PRESIDENCY OF FINLAND
Council of Europe
November 2018 – May 2019
PRÉSIDENCE DE LA FINLANDE
Conseil de l'Europe
Novembre 2018 – Mai 2019

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

HIGH-LEVEL CONFERENCE

Governing the Game Changer – Impacts of artificial intelligence development on human rights, democracy and the rule of law

Conference co-organised by the Finnish Presidency of the Council of Europe Committee of Ministers and the Council of Europe

26 – 27 February 2019, Helsinki, Finland – Finlandia Hall

Conference Report by Joe McNamee[1]

Introduction

The growth of artificial intelligence in its various forms has a wide range of impacts on our society. We are very much at the beginning of this phenomenon, with the challenges and opportunities, risks and possible risks becoming more obvious as new technologies and applications start to be used.

It is therefore clear that it is important to facilitate a critical, open and inclusive discussion, in order to maximise the benefits and minimise the risks to society of such technological developments. To achieve this goal, the Finnish Presidency of the Council of Europe Committee of Ministers and the Council of Europe worked together to organise a multi-stakeholder discussion of the impact of artificial intelligence on the three pillars on which the Council of Europe is founded, namely its impact on human rights, democracy and the rule of law.

Core points of discussion emerging from the conference

During the discussions, several points emerged as themes, raised by multiple speakers:

- the Council of Europe has a significant and global role in promoting human rights compliant and supportive AI. This is due to its core competence and its responsibility for key Conventions that are open for signature globally.

- there are potential positive and negative impacts anticipated in the area of AI. While being clear about the risks, speakers were broadly positive about future developments.

- referring back to the title of the conference, speakers repeatedly stated that it is important to act now. Put starkly, either we will rule the "game" or the "game" will rule us.

- accountability rules have been developed in other complex policy areas, so they should also be possible in relation to AI.

- speakers who referred to soft law and "ethics" were highly sceptical of reliance on this approach as a replacement for hard law. However, many saw soft law and ethical

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guidelines as useful complements to hard law.

- the Cambridge Analytica scandal was mentioned repeatedly as evidence of the need to ensure the existence and powers of strong regulatory authorities, of how late we become aware of problems and of the scale of the problems that can arise.

- several speakers stressed the need for individuals to be equipped with both knowledge of, and control over, AI applications.

- warnings, in various forms, were heard in relation to stasis that would come from relying on old data for new problems. How can our society evolve, if tomorrow is governed by data from yesterday?

Opening of the conference

The opening session of the conference was marked by a strong recognition from all three high-level speakers of the central role that the Council of Europe can and does play in this policy area.

Timo Soini, Minister for Foreign Affairs of Finland, stressed the value of the Council of Europe's work to defend and uphold human rights in Europe. He pointed out that life has changed for the better thanks to being party to the European Convention on Human Rights (ECHR). For these reasons, Finland is doing its utmost to defend the Council of Europe in its core work.

He stated that the conference was about assessing the impact of artificial intelligence on the fundamental values of human rights and the rule of law. Minister Soini stressed that the topic must be addressed comprehensively and in a broad, multi-stakeholder approach.

In the spirit of such an approach, he extended a warm welcome on behalf of Finland to the diverse stakeholders present. He also welcomed the two big anniversaries that will take place during the Finnish Presidency of the Committee of Ministers, 20 years of the office of Human Rights Commissioner and 70 years of the Council of Europe.

While recognising the speed of technological development over the past decades, in particular with regard to autonomous data collection and "big data", he expressed the view that the "big bang" for society was still to come.

With regard to current activity in this area, he was the first of many speakers at the event to praise the work of the CoE's European Commission for the Efficiency of Justice (CEPEJ) on its European Ethical Charter on the use of artificial intelligence in judicial systems, and to welcome the adoption of the Declaration on the manipulative capabilities of algorithmic processes by the Committee of Ministers. He also pointed to work being undertaken in the United Nations on the issue of artificial intelligence. However, some groups are still being neglected in current work and some groups have particular challenges. On a positive note, artificial intelligence offers welcome developments, which one can see in improved healthcare and the ability to discover and confirm human rights violations.

He concluded by saying that protection of human rights must be guaranteed in the future and that the Council of Europe can set an example in achieving this goal.

Thorbjørn Jagland, Secretary General of the Council of Europe stressed that the challenges presented by AI are here and now. We already see the influence of AI on the

information we consume, on what we are induced to watch or to read and there are, indeed, positive developments in the field of healthcare.

However, a society driven by mathematics might remain human but lose its ability to be humane. As his wish for the conference, he wanted it to separate fact from fiction, identify real advantages and real risks, as well as discuss how to prevent or mitigate ensuing dangers.

He pointed to the ways in which the Council of Europe is helping Member States to safeguard ECHR standards. In particular, he pointed to the Oviedo Convention on bioethics, as well as the Convention 108 (+) on data protection and the Budapest Convention on Cybercrime as examples of this. He also mentioned the CEPEJ guidelines, the newly adopted Declaration, and the fact that the Council of Europe Steering Committee on Media and Information Society is finalising a draft recommendation on the human rights impacts of algorithmic systems, which will include guidelines on action to be taken in the areas of public administration.

However, more needs to be done. As technological development advances, new challenges are appearing, including biomedicine, issues around elections and counter-terrorism. Measures need to be taken for predicting and counteracting technologies being used against innocent people. This includes the possibility of a binding Framework Convention to ensure that AI is designed, developed and applied in line with European standards on human rights, democracy and the rule of law.

Nicole Belloubet, Minister of Justice of France pointed to the Joint Statement on AI that was adopted by France and Finland on 30 August 2018. She stressed the need for an active role from governments in promoting a fair, inclusive and human-centric vision of artificial intelligence that builds on and fosters trust. AI is at the heart of serious questions on human rights that we need to address urgently.

She paid tribute to the work of the Council of Europe in general and also in relation to the challenges of AI in the justice system. She raised concerns about the defence of Article 10 of the European Convention on Human Rights, faced with efforts to falsify debates and undermine trust in public debate and institutions and also pointed to the Committee of Ministers Declaration of 13 February 2019, with regard to the risks for society.

She welcomed the organisation of the conference as a step towards society better understanding the challenges. Deep learning tools are beyond the understanding of their developers, and present a challenge to justice and to democracy. Echoing Minister Soini, she pointed to specific groups whose rights may be threatened, in particular people with limited IT experience.

France has recently launched an ambitious plan to allow people to follow legal dossiers online by 2022 and has a new law on open data in justice, which will put all decisions online. This is being done as a means to support, and not replace the role of judges.

Efforts to fight the undermining of elections are not restricting freedom of speech, but do serve to preserve freedom of opinion. The new French law against disinformation requires larger platforms to designate a legal representative in France. Similarly, hate speech can be fought by using AI, as well as by using hosting provider liability, and notice and takedown procedures.

Setting the scene

Joanna Bryson (presentation) from Bath University welcomed the speeches from the opening session and Europe's leading role in policy-making in AI. She rejected the notion of seeing the USA or China as leaders. Having companies that are more powerful than countries is not a good way of preparing for AI. Responding to Minister Belloubet, she commented that if judicial records are to be put online, one should also maintain a paper copy – after all, digital copies can be changed in an instant.

She defined intelligence as doing the right thing at the right time – an animal's intelligence allows them to adjust behaviour in accordance with changing conditions. This definition is from 1883, so we have long known what intelligence is. Computer intelligence is a form of computation that transforms sensing into action. This requires time, space and energy. Companies do not simply have algorithms, they also have a huge technical infrastructure – a point subsequently addressed in Session II by Lorena Jaume-Palasí.

Artificial intelligence is an artefact that is built intentionally. This intent incurs responsibility. Humans can be held to account for all of the building blocks of AI. Humans should follow procedures appropriately and be able to demonstrate due diligence. Cars are well regulated, which means that we can find out why an autonomous car crashed. Why not have similar controls for software?

There are at least three sources of AI bias:

- Implicit – absorbed automatically, using machine learning from ordinary culture. This can be fought with design and architecture.
- Accidental – introduced through ignorance by insufficiently diverse or careful development teams. This can be fought by having a diverse workforce and testing, logging, iterating and improving.
- Deliberate - introduced intentionally. This can be fought with audits and regulation.

Dunja Mijatović, Council of Europe Human Rights Commissioner, said that AI is a challenging and controversial topic and argued that the impact on the rule of law is the big topic of the century.

The legal implications are complicated – you can sue a state for harming you, but not an algorithm. The legal framework of the past 70 years is challenged. She pointed out that one of her first comments as Human Rights Commissioner was on this topic.

AI has the possibility to support or destroy. It can negatively impact a range of human rights, such as privacy and freedom of expression. It can reproduce and reinforce biases and can spread mis-information.

She explained that her first country visit as Human Rights Commissioner was to Estonia, where she looked at the rights of elderly people. There, NGOs had raised problems with AI in the social security system. AI had, without the involvement of real people, been used to establish incapacity levels and to remove benefits.

Similarly in France, a college admission system was developed to centralise applications, leading to complaints of bias. The criteria were indeed potentially biased, for example using the place of residence. She called for more information to be made public. Reiterating the point made in the opening session, she added that the economically disadvantaged suffer the most from AI bias, while lack of information about how the systems work undermines accountability.

We must either govern the game or the game will govern us.

It is important to be careful, to listen, to develop the legal framework, with everyone – public and private – taken into account. We need human rights by design and multi-stakeholder engagement. States should monitor their own use of AI and strengthen oversight. AI literacy should be promoted, which will allow people to understand how it works and to recognise harms. We need to develop legislation. We need to steer AI and not the other way round.

There will be an enormous democratic return for this investment and this should be Europe's achievement. AI will be a priority for her mandate.

She concluded by saying that time is now to put human rights at the centre of AI design.

David Kaye, UN Special Rapporteur on the promotion and protection of Freedom of Opinion and Expression, started by reiterating the point made repeatedly by earlier speakers – that the role of the Council of Europe in this area cannot be overstated. He asked the Council of Europe to keep doing this work, arguing that no other intergovernmental organisation is doing this.

AI is not just a nefarious great disruptor. Instead it can be used for good or ill. It can expand our rights and be a set of tools to protect us from the profiling and the "censorship sword of Damocles" that hangs over our heads.

Algorithms and AI are in every corner of the internet. The vastness of data has facilitated a "cloak of opacity" that is a particular problem in information management. It is important not to lose sight of the human rights-averse impacts. Specifically, there are challenges to:

Freedom of opinion: The intersection of AI and content moderation raises new issues for freedom of opinion. It creates the risk that we are losing the ability to form independent opinions, as corporations decide what we know.

Freedom of expression: The AI that we see in computational propaganda prevents individuals from understanding how information is disseminated. Protections like transparency are limited and are only of slight benefit. Such safeguards contribute to users' awareness of the framework, but do little to deepen understanding.

Freedom from discrimination: AI *is* discrimination because it is a tool to discriminate between outcomes. As a result, it threatens to replicate bias and discrimination. There needs to be a human rights framework, using the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the UN Guiding Principles.

With regard to regulation, we see President Trump asking for software to "zap" bogus stories. In the EU, we also see regulation going in troubling directions. In Europe we are having, on the one hand, sophisticated discussions but, on the other, we are having troubling debates on terrorist content and hate speech. He raised particular worries about the "intense" pressures to use AI to take down content at the moment of upload.

The autonomy of the individual must be the goal, underlining public and private regulation. AI must not interfere with individuals' right to hold opinions or express opinions. Industry self-regulation is only acceptable if it is not the only approach. Codes of ethics can only be considered as a complement to, and not a replacement for, law.

Radical transparency requires companies to permit systems to be scrutinised from conception to implementation. Any adverse impact on human rights must be remediable – and remedied by the companies responsible. Individuals must know that they were subject to an algorithmic decision. Public institutions have an important role in ensuring accountability. Currently a clear template for courts' and other independent bodies'

involvement in identifying and remedying rights violations is missing, and this has to change.

Session I: Democracy and Human Rights

Karen Yeung, Birmingham Law School and School of Computer Science (moderator), reiterated the point made by Dunja Mijatović that "computers are increasingly ruling the world and we need to rule them". AI is a "dual use technology" - it can be a force for good. It can enhance and improve our lives but we need to focus on threats. We need to be cautious about negative consequences. Individuals need a basic technical understanding of how the tools work.

AI tools are changing and shaping the socio-technical environment. They are changing it at a micro- and highly personalised level, and at the same time – at a population-wide level. They are undertaking information-shaping at scale. They have the potential to change the way we think. This potential creates existential questions.

Previously, it was not possible to know what was inside your head, but it is increasingly possible to infer what you are thinking, striking at the heart of individual autonomy. We must govern or be governed.

We need to think about principles and act upon these. We have the capacity to shape these technologies.

Michael O'Flaherty, Director of the EU Fundamental Rights Agency, praised the global importance of the Council of Europe's work, as well as the role of the United Nations and David Kaye in particular. He pointed to the EU's draft ethical guidelines as a positive development. The EU has done some good work, such as the GDPR, but also has made some worrying proposals, such as the Terrorist Content Regulation.

Overall, he said he was optimistic. He stressed the positive potential of AI, saying it had enormous potential for good. However, as AI is not a single thing, a single solution is not possible.

It is crucial to understand that AI must be governed by human rights and that it would be preposterous to argue against this principle. He stressed the importance of the role of states who are responsible for defending human rights. This responsibility should not be transferred to companies.

He issued a strong call for everybody and every authority to play its role to the full. The scale of the issue means that all special rapporteurs should be working on this topic, as should all monitoring bodies of the Council of Europe. All relevant national bodies, not just data protection authorities, but also other authorities such as those working on equality, should be working on this. AI needs to be part of national human rights action plans. NGOs have an important role to play and AI should be a key topic for all human rights organisations. He concluded by calling for more research.

The Fundamental Rights Agency is working on documents on "dirty data" and other AI-related topics.

Tamar Kaldani, Data Protection Commissioner of Georgia, described the data protection framework. Convention 108+ includes a right not to be subject to a decision based solely on the basis of automated decision-making. In relation to the EU's General Data Protection Regulation, principles such as privacy by design and privacy by default are important. Soft law can have a value in filling gaps in hard law.

While there are 120 laws on data protection globally, there is a huge gap between paper laws and implementation. Human rights cannot rely on industry self-regulation. The Cambridge Analytica scandal shows how data can be abused and how late we discover the existence of problems.

Finally, she demanded more research, not just about privacy rights but covering the other related rights, and the strengthening of all related supervisory authorities, including in health and banking, reiterating Michael O'Flaherty's point on this subject.

Aidan White, President of the Ethical Journalism Network, raised a set of specific issues regarding journalism. He regretted the contradiction between people being prepared to believe anything they read on Twitter, but dismissive of the views of experts.

AI is being used in journalism, with sports, financial and electoral information being generated by AI. As an example of a positive use of digital technology in journalism, the Panama Papers would have been impossible without scraping data.

The "human dimension" needs to be strengthened. We need to question how we work with technology and, in particular, we need to ensure that the social element of humans to analyse and change strategy is included. Transparency is important, such as in relation to how information is being produced and the intention behind it. We need a note at the end of stories to say how it was produced. Journalists need to be cognisant of how AI tools function and of potential effects of their use; this must become part of their professional training.

An ethical framework is needed throughout the process. Everyone needs to be ethically and technologically aware. He concluded by saying that media self-regulation needs to be protected.

Nani Jansen Reventlow, Director of the Digital Freedom Fund, explained that a lot of digital rights litigators focus on civil and political rights, missing the social and economic rights perspective. She welcomed the fact that the UN Special Rapporteur on extreme poverty and human rights will be looking at this important part of the human rights spectrum in the upcoming report on the rise of the "digital welfare state".

There are some very relevant cases. In the USA, the ongoing State vs. Loomis case involves an individual who was sent to prison for six years, because a proprietary algorithm ruled that Mr Loomis had a high risk of recidivism. A second case, Houston Federation of Teachers et al vs Houston Independent School District involved teachers being dismissed on the basis of privately developed algorithms. In KW vs Armstrong, cuts to Medicaid social care payments were made by a "black box" computer-generated decision. The Idaho courts required the criteria to be made public and then concluded that property rights had been violated.

Article 22 of the GDPR provides restrictions on profiling, but a lot of clarification is needed, particularly on the scope of the right 'not to be subject to a decision based *solely* on automated processing'. Importantly, Articles 13-15 of the GDPR also give the right to get meaningful information about the logic of decision-making.

Lack of transparency is a big issue. Freedom of information laws can be used in relation to public function. However, the laws are diverse.

Overall, she expressed optimism regarding the direction in which society is going in relation to AI, as it is becoming more aware of possible risks.

Oliver Süme, Chairman of the Board of the Internet Industry Association (eco), pointed out firstly that, looking at use cases of AI, only a minority are relevant for freedom of

expression. Most are in supply chain management, farming, etc., where personal data are not used. As a result, he argued that a sectorial approach is appropriate.

On personal data protection, good data needs to be put in, if one wants to get good data out. However, only 4% of available data is hosted in the EU, raising the question of how much bias will be generated if non-European data is used. It is important to have transparency and accountability as core principles.

Data protection impact assessments are an interesting tool. We should look at how the totality of tools available, such as antitrust law, commercial law, etc., can be used to build a useful legal framework. Only after this is done should we look at new legislation.

Regarding freedom of expression, he expressed concern about the responses in the EU. Technology is offered as the answer to hate speech, terrorism and copyright. This is dangerous. No AI is or will be able to make subtle distinctions. When such technologies are implemented, there will be mistakes, with state responsibilities being shifted to the private sector.

Ensuing discussion:

Support was expressed for comprehensible code, funding for education and the need for "good" rather than "big" data. There should be focus on the most vulnerable, also by including them in all relevant discussions. There is some promise in the ability to personalise services for individuals but this raises risks for collective approaches, insurance being an obvious example. However, legislation to ensure that previous health history should not be used for insurance purposes helped address that problem, which shows that solutions can be found. The privatisation of decision-making, often through automated means is a particular concern. Many human rights problems have arisen due to a lack of "moral thinking" by large private companies. We need to be clearer about the ensuing risks, including for the very foundations of our societies and respond with clear standards, ideally at global level. Convention 108 + offers the potential of being such a global standard.

Opening of the afternoon session

Snežana Samardžić-Marković, Director General of Democracy at the Council of Europe invited the audience to imagine the world from the perspective of a girl growing up in the future. Would she believe in democracy? Would she be able to distinguish fact from fiction? What would voting processes look like? How would the elections she voted in be monitored? Would elections be protected from online interference? Crucially, is there something we can do now to empower her and secure the quality of election processes?

We have lost the early optimism of the open, free internet. Together with the European Commission against Racism and Intolerance, the Council of Europe is looking at how AI is causing hate speech to spread.

Our civilisation is based on diversity of cultural content, opinions and ideas. The pluralism of ideas is essential for a free and fair world. How would the future girl be exposed to these ideas? In a bookstore, where she would be able to stumble across a book she would not otherwise have encountered? Or would she prefer to follow Netflix recommendations? Video on demand platforms use viewing habits and demographics to make suggestions. This is not inherently a problem but it limits the ability to choose freely.

Article 10 of the ECHR includes the freedom to receive information, which should be as diverse and pluralistic as possible. Now a handful of people will decide for millions. Democracy requires freedom, but it may not require algorithms. The Council of Europe is working with companies, in cooperation with educational establishments, on the rights of the child and against cultural homogenisation.

Session II: AI and Democracy

Damian Tambini, London School of Economics (moderator), highlighted that democracy includes representative and direct elements, but also deliberative aspects linked to broad formation of public opinions. Bots, disinformation, and the design of social media algorithms constrain our choices in a way that creates a democratic emergency. Already the mere perception that something is going wrong leads to disengagement and distrust. As a result of the work of the CoE and other organisations, attention is shifting to transparency requirements, to spending rules on elections and to wider media regulation. A set of frameworks to maintain trust in democratic processes and to protect them is available as a first response. Media pluralism is absolutely necessary to protect public opinion from sectorial or private interests. We also need to think in the long term perspective. Human autonomy is about individual decisions and the extent to which they can be captured by those in control. It is about the ability to disengage from one set of processes and re-engage with another. Ultimately, this depends on the market structure.

On a positive note, he concluded that democracy is a very simple algorithm, and AI can offer means to protect our democratic processes.

Moez Chakchouk, Director General for Communication and Information at UNESCO, said that misinformation undermines our ability to make informed decisions. Marginalised speakers and cultures risk being sidelined. AI is used to spread misinformation and to manipulate groups. However, AI has also been used to identify hate speech and more companies are committing to self-regulation.

People must be empowered through education, capacity-building and awareness raising. In line with its mandate, UNESCO has committed to work towards an international normative framework. In this context, he pointed to the event on 4 March 2019 on "Artificial Intelligence – Towards a Humanistic Approach", organised by UNESCO.

Cooperation is needed and this is already happening. In particular, the CoE, OECD, IEEE and EU have already done a great deal of work.

Christian Åhlund, member of the Bureau of the European Commission against Racism and Intolerance (ECRI), said that ECRI was concerned about AI and discrimination. Data reflect the social and cultural contexts within which they are gathered. If AI is fed with data that reflect existing prejudices, it will reinforce them. For example, if police focus on particular areas or groups, this will produce statistics to back this up.

Furthermore, as AI systems become more complex, even developers will have problems to explain them. This undermines the right to legal recourse, which is fundamental to the rule of law. This means that some situations may require the publication of the software. He pointed to an article from The Atlantic Magazine that raised issues around ownership of data. Do data belong to me or to corporations? Finally, he referenced the study from Frederik Borgesius for the Council of Europe on AI and automated decision-making.

Wolfram von Heynitz from the German Federal Foreign Office argued that much future debate will focus on machine-based proposals. Will doctors be able to reject machine-

based solutions? Will a politician? Some AI systems are simply not explainable and there may be a limit to the level of intransparency that we can accept.

We lose the essence of democracy without trust. We cannot ban AI but we need to maintain trust. If decision-making is based on intransparent processes, this will benefit the extremists.

The self-correcting nature of democracy becomes lost in a system that is not transparent. Furthermore, if AI systems are based on a huge amount of data, there is a dictatorship of data. Sometimes, it is necessary to fight against the majority view and this requires open systems.

It is important to build capacity, ask the right questions and become an active participant that is open to, but critical of, AI. Rules are needed and these need to be on a European or global level.

He concluded by pointing to the strength of the CoE and the norm-setting role of the European Court of Human Rights.

Lorena Jaume-Palasí from the Ethical Tech Society argued that we can automate some things because they are foreseeable and we want to be able to plan, relying on the available infrastructure. When it comes to AI, software and code need to be seen as part of our infrastructure. We are faced with a problem that we rarely see individual harms in this context, while collective harms are easier to see. However, human rights are an issue concerning individuals, rather than groups.

There is value in regulating AI as infrastructure. Approaching regulation in the context of AI from an infrastructure perspective creates a fine palette of normative structures.

We tend to see the issue from a consumer or trade perspective, as concerning the individual. The European legal approach does not have a collective perspective like that seen in the USA. For example, everyone thinks about regulating the relationship between Google and the individual. If it were seen as collective infrastructure, it would be regulated differently – and possibly more adequately.

Frederike Kaltheuner from Privacy International pointed out that in Kenya, biometric voter registration data had been used to target voters. In cases like this, and like the Cambridge Analytica scandal, an authority is needed to investigate what is happening. Sometimes, the information is there but there is nobody willing or able to carry out the investigation. Even in Europe where there is good legislation, there is a problem with opacity.

Machine learning can be used to infer and predict information. We tend to focus on the decisions, but not on the information that is collected or created to produce those decisions. It is ironic that, in relation to the inferred data, it is either accurate, and therefore Orwellian, or inaccurate, and therefore Kafkaesque.

Fundamental decisions are now being made, such as adding facial recognition to CCTV. As a society, we need to come to a view as to whether this is compatible with democracy and the notion of a public space.

She concluded by saying that if we don't challenge the backbone of data sharing, we can't challenge the ecosystem.

Pekka Ala-Pietilä, Chairman of the Board, Huhtamäki, and Chair of the EU High Level Group on AI (EU HLG), provided an overview of the EU HLG's work. He stressed the need for a clear ethical framework as a basis for trust and take-up. This was the goal of the draft guidelines that were produced (and subjected to a consultation, with revised guidelines to

be produced on 9 April). These ethical guidelines will promote a human-centric and trustworthy approach, which means lawfulness, respect for core principles and technical robustness.

The subject is complex and changing. We need to leave room for innovation, so we need soft regulation, sandboxing and then hard law. We already have relevant laws, so the question is how to apply them. If “trustworthy AI” could be a characteristic of “made in Europe” then we can take the lead. We have lost the B2C market to the USA and China, but the B2B market has not been lost. Public to citizen services is a third market where the EU also has an advantage.
Finally, he said that dialogue with stakeholders was essential.

Ensuing discussion:

Opinion was expressed that we should not be afraid of new technology, but think of how to use it in the best way to secure democracy and stop hate speech and terrorism. However, an algorithm to stop hate speech would be very difficult to construct as even specialised courts disagree.

National law is no longer enough to protect electoral processes in a context where platforms have direct access to users’ data and can act across borders. The Council of Europe is best placed to provide guidance to its member states in addressing these challenges. Regulation must look at the entire electoral cycle, and implementation is essential. When in the midst of the Cambridge Analytica scandal the UK enacted the GDPR exemption for political parties, Privacy International called on political parties not to use this option, but without effect.

The importance of regulation based on democratic principles, of debate at national and international level and of multi-stakeholder and multi-sectorial approaches was stressed on many occasions. Having rules and being competitive is not mutually exclusive. Soft and hard law must also leave room for innovation. This is a long process.

The unilateral shut down of Google+ was mentioned as an illustration of how important infrastructure is. AI is nothing without underlying storage and processing capabilities. Both state and private-owned AI systems can be considered infrastructure, depending on how critical the provided service is and what effects their disruption may cause in society. There are different models for dealing with infrastructure, they also vary from state to state. As regards AI, we should look beyond trade and economic interests and take an ‘eco-tectonic’ point of view.

DAY TWO

Opening of the second day

Antti Häkkänen, Minister of Justice of Finland, acknowledged the great potential of the next generation of digital development and stressed that this needs to be rooted in common values and, globally, driven by a European example. He described the CoE’s role in this process as self-evident.

Europe is already a global standard-setter in privacy and data protection. In January, the Council of Europe launched new guidelines on artificial intelligence and data protection, while in December the Ethical Charter was adopted.

The baseline is that existing rights and freedoms should not be undermined. The principles in the Ethical Charter are equally valid outside the field of justice – respect for fundamental rights, non-discrimination, transparency and fairness and ensuring that users of AI are informed actors that are in control of the choices they make.

AI is not just supporting cost-efficient technical solutions, it is a means for supporting a democratic and inclusive society, supporting access to justice, bridging the digital divide.

We must defend key principles, such as equality before the law. Regulation must enable and not hinder development. Self-regulation and ethical guidelines must ensure compliance with the rule of law. Legislators must be ready to legislate when this is needed.

All parties need to cooperate, and we need to be proactive in finding solutions. Our task is to build trust and be open in our discussions about positive and negative impacts of AI.

Liliane Maury Pasquier, President of the Parliamentary Assembly of the Council of Europe (PACE), argued that AI is an opportunity, as demonstrated by lots of positive examples, but also a challenge of unknown proportions. We risk being left behind by technological developments. AI may regulate us if we do not have the normative and ethical standards to regulate it.

As parliamentarians, members of the PACE are very aware of regulation being the top challenge. We cannot leave it to self-regulation and ethical codes developed by industry. What is at stake is too important, as shown by the Cambridge Analytica scandal and the negative impact on election processes.

We need to look at the normative framework, establish red lines and build on existing principles. We also need to learn from existing rules such as Convention 108+ and the Oviedo Convention. These are solid norms on which global regulation can be based, as these conventions can be signed by CoE non-members.

The PACE is working on several issues including AI in labour and justice. It is prepared for close cooperation with other organisations.

It is important to work to identify future challenges. This necessitates links between NGOs, industry and others to find solutions. The PACE recently created a sub-committee on AI and human rights. The importance of the topic is shown by the presence of the President and Vice President of the Assembly at this event.

Without equality, our society cannot develop. We need a normative order. The Council of Europe is in a perfect position to develop a human rights approach for artificial intelligence.

Session III: AI and the Rule of Law

Jean Lassègue, of the French Centre for Scientific Research (moderator), asked why code “writing” is so disruptive. Laws are written texts but AI is written code. We don’t read code and don’t know the source of legality any more.

For actors in the legal context, we need to see how we can keep trust and recognition in justice.

For coders, who is legally entitled to check the source code? How do we deal with the fact that open data is free, but processed by software for which we have to pay? The larger the database, the larger the possibility of spurious correlations.

For virtual courts, how do we deal with this transformation of justice? Can we reintroduce unpredictability and freedom of judgement?

Tiina Astola, Director General for Justice and Consumers, said that there has to be democracy, respect of fundamental rights and judicial independence. So far, there is very little use of AI in courts. Only 7% of courts use AI, but 82% said that it was an important area to explore.

There are clearly problematic examples in criminal law, where AI can be used to set bail or establish guilt or innocence. Also there are examples of bias in predictive policing as well as in explainability of systems. In civil law, AI can be used to set damages, but perhaps a judge is needed to understand context.

In machine learning, we know the input and we know the output, but we do not know how the decision is made. There is a deeper problem of relying on old data or relying on a majority view. Just because everyone is doing something does not mean that it is good.

AI has the potential to be useful for finding cases, improving judges' knowledge and in administration of justice, for example by predicting bottlenecks in court.

The European Commission is working on ethics and explanation and is coordinating with Member States to have an EU-wide approach. AI in justice should not interfere with either the independence or accountability of judges.

Paul Mahoney, former Judge at the European Court of Human Rights, said that in AI, civil and political rights overlap with social, economic and political rights. Any interference with a Convention right must have an adequate basis in national law. Any such law must have certain characteristics, accessibility and foreseeability in particular.

The open-ended wording of the European Convention on Human Rights (ECHR) means that it can address new societal phenomena, through evolutive interpretation. The Malone ruling is a good example. It upheld the principle that there must be effective protection in national law against human rights abuses. The ECHR creates a positive obligation to protect against the damage caused by AI, and this extends to damage caused by private actors.

The ECHR is the bottom of the pyramid. Above this is national law and practice. Risks need to be identified by competent authorities in all of the sectors concerned. There need to be technically adequate safeguards with protection from Europe-wide conventions and guidelines on the highest level, down to national legislation and codes of conduct for the individual workplace.

In relation to bioethics, social media and mass surveillance, the Strasbourg court has shown that it can take developments into account. The challenge is now to see if there is a European consensus. Guidance can be obtained from third party briefs from NGOs, academia or other sources, including conference conclusions. The future approach is manufactured in fora such as this conference.

Finally, a case involving secret surveillance measures which raises similar issues of effective protection as in the Malone case is currently pending before the ECHR's Grand Chamber.

Georg Stawa, former President of the European Commission for the Efficiency of Justice (CEPEJ), explained that US law firms are using AI to make predictions on rulings. Their accuracy is increasing and is already up to 80%. They also use chatbots to offer advice in standard cases.

In the CEPEJ guidelines there are five criteria:

- Principle of respect of fundamental rights: ensuring that the design and implementation of artificial intelligence tools and services are compatible with fundamental rights;

- Principle of non-discrimination: specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;

- Principle of quality and security: with regard to the processing of judicial decisions and data, using certified sources and intangible data with models conceived in a multi-disciplinary manner, in a secure technological environment;

- Principle of transparency, impartiality and fairness: making data processing methods accessible and understandable, authorising external audits;

- Principle "under user control": precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.

Clara Neppel from the Institute of Electrical and Electronics Engineers (IEEE) explained that the technical community cares about human rights, as demonstrated by employee activism. Current developments were foreseen a long time ago by the technical community.

She explained that trust is a prerequisite for AI. She used the analogy of aviation. You trust a plane because it is certified. We need informed trust and, and for this, we need information. The ingredients of informed trust are:

- information on the effectiveness of the system. You need to make sure that the plane is capable of flight. This requires metrics, some of which are easy to deliver and some are more difficult. Statistics need to be valid and useable by their consumers. A trust label could be used for this.

- competence. We trust the pilot because we know he can fly the plane. There is currently no accreditation for AI. We need accreditation for designers and operators.

- accountability. Systems are often built from open source code that originally had a different purpose. Who is accountable if something goes wrong? The data provider, the coder, the user? However, this complexity should not prevent clear lines of accountability. Aviation is also complex but solutions were found. Similarly, there are problems around intellectual property and AI. This too can be solved because not all information needs to be presented to all stakeholders.

The technical community, affected individuals and others need to work together. We need a common language to discuss things like transparency.

Tuomas Pöysti, Chancellor of Justice of Finland strongly disagreed with optionality of use of AI in justice. He argued that humans are "noisy and lazy". There are several functions where machines are better than humans. They can read massive amounts of data and find hidden patterns. In criminal and administrative cases, AI can do a lot of positive things, such as predictive analytics and recognition of patterns. AI is there to help the judge, but this needs openness and explainability.

Some international regulation is needed. Law is public and knowable, while these systems are under IPR restrictions like patents and copyright. There need to be reasonable copyright exceptions to allow system auditing and this needs work. Liability is another complex issue. We need rules to give incentives to companies for ethics by design.

Tõnis Saar, Secretary General of the Ministry of Justice of Estonia said that AI in justice can be divided into two blocks. Firstly, as a supportive tool which requires data to work, and secondly, as a decisive tool. The latter should be approached with scepticism, as we cannot justify such decisions and cannot persuade courts to take this option.

We need to think differently. Ford was not thinking about how to make horses run quickly when he made his technological advances. For automated decision-making, law would need to be machine readable, detailed and binary. However, this would require regulation to a high level of detail, resulting in huge amounts of law, which kills innovation. We therefore need to regulate differently.

He argued that we need to use AI and there will be consequences if we do not. However, when decisions are taken by AI, people are needed in the process.

Ensuing discussion:

Global problems require a global approach, and there is agreement on the need for international standards. The IEEE is working with UNESCO and is part of the EU HLG. A network of networks is developing, often going from regional to global.

We need a deeper understanding of different types of machine learning. Relevant studies must always include ethical aspects and the perspective that crucial decisions should always be vetted by humans.

In justice, AI can play a supportive role, while maintaining the creative role for judges. Court rulings are often innovative and offer new interpretations, while AI can hinder this function.

The European Court of Human Rights only has jurisdiction over states, not private parties or the EU. If the effects of AI within the jurisdictions of one of the contracting states have produced a result that is contrary to the enjoyment of the Convention rights, then that state is *prime facie* responsible, regardless of where the original blame lies. The state is responsible because the state allowed it to happen.

Session IV: Tying it all together and adoption of the Conference Conclusions

Professor Markku Suksi, Åbo Akademi University, argued that while the phenomenon of AI itself cannot be regulated, its procedures, consequences and liability can and must be regulated. We must go beyond regulatory restraint, but ensure that AI is enabled through regulation. He argued that the vertical relationship between states and individuals under their jurisdiction is often overlooked. Furthermore when AI is used, traditional rules tend to be set aside or not used, because the black box is intransparent. In conclusion, he said that we are all concerned about transparency and democratic legitimacy of decision making by artificial intelligence in the public and private sectors.

Professor Karen Yeung of Birmingham Law School and School of Computer Science, argued that it is difficult to tell if new legislation is needed, due to the speed and unpredictability of change. She gave the GDPR, whose enforcement and interpretation are still open questions, as an example. Generally, there was scepticism about self-regulation as an approach, although it does have a role in complementing hard law. Institutionally, the state has a critical role as the body responsible for human rights. She said that sector specific regulatory authorities should also look at AI. Finally, she said that civil society and vulnerable groups need to be heard.

Damian Tambini, Associate Professor at the London School of Economics, pointed to the Cambridge Analytica scandal as central to discussions of democracy. This represented AI-driven targeting of opaque messages, to narrow sub-audiences which, themselves, were generated by AI, without ethics, without respect for human rights and without truth. Democracy will be changed by AI, due to its scale, the removal of human ethical oversight,

and the lack of transparency, accountability and redress. Three categories of impacts on democracy arise – direct impacts on elections, e-voting (which was not discussed) and indirect impacts on opinion formation. Human autonomy, which is undermined by the current advertising model, is also challenged and this, in turn, challenges notions of equality. He concluded by calling for more transparency, more multi-stakeholderism and more monitoring of developments.

Jean Lassègue, Research Fellow, French Centre for Scientific Research (CNRS), explained that regulation is not contradictory to innovation. Regulation can also take the form of directions and principles rather than rules. Secondly, it is necessary to go back to the user. It is important for the users to be included in the process of decision-making. Thirdly, the relationship between global and local laws was discussed and both need to be considered. He concluded by saying that Europe can have an exemplary role and this is what we should hope for.

Professor Markku Suksi then gave a brief overview of the Conference conclusions. He pointed to the references to public and private uses of AI and the positive and negative impacts of these technologies. He said that the potential of AI, but also the need for a human-centric approach, are addressed in the document. It also recognises the impact of AI on human rights, democracy and the rule of law. Supervision and oversight is of the essence and regulatory imagination is needed. Trust is needed to ensure that democratic legitimacy is achieved. The existing legal framework continues to apply, monitored by the Council of Europe and member states. This is just one step, many more need to be taken.

Ensuing discussion:

Comments from the audience highlighted some points for future debate, such as different types of AI, in particular human-like and non-human-like, and the attribution of responsibilities for risk assessments. There was broad agreement that more research is needed and that the dialogue must continue.

Closing remarks

Pekka Puustinen, Under-Secretary of State, Ministry for Foreign Affairs, Finland, thanked organisers and participants. He pointed to the opportunities and also to dangers and said that dangers require our action. He welcomed the multi-stakeholder approach and said that the conference had set a benchmark on which the necessary future work can build.

Jan Kleijssen, Director, Information Society - Action against Crime Directorate, Council of Europe, said that, after these two days, we have achieved some common views. The Council of Europe is working as a multi-stakeholder platform, working through various intergovernmental committees and with academic and scientific experts and youth representatives. It also has on-going cooperation with civil society and business. The Council of Europe is mainstreaming AI policy in all thematic areas.

We need stronger guidelines. Ethical frameworks are useful, but should be based on legal standards. He pointed to the Council of Europe's initiative on bioethics, as an example of a positive reaction to a new technology, founded on ethics but instrumentalised through law.

He concluded by saying that the Council of Europe will continue to develop sector-specific recommendations and other non-legislative measures, to identify possible gaps in applicability and enforceability of existing regulatory frameworks and will explore the

feasibility of a legal instrument that sets a general framework for the development, design and deployment of AI in conformity with the organisation’s standards.