The Global Digital Compact: opportunities and challenges for developing countries in a fragmented digital space

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THE GLOBAL DIGITAL COMPACT:
OPPORTUNITIES AND CHALLENGES FOR DEVELOPING COUNTRIES IN A FRAGMENTED DIGITAL SPACE

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In August 1995, the South Centre was established as a permanent intergovernmental organization. It is composed of and accountable to developing country Member States. It conducts policy-oriented research on key policy development issues and supports developing countries to effectively participate in international negotiating processes that are relevant to the achievement of the Sustainable Development Goals (SDGs). The Centre also provides technical assistance and capacity building in areas covered by its work program. On the understanding that achieving the SDGs, particularly poverty eradication, requires national policies and an international regime that supports and does not undermine development efforts, the Centre promotes the unity of the South while recognizing the diversity of national interests and priorities.

ABSTRACT

The adoption of a Global Digital Compact (GDC) as one of the outcomes of the Summit of the Future opens up the opportunity to address in a systematic manner issues that are of critical importance for the digital global governance. It also poses a challenge to developing countries, as most of them lack the infrastructure and capabilities to fully participate in the digital transformation. Many inequalities, including a deep digital divide, do exist and would need to be addressed by the GDC for it to become a real instrument of change and improvement in the living conditions and the prospects of a better future for most of the world population. This paper examines the current fragmentation in the digital governance and some of the issues raised by the proposals made by the UN Secretary-General for adoption of the GDC.

L'adoption, à l'issue du Sommet de l'avenir, du Pacte mondial pour le numérique (PMN) offre la possibilité d'aborder de manière systématique des questions qui sont d'une importance cruciale pour la gouvernance numérique mondiale. Elle constitue également un défi pour les pays en développement, qui, pour la plupart, ne disposent pas des infrastructures et des capacités nécessaires pour participer pleinement à la transformation numérique. De nombreuses inégalités, y compris une profonde fracture numérique, existent qui doivent être abordées dans le cadre du Pacte afin que celui-ci puisse devenir un véritable instrument de changement et d'amélioration des conditions de vie et donner à la majeure partie de la population mondiale l'espoir d'un avenir meilleur. Ce document examine la fragmentation actuelle de la gouvernance numérique et certaines des questions soulevées par les propositions faites par le Secrétaire général des Nations unies en vue de l'adoption du Pacte mondial pour le numérique.

La adopción de un Pacto Digital Global como uno de los resultados de la Cumbre del Futuro presenta la oportunidad de abordar de manera sistemática cuestiones de una importancia crítica para la gobernanza digital global. También plantea un reto para los países en desarrollo, ya que la mayoría de ellos carecen de infraestructura y capacidad para participar plenamente en la transformación digital. Existen muchas desigualdades, en particular una profunda brecha digital, que el Pacto Digital Global tendría que abordar para convertirse este en un verdadero instrumento de cambio y mejora de las condiciones de vida y las perspectivas de un futuro mejor para la mayoría de la población mundial. En este documento se examinan la fragmentación actual que existe en la gobernanza digital y algunas de las cuestiones planteadas en las propuestas formuladas por el Secretario General de las Naciones Unidas para la adopción del Pacto Digital Global.

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I. INTRODUCTION

One of the proposals made by the United Nations (UN) Secretary-General (UNSG) in his report "Our Common Agenda" (A/75/982)[2] was the adoption of a 'Global Digital Compact' (GDC). The main objective of this proposal was "to protect the online space and strengthen its governance" based on "shared principles for an open, free and secure digital future for all".[3] The report added that the complex digital issues that could be addressed could include: reaffirming the fundamental commitment to connecting the unconnected; avoiding fragmentation of the Internet; providing people with options as to how their data is used; application of human rights online; and promoting a trustworthy Internet by introducing accountability criteria for discrimination and misleading content.[4] The GDC would also address artificial intelligence (AI) to ensure that its development and application is aligned with shared global values.[5]

The agenda as set in the UNSG's report is timely and may allow to address in the UN many of the contemporary issues that raise concern with regards to digital transformation, such as data governance, the protection of privacy and human rights and the digital divide. The latter certainly is of major relevance: in accordance with the International Telecommunication Union (ITU), 2.7 billion people – roughly one-third of the global population – remain unconnected to the Internet, essentially in developing countries and least developed countries (LDCs).[6] Of course, the impact of and how to regulate the use and development of AI have become new priorities of public policy in both developed[7] and developing countries.[8] The GDC would hence have to address issues that concern current participants in the digital world but also, and importantly, how those who are still unconnected can be integrated into the digital space with the necessary measures to address the risks to family health, cultural identity, personal and community privacy, economic livelihood, political independence, and even the safety of people, among others.[9] In addition, it should make sure that those already digitally integrated are sufficiently digitally literate (as to prevent, among others, vulnerability to misinformation

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[2] United Nations, Our Common Agenda - Report of the Secretary-General (August 2021). Available from https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F982&Language=E&DeviceType=Desktop&LangRequested=False.

[3] Idem, p. 45.

[4] Idem, p. 46.

[5] Idem, p. 46.

[6] International Telecommunication Union, "Facts and Figures 2022: Latest on global connectivity amid economic downturn", 30 November 2022. Available from https://www.itu.int/hub/2022/11/facts-and-figures-2022-global-connectivity-statistics/.

[7] See e.g. the White House, "The Impact of Artificial Intelligence on the Future of Workforces in the European Union and the United States of America - An economic study prepared in response to the US-EU Trade and Technology Council Inaugural Joint Statement". Available from https://www.whitehouse.gov/wp-content/uploads/2022/12/TTC-EC-CEA-AI-Report-12052022-1.pdf; see also European Parliament, "EU AI Act: first regulation on artificial intelligence", 14 June 2023. Available from https://www.europarl.europa.eu/news/en/headlines/society/20230601STO93804/eu-ai-act-first-regulation-on-artificial-intelligence.

[8] ABP News, "BRICS Nations Call For Effective Global Framework On AI, Emphasise On Ethical Development", 2 June 2023. Available from https://news.abplive.com/technology/ai-brics-nations-call-for-effective-global-framework-on-artificial-intelligence-emphasise-on-ethical-development-1606406; see also: Cyberspace Administration of China, Interim Measures for the Management of Generative Artificial Intelligence Services. Available from http://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm.

[9] "As our world embraces a digital transformation, innovative technologies bring greater opportunities, cost efficiencies, abilities to scale globally, and entirely new service capabilities to enrich the lives of people globally. But there is a catch. For every opportunity, there is a risk. The more dependent and entrenched we become with technology the more it can be leveraged against our interests. With greater scale and autonomy, we introduce new risks to family health, personal privacy, economic livelihood, political independence, and even the safety of people throughout the world." Mathew Rosenquist, "The 7 most dangerous digital technology trends", Help Net Security, 10 December 2019. Available from https://www.helpnetsecurity.com/2019/12/10/dangerous-digital-technology-trends/.

and online fraud) and that the rules governing platforms, intermediaries and companies are robust, with sufficient accountability, redress and liability mechanisms, and transparency.[10]

The global digital governance is currently fragmented, even in relation to other international law and global governance areas such as trade and investment, in which developing countries may struggle to adequately negotiate the issues, due to capacity constraints and power imbalances.[11] There is no single United Nations or multilateral body dealing with the wide array of issues that are covered under the label of 'digital'. Rather, there are multiple multilateral and multi-stakeholder fora that deal with different but related digital governance issues. For instance, negotiations taking place along the side lines of the World Trade Organization (WTO) on e-commerce amongst a subset of WTO Members, including on cross-border data flows[12]; the World Health Organization (WHO) oversees digital health, including the use of data and AI to improve health outcomes, as well as a global strategy on digital health[13]; the International Telecommunication Union and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have been at the forefront of setting global norms on AI ethics[14], and so on. Recognizing the intersection of all these issues, and the inherent challenges facing the digital world (data, digital and innovation divides), the GDC would be the first global framework on our digital future. Even if it cannot end or truly diminish the fragmentation of digital governance, this unifying effort remains indeed a major, important challenge, as shown by the multiplicity of fora and ongoing processes, and as discussed in more depth below.

In moving forward the agenda on the GDC, the UNSG produced the Our Common Agenda Policy Brief 5, "A Global Digital Compact – an Open, Free, and Secure Digital Future for All" ('the Policy Brief')[15], pursuant to a series of informal and formal activities related to the GDC process. The GDC is expected by the UNSG to be one of the main outcomes of the "Summit of the Future", which is to be held in September 2024 to "articulate a shared vision of an open, free, secure and human-centered digital future that rests on the purposes and principles of the

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[10] For governance suggestions in the context of platforms and its interface with competition and data, see B. Kira, "Platform Design and Recommendation Systems: Implications for Competition, Data Privacy, and Platform Governance", in *Research Handbook on Competition Law and Data Privacy,* M. Ioannidou and D. Mantzari, eds. (Cheltenham, UK, Edward Elgar Publishing, forthcoming).

[11] Although fragmentation itself may not necessarily signify a governance problem – nor is unification necessarily a solution –, the particular material condition of developing countries may impede their sufficient participation, particularly in emerging regulatory fields such as those related to digital governance. For a broader assessment of the governance issues for developing countries and LDCs in the context of global health, but equally applicable to digital governance, see Obijiofor Aginam, "The Proposed Pandemic Treaty and the Challenge of the South for a Robust Diplomacy", *SouthViews* No. 218, 19 May 2021. Available from https://www.southcentre.int/wp-content/uploads/2021/05/SouthViews-Aginam.pdf.

[12] See World Trade Organization, "Joint Initiative on E-Commerce". Available from https://www.wto.org/english/tratop_e/ecom_e/joint_statement_e.htm. It is worth noting that the United States Trade Representative (USTR) announced on October 25, 2023, withdrawal of US support for provisions promoting free cross-border data flows. See South Centre, "U-turn by the U.S. Trade Representative to rein in the Big Tech Digital Trade Agenda", 15 November 2023. Available from https://www.southcentre.int/sc-statement-on-ustr-jsi-e-commerce-decision-15-november-2023/#:~:text=SC%20Statement%20on%20USTR%20JSI%20E%2DCommerce%20Decision%2C%2015%20November%202023,-Share%20this%20publication&text=The%20landmark%20shift%20by%20the,side%20lines%20of%20the%20WTO.

[13] World Health Organization, "Digital Health". Available from https://www.who.int/health-topics/digital-health#tab=tab_1

[14] International Telecommunication Union, "Artificial Intelligence for good". Available from https://www.itu.int/en/mediacentre/backgrounders/Pages/artificial-intelligence-for-good.aspx; UNESCO, "Recommendation on the Ethics of Artificial Intelligence". Available from https://www.unesco.org/en/artificial-intelligence/recommendation-ethics.

[15] United Nations, "A Global Digital Compact – an Open, Free, and Secure Digital Future for All", Our Common Agenda Policy Brief 5 (May 2023). Available from https://digitallibrary.un.org/record/4011891/files/%5EEOSG_2023_5%5E--EOSG_2023_5-EN.pdf.

Charter of the United Nations, the Universal Declaration of Human Rights and the 2030 Agenda".[16]

This document describes the fragmentation of the digital governance and the background and mandate of the GDC, and provides comments on some of the issues raised and the proposals made by the UNSG in his document.

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[16] Idem, p. 11.

II.   DIGITAL FRAGMENTATION

There is no single multilateral body dealing with digital governance. Previous attempts to create one or various UN-led intergovernmental Internet governance body or bodies have failed.[17] The World Summit on the Information Society (WSIS) led to the creation of the Internet Governance Forum (IGF) in 2005, a multi-stakeholder body in which Member States, intergovernmental bodies and organizations, private sector, civil society organizations and the tech industry were expected to have a voice and direct participation in Internet governance.[18] Developed countries have historically argued that a multilateral, but Member States-only body, would lead to potential censorship and content moderation which would impede the very foundational idea of a free Internet. However, heightened preoccupations about market power of platforms and the failures to combat misinformation and hate speech have led to recent changes in the position of most countries towards a more nuanced view whereby some form of regulation and liability regime is needed (instead of a full deregulation), with calls for new solutions at the multilateral level.[19] From the perspective of most developing countries, the multi-stakeholder model exacerbates the influence and lobbying of private actors to the detriment of the public interest, and the fact that some bodies are straightaway dominated by the United States (notably the Internet Corporation for Assigned Names and Numbers - ICANN), not to mention the critical infrastructure of the Internet, has always been a matter of major concern. Admittedly, many developing countries also have historically very divergent views on how to govern the Internet in the most appropriate manner, and governments have often clashed and/or allied with civil society organizations of various kinds.

In addition, there are often intertwinements and indirect ways whereby one organization's work and mandate on digital governance matters may influence others. Agreements in one forum, such as the ITU, can be deployed in other fora, such as the World Intellectual Property Organization (WIPO), to advance a digital agenda.[20] In other instances, the problems identified in one sphere may raise cautionary attention in others.[21]

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[17] The UN-led World Summit on the Information Society (WSIS) was initially held in 2003, with a series of areas of Internet governance to be discussed, including the takeover of the private-led and US-controlled Internet Corporation for Assigned Names and Numbers (ICANN) to a UN-led body to be created. Pursuant to the failure to reach a consensus, the Working Group on Internet Governance (WGIG) was formed in December 2003. The second WSIS was held in 2005, with a series of recommendations and the Tunis Agenda. The WGIG wrapped up without any form of consensus, and not even a non-binding outcome document, given the massive divergences between countries – particularly developed countries and some developing countries – on issues such as content moderation.

[18] See Internet Governance Forum (IGF) at https://www.intgovforum.org/en.

[19] For example, see https://www.reuters.com/business/macron-eu-will-draw-up-regulation-fight-hate-social-media-2021-12-09/.

[20] For example, the criticism of how data from developing countries is widely extracted and used by developed countries' companies without any compensation and without real conditions for users and institutions from the Global South to accrue benefits from it is a topic often raised in the context of digital connectivity and technical regulations. This perspective can and has been brought to WIPO-related discussions to reflect on the most appropriate intellectual property (IP) copyright regime so that individuals and institutions (both public and private) benefit from limitations and exceptions (L&Es) such as those to enable research and education, while also ensuring fair remuneration of authors and creators, notably in the digital environment. It may also provide the grounds for developing countries to reorient the ongoing debates on IP and AI taking place at WIPO, which generally do not relate at all to issues of fairness and global inequality between North and South.

[21] In one paradigmatic case, for instance, the countries with Amazon Forest brought a claim at the multi-stakeholder (but not multilateral) organization ICANN against the US company Amazon for the registration of a high-level domain name (amazon), pointing that this would be a privatization of the name 'Amazon' (see, e.g. The Conversation, "Amazon wins 'amazon' domain name, aggravating South American region and undermining digital commons", 21 June 2019. Available from https://theconversation.com/amazon-wins-amazon-domain-name-aggravating-south-american-region-and-undermining-digital-commons-118186). The case motivated discussions at WIPO on the protection of country names against misappropriation via trademarks and on misappropriation of traditional knowledge.

In the absence of any systematic form of digital governance at the multilateral level, States adopt different national strategies in their quest to meaningfully participate in the global digital scenario. In fact, it is not uncommon for the same countries and regional groups to adopt divergent positions in two or more different fora. Some countries, however, have enacted specific digital foreign policies that aim at being comprehensive and cross-cutting (e.g., Switzerland[22]), while others have set up diplomatic tech envoys specifically dedicated to dealing with digital technology companies (e.g., Brazil nominated the first tech envoy to the Silicon Valley in 2021[23]).

The US, through transnational governance of its big tech firms, perhaps has the greatest stake. This is aided by its regulatory approach to innovation which is a hybrid between state-led funding and positive regulation in the early Internet age[24], a more recent lax approach in which technology firms have themselves transformed law and legal institutions to accommodate new information capabilities such as data extraction and algorithmic surveillance.[25] Internationally, the US policies, often entrenched in free trade agreements, continue to consolidate the US' powers abroad.[26] The US Executive Order of October 30, 2023 on "safe, secure, and trustworthy artificial intelligence" sets new standards, *inter alia*, on AI safety and security and contains a mandate for their internationalization.[27]

The European Union, while not a leader in digital innovation, has great regulatory power through the externalization of its rules, standards, and norms – a phenomenon known as the "Brussels effect."[28] Through the Brussels effect, the EU influences regulatory approaches taken by tech companies that operate throughout the world. This is mostly seen with the EU's General Data Protection Regulation (GDPR) but may also extend to regulation of AI and data governance.[29] As the EU is of significant market importance to these companies, they find it more beneficial – and actually *necessary* to achieve European market access – to adopt EU standards even in non-EU markets. The GDPR has had significant influence in not only the regulatory choices of tech companies; it has also emerged as a model law on personal data protection in many other countries. Additionally, the EU is itself expanding its influence by forging partnerships with developing countries. For instance, the Africa-Europe Digital Economy partnership[30] promotes EU's regulatory norms and standards in African countries, what could enable free data flows among the different countries.

The success of digital strategies for most Global South countries is still largely limited by pre-existing unequal structures, notably in terms of digital infrastructure, cost of digital services

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[22] See: https://www.eda.admin.ch/missions/mission-onu-geneve/en/home/news/publications.html/content/publikationen/en/eda/schweizer-aussenpolitik/Digitalaussenpolitik_2021-2024.
[23] See https://theunbrief.substack.com/p/interview-with-deputy-consul-general.
[24] See generally, Marianna Mazzucato, *The Entrepreneurial State: Debunking Public vs. Private Sector Myths* (Anthem Press, 2013).
[25] See generally, Julie Cohen, *Between Truth and Power: The Legal Construction of Informational Capitalism* (Oxford University Press, 2019).
[26] Mira Burri and Rodrigo Polanco, "Digital Trade Provisions in Preferential Trade Agreements: Introducing a New Dataset", *Journal of International Economic Law* (2020). Available from https://boris.unibe.ch/139789/1/jgz044.pdf. See the current free trade agreements signed by the USA with e-commerce chapters at https://ustr.gov/issue-areas/services-investment/telecom-e-commerce/e-commerce-fta-chapters.
[27] See https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/30/fact-sheet-president-biden-issues-executive-order-on-safe-secure-and-trustworthy-artificial-intelligence/.
[28] Anu Bradford, *The Brussels Effect: How the European Union Rules the World* (Oxford University Press, 2020).
[29] Marc Stuhldreier, "Data Access and the EU Data Strategy: Implications for the Global South", Policy Brief, No. 122 (Geneva, South Centre, 2023).
[30] European Commission, "Africa–Europe Alliance: European Commission and African Union Commission welcome the Digital Economy Task Force Report", 13 June 2019. Available from https://digital-strategy.ec.europa.eu/en/news/africa-europe-alliance-european-commission-and-african-union-commission-welcome-digital-economy.

and the resulting exclusion of a large part of the population, particularly women and girls,[31] not to mention the power disparity *vis-à-vis* developed countries. Presently, the global struggle to shape the internet's trajectory has resulted in concentration of power among a few nations, often referred to as "digital empires" i.e., the United States, China, and the European Union.[32]

China, which has become a digital super-power, is the origin of many projects supporting digital development across the developing world. Through such projects, China supplies other developing countries, especially in South-East Asia and Africa, with more affordable (compared to US and EU exports) technology devices like smartphones, and builds cheaper Internet and data infrastructure.[33] In addition, being also a super-power in AI, its regulatory standards may end up serving as the basis for other countries' own national policies and laws, such as the generative AI regulations of July 2023.[34]

This complex scenario is reflected in the alluded fragmentation of the digital global governance. In the Annex, key issues discussed in some of the GDC 'thematic deep-dive sessions' and the various organizations where different aspects of digital governance are being considered, either directly or indirectly, are presented. It confirms the high level of dispersion existing in this area, a problem that the GDC should contribute to resolve.

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[31] Hafsah Muheed, "The gender digital divide must be bridged to ensure we leave no one behind", UN Women, 16 March 2023. Available from https://asiapacific.unwomen.org/en/stories/feature-story/2023/03/the-gender-digital-divide#:~:text=The%20digital%20divide%20impacts%20gender,for%20education%20and%20financial%20independence.

[32] Anu Bradford, *Digital Empires, The Global Battle to Regulate Technology* (Oxford University Press, 2023).

[33] See, for some (divergent views) on the topic: "Chinese activities related to the Digital Silk Road make an important contribution to providing Internet access to more communities in developing and emerging economies; quite in line with European efforts to do so. Chinese ICT infrastructure financing in Africa surpassed the combined funds from multilateral agencies, G7 nations and the African countries themselves in 2015 and 2017, with annual funding surpassing USD 1 billion." Merics, "Networking the 'Belt and Road' - The future is digital", 28 August 2019. Available from https://merics.org/en/tracker/networking-belt-and-road-future-digital; see also https://www.cfr.org/sites/default/files/pdf/Chinas%20Digital%20Silk%20Road%20and%20Africas%20Technological%20Future_FINAL.pdf; from an American perspective: Daria Impiombato, "Chinese Telecommunications Giants and Africa's Emerging Digital Infrastructure", 3 May 2022. Available from https://www.nbr.org/publication/chinese-telecommunications-giants-and-africas-emerging-digital-infrastructure/.

[34] See https://www.dataprotectionreport.com/2023/07/china-finalises-its-generative-ai-regulation/.

III.   BACKGROUND OF THE GDC

In July 2018, the UNSG convened a High-level Panel on Digital Cooperation[35] to advance proposals to strengthen cooperation in the digital space among governments, the private sector, civil society, international organizations, academic institutions, the technical community and other relevant stakeholders. Upon completion of deliberations, the panel submitted its final report titled "The Age of Digital Interdependence,"[36] in June 2019. It recommended five areas in which the international community could work together to utilize the benefits of digital technologies while mitigating their risks. These areas are: (i) building an inclusive digital economy and society; (ii) developing human and institutional capacity, (iii) protecting human rights and human agency, (iv) promoting digital trust, security and stability, and (v) fostering global digital cooperation.

Based on these recommendations and a series of roundtable discussions with the various relevant stakeholders mentioned above, the Secretary-General prepared in 2020 a "Roadmap for Digital Cooperation",[37] which identifies the following eight key areas for action: (1) Achieving universal connectivity by 2030, (2) Promoting digital public goods to create a more equitable world, (3) Ensuring digital inclusion for all, especially the most vulnerable, (4) Strengthening digital capacity building, (5) Ensuring the protection of human rights in the digital environment, (6) Supporting global cooperation on artificial intelligence, (7) Promoting trust and security in the digital environment.

One of the outcomes of the discussions leading to the Roadmap was the proposal that the UN would serve as the convener and platform for a multi-stakeholder policy dialogue on these issues. A UN Envoy on Technology was appointed in 2021 to serve as the focal point for digital cooperation.[38]

The UNSG's Envoy on Technology coordinates the GDC, while the Permanent Representatives of Sweden and of Rwanda were appointed in October 2022 by the President of the UN General Assembly to co-facilitate the intergovernmental process of the GDC.[39] New consultations with Member States and other stakeholders (once again, including technology companies, academia, and civil society) began in January 2023 and continued thereafter.

In the first half of 2023, the Co-facilitators and the Secretariat organized a series of thematic deep dive consultation sessions.[40] In addition, in May 2023, the UNSG Policy Brief already outlined key areas where multi-stakeholder digital cooperation is deemed to be urgently

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[35] See https://www.un.org/en/sg-digital-cooperation-panel.

[36] United Nations, *Report of the UN Secretary-General's High-level Panel on Digital Cooperation - the age of digital interdependence* (June 2019). Available from https://www.un.org/en/pdfs/DigitalCooperation-report-for%20web.pdf.

[37] United Nations, Report of the Secretary-General- Road map for digital cooperation: implementation of the recommendations of the High-level Panel on Digital Cooperation (29 May 2020). Available from https://digitallibrary.un.org/record/3864685?ln=en. .

[38] Mr. Amandeep Singh Gill, UN Secretary-General's Envoy on Technology. See https://www.un.org/sg/en/content/profiles/amandeep-gill.

[39] See https://www.un.org/techenvoy/global-digital-compact/intergovernmental-process.

[40] Between January and June 2023, the GDC co-facilitators held joint muti-stakeholder consultations focused on eight thematic issues i.e., 'thematic deep-dives'. These are:
1.   Digital inclusion and connectivity,
2.   Internet governance,
3.   Data protection,
4.   Human rights online,
5.   Digital trust and security,
6.   AI and other emerging technologies,
7.   Global digital commons, and
8.   Accelerating progress on the sustainable development goals (SDGs).

needed. An Issues Paper was released in September 2023, following the outcomes of the consultations and other inputs received so far.[41] Negotiations on the GDC will take place from the end of 2023 until the second quarter of 2024. The process is expected to conclude, also as noted above, with the Summit of the Future in September 2024.

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[41] See https://www.un.org/pga/77/2023/09/01/letter-from-the-president-of-the-general-assembly-global-digital-compact-co-facilitators-letter-issues-paper/.

IV.   THE UNSG POLICY BRIEF ON GDC

As one of the milestones of the GDC development, the Policy Brief outlines areas in which the need for multi-stakeholder digital cooperation is urgent, namely: (i) closing the digital divide and advancing sustainable development goals (SDGs), (ii) making the online space open and safe for everyone, and (iii) governing AI for humanity.[42]

The main purpose of the GDC would be, in accordance to the Policy Brief, to advance multi-stakeholder cooperation; to establish a global framework for bringing together and leveraging existing digital cooperation processes to support dialogue and collaboration among regional, national, industry and expert organizations and platforms, according to their respective mandates and competencies, and facilitate new governance arrangements where needed, and to identify achievable and measurable actions in support of its implementation.

The UNSG Policy Brief presents the rationale for adopting a Global Digital Compact in line with the principles and obligations under the United Nations Charter. It considers, in particular, the need to empower women and girls, children, and persons in vulnerable situations to exercise their rights, and to respond to the gaps in their access to digital means. The document also highlights the need for accountability of digital platforms, including private businesses, and the role of other stakeholders in ensuring that digital transformation is safe and benefits all.

This section comments on some of the main aspects of the Policy Brief of particular relevance for developing countries.

a) Design of the GDC, Follow-up and Review

The process for adoption of the GDC should serve to strengthen multilateralism and to recognize and act on the needs of developing and least developed countries, which are the ones facing major hurdles originating from the digital divide and the market power of the major tech companies. The process should be articulated in a way that prevent such companies from promoting their business interests and legitimize them in the UN context; it should rather enhance the opportunity for governments to set policies for the common good and with the participation of civil society and communities that are facing the challenges of digital transformation. The process should guarantee a State-led open discussion while identifying any conflict of interest that could undermine the development of an outcome guided by the global public interest.

The Policy Brief suggests objectives and actions to advance cooperation and safeguard the digital future while advancing it, as well as a set of principles. From a Global South perspective, it would be salutary to add 'development' as either a standalone principle or to explicitly integrate development considerations (or a development-oriented approach or focus) into the "open, free, secure and human-centred digital future" framework. This cannot be replaced by reference to 'innovation' or 'innovative' frameworks (also see section "d", below), nor 'secure' frameworks.

An essential element would be for the GDC to contain specific targets so that progress can be measured and monitored. For the time being, the actions proposed are largely disengaged or only indirectly related to the main issues identified (the digital, innovation gaps, inequality, and

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[42] United Nations, "A Global Digital Compact – an Open, Free, and Secure Digital Future for All", Our Common Agenda Policy Brief 5 (May 2023). Available from https://digitallibrary.un.org/record/4011891/files/%5EEOSG_2023_5%5E--EOSG_2023_5-EN.pdf.

governance limits). The creation of new bodies and a UN mandate without such possibility of measurement can be counterproductive to the existing global digital governance.

While addressing duplication of efforts and fragmentation are indeed important objectives, the mechanisms envisaged for participation of stakeholders should not undermine what essentially needs to be a States-led process. A mechanism of conflict of interest should be created, in particular, to avoid industry direct and indirect lobbying in regulation.[43]

The use of digital technologies to promote wider consultations is salutary but needs to be tied to concrete measures to both enhance connectivity and access in developing countries and least developed countries (LDCs), and to adequately ensure that effective consultation takes place.

Without concrete targets and a clearer mandate, the proposed Annual Digital Cooperation Forum will be void of impact and may continue to reproduce the problems and limited effectiveness of the existing platforms and fora, such as the IGF.[44] Specific attention to the governance and process of the proposed Digital Cooperation Forum is needed in the upcoming negotiations, considering that it is aimed at becoming the main UN-led process on digital governance across all topics.

It is also unclear how the consulted parties (including UN agencies) and consultations were reflected in the design of the Policy Brief. Considering the various topics which are not adequately represented, such as trade and intellectual property – e.g., WTO and WIPO are not mentioned nor considered as part of Figure V (UN Intergovernmental and Multi-Stakeholder Digital Cooperation Bodies and Forums) – the procedural and transparency aspects are to be further contemplated in the upcoming negotiations.

b) Tackling Market Power in the Global Digital Economy

The Policy Brief acknowledges major challenges facing the global digital economy but does not advance any means of addressing them. For instance, it recognizes that the digital economy is dominated by a handful of companies and States and warns that developing countries may become "mere providers of raw data while having to pay for the services that their data help to produce". At no point does the Policy Brief propose any mechanisms for tackling digital market power - it could have proposed actions towards national pro-competition antitrust rules[45] that can enable the growth of smaller market players in developing countries or the establishment of mutually beneficial digital value chains. It could also have proposed objectives towards tackling regulatory arbitrage by big tech companies that dominate the digital economy e.g., suggesting/endorsing principles for taxation in the absence of the

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[43] Albeit limited, the World Health Organization (WHO)'s FENSA (Framework of Engagement with Non-State Actors) is one example of a conflict of interest policy within the UN system.

[44] The 2022 Internet Governance Forum, which was held in Addis Ababa, had the lowest attendance of all sessions. Many consider that the lack of concrete outcomes deriving from this multi-stakeholder process, on the one hand, and the increased participation of the private sector, on the other hand, are responsible for a strong decrease in the interest vis-à-vis the IGF.

[45] For a few examples, see European Commission," Antitrust: Commission fines Google €2.42 billion for abusing dominance as search engine by giving illegal advantage to own comparison shopping service – Factsheet", 27 June 2017. Available from https://ec.europa.eu/commission/presscorner/detail/es/MEMO_17_1785; Federal Trade Commission (FTC), "FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook", 24 July 2019. Available from https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook. For a foundational study, see Lina Khan, "Amazon's Antitrust Paradox", *Yale Law Journal* (2017). Available from https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyyeh.pdf.

companies' physical presence. Currently, big tech companies do businesses in developing countries but systematically avoid paying taxes there.[46]

The absence of reference to rules on data flows is also highly problematic. While big tech companies and most developed countries propose a free flow of data with low levels of regulation, developing countries have insufficient infrastructure, knowledge, and technological tools for data management including consumer protection, and to turn data into intelligence, and their entities are not able to compete internationally with companies operating in a handful of countries. This structural inequity in the global data market needs to be acknowledged as a crucial feature for global regulatory purposes, including the sovereign right to adopt measures for data localization in the public interest.[47]

The issue of data localization has not been addressed in the Policy Brief. Several countries apply policy measures towards requiring digital corporations and other entities to store the data collected in a country within the country itself and not allow it to be stored in other countries or on the cloud. This is particularly pertinent in regard to the security of medical and financial data. It forms an important component of data sovereignty for developing countries, and there needs to be space within the GDC to address this issue.

c) The Role of the Private Sector in Digital Cooperation

The Policy Brief and the *Our Common Agenda* Report from which it emanates, both adopt a "multi-stakeholder approach" to global cooperation.[48] The Common Agenda calls for "inclusive, networked, and effective multilateralism" that allows participation of all relevant stakeholders, including private sector, in digital cooperation. That said, the Policy Brief does not indicate how this shift in approach to multilateralism changes the status quo. Action items are heavily geared towards Member States (who have unequal power in the digital economy in comparison with companies), and to "all stakeholders", a term that is particularly vague – which may also further reduce the duties and obligations by private companies.

To achieve genuine international cooperation, this "multi-stakeholder" approach should be accompanied by meaningful participation and accountability of all relevant stakeholders in accordance with their role and power in the digital economy. It should also explicitly address the issue of corporate capture and lobbying, and should not treat big tech platforms and their interventions the same way civil society activities and government representatives are treated. For instance, the Policy Brief could benefit from more specific action items that are targeted to the private sector who largely profit from the Internet and its affordances. The private sector can contribute to many policy objectives – they can hasten digital connectivity by investing in underserved areas where investor interest is marginal; they can provide data to fight crime; they can fund projects to accelerate the achievement of SDGs, etc. To do so, however, global governance should not rely on corporate advice nor on corporate willingness to implement an internationally agreed framework if this outcome is reached. These positive action items need not negate any other regulatory policy objectives such as data protection and localization, ethical and other rules for use of AI, consumer protection, among others.

In addition, public and private partnerships can be in some instances a useful tool to support an inclusive digital transformation, but they are not a panacea nor an instrument that can

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[46] See, e.g., Abdul Muheet Chowdhary and Sébastien Babou Diasso, "Taxing Big Tech: Policy Options for Developing Countries", Tax Cooperation Policy Brief, No. 27 (Geneva, South Centre, 2022). Available from https://www.southcentre.int/wp-content/uploads/2022/12/TCPB27_Taxing-Big-Tech-Policy-Options-for-Developing-Countries_EN.pdf.
[47] See, e.g., Bilal Zaka, "Digital Transformation: Prioritizing Data Localization", *SouthViews* No. 206, 25 September 2020). Available from https://www.southcentre.int/wp-content/uploads/2020/09/SouthViews-Zaka.pdf.
[48] See United Nations, "A Global Digital Compact — an Open, Free and Secure Digital Future for All"), p. 18.

always respond to the public needs. Strengthening public participation and oversight of public-private partnerships, guided by strong principles of transparency and the protection and respect for human rights, is necessary to support the transfer of technology, skills and knowledge needed to promote an inclusive digital transformation.[49]

d) The 'Innovation Divide' and the Lack of Mechanisms to Address It

The Policy Brief importantly acknowledges the existence of an innovation divide, which renders explicit the disproportionate power of certain companies located in a few countries. However, the actions proposed and the description of the facts do not properly address core issues on innovation. It is problematic how innovation has become an umbrella term that promises socio-economic changes and broad solutions to the Global South without addressing root causes of inequality nor the obstacles to innovate, including intellectual property regimes that prevent technological catching-up as done in the past by today's advanced industrialized countries.[50] In particular, the issue of transfer of technology and access to the outcomes of innovation (often impeded or conditioned by intellectual property rights) is largely disregarded.

Thus, technology transfer is not mentioned in the Policy Brief.[51] While developed countries have obligations regarding transferring technology to developing countries in various multilateral agreements and particularly in respect of LDCs under article 66.2 of the Agreement on Trade-Related Aspects of Intellectual Property Rights, such obligations – which are already underapplied or outright ignored – should be appropriately considered in the GDC.[52]

Intellectual property is only referred to in the section related to data governance, and to ensure that standards and frameworks for data should be conducted "in full respect of intellectual property rights", also associating such protection to the development of a trustworthy data framework. This has at least three main problems: (i) a complete disregard of the need for flexibilities on intellectual property rights as to ensure access to technologies and strengthen the freedom to operate necessary to ensure innovation through catching-up strategies, (ii) the questionable association between full intellectual property protection and the security and trust of a data system (an analogy could be made with how generic medicines have been often portrayed as equivalents of counterfeited and sub-standard medicines), and (iii) the narrow framing of intellectual property as a premise or given reality rather than a policy instrument that must be tailored in accordance with development goals.

e) Governance Gap

The issue of governance is crucial and is also at the direct interface with the issue of regulatory capacity and where regulation takes place. Apart from the difficulty – or even impossibility – to adequately regulate emerging technologies, a core problem is the current prominence or near

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[49] See South Centre, Submission to the Global Digital Compact: Apply Human Rights Online (April 2023) in https://www.southcentre.int/wp-content/uploads/2023/05/GlobalDigitalCompact_WrittenSubmission_SouthCentre_2023.pdf and Marco Schäferhoff, Sabine Campe and Christopher Kaan, "Transnational Public-Private Partnerships in International Relations", SFB-Governance Working Paper Series, No. 6 (August 2007) in https://www.files.ethz.ch/isn/95431/WP6e.pdf.

[50] See e.g. Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective* (Anthem Press, 2002).

[51] This is one objective of the Sustainable Development Goals (17.7): "promote development, transfer, dissemination and diffusion of environmentally sound technologies to developing countries on favorable terms, including on concessional and preferential terms, as mutually agreed".

[52] See also the commitments in the Doha Programme of Action available from https://digitallibrary.un.org/record/3959499?ln=en.

exclusivity of private governance as the main modus of regulation. In many respects, the regulatory standards adopted unilaterally by the big companies, such as Google and Meta, are more relevant and enforceable than those enacted by national and regional bodies. The intertwinement between private and public, and between national, regional, and international standards, generates added difficulties that further limit the regulatory capacity of States. This issue should be addressed with actions that aim at increased scrutiny of platforms, enhanced transparency mechanisms (e.g., mandatory disclosure of how certain algorithms function, on how issues such as bias and redress are treated by the companies). Clear and enforceable liability rules for corporations are needed, including the possibility of seeking redress in a foreign jurisdiction.[53]

f) Data Management

One of the major issues discussed is data management. The document differentiates between public and private data, and the benefits and risks derived from its respective use and ownership.[54]

With respect to **public data**, the document provides for the need to harness data at scale, which can inform and provide solutions to development programmes. It also incorporates the idea that data can be a 'force multiplier for progress' on the achievement of the SDGs.

Nonetheless, the achievement of such objectives relies majorly on public-private partnership and 'multi-stakeholder' platforms (see also section above on the role of the private sector). Although it recognises the need for accountability and transparency in data management, it calls for the development of a set of principles by 'other stakeholders'. While assistance and cooperation with other stakeholders is important, the development of such frameworks should be a task for the United Nations membership, rather than for a 'multi-stakeholder' initiative.

Similarly, given the multiple objectives and diversity of countries engaged in digital transformation, it would be important that reporting and monitoring standards and mechanism are not only those designed by the Organisation for Economic Co-operation and Development (OECD), as proposed in the Policy Brief, but should be developed by an organisation comprising of all United Nations Member States; for example the United Nations Conference on Trade and Development (UNCTAD) could be the organization in charge of developing such mechanism.[55]

With respect to **private data**, personal data and information should not be used only for the financial gain of digital service providers.[56] The document conceives actions towards the need for establishing legal protections on the use of personal data and privacy, but still relies on the 'user' rather than proposing how to regulate the use of this information for economic gain. Although it provides a call to action for the High-level Advisory Board on Effective Multilateralism for seeking convergence on principles of data governance, it suggests a 'multi-

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[53] Daniel Uribe and Danish, "Designing an International Legally Binding Instrument on Business and Human Rights" (Geneva, South Centre, 2020). Available from https://www.southcentre.int/wp-content/uploads/2020/07/Designing-an-International-Legally-Binding-Instrument-on-Business-and-Human-Rights-REV.pdf.
[54] On the issue of 'ownership' of data, see e.g. Carlos Correa, *Data in Legal Limbo: Ownership, sovereignty, or a digital public goods regime?*, Research Paper, No. 117 (Geneva, South Centre, 2020).
[55] See United Nations, "A Global Digital Compact — an Open, Free and Secure Digital Future for All", p. 14.
[56] Sorina Teleanu & Jovan Kurbalija, "Stronger Digital Voices from Africa: Building African Digital Foreign Policy and Diplomacy", Diplo-Foundation (November 2022), p. 86. Available from https://www.diplomacy.edu/wp-content/uploads/2022/11/Stronger-digital-voices-from-Africa.pdf.

stakeholder' approach, involving those using data for commercial purpose in the decision-making process itself.[57]

g) Digital Cooperation to Accelerate Progress on the SDGs

The Policy Brief seems to see digital technology as a panacea for development and achieving the SDGs. It misses one of the greatest lessons from information and communications technology (ICT) for development projects, i.e., that the success of digital technologies is also heavily dependent on the social, political, and cultural context of the society where the technology is deployed, and that the technology must be integrated within a particular social fabric or else it will not be adopted, or it will lead to harmful consequences in the community. This calls for the need for "design justice" in digital development projects.[58] An additional action item would be for stakeholders including international organizations to showcase good practices and derive key principles in the deployment of digital technologies for accelerating the SDGs.

Under this theme the need for **regulation** should also be recognized in order to avoid adverse societal effects from digital development projects, rather than adopting a determinist approach that digitalization will always result in positive effects. Figure II on page 8 in the Policy Brief shows a list of examples in which application of digital technology can accelerate the SDGs. The list is quite selective, somewhat "cherry picks" good effects, while leaving out negative ones. For instance, on SDG 8, the Policy Brief notes that Internet availability leads to more jobs - this is against a lot of research in this area that has demonstrated how jobs have become more precarious in the digital economy.[59] There is also a worry that artificial intelligence may lead to loss of jobs.

The path towards digital transformation will impact the labour market, particularly in those sectors where digital technologies and equipment can replace human labour, or repetitive task can be automated. Notably, digital innovation has not produced the expected spill overs in productivity *and* decent work in developed and developing countries alike; on the contrary, the digital divide has increased the inequality and development gap between the developed and developing world, including by undermining legal labour standards.[60]

While the labour displacement effect linked to digital technologies has been reflected in the production of goods, the services sector is only now identifying the benefits and setbacks that newer technologies, including AI and machine-learning technologies, could bring to the formal labour market. In addition, the platform economy based on digitalisation has led to the deterioration of the employment situation of individuals occupied in some sectors, with jobs that become precarious due to increased flexibility and reduction of the social benefits associated to the formal labour market.[61]

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[57] About the risk of this approach for the global governance and the participation of developing countries, see Harris Gleckman, *Multistakeholderism: Is it good for developing countries?*, Research Paper, No. 182 (Geneva, South Centre-TNI, 2023) available at https://www.tni.org/files/2023-09/Multistakeholderism%20Is%20it%20good%20for%20developing%20countries_EN_0.pdf.

[58] See https://www.media.mit.edu/posts/understanding-and-embedding-design-justice-in-design-processes/.

[59] See Rebecca Giblin & Cory Doctorow, *Chokepoint Capitalism: How Big Tech and Big Content Captured Creative Labor Markets and How We'll Win Them Back* (Penguin, 2022); see also J.B. Schor, W. Attwood-Charles, M. Cansoy, *et al.*, "Dependence and precarity in the platform economy", *Theory and Society,* Vol. 49 (2020), pp. 833–861. Available from https://doi.org/10.1007/s11186-020-09408-y.

[60] See South Centre's submission to the Global Digital Compact: Apply Human Rights Online, available from https://www.southcentre.int/wp-content/uploads/2023/05/GlobalDigitalCompact_WrittenSubmission_SouthCentre_2023.pdf.

[61] Ibid.

h) Financing

Closely linked to the issue of accelerating the achievement of SDGs is the need for financial support. Funds for achieving the objectives stated in the Policy Brief are supposed to be provided by international development assistance. It calls for a percentage of total international development assistance to be allocated for digital transformation.[62] It is important to note that the Official Development Assistance (ODA) provided to developing countries (notably in Africa) has dropped (a growing portion has been spent in the developed countries themselves to cover for refugees' associated costs).[63] Diverting funds that could be invested to achieve developing countries' important policy objectives, such as education, access to health, housing and food security, can only increase current limitations to the achievement of the SDGs.[64] If ODA will be used to finance the achievement of the objectives of the GDC, it would require *additional* resources and more clarity with respect to linkages between data gathering, storage and use of data for the achievement of the SDGs.

Likewise, guaranteeing access to affordable and renewable energy and infrastructure is necessary to achieve inclusive digital transformation. This objective requires considering the specific challenges faced by developing countries, including their social and economic needs, actions to achieve a transition to clean and renewable resources, consistent with the principles of equity and common but differentiated responsibilities. In particular, it should avoid overwhelming developing countries with added responsibilities that will require additional debt burden. International cooperation directed towards digital transformation should be linked to programs suitable to address climate change, one of the most pressing issues for developing countries today.

i) Upholding Human Rights[65]

The need to guarantee human rights online, achieve gender equality and protect minorities as an integral part to the efforts undertaken is part of the proposed GDC. The Policy Brief recognises that the private sector must respect human rights, and that due diligence and increased accountability are necessary,[66] but it does not propose any new or additional legal instruments with respect to remedy for any harm occurred. Although it creates an advisory mechanism facilitated by the Office of the United Nations High Commissioner for Human Rights (OHCHR), there is not an additional mechanism that increases human rights protection *vis-à-vis* the digital transformation.

It would be impossible to achieve the objectives set out in any instrument dealing with the issue of digital transformation without looking at its linkages with the obligation to guarantee the full implementation and protection of human rights by States and other stakeholders,

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[62] See United Nations, "A Global Digital Compact — an Open, Free and Secure Digital Future for All", p. 14.

[63] See Eleanor Carey, Harsh Desa and Yasmin Ahmad, "Tracing the impacts of Russia's war of aggression against Ukraine on official development assistance (ODA)" in https://www.oecd-ilibrary.org/sites/2dcf1367-en/1/3/1/1/index.html?itemId=/content/publication/2dcf1367-en&_csp_=177392f5df53d89c9678d0628e39a2c2&itemIGO=oecd&itemContentType=book#section-d1e179-ab664716e3.

[64] See Annalisa Prizzon and Bianca Getzel, "Prospects for aid in 2023: a watershed moment or business and usual?", ODI, 18 April 2023 in https://odi.org/en/insights/prospects-for-aid-in-2023-watershed-moment-or-business-as-usual/ . See as well Peter Lunenborg, *Least Developed Countries and Their Progress on the Sustainable Development Goal*, Research Paper, No. 183 (Geneva, South Centre, 2023), available at https://www.southcentre.int/research-paper-183-15-september-2023/ and South Centre Report on Key Sustainable Development Goals Midterm Review (forthcoming).

[65] This section is partially based on South Centre's submission to the Global Digital Compact: Apply Human Rights Online, op. cit.

[66] See Daniel Uribe, *Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights*, Research Paper, No. 138 (Geneva, South Centre, 2021) in https://www.southcentre.int/research-paper-138-october-2021/.

including businesses. Those rights are not only limited to civil and political rights, including the right to freedom of expression, privacy and personal security, but also include other set of rights whose realization requires access to electrical power, electronic devices, communications networks, online services as well as digital literacy.[67]

Digital transformation goes beyond interpreting existing human rights as an extension to the Internet age; it demands a broader and more differentiated approach. On the one side, peoples and countries differ in their levels of development, access to technology, values and culture. Thus, the existing digital divide is not explained only by the lack of access to technology and information, but it has deeper roots involving failures and gaps in the realization of fundamental rights, such as the right to education and culture and the right to enjoy scientific progress. On the other, the digital environment creates unprecedented situations and risks that require the definition of a new sub-set of human rights.

The proliferation of technological solutions has brought in significant human rights implications, for instance, through the use of spyware. However, this issue has not been considered in the Policy Brief. Similarly, there have also been concerns raised about the use of facial recognition technologies, and biases in algorithm training datasets which heighten risks of human rights abuses and violations, which are not addressed.

In line with this reality, the GDC should recognise that human rights are at the core of the digital transformation, which not only implies expanding the interpretation of existing human rights to the digital transformation, but identifying the gaps in human rights law that need to be addressed to guarantee that the digital transformation benefits the world population without discrimination on the basis of income, gender, race and ethnicity, disability, access to education or age. The following aspects should be considered:

- **Universal and equal access to digital tools and communications networks:** the recognition of the digital divide as one of the major challenges to achieving digital transformation for all requires ensuring universal and equal access to digital tools and online networks to all, including by promoting universal access for persons with disabilities.

- **Privacy and data self-determination:** personal data and information should not be used for the financial gain of digital service providers; an international framework needs to be developed ensuring not only the rights to privacy and not to be profiled, but also the rights to personal safety and security, to connectivity and digital self-determination.

- **Protection of people and communities facing barriers:** Ensuring the protection of children, women, persons with disabilities, indigenous peoples, and other people facing barriers is necessary to sustain and guarantee human rights in the digital transformation. Securing participation through safe and universal access to digital tools and networks of these communities are just some of the fundamental aspects of these principles, whose implementation also requires the commitment of States to develop cooperation mechanisms for sharing technologies and attaining digital literacy.

- **Fighting against poverty and inequality:** Social sustainability and inclusion should become a critical pillar for digital transformation. This requires seeking the best means for the improvement of human conditions - a precondition for a just digital transformation - for example by guaranteeing the attainment of economic, social and cultural rights, and the right to development. Digital transformation as a tool for

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[67] See UNESCO, A Global Framework of Reference on Digital Literacy Skills for Indicator 4.4.2 (2018) at https://unesdoc.unesco.org/ark:/48223/pf0000265403.

achieving social inclusion, requires the full implementation of all human rights so as to ensure an effective, accountable and inclusive process of digitalization.

Action items under the theme 'Making the Online Space Open and Safe' in the Policy Brief should also specifically address the role of platform companies in shaping online spaces. The lack of effective moderation on social media platforms has proven to result in human rights violations and even allegations of genocide being enabled. The Policy Brief only proposes a commitment towards co-regulation mechanisms, but it does not suggest any specific avenue for seeking accountability and access to justice and remedy in case of failures on part of the platforms.

The Policy Brief does not make any reference either to the need for consumer protection. Member States should legally mandate consumer protection to ensure service providers take greater responsibility in administering new technologies, and further that consumers have a right to redress if they are harmed.

As noted in the Annex, the UNESCO is currently negotiating guidelines on platform regulation. The action items should target platform companies and require them to apply agreed policies and standards to ensure that online spaces are not used for online hate, disinformation, and misinformation. The United States and EU are currently leading efforts in content moderation, and so are many developing countries such as Brazil and China (albeit with extremely distinct models).[68] However, international cooperation and the development of international standards will be needed to effectively address these and other human rights issues, as also further discussed below.

j)   An Inclusive, Open, Secure and Shared Internet

The Policy Brief rightfully mandates States to avoid blanket internet shutdowns and ensure that "targeted measures are proportional, non-discriminatory and undertaken only as necessary for transparently reported and legitimate aims and in accordance with international human rights law."[69]

It is widely acknowledged that Internet shutdowns are used by authoritarian governments to suppress dissenting voices. Therefore, leaving it to these States to determine when shutdowns are proportionate and legitimate is unhelpful. At the same time, there is a common understanding that there should be sufficient and adequate regulation of platforms in light of a context of misinformation, hate speech and algorithmic bias. This means that the objective of an inclusive, open, secure and shared Internet is not incompatible with a regulation against, in particular, practices that lead to the accrual of economic benefits from illegal online practices. If in the past this discussion was restricted to the enforcement of intellectual property rights online, this now requires a broader view on how to achieve a balance between regulation and responsibility of companies (platforms), on the one hand, and ensuring that any intervention does not impede the realization of the benefits of acceding to the Internet on an equality basis.

Accordingly, the action items should move towards establishing a right to Internet access, expressly grounding this right into international human rights instruments. The lack of adequate access to the Internet re-potentializes the risk of increase in poverty and social exclusion at the expense of human rights. Therefore, a discussion on digital rights should be

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[68] See Luca Belli, "New Data Architectures in Brazil, China, and India: From Copycats to Innovators, towards a post-Western Model of Data Governance", *Indian Journal of Law and Technology* (2022); see also: https://www.gov.br/secom/en/latest-news/brazil-asks-for-more-accountability-from-digital-platforms.

[69] See United Nations, "A Global Digital Compact — an Open, Free and Secure Digital Future for All", p. 15

incorporated into the agenda including on their implications with regards to the realization not only of civil and political rights but also of social, economic and cultural rights and on the need of adopting a universal declaration on digital rights.[70]

k) *Governing AI for Humanity and Agile Governance of AI and Other Emerging Technologies*

The rapid development of artificial intelligence has been highlighted by the Policy Brief, in particular by emphasizing on the need to strengthen AI governance. For the UNSG, there is gap with respect to the use of AI technology without clearly understanding, nor guaranteeing the accuracy or the outcomes. A welcome remark included in the brief is the recognition that digital investment should move towards "solving societal problems and shared global challenges."

The Policy Brief recognises that transparency, fairness and accountability are at the core of AI governance, but it only places responsibility on States to identify and address risks deriving from AI systems. Although it provides for the establishment of a high-level advisory body for AI within the framework of the GDC, it is necessary to consider stronger frameworks of business responsibility that guarantees States sufficient regulatory space to adopt measures intended to regulate not only the use of AI technologies, but also its development.

The issue of AI governance should not be restricted to ethics. It should also address core issues such as algorithmic bias (particularly affecting vulnerable populations), redress and injustice. The GDC should be more explicit about the need for complements to the current self-regulation approach. In this sense, it is important that the actions mention "transparency, fairness and accountability" but this should be bolder. Some initiatives should not necessarily be conducted with industry (which often exerts a prominent role), but rather as potential alternatives to it.

An additional action item here would be for States to consider mandating that all new technologies be subjected to impact assessments or regulatory approval before being released to the market. At the same time, the standard for AI regulation should not be exclusively the ones recently explored, *inter alia*, by the EU AI Act which is focused on a risk-based assessment. [71] Other solutions, such as human rights-based assessments (one proposal in the draft AI regulation law in Brazil, for instance[72]) should be explored.

Many of the large AI language models have used public databases to train the models, in many instances without the knowledge or consent of the users whose data was present in such databases. Similarly, copyrighted content[73] and even medical records[74] have been showing up within some AI models, which can compromise the privacy of data subjects. At the same time, limiting access to databases and works can impede the right to research of users and institutions, and hinder research and development capabilities.

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[70] See Mohandas Pai and Nisha Holla, "Case for a Universal Declaration of Digital Rights", *Financial Express*, 30 January 2020, available at https://www.gatewayhouse.in/digital-rights/.
[71] European Parliament, Artificial Intelligence Act 2023. Available from https://www.europarl.europa.eu/doceo/document/TA-9-2023-0236_EN.pdf.
[72] See https://www12.senado.leg.br/radio/1/projeto-em-destaque/2023/06/13/marco-legal-da-inteligencia-artificial (as of August 2023).
[73] Suzanne Bearne, "New AI systems collide with copyright law", BBC News, 1 August 2023. Available from https://www.bbc.com/news/business-66231268.
[74] Benj Edwards, "Artist finds private medical record photos in popular AI training data set", Arstechnica, 21 September 2022. Available from https://arstechnica.com/information-technology/2022/09/artist-finds-private-medical-record-photos-in-popular-ai-training-data-set/.

It is not clear to what extent global soft norms such as UNESCO's guidelines on AI ethics[75] are effective at shaping national strategies on the matter. This notwithstanding, international organizations such as the United Nations Development Programme (UNDP), UNCTAD and WTO seem to be exerting a lot of influence in digital regulation in developing countries in areas such as competition law, AI ethics, and data protection law.

While the regulation of AI is necessary, the approach to be considered has not been fully explored in the Policy Brief. There are still discussions as to whether a light touch or collaborative approach with the private sector (as in the USA, Singapore, etc.) or having a stricter framework as under the AI Act in the European Union -which classifies AI systems based on risk levels and safeguards of civil rights, with severe fines for violations- would be appropriate for regulating AI. In fact,

> [a]s countries continue their AI race, we might end up with a patchwork of legislation, rules and guidelines that might espouse conflicting values and priorities. It is no surprise that calls for global rules and an international body are also gaining traction. A future global AI agency inspired by the International Atomic Energy Agency (IAEA), an idea first put forward by OpenAI CEO Sam Altman, has garnered support from UN Secretary-General Antonio Guterres.[76]

The Policy Brief suggests, however, the establishment of a high-level advisory body for AI within the Compact, but given the still evolving nature of this technology, as well as early national and regional regulatory efforts, it should be considered whether and how an international legally binding standard that reflects the interests of developing countries could be set for AI regulation, and which multilateral forum should be made responsible for discussing and adopting it.

Finally, setting up modalities for the sharing of revenue that is being generated by the use of public data by AI should be considered, while also ensuring enough access to the training data that is required for AI development.

I) Digital Education

In the area of education, the use of digital technologies in developing countries creates opportunities but many challenges as well that need to be carefully considered in implementing educational policies. As noted by Kishore Singh, Former United Nations Special Rapporteur on the Right to Education, in this area:

> [a] two pronged strategy is required – on the one hand, setting limits to the digitalization in education and unbridled spread of so-called 'edu-tech', with a judicious approach so as to ward off against their deleterious effect of digitalization in education; and on the other hand, expanding opportunities for digitally-supported education and learning as a public good. Devising policies and programs founded upon the emerging concept of "digital commons" is momentous for universalizing access to education and learning by way of national digital platforms, accessible, free of costs, buttressed by enhanced budgetary allocations and national investment for education. [77]

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[75] UNESCO, Recommendation on the Ethics of Artificial Intelligence (2020). Available from https://www.unesco.org/en/artificial-intelligence/recommendation-ethics.
[76] See https://dig.watch/updates/digital-policy-trends-in-june-2023.
[77] See e.g. Kishore Singh, "Harnessing Digital Technologies for Education in Developing Countries: Need for a Judicious Approach", *SouthViews* No. 253, 27 October 2023. Available from https://www.southcentre.int/southviews-no-253-27-october-2023/.

A reference to the importance of access to textbooks and learning materials is also necessary. More often than not, such materials face copyright barriers that do not allow access of essential texts to students nor enable e-learning in cross-jurisdictional settings. The absence of limitations and exceptions (L&Es) for educational purposes is therefore a major problem that must be addressed.[78]

m) Data Commons

The concept that digital platforms should be treated as public utilities (therefore also under notions such as competition law essential facilities doctrine) should be supported.[79] This is an example of situations where private-only and market-only solutions are not suited to address contemporary needs, particularly in developing countries. Similarly, the Policy Brief refers to the creation of 'data commons' (p. 7). A clarification is needed as to ensure that such data commons are neither privatized nor commodifiable. This is important to the extent that existing data commons may be under the scope of intellectual property rights and other forms of exclusivity rights as a result of which third parties may not have access to the commons, going against their very objective in the first place.

While the Policy Brief advocates for investing in 'data commons', many large databases compiled using public resources have been used by private corporations for their own business purposes. The concern for developing countries is that the data collected by their governments for public purposes will be primarily used for private gain. Certain safeguards need to be set up in the GDC to ensure that any innovations or services which are derived from digital public goods are made available for public purposes in an equitable manner. For objectives such as to "pool data, AI expertise and infrastructure across borders to generate innovations for meeting the Goal targets", the entities who will have these commitments need to be clearly identified.

As already noted above, in the context of existing and emerging technologies, there is a need to ensure that they can be adapted to the different contexts of developing countries across regions. Many developing countries simply do not have the required digital infrastructure in place to effectively implement some of the digital solutions being proposed, which could result in a widening of the digital divide.

However, experience has shown that efforts to adapt technology to the local realities can work. So, sufficient flexibility needs to be built into the Compact to allow such adaptation, without facing barriers like intellectual property or end use requirements.

Further, there is a possible risk that any regulatory framework arising from the GDC might result in a consolidation of position by current market leaders. This needs to be addressed as part of the discussions as well.

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[78] See Daniel Seng, "An Empirical Review of the Copyright Limitations and Exceptions for Educational Activities", in *The Cambridge Handbook of Copyright Limitations and Exceptions*, Shyamkrishna Balganesh, Ng-Loy Wee Loon and Haochen Sun, eds. (Cambridge University Press, 2021), pp. 267 – 303.

[79] See, for example, Vicente Bagnoli, "Digital Platforms as Public Utilities" in https://doi.org/10.1007/s40319-020-00975-2.

V.   CONCLUSIONS

The adoption of a GDC as one of the outcomes of the Summit of the Future opens up the opportunity to address in a systematic manner issues that are of critical importance for the digital global governance. It also poses a challenge to developing countries, as most of them lack the infrastructure and capabilities to fully participate in the digital transformation. Many inequalities, including a deep digital divide, do exist and would need to be addressed by the GDC for it to become a real instrument of change and improvement in the living conditions and the prospects of a better future for most of the world population.

As examined in this document, the current proposals by the UNSG, while welcomed in some respects, present gaps and shortcomings from the perspective of developing countries' interests in this area. For example, although the very idea of regulation is acknowledged in the Policy Brief, it does not envisage a broader role for the UN and multilateral processes to regulate core areas of the digital governance, such as big tech platforms and AI development and use. In fact, global minimum standards for digital governance are being negotiated outside the UN along the side lines of the WTO under the Joint Statement Initiative on E-commerce, addressing issues under the respective themes of the Global Digital Compact. These emerging global minimum standards cover a wide range of issues including imposition of taxes/customs duties on electronic transmissions, data flows, localisation of computing facilities, use of financial information by financial service suppliers, interoperability of digital payment systems, electronic authentication, open government data, access to and use of the Internet for electronic commerce, consumer protection, cybersecurity and telecommunications regulation.

It will be essential that the GDC be developed under the umbrella of human rights and that it contributes to their realization, including the Right to Development. It will also be essential that the GDC be conceived a States-led rather than a multistakeholder mechanism that could lead to tech corporations participating in decision-making on the same footing as States. One major contribution of the GDC should be to overcome the current fragmentation in processes dealing with the digital transformation, which can lead to contradictory and ineffective solutions to the detriment in particular of the countries that are struggling to harness the potential of the digital transformation, while avoiding its associated risks, notably in the area of job creation.

ANNEX

Digital Governance in the light of the GDC Objectives

In this section, we map out the status of key issues under discussion in some of the GDC 'thematic deep-dive sessions' and in various organizations where different aspects of digital governance are being considered, either directly or indirectly. It does not seek to provide a thorough analysis of the positions and topics currently, but rather serve as a scoping study to highlight the variety of issues in the GDC process and the multiple existing fora for their discussion and/or implementation. Other instances must be taken into account for a broader assessment, particularly as there are many bilateral or regional instruments (e.g., free trade agreements, technical standards, regional policies and strategies), national processes (e.g. comprehensive or sectoral digital strategies in the making), and discussions at the private sector level (e.g., self-regulation statements, guidelines by large big tech companies), which may concretely have a bigger impact in areas such as AI than many developing countries' actions.

Theme 1: Digital Inclusion and Connectivity

This theme aims at achieving universal and meaningful connectivity, in order to reduce the digital divide within and between countries. Universal and meaningful connectivity involves "available, interoperable, high-quality and sustainable infrastructure; inclusive, affordable and secure coverage; and the capacity and skills for people to make full and safe use of connectivity."[80] The objectives under this theme are being pursued at the organizations below.

1. *International Telecommunication Union (ITU)*

The ITU is the UN specialized agency for information and communication technologies and is the main body that has been working on achieving the "universal and meaningful connectivity" objective. Some of the activities the ITU has undertaken under this objective include:

- Developing a framework[81] on what it means to attain "universal" and "meaningful" connectivity and how to measure both metrics - in conjunction with the UN Office of the Secretary-General's Envoy on Technology. The framework defines the "universal" dimension to mean usage by various stakeholders and the "meaningful" dimension to mean "a level of connectivity that allows users to have a safe, satisfying, enriching and productive online experience at an affordable cost." It also proposes five enablers of meaningful connectivity to include infrastructure, device, affordability, skills, and safety and security.
- Mobilizing resources and forging partnerships amongst its membership in order to expand Information and Communication Technologies (ICTs), such as mobile phones, satellites or the Internet, which provide a unique infrastructure for promoting digital inclusion.
- Tracking progress through its annual Global Connectivity Report.[82]
- Providing technical assistance and capacity building to developing countries to assist them in meeting connectivity targets. This includes not only mobilizing financial resources but also supporting development of legislation that would enhance foreign direct investment for upgrading and expanding digital infrastructure.

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[80] The Kigali Declaration of 2022, at the World Telecommunication Development Conference held in June 2022.
[81] ITU & UN Office of the Secretary-General's Envoy on Technology, "Achieving universal and meaningful digital connectivity: Setting a baseline and targets for 2030" (2022).
[82] See e.g., https://www.itu.int/itu-d/reports/statistics/global-connectivity-report-2022/.

2. United Nations Children's Fund (UNICEF)

The UNICEF works on promoting digital connectivity for children. UNICEF works to promote Internet access, and digital literacy for children but also advocates for policies that ensure children's rights extend to the online space. They have developed a "Policy Guide on Children and Digital Connectivity."[83] In this guide, UNICEF advances principles for extending affordable internet access and digital skills to children around the world and recommends safeguards for keeping children safe online. These include online content moderation to avoid exposure to inappropriate content, child abuse and exploitation; privacy and identity protection, cyberbullying; misinformation and fake news. UNICEF continues to monitor internet developments as they relate to protection of children online.

Specific to internet connectivity, UNICEF provides data on access to remote learning and digital connectivity for children across the world, and identifies potential areas for collaboration among governments, private sector, non-governmental organizations (NGOs) and other education stakeholders.[84] UNICEF and ITU have also launched the Giga Initiative with the goal of connecting every school to the internet.[85]

3. The ITU/United Nations Educational, Scientific and Cultural Organization (UNESCO) Broadband Commission for Sustainable Development

The Commission is a public/private partnership to promote universal access to broadband and mobile technologies. The Commission is composed of over 50 members who engage in high-level advocacy to promote broadband in developing countries and underserved communities. In its 2022 Report, *State of Broadband 2022: Accelerating Broadband for New Realities*, the Commission made recommendations for realizing universal connectivity.[86]

The Recommendations call for more funding and investment in broadband, and advocate for a favorable regulatory environment for such investment. They also propose a 7-point toolkit that could enable broadband adoption: data protection; reduction in greenhouse emissions by ICT companies; more specific metrics for measuring progress; policy measures that incentivize affordable broadband services; stronger Internet networks; enabling remote learning and education; and greater investment in broadband infrastructure.

4. UNESCO Internet for Trust (regulation of platforms draft guidelines)

The issue of access to literacy in the online environment as a means to combat misinformation is an integral element of the discussions on guidelines on the regulation of platforms, currently discussed under the auspices of an intergovernmental process led by UNESCO.

5. United Nations Conference on Trade and Development (UNCTAD) e-commerce and digital economy

As part of the e-commerce initiative,[87] UNCTAD treats the issue of connectivity as a development and trade matter. ICT access (including mobile connectivity, smartphone adoption, affordability, and internet use) are treated as development indicators, and UNCTAD often advocates for better measurement of ICT indicators and statistics in developing

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[83] UNICEF, Policy Guide on Children and Digital Connectivity, June 2018.
[84] See https://data.unicef.org/resources/remote-learning-readiness-index/.
[85] See https://www.unicef.org/innovation/giga.
[86] See https://www.broadbandcommission.org/recommendations/.
[87] See https://unctad.org/topic/ecommerce-and-digital-economy.

countries. It also recommends domestic internet infrastructure such as internet exchange points, and co-location data centres.[88]

Theme 2: Internet Governance

1. *ITU*

ITU plays a facilitating role in the coordination of international public policy issues pertaining to the Internet and the management of internet resources, including internet protocols, internet domain names and addresses.[89] The ITU also hosts the World Summit on Information Society (WSIS), which continues to be an important forum despite a certain decrease in expectations about its outcomes and funding. The latest March 2023 conference, held at the ITU headquarters, was limited in comparison with what it once was.

2. *Internet Governance Forum (IGF)*

Created in 2006 by the UN as an outcome of the WSIS, the IGF is a multi-stakeholder community that meets once a year to dialogue on issues relating to privacy, digital content, human rights, and interconnection. The IGF has also recently seen a limited participation given its lack of concrete outcomes and the wide scope of its mandate – including cybersecurity, human rights online, privacy, infrastructure, connectivity, and Internet governance structures. The most recent IGF in Addis Ababa had the lowest participation so far. From the point of view of Member States, the multi-stakeholder emphasis of IGF limits their participation; from the point of view of civil society and tech activists, the lack of real commitments by States is equally underwhelming; from the point of view of private companies, their regulatory efforts focus at the national and regional levels (in the case of the EU), and in their private self-regulation standards.

See https://www.intgovforum.org/en.

3. *Internet Corporation for Assigned Names and Numbers* (*ICANN*)

The ICANN was incorporated under Californian law as a non-profit organization and works under a Memorandum of Understanding (MoU) with the US Department of Commerce for certain key functions of the Internet. ICANN is responsible for managing and coordinating the Domain Name System (DNS) to ensure that every address is unique and that all users of the Internet can find all valid addresses. It does this by overseeing the distribution of unique IP addresses and domain names. It also ensures that each domain name maps to the correct IP address.

See https://www.icann.org/.

4. *Internet Engineering Task Force (IETF)*

The IETF is a standards organization responsible for technical standards of the Internet, without formal representation and divided in multiple committees. Although originally supported by the US government (which still retains large control over the Internet infrastructure as a whole), it is nowadays managed by Internet Society, a leading non-profit organization in the field with multiple chapters around the world. The technical standards by IETF are particularly important for the Internet governance as they are the *de facto* standards followed by most companies and institutions around the world, even if they are in principle

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[88] See e.g., UNCTAD Digital Economy Report 2021, page 38, available at https://unctad.org/system/files/official-document/der2021_en.pdf.
[89] See https://www.itu.int/en/action/internet/Pages/default.aspx.

voluntary in nature. Participation by developing countries remains particularly small, as first-mover advantage by developed countries and overall existing inequalities – including to attend meetings – contribute to enhancing the gap despite some efforts.

5. *Internet Governance Forum Leadership Panel on Effective Multilateralism*

This Panel was appointed by the Secretary-General in 2022 to support and strengthen the IGF, as to "address strategic and urgent issues and highlight Forum discussions and possible follow-up actions, in order to promote greater impact and dissemination of IGF discussions."[90] As another multi-stakeholder body, its 10 members appointed by the Secretary-General, plus 5 *ex officio* representatives, is composed of: "ministerial-level Government representatives, executive-level representatives of the private sector, civil society and the technical community, as well as "at-large" prominent persons in the field of digital policy." It is to be seen whether it will concretely influence the negotiations and processes at IGF.

6. *World Intellectual Property Organization (WIPO)*

Although not directly implicated in Internet Governance, WIPO administers a well-known arbitration and mediation center that addresses DNS disputes. The implications of domain names which cover country names have also been brought to WIPO in the context of trademarks: some countries oppose trademarks which contain country or geographical names, similar to the opposition that domain names including countries' names (geographical regions such as the Amazon) be owned by private entities (such as the US company Amazon).

Theme 3: Data Protection

1. *UNCTAD*

UNCTAD's ICT Policy Section carries out research on the development implications of information and communications technologies (ICTs) and e-commerce. It promotes international dialogue on issues related to ICTs for development, and supports developing countries in Africa, Asia and Latin America in their efforts to establish legal regimes that address the issues raised by the electronic nature of ICTs to ensure trust in online transactions, ease the conduct of domestic and international trade online, and offer legal protection for users and providers of e-commerce and e-government services.

UNCTAD's 2021 report on the digital economy particularly addresses data governance, advocating for a free flow of data approach to the extent possible, while safeguarding national legitimate objectives.

See   https://unctad.org/topic/ecommerce-and-digital-economy; https://unctad.org/topic/ecommerce-and-digital-economy/ecommerce-law-reform.

2. *World Trade Organization (WTO)*

Although not part of the WTO mandate, data protection has been discussed amongst WTO Members during the multilateral discussions under the 1998 Work Programme on Electronic Commerce, as well as amongst a subset of Members under the Joint Statement Initiative on E-commerce taking place along the side lines of the WTO, where amongst other issues, the cross-border data flows has been considered in the negotiations. Discussions on data protection have also taken place multilaterally in the context of Mode 1 supply of a service i.e.,

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[90] See https://www.un.org/sg/en/content/sg/personnel-appointments/2022-08-16/internet-governance-forum-leadership-panel%C2%A0.

the supply of a service from the territory of one Member into the territory of any other Member e.g., telemedicine (which deals with sensitive health data).

3. World Health Organization (WHO)

Digital health issues are being discussed in the WHO, including the protection of sensitive health data and the use of populational health data. The work currently focuses on mainly technical standards and support to national digital health strategies without touching upon most of the core issues – including dependency on digital health providers, accessibility of technologies, diversity in forms of consent in light of digital literacy, among others. Another area under the WHO is the specific development of digital health tools, with a focus on telemedicine for the time being – which is different from the Organization's work on the use of health data for public benefit.

See https://www.who.int/health-topics/digital-health.

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

Although representing a relatively limited number of countries, the OECD has a significant impact with its policy documents and guidelines on data protection. See for example https://www.oecd.org/sti/ieconomy/information-security-and-privacy.htm. Similar to the 'Brussels' effect' identified after the enactment of EU regulations, the OECD influences policymaking in developing countries, which often rely on its recommendations. The OECD requires countries wishing to accede to it a series of conditions which may include compliance with their digital standards.

5. UN World Data Forum

The UN World Data Forum's objectives are to "promote data innovation, foster collaboration, mobilise political and financial support for data, and provide a path toward better data for sustainable development." It is hosted by the Statistics Division of the UN Department of Economic and Social Affairs (DESA), under the guidance of the UN Statistical Commission and the High-level Group for Partnership, Coordination and Capacity-Building for Statistics for the 2030 Agenda for Sustainable Development (HLG-PCCB). A biannual conference is held in partnership with a national statistics office (for example: 2023: China; 2021: Switzerland). Various aspects of data are discussed, including data privacy. However, the focus being on statistics and quality of data, regulatory areas tend to be largely disregarded in the discussions.

See https://unstats.un.org/unsd/undataforum/index.html.

Theme 4: Human Rights Online

1. UNESCO

UNESCO has been discussing guidelines on the regulation of platforms, which include the combat against misinformation and hate speech as core elements. A concern has been that since most developed countries have their own standards and policies in place (or are preparing or reviewing them), these guidelines may serve as *de facto* guidelines for developing countries only. One concern for some is also the fact that they mainly focus on content (relating notably to hate speech, misinformation and others) rather than platform governance (e.g., specific liabilities for platforms, obligations concerning transparency of algorithms, intellectual property misuse, etc.). Admittedly, some of these issues could be seen as either controversial due to lack of any common international understanding so far and/or outside of UNESCO's

mandate. Compared to the fully multi-stakeholder processes, the UNESCO provides more opportunities for States to engage with a relatively less prominence of private sector and civil society organizations. It is nonetheless not a States-only process, as there is engagement with different stakeholders that has always characterized digital governance. One issue at stake is how developing countries have been able to properly engage with this process, since most of the work is undertaken by the diplomatic missions based in Paris for UNESCO, which typically cover other topics.

See https://www.unesco.org/en/internet-conference/guidelines.

2. Human Rights Council (HRC)

The HRC has passed a number of relevant resolutions addressing human rights in the digital space, such as: The promotion, protection and enjoyment of human rights on the Internet, A/HRC/RES/20/8, July 2012; The right to privacy in the digital age, A/HRC/RES/28/16, April 2015; Rights of the child: information and communications technologies and child sexual exploitation, A/HRC/RES/31/7, April 2016; Accelerating efforts to eliminate violence against women and girls: preventing and responding to violence against women and girls in digital contexts, A/HRC/RES/38/5, July 2018; New and emerging digital technologies and human rights, A/HRC/41/11, July 2019 (and subsequent resolutions); Freedom of opinion and expression, A/HRC/RES/44/12, July 2020; Countering Cyberbullying, A/HRC/RES/51/1, October 2022. Attention on the issues of human rights in the digital environment, particularly in relation to new forms of discrimination, violence and violation of human rights in the digital space (also giving renewed importance to some rights, such as privacy) continues to grow and to be addressed in different manners at the HRC. Many such rights overlap and dilute conventional categorization of human rights since individual and collective aspects, as well as cultural and economic aspects, are present in all of them.

Theme 5: Artificial Intelligence and Other Emerging Technologies

1. UNESCO

UNESCO published Recommendation on the Ethics of Artificial Intelligence in November 2021, and all 193 Member States adopted them. The Recommendation has policy action areas which guide Member States in adopting legislations on the oversight of AI. This is considered a landmark process given that it was the first UN-led and country-endorsed process governing AI. In this perspective, although it does not create any binding rules and although it may be limited in scope, it nonetheless represents a concrete outcome that has shaped many of the digital governance discussions after 2021. UNESCO's particular mandate refers to 'educational, scientific and cultural'. It is no wonder that the ongoing process on platforms is taking place at UNESCO. While some may argue that -given its mandate- it is not the best suited to address these matters, UNESCO has been the only multilateral organization capable of achieving substantive outcomes, even if limited, in the past few years.

See https://www.unesco.org/en/artificial-intelligence/recommendation-ethics.

2. ITU

ITU provides in principle what is considered to be a "neutral" platform for all stakeholders to build a common understanding of the capabilities of AI technologies, facilitating trusted, safe and inclusive development of AI technologies, and equitable access to their benefits. In practice, many such discussions, particularly those highly embedded in technical jargons and processes that render full participation by developing countries and other stakeholders difficult or impossible, may be turned into spaces for potential cooption by the private sector (the main

interest of developed countries) or, at least, lead to a lack of proper consideration of developmental aspects of AI and other technologies' regulations (for example, accessibility of these technologies and/or, as some developing countries have expressed during ITU meetings, issues of data extraction and data colonialism to the detriment of the Global South). It is important to treat ITU not solely as a technical organization but as an increasingly important area for digital governance, since not only AI, but various emerging technologies will increasingly be at least partly regulated and under the mandate of the ITU. See https://www.itu.int/en/action/ai/Pages/default.aspx.

The ITU has also developed a mapping of the AI-related activities which are currently taking place in different UN organizations: https://aiforgood.itu.int/about-ai-for-good/un-ai-actions/.

3. UNCTAD's Commission on Science and Technology for Development (CSTD)

The CSTD is "the United Nations' home for discussions on science and technology – what is new, what matters, what is changing, what the impact is – and how this affects development and a sustainable future for all." It provides an annual forum where countries can raise critical challenges and explore opportunities presented by rapid technological development – to ensure developing countries and people do not get left behind. However, it has limited potential as to influence regional, national and private processes of AI regulation, and its sharing of experiences' framework may lead to inconclusive and underutilized reports. The Commission held its 2023-2024 inter-sessional panel meeting on 6-7 November 2023 which addressed as a priority theme 'Data for Development'.

See https://unctad.org/topic/commission-on-science-and-technology-for-development/about; https://unctad.org/meeting/commission-science-and-technology-development-2023-2024-inter-sessional-panel.

4. UN Office of the Secretary-General's Envoy on Technology

The Office has developed a resource guide on artificial intelligence strategies - in collaboration with other UN agencies. As noted, the UN Tech Envoy is playing a pivotal role in shaping the GDC in line with the priorities of the UNSG. However, its mandate seems to largely exclude complex, but central discussions on market power, regulation and trade-related aspects of digital governance. For this reason, while some issues may be acknowledged, others continue to be largely ignored.

See https://sdgs.un.org/sites/default/files/2021-04/Resource%20Guide%20on%20AI%20Strategies_April%202021_rev_0.pdf.

5. WIPO Frontier Technologies Division

WIPO created in 2021 a division on Frontier Technologies under the Platforms and Infrastructure Sector. Unlike other WIPO Sectors, there is basically no space for Member States to engage with the topic in 'standing committees' which regularly meet to discuss various IP issues. Unlike other areas at WIPO (such as technology transfer and the full use of the TRIPS flexibilities), AI-related issues have advanced swiftly even despite lack of Member States-driven decisions. The Frontier Technologies division has held six conversations on IP and frontier technologies since its creation, including two particularly addressing AI. The 8th conversation, held in late September, dealt with generative AI. Although the division's work does not formally deal with norm-setting, legislative assistance nor technical assistance (all of which would be more directly related to the WIPO Development Agenda's recommendations that include transparency, accountability, development-oriented and Member-State driven), its work has had policy implications so far: for example, an issues paper by the Secretariat selectively focuses on areas attuning to the interests of developed countries but is silent on

issues such as access to AI technologies, IP barriers to AI development, as well as algorithmic bias, redress, and fairness in AI.

See https://www.wipo.int/about-ip/en/frontier_technologies/.

6. *International Labor Organization (ILO)*

The impacts of AI on the future of labor are a key policy discussion at the ILO, to the extent that millions of existing jobs may be displaced or erased due to artificial intelligence. The uses of AI to render work more efficient, or for more techno-surveillance to be exerted, are other key related areas. Overall, this work is diluted across the organization and although a recurrent topic, it cannot be centralized at the organization under a single area of work.

Theme 6: Digital Trust and Security

1. *ITU*

At the World Summit on the Information Society (WSIS) and the ITU Plenipotentiary Conference, Heads of States and world leaders entrusted ITU to be the Facilitator of Action Line C5, "Building confidence and security in the use of ICTs", in response to which ITU launched, in 2007, the Global Cybersecurity Agenda (GCA), as a framework for international cooperation in this area.

See   https://www.itu.int/en/action/cybersecurity/Pages/default.aspx   ; https://www.itu.int/en/action/cybersecurity/Pages/gca.aspx.

2. *United Nations Office on Drugs and Crime (UNODC)*

UNODC runs a Global Programme on Cybercrime that supports the campaign against cybercrime. It provides sustainable capacity building to prevent and counter cybercrime through supporting national structures and specifically through: capacity building/technical assistance, cooperation, and normative assistance/legal framework.

See https://www.unodc.org/unodc/en/cybercrime/our-approach.

3. *WTO*

Trustworthy digital systems (such as those for digital payments) are considered to be paramount to cross-border e-commerce. This has been debated in the WTO primarily in the context of international trade in services and under the Work Programme on E-Commerce. Trust and security have been highlighted as essential elements for digital payments to ensure smooth international trade and e-commerce operations (for example, avoiding online frauds and being able to track trade operators). This is therefore notably distinct from conventional areas such as removing subsidies for trade or more direct IP-related implications (even if there are clearly IP intersections).[91] On the other hand, an area of core concern to the WTO is whether measures which are unrelated to trade (such as cybersecurity as a matter of national security or geopolitical and technological aspirations of countries) may constitute disguised trade practices. At the same time, the WTO fails to acknowledge when seemingly trade demands by certain countries are in fact protectionist measures that are related to these other aspirations (e.g., Japan has proposed a prohibition on disclosing source codes, which was

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[91] See Vitor Ido, "Intellectual Property and Electronic Commerce: Proposals in the WTO and Policy Implications for Developing Countries", Policy Brief, No. 62 (Geneva, South Centre, 2019). Available from https://www.southcentre.int/policy-brief-62-june-2019/.

clearly targeting China's fast technological development). In addition, there are various concerns with the fact that there is no consensus amongst WTO Members to mandate such negotiations. Currently, negotiations on the Joint Statement Initiative on e-commerce remain outside of the WTO legal framework and it is not yet clear whether Members will agree to incorporate the outcome within the WTO legal framework.

Theme 7: Global Digital Commons

The thematic deep-dive consultation on this matter expressed the diversity of views of stakeholders while addressing the concept of 'digital common goods' (DCGs). For example, some reflect on DCGs in a sectoral manner treating (online) education, environmental data, health, etc. as DCGs. Others focus on the specificities of Internet governance and digital governance, often relating the notion of DCGs to a free, open Internet with little to no moderation. Companies may refer to this concept in their regulatory efforts, while also having IP and other forms of exclusivities over the technologies, data and business know-how. For others, still, DCGs mean areas of governance which should not be commercialized or commodified, and for which benefit sharing should be provided. In this particular context, DCGs must not be tradable. In many aspects, the DCGs discussions resonate with broader global public goods discussions (such as the recent one held on COVID-19 vaccines), but they are not entirely the same.

   1. *UNESCO*

UNESCO's Recommendation on Open Science (2021) defines shared values and principles for Open Science, and identifies concrete measures on Open Access and Open Data, with proposals to bring citizens closer to science and commitments to facilitate the production and dissemination of scientific knowledge around the world. It complements UNESCO's 2017 Recommendation on Science and Scientific Research, and the UNESCO Strategy on Open Access to Scientific Information and Research and the new UNESCO Recommendation on Open Educational Resources. These were adopted alongside the abovementioned Recommendation on AI ethics. This is an important precedent for access to knowledge advocates, which now regularly make reference to this document as a basis to further pursue the efforts towards ensuring access to educational and scientific materials, focusing on open practices rather than copyright and exclusivity-based ones. This shows another example of the interaction between different areas, since in principle UNESCO is not governing *per se* copyright policies and laws.

See https://en.unesco.org/science-sustainable-future/open-science/recommendation.

   2. *ITU through the Govstack Initiative*

The GovStack initiative is a multi-stakeholder initiative led by the German Federal Ministry for Economic Cooperation and Development, Gesellschaft für Internationale Zusammenarbeit (GIZ), the Ministry of Foreign Affairs of Estonia, the ITU and the Digital Impact Alliance. It was launched in 2020 with the goal of accelerating national digital transformation and the digitalization of government services for achievement of the Sustainable Development Goals by 2030. Govstack develops specifications for interoperable, reusable, open-source software components that can form the foundation of a multitude of e-government services.

See https://www.govstack.global/our-approach/.

   3. *Climate-related fora such as the United Nations Framework Convention on Climate Change (UNFCCC) and the Intergovernmental Panel on Climate Change (IPCC)*

In climate governance, the issue of environmental and climate data is pivotal. One key element refers to the availability of such data for global common purposes. However, in the context of these arenas, there are little to no particular reflections on the management, sourcing and treatment of data – sometimes almost treated as a given. This is particularly relevant in the context of data coming from sensitive populations without proper consent, such as indigenous peoples.

Other areas not covered by the current GDC process

Apart from the already mentioned fact that most trade and regulatory areas are simply outside of the scope of the GDC process, there are also multiple other examples of areas that are not directly covered, such as:

- Copyrights: Decision-making bodies, Copyright & Creative Industries Sector, and Regional and National Development Sector of the World Intellectual Property Organization (WIPO) (https://www.wipo.int/policy/en/sccr/)
- World Meteorological Organization (WMO)'s work on new technologies
- International Organization for Migration (IOM) on data and privacy of migrants
- Disarmament negotiations on autonomous weapons (Geneva)
- Climate-related negotiations at the United Nations Framework Convention on Climate Change (UNFCCC) and the use of new technologies to identify and curb climate change
- Food and Agriculture Organization (FAO)'s work on innovation in food and agriculture
- Economic and Social Council (ECOSOC) committees at the UN level
- United Nations High Commissioner for Refugees (UNHCR) Strategy on Digital Inclusion
- World Economic Forum (WEF)'s work on the 'Fourth Industrial Revolution'

		universo existente de solución de controversias entre inversionistas y estados	
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