connor, M. (2013). *In Mexico, a movement and a bill against impunity*. Retrieved October 07, 2018, from <http://www.cpj.org/blog/2013/04/in-mexico-a-movement-and-law-against-impunity.php>.

UN Docs. (1975). *Human rights in armed conflicts: protection of journalists engaged in dangerous missions in areas of armed conflict*. Retrieved October 03, 2018, from <http://undocs.org/A/10147>.

United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved October 03, 2018, from <http://www.un.org/en/documents/udhr/>.

United Nations Educational, Scientific and Cultural Organization. (1997). *Resolution 29 "Condemnation of violence against journalists"*. Retrieved October 04, 2018, from [http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc\\_resolution\\_29.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Brussels/pdf/ipdc_resolution_29.pdf).

United Nations Educational, Scientific and Cultural Organization. (2006). *Freedom of Information and the Press*. Retrieved October 02, 2018, from <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/previous-celebrations/worldpressfreedomday20090000/freedom-of-information-and-the-press/>.

United Nations Educational, Scientific and Cultural Organization. (2008). *Decision on the safety of journalists and the issue of impunity adopted by the IPDC Intergovernmental Council at its 26<sup>th</sup> session*. Retrieved October 04, 2018, from [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2008\\_decision\\_safety\\_of\\_journalists.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/ipdc2008_decision_safety_of_journalists.pdf).

United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights (A/RES/21/2200A)*. Retrieved October 03, 2018, from [https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_04.pdf](https://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_04.pdf).

United Nations Human Rights Committee. (2001). *General Comment No. 29 on Article 4*. Retrieved October 03, 2018, from <https://undocs.org/CCPR/C/21/Rev.1/Add.11>.

United Nations Human Rights Committee. (2011). *General Comment No. 34 on Article 19*. Retrieved October 03, 2018, from <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

United Nations Human Rights Council. (2012). *Safety of Journalists (A/HRC/RES/21/12)*. Retrieved October 04, 2018, from <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/174/10/PDF/G1217410.pdf?OpenElement>.

United Nations Office of the High Commissioner for Human Rights. (n.d.). *Human Rights Bodies*. Retrieved October 07, 2018, from <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>.

United Nations Security Council. (2006). *S/RES/1738*. Retrieved October 04, 2018, from <https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/Civilians%20SRES1738.pdf>.

United Nations Security Council. (2012a). *S/RES/2042*. Retrieved October 04, 2018, from <https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/Syria%20SRES%202042.pdf>.

United Nations Security Council. (2012b). *Report of the Secretary-General on the protection of civilians in armed conflict*. Retrieved October 07, 2018, from [http://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2012\\_376.pdf](http://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_376.pdf).

United Nations Security Council. (2013a). *S/RES/2093*. Retrieved October 04, 2018, from [http://www.un.org/ga/search/view\\_doc.asp?symbol=S/RES/2093%282013%29](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2093%282013%29).

United Nations Security Council. (2013b). *Press release of the 6917th Meeting of the United Nations Security Council*. Retrieved October 07, 2018, from <http://www.un.org/News/Press/docs/2013/sc10913.doc.htm>.

United Nations Security Council. (2015). *S/RES/2222*. Retrieved October 04, 2018, from [https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s\\_res\\_2222.pdf](https://www.securitycouncilreport.org/atf/cf/%7b65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7d/s_res_2222.pdf).

## II. THE RIGHT TO PRIVACY IN THE DIGITAL AGE

### Introduction

Being one of the most important achievements of the so called “Digital Revolution”, the Internet has in a short time period revolutionized the way human beings interact. For millions of people, the digital age was one of emancipation – perhaps the greatest liberation movement the world had ever known.<sup>129</sup> Hence, advances in information and communication technologies (ICT) are dramatically improving real-time communication and information-sharing.<sup>130</sup> By improving access to information and facilitating global debates on various topics, ICTs can foster democratic participation.<sup>131</sup> For example, over one million people participated electronically in the open dialogue and on the framework for the post-2015 Sustainable Development Goals.<sup>132</sup> Furthermore, by amplifying the voices of human rights defenders and helping to expose abuses, these powerful technologies offer the promise of improved enjoyment of human rights.<sup>133</sup>

At the same time, technology is also enhancing the capacity of governments, companies and individuals to undertake surveillance, interception and data collection. These activities have the potential to violate or abuse human rights, especially the right to privacy, which inter alia was set out in Article 12 of the *Universal Declaration of Human Rights* and Article 17 of the *International Covenant on Civil and Political Rights (ICCPR)*.<sup>134</sup> Indeed, with enhanced knowledge about states’ intelligence services’ mass surveillance practices, the intersection of privacy with security interests in cyberspace<sup>135</sup> attracted the awareness of the public globally.

An ever-growing number of people gain access to the internet in all parts of the world – with a penetration rate of 54,4% of the entire world’s population by the end of 2017<sup>136</sup> – and thus become a potential target for surveillance. Accordingly, the topic’s relevance is continuously increasing, especially while keeping in mind the immense speed of innovation in the ICT sector. Due to the growing number of internet users as well as the variety of surveillance technologies, the necessity to protect the right to privacy in the digital sphere is evident.

Whereas surveillance and privacy are concerned, international human rights law in fact provides the basic set of universal, high-level principles and rights.<sup>137</sup> However, innovations in policy and technology, private and public sector data practices, are largely left unregulated and unchecked.<sup>138</sup> Furthermore, the lack of transparency in both private sector and government online data collection and retention practices is deeply problematic for human rights protection, as citizens often are not even aware if and how their data is used.<sup>139</sup> Because

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<sup>129</sup> UN Human Rights Council, *Summary of the Human Rights Council panel discussion on the right to privacy in the digital age (A/HRC/28/39)*, 2014, p. 3.

<sup>130</sup> UN OHCHR, *The Right to Privacy in the Digital Age, Overview*, 2018.

<sup>131</sup> *Ibid.*

<sup>132</sup> UN Human Rights Council, *Summary of the Human Rights Council panel discussion on the right to privacy in the digital age (A/HRC/28/39)*, 2014, p. 3.

<sup>133</sup> UN OHCHR, *The Right to Privacy in the Digital Age, Overview*, 2018.

<sup>134</sup> UN Human Rights Council, *The right to privacy in the digital age (A/HRC/RES/34/7)*, 2016.

<sup>135</sup> UN OHCHR, *Statement by Mr. Joseph Cannataci, Special Rapporteur on the Right to Privacy*, 2018.

<sup>136</sup> Internet World Stats, *World Internet Usage and Population Statistics*, 2017.

<sup>137</sup> UN OHCHR, *Statement by Mr. Joseph Cannataci, Special Rapporteur on the Right to Privacy*, 2018.

<sup>138</sup> Privacy International, *Data Protection*, 2018.

<sup>139</sup> Donahoe, *Why a UN Special Rapporteur on privacy matters*, 2015.

of the lack of regulation, global companies with dominant market positions are able to impose terms and conditions onto users which allow them to exploit their data.<sup>140</sup> Furthermore, violations of the right to privacy can even affect other human rights, including the right to freedom of expression and the right to hold opinions without interference as well as the freedom of peaceful assembly and association.<sup>141</sup> Even more, practices like unregulated intelligence sharing can also pave the way to serious human rights abuses such as unlawful arrest or detention, torture or other cruel, inhumane or degrading treatment.<sup>142</sup> In particular, information collected through digital surveillance has been used to target dissidents.<sup>143</sup> For instance, there are credible reports suggesting that digital technologies were used to gather information that led to torture and other forms of ill-treatment.<sup>144</sup>

## International and regional Framework

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” – Article 17 of the ICCPR<sup>145</sup>

### The (human) right to privacy

With digitalization as a rather new development, the right to privacy on its own is a longstanding core human right granted to the individual to protect their private sphere against the state and increasingly against third parties. Indeed, it is most prominently included in Article 12 of the non-binding, but essential *Universal Declaration of Human Rights* of 1948.<sup>146</sup> Moreover, it is enshrined and defined in numerous international and regional frameworks and documents. The *General Comment No. 16* of the Human Rights Committee (not to be confused with the Human Rights Council), which describes in detail the legal content of Article 17 of the ICCPR, is regarded as an important document defining the scope of protection of privacy. According to the *General Comment*, a state is required to adopt legislative and other measures to give effect to the prohibition against interferences and attacks into the right to privacy as well as to the protection of this right.<sup>147</sup> Apart from the provisions of the right to privacy in general human rights treaties, notions of the right are included in specific treaties such as the *Convention on the Elimination of All Forms of Discrimination against Women*, the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Rights of the Child* as well.

On the regional level, the right to privacy is explicitly enshrined in Article 8 of the *European Convention on Human Rights* (ECHR) and Article 11 of the *American Convention on Human Rights*, as well as implicitly, for instance, in the *Cairo Declaration on Human Rights in Islam*: Article 18, the *Arab Charter on Human Rights*: Articles 16 and 21; the African Commission on Human and People's Rights *Declaration of Principles on Freedom of Expression in Africa*; the *African Charter on the Rights and Welfare of the Child*: Article 19; the *Human Rights*

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<sup>140</sup> Privacy International, *Competition and Data*, 2018.

<sup>141</sup> UN Human Rights Council, *The right to privacy in the digital age* (A/HRC/RES/34/7), 2016.

<sup>142</sup> Privacy International, *Communications Surveillance*, 2018.

<sup>143</sup> UN Human Rights Council, *Summary of the Human Rights Council panel discussion on the right to privacy in the digital age*, 2014, p. 3.

<sup>144</sup> Ibid.

<sup>145</sup> UN General Assembly, *International Covenant on Civil and Political Rights* (A/RES/21/2200A), 1966.

<sup>146</sup> UN General Assembly, *Universal Declaration of Human Rights* (A/RES/217(III)), 1948.

<sup>147</sup> UN Human Rights Committee, *Official Records of the General Assembly, Forty-third Session, Supplement No. 40* (A/43/40), annex VI., 1988.

*Declaration of the Association of Southeast Asian Nations: Article 21 and the Asia-Pacific Economic Cooperation Privacy Framework.*<sup>148</sup> Concluding, the global expansion of privacy frameworks proves the relevance of the topic as well as the existence of regional differences.

### **Regional efforts to adapt to the digital age**

As noted before, the existing human rights framework on the international level does not provide sufficient protection of the right to privacy in times of digital innovation. However, this does not generally apply to the regional level.

For instance, already in 1968, in the light of early developments of ICTs, the Committee of Ministers of the Council of Europe (CoE) examined the protection of personal privacy by the European Human Rights Convention vis-à-vis modern science and technology.<sup>149</sup> Following intergovernmental consultations within the framework of the CoE and national-level data protection legislation in several Member States in the meantime, the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981)* was drawn up and ratified.<sup>150</sup> At the time, the Convention complemented the Organization for Economic Development's (OECD) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data (1980)*.<sup>151</sup> The Convention was even additionally ratified by 6 states which are not member of the CoE.<sup>152</sup> It inter alia seeks to protect the individual against abuses which may accompany the collection and processing of personal data.<sup>153</sup> Furthermore, it also enshrines the individual's right to know what information is stored on him or her and, if necessary, to have it corrected.<sup>154</sup> In addition, in order to adapt to new technologies and data protection, there have been numerous rulings of the European Court of Human Rights in recent years which redefined the legal definition of the scope of protection of Article 8 of the ECHR.<sup>155</sup>

In 2005, the Asia-Pacific Economic Cooperation (APEC) published the non-binding *APEC Privacy Framework*. It contains several principles as well as guidance for implementation and is described as promoting a "flexible approach to information privacy protection across APEC member economies, while avoiding the creation of unnecessary barriers to information flows".<sup>156</sup> In 2014, the *African Union (AU) Convention on Cyber Security and Personal Data Protection* was adopted, but with only two ratifications to date has yet to come into legal effect.<sup>157</sup> In 2018, the African Union Specialized Technical Committee on Communication and Information Technologies requested the AU to facilitate implementation of the Convention.<sup>158</sup> Consequently, the Commission of the AU in collaboration with the Internet Society and with contributions from regional and global privacy experts jointly developed the *Privacy and Personal Data Protection Guidelines for Africa*.<sup>159</sup>

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<sup>148</sup> UN OHCHR, *Special Rapporteur on the right to privacy. International Standards*, 2018.

<sup>149</sup> CoE, *Explanatory Report to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*, 1981, p. 2.

<sup>150</sup> *Ibid.*, p. 1.

<sup>151</sup> OECD, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, 1980.

<sup>152</sup> CoE, *Chart of signatures and ratifications of Treaty 108*, 2018.

<sup>153</sup> CoE, *Details of Treaty No.108*, 2018.

<sup>154</sup> *Ibid.*

<sup>155</sup> European Court of Human Rights, *Factsheet – New technologies; Factsheet – Personal data protection*, 2018.

<sup>156</sup> APEC, *APEC Privacy Framework*, 2005.

<sup>157</sup> AU, *African Union Convention on Cyber Security and Personal Data Protection*, 2018.

<sup>158</sup> Internet Society, *Personal Data Protection Guidelines for Africa*, 2018.

<sup>159</sup> *Ibid.*



## **Safeguarding the right to privacy globally in a digital world**

On the international level, a major step towards a modern understanding of the right to privacy was *resolution 20/8* of the UN Human Rights Council (HRC) in 2012. With this resolution the HRC stipulated that “the same rights people have offline must also be protected online, including the right to privacy”.<sup>160</sup> Later, the General Assembly (GA) in 2013 noted in *resolution 68/167* that unlawful or arbitrary surveillance and collection of personal data violate the right to privacy and to freedom of expression.<sup>161</sup> Additionally, they may also contradict the tenets of a democratic society.<sup>162</sup> It was added that while concerns about public security may justify the gathering and protection of certain sensitive information, states must ensure full compliance with their obligations under international human rights law.<sup>163</sup>

In the following years, the GA as well as the HRC – who worked together on this issue closely – regularly included the topic “The right to privacy in the digital age” in their agenda. For instance, with *resolution 34/7* the HRC pointed to the fact that certain types of metadata, when aggregated, can reveal personal information that can give an insight into an individual’s behaviour, social relationships and identity.<sup>164</sup> With the resolution, the HRC also put a special emphasis on the role of the public as well as the private sector, calling upon Member States as well as businesses to meet their respective obligation to respect and protect the individual’s right to privacy.<sup>165</sup> There is strong engagement of civil society organisations to address new challenges to the right to privacy as well. For instance, in 2015 the American Civil Liberties Union (ACLU) proposed an update to *General Comment No. 16* to the ICCPR which should adequately consider the new developments of the digital age.<sup>166</sup>

## **The Special Rapporteur on the Right to Privacy**

In 2015, adopting *resolution 28/16*, the HRC decided to appoint a Special Rapporteur on the Right to Privacy with a comprehensive mandate for a period of 3 years until 2018.<sup>167</sup> His tasks included to gather information on the right to privacy, to make recommendations for its promotion and protection - which included challenges arising from new technologies - and to seek, receive and respond to information from relevant stakeholders.<sup>168</sup> Moreover, he was mandated to identify obstacles, exchange and promote principles and best practices at national, regional and international levels, and to submit proposals and recommendations, inter alia with special regards to particular challenges arising in the digital age.<sup>169</sup>

Within the framework of his mandate, the Special Rapporteur, Mr. Joseph Cannataci, established five Thematic Action Streams (TAS) Taskforces as the basic structure for his work, namely: A better understanding of Privacy; Security and Surveillance; Big Data and Open Data; Health Data, and the Use of Personal Data by Corporations.<sup>170</sup> Examining the main focus of

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<sup>160</sup> UN Human Rights Council, *The promotion, protection and enjoyment of human rights on the Internet* (A/HRC/RES/20/8), 2012.

<sup>161</sup> UN General Assembly, *The right to privacy in the digital age* (A/RES/68/167), 2013.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid.

<sup>164</sup> UN Human Rights Council, *The right to privacy in the digital age* (A/HRC/RES/34/7), 2017.

<sup>165</sup> Ibid.

<sup>166</sup> ACLU, *Information Privacy in the digital age. A Proposal to Update General Comment 16 (Right to Privacy) to the International Covenant on Civil and Political Rights*, 2015.

<sup>167</sup> UN Human Rights Council, *The right to privacy in the digital age* (A/HRC/RES/28/16), 2015, p. 3f

<sup>168</sup> Ibid.

<sup>169</sup> Ibid.

<sup>170</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right to privacy* (A/HRC/37/62), 2018, p. 4.

the TAS, one understands that the right to privacy can barely be understood outside the context of ICTs, as personal data as a fundamental part of privacy is overwhelmingly computed digitally. Thus, the digital dimension has become the main theme of almost any consideration of privacy, only a few years after it was recognized as one of several aspects.

Amongst others, the Special Rapporteur created the International Intelligence Oversight Forum, an annual gathering of national stakeholders supervising domestic and foreign intelligence in their countries.<sup>171</sup> The Forum serves as a platform at an international level to share information, exchange experiences and identify best practices safeguards regarding internet-based surveillance.<sup>172</sup> In addition, the Rapporteur also organises regional events on privacy, personality and flows of information which are held twice a year.<sup>173</sup> As a part of his mandate, the Special Rapporteur engages with civil society, governments, law enforcement, intelligence services, data protection authorities, intelligence oversight authorities, academics, corporations and other stakeholders in Africa, America, Asia, Australasia, and Europe.<sup>174</sup> For instance, he cooperates with the International Conference of Data Protection and Privacy Commissioners.<sup>175</sup>

As part of his work in the priority area “Security, surveillance and privacy”, the Special Rapporteur has co-led efforts to explore options for measures to limit surveillance and other privacy-intrusive measures in cyberspace.<sup>176</sup> In synergy with the European Union-supported Managing Alternatives for Privacy, Property and Internet Governance (MAPPING) project, he explored options for a draft legal instrument on surveillance and privacy to strengthen standards and create protection mechanisms.<sup>177</sup>

In February 2018, a workshop on the right to privacy in the digital age, including the responsibility of business enterprises was hosted by the HRC in Geneva with experts from around the globe. As the concept note states, there is growing recognition of the role business enterprises play, both in facilitating government surveillance and in their own use of personal information.<sup>178</sup> Furthermore, businesses often rely on the collection, processing, repurposing and sale of personal information, while often not ensuring adequate transparency and informed consent of the individuals concerned.<sup>179</sup> In his paper to the workshop, the Special Rapporteur pointed out that some countries and some inter-governmental organizations have taken the initiative to develop their legal framework with respect to privacy, but others have not.<sup>180</sup> Consequently, there is no comprehensive legal framework which provides both safeguards and remedies for all facets of the citizens’ presence in cyberspace, whether the threat to privacy comes from inside that citizen’s country or from outside it.<sup>181</sup>

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<sup>171</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right to privacy (A/HRC/37/62)*, 2018, p. 4.

<sup>172</sup> *Ibid.*

<sup>173</sup> *Ibid.*, p. 21.

<sup>174</sup> *Ibid.*, p. 8.

<sup>175</sup> *Ibid.*, p. 13.

<sup>176</sup> *Ibid.*, p. 6.

<sup>177</sup> *Ibid.*, 17f.

<sup>178</sup> UN OHCHR, *Expert workshop on the right to privacy in the digital age. Concept Note*, 2018, p. 2.

<sup>179</sup> *Ibid.*

<sup>180</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right to privacy - Annex. (A/HRC/37/62)*, 2018, p. 25f.

<sup>181</sup> *Ibid.*

In early March 2018, the Special Rapporteur, presenting the last report of his three-year term to the HRC, delivered an oversight on the activities taken under the mandate.<sup>182</sup> He inter alia called for renewed UN efforts and outlined the prospect of a legal instrument on surveillance and privacy at the global level, therefore issuing a *Draft Legal Instrument on Government Led Surveillance*.<sup>183</sup> In late March, the HRC decided to extend the mandate of the Special Rapporteur for a period of three more years – under the same terms as the initial appointment.<sup>184</sup> In doing so, the HRC called upon all States to cooperate with and assist the Special Rapporteur in the performance of his mandate and thus especially to consider his requests for information, visits and consideration of recommendations favorably.<sup>185</sup>

## Case Study

### The European Union's General Data Protection Regulation (GDPR)

Article 8 of the *Charter of the Fundamental Rights of the European Union* (2000) protects the right to the protection of personal data of EU citizens. It specifies that data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law, and that everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.<sup>186</sup>

In 2012, the European Commission proposed a comprehensive reform of the EU's 1995 data protection rules to strengthen online privacy rights.<sup>187</sup> In the past, the 27 EU Member States had implemented the 1995 rules differently, which resulted in divergences in enforcement.<sup>188</sup> The aims of the reform were described as to inter alia provide a single set of rules on data protection valid across all EU Member States and to implement the "right to be forgotten".<sup>189</sup> Moreover, it lays down the principle that EU data protection rules must apply if personal data is handled abroad by companies that offer their services to EU citizens.<sup>190</sup>

In May 2016, after a comprehensive, four-year negotiation process, *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data*, also known as the *General Data Protection Regulation* (GDPR), entered into force formally.<sup>191</sup> The regulation strengthens citizens' rights and provides a framework of rules for businesses.<sup>192</sup> Apart from the already mentioned features, citizens are entitled to easier access to personal data, a right to data portability and a right to know when their personal data has been hacked.<sup>193</sup> Rules for businesses include the use of privacy-friendly techniques such as pseudonymisation and encryption, and obligatory impact assessments when data processing may result in a high risk for the rights of individuals.<sup>194</sup> As a general rule, the GDPR

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<sup>182</sup> UN Human Rights Council, *Report of the Special Rapporteur on the right to privacy*. (A/HRC/37/62), 2018.

<sup>183</sup> *Ibid.*, p. 18ff.

<sup>184</sup> UN Human Rights Council, *The right to privacy in the digital age* (A/HRC/RES/37/2), 2018.

<sup>185</sup> *Ibid.*

<sup>186</sup> EU, *Official Journal of the European Union* C 326, 2012, p. 397.

<sup>187</sup> European Commission, *Commission proposes a comprehensive reform of data protection rules to increase users' control of their data and to cut costs for businesses*, 2012.

<sup>188</sup> *Ibid.*

<sup>189</sup> *Ibid.*

<sup>190</sup> *Ibid.*

<sup>191</sup> EU, *Official Journal of the European Union* L 119, 2016.

<sup>192</sup> EU, *Summary of Regulation (EU) 2016/679*, 2018.

<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

applies when an individual, a company or an organisation processes personal data relating to individuals in the EU.<sup>195</sup>

A short time before the regulation came applicable in May 2018, it received enormous attention of a broad public and from private businesses<sup>196</sup>. For example, Facebook CEO Mark Zuckerberg announced that the company would make the same controls and settings required by the GDPR available globally and not just in the EU, thereby demonstrating the global impact of regional legislation.<sup>197</sup> After the regulation came into force, internet users in the EU received emails from websites where they had signed up on and thereby got informed about changed privacy policies. Some critique was raised about disordered implementation, as there was little information available beforehand especially for businesses<sup>198</sup>. Nevertheless, the GDPR as a legally binding regulation directly applicable in EU Member States constitutes the most effective data protection framework in the world with no comparable equivalent<sup>199</sup>.

## Conclusion

The vast speed of ICT innovation in the digital sector leaves the international community with no respite. The right to privacy as a fundamental human right must not be undermined by new opportunities that technological progress offers to governments, businesses and individuals. There is commitment of States to act, but substantial progress is yet to follow. Up to date, alleged violations of the right to privacy through means of digital technologies are reported regularly, with numbers supposedly to rise without further action. As the Special Rapporteur puts it, progress towards international standards – such as the draft legal instrument – has been made, but it needs fresh vigor to be applied to all UN efforts.<sup>200</sup> The General Assembly as the most prominent policy-making body of the UN is a convenient setting to address this pressing issue affecting all States, and all people around the world.

## Further Research

To prepare themselves for this topic, delegates should focus on the following questions:

- Confronted with diverging interests at the intersection of privacy with state security and surveillance in cyberspace, how can the GA contribute to weighting these two opposites?
- Considering that a legal instrument on surveillance and privacy at the global level generally has unanimous or even majority support of states, can the GA reach consensus on how to foster the process of creating such a legal instrument such as the draft legal instrument of the Special Rapporteur?
- Keeping in mind that both the public and the private sectors' activities may conflict with the individual's right to privacy, what can the GA do to bring forward solutions on the role and responsibility of businesses as well?

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<sup>195</sup> European Commission, *What does the General Data Protection Regulation GDPR govern?*, 2018.

<sup>196</sup> The Irish Times, *New rules on data protection pose compliance issues for firms*, 2018.

<sup>197</sup> EUobserver, *New EU privacy rules to benefit Facebook users globally*, 2018.

<sup>198</sup> Roberts, *The GDPR Is in Effect: Should U.S. Companies Be Afraid?*, 2018.

<sup>199</sup> Ibid.

<sup>200</sup> UN OHCHR, *Statement by Mr. Joseph Cannataci, Special Rapporteur on the Right to Privacy*, 2018.

## Bibliography

African Union. (2018). *African Union Convention on Cyber Security and Personal Data Protection*. Retrieved September 22, 2018, from <https://au.int/en/treaties/african-union-convention-cyber-security-and-personal-data-protection>.

Asia-Pacific Economic Cooperation. (2005). *APEC Privacy Framework*. Retrieved September 23, 2018, from <https://www.apec.org/Publications/2005/12/APEC-Privacy-Framework>.

Council of Europe. (1981). *Explanatory Report to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*. Retrieved September 22, 2018, from <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800ca434>.

Council of Europe (2018). *Chart of signatures and ratifications of Treaty 108*. Retrieved September 23, 2018 from [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p\\_auth=4Ox1YcHR](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p_auth=4Ox1YcHR).

Council of Europe (2018). *Details of Treaty No.108*. Retrieved September 23, 2018 from <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108>.

Donahoe, E. (2015). *Why a UN Special Rapporteur on privacy matters*. Retrieved September 16, 2018, from <http://www.ishr.ch/news/why-un-special-rapporteur-privacy-matters>.

EUobserver. (2018). *New EU privacy rules to benefit Facebook users globally*. Retrieved September 26, 2018, from <https://euobserver.com/science/141520>.

European Court of Human Rights. (2018). *Factsheet – New technologies*. Retrieved September 22, 2018, from [https://www.echr.coe.int/Documents/FS\\_New\\_technologies\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_New_technologies_ENG.pdf).

European Court of Human Rights. (2018). *Factsheet – Personal data protection*. Retrieved September 22, 2018, from [https://www.echr.coe.int/Documents/FS\\_Data\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Data_ENG.pdf).

European Commission. (2012). *Commission proposes a comprehensive reform of data protection rules to increase users' control of their data and to cut costs for businesses*. Retrieved September 25, 2018, from [http://europa.eu/rapid/press-release\\_IP-12-46\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-46_en.htm?locale=en).

European Commission. (2018). *What does the General Data Protection Regulation (GDPR) govern?*. Retrieved September 28, 2018, from [https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en).

European Union. (2012). *Official Journal of the European Union C 326*. Retrieved October 15, 2018, from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN>.

European Union. (2016). *Official Journal of the European Union L 119*. Retrieved September 25, 2018, from <https://publications.europa.eu/en/publication-detail/-/publication/3e485e15-11bd-11e6-ba9a-01aa75ed71a1/language-en>.

European Union. (2018). *Summary of Regulation (EU) 2016/679*. Retrieved September 26, 2018, from [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:310401\\_2&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM:310401_2&from=EN).

Internet Society. (2018). *Personal Data Protection Guidelines for Africa*. Retrieved September 23, 2018, from <https://www.internetsociety.org/resources/doc/2018/personal-data-protection-guidelines-for-africa/>.

Internet World Stats. (2018). *World Internet Usage and Population Statistics Dec 31, 2017 – Update*. Retrieved September 16, 2018, from <https://internetworldstats.com/stats.htm>.

Organization for Economic Development. (1980) *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*. Retrieved September 23, 2018, from <http://www.oecd.org/sti/ieconomy/oecdguidelinesontheProtectionofPrivacyandTransborderFlowsofPersonalData.htm>.

Privacy International. (2018). *Communications Surveillance*. Retrieved October 18, 2018, from <https://www.privacyinternational.org/topics/communications-surveillance>.

Privacy International. (2018). *Data Protection*. Retrieved November 06, 2018, from <https://www.privacyinternational.org/topics/data-protection>.

Privacy International. (2018). *Competition and Data*. Retrieved November 06, 2018, from <https://www.privacyinternational.org/topics/competition-and-data>.

Roberts, Jeff John. (2018). *The GDPR Is in Effect: Should U.S. Companies Be Afraid?*. Retrieved November 19, 2018, from <http://fortune.com/2018/05/24/the-gdpr-is-in-effect-should-u-s-companies-be-afraid/>.

The Irish Times. (2018). *New rules on data protection pose compliance issues for firms*. Retrieved November 19, 2018, from <https://www.irishtimes.com/business/technology/new-rules-on-data-protection-pose-compliance-issues-for-firms-1.3397742>.

United Nations General Assembly. (1948). *Universal Declaration of Human Rights (A/RES/217(III))*. Retrieved October 12, 2018, from [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/217\(III\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/217(III))

United Nations General Assembly. (1966). *International Covenant on Civil and Political Rights (A/RES/21/2200A)*. Retrieved October 07, 2018, from <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

United Nations General Assembly. (2013). *The right to privacy in the digital age (A/RES/68/167)*. Retrieved September 18, 2018, from <http://undocs.org/A/RES/68/167>.

United Nations Human Rights Committee. (1988). *General comment 16 (A/43/40, Annex VI)*. Retrieved September 18, 2018 from <http://undocs.org/A/43/40>.

United Nations Human Rights Council. (2012). *The promotion, protection and enjoyment of human rights on the Internet (A/HRC/RES/20/8)*, retrieved September 18, 2018, from <http://undocs.org/A/HRC/20/8>.

United Nations Human Rights Council. (2014). *Summary of the Human Rights Council panel discussion on the right to privacy in the digital age* (A/HRC/28/39), retrieved September 17, 2018, from <http://undocs.org/A/HRC/28/39>.

United Nations Human Rights Council. (2015). *The right to privacy in the digital age* (A/HRC/RES/28/16). Retrieved September 19, 2018, from <http://undocs.org/A/HRC/RES/28/16>.

United Nations Human Rights Council. (2017). *The right to privacy in the digital age* (A/HRC/RES/34/7). Retrieved September 16, 2018, from <http://undocs.org/A/HRC/RES/34/7>.

United Nations Human Rights Council. (2018). *Report of the Special Rapporteur on the right to privacy* (A/HRC/37/62). Retrieved September 20, 2018, from [https://www.ohchr.org/Documents/Issues/Privacy/SR\\_Privacy/A\\_HRC\\_37\\_62\\_EN.docx](https://www.ohchr.org/Documents/Issues/Privacy/SR_Privacy/A_HRC_37_62_EN.docx).

United Nations Human Rights Council. (2018). *The right to privacy in the digital age* (A/HRC/RES/37/2). Retrieved September 22, 2018, from <http://undocs.org/A/HRC/RES/37/2>.

United Nations Office of the High Commissioner for Human Rights. (2018). *Expert workshop with the purpose of identifying and clarifying principles, standards and best practices regarding the promotion and protection of the right to privacy in the digital age, including the responsibility of business enterprises in this regard. Concept Note*. Retrieved September 16, 2018, from <https://www.ohchr.org/Documents/Issues/DigitalAge/ConceptNote.pdf>.

United Nations Office of the High Commissioner for Human Rights. (2018). *Statement by Mr. Joseph Cannataci, Special Rapporteur on the Right to Privacy*. Retrieved September 16, 2018, from <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22858&LangID=E>.

United Nations Office of the High Commissioner for Human Rights. (2018). *Special Rapporteur on the right to privacy. International Standards*. Retrieved September 20, 2018, from <https://www.ohchr.org/EN/Issues/Privacy/SR/Pages/Internationalstandards.aspx>.

United Nations Office of the High Commissioner for Human Rights. (2018). *The Right to Privacy in the Digital Age*. Retrieved September 16, 2018, from <https://www.ohchr.org/EN/Issues/DigitalAge/Pages/DigitalAgeIndex.aspx>.