Dr. Jan Christoph Bublitz (Hamburg)

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Dear Ms Chairperson, dear committee members, distinguished guests, fellow panelists,

Thank you for the opportunity to speak to you this morning. Some years ago I was spending many hours in the library here, looking for traces in UN Documents that could shed light on today’s topic, and it thus is a great honor to be able to return here today and present some findings to this distinguished audience. I like to make five brief comments on the circulated draft, beginning with the foundational and fashionable question: Is there a need for *novel* human rights because existing ones are insufficient to address challenges by neurotechnologies? I think the answer is a clear no – and I much appreciate the statement on this point in the draft. The draft also correctly notes the problem of rights inflation, which may also create problems of coherence. I wish to draw attention to yet another problem: As statements by the Human Rights Council and I suppose this Committee come with de facto soft law powers, suggestions of the insufficiency of existing human rights will be gladly received by all actors that are interested in not being bound by them. It would be a of doubtful wisdom to feed this narrative.

Also, most importantly, because this narrative is largely false. Several rights mentioned by the draft apply to neurotechnologies. And, as my second point, let me make this even clearer. Neurotechnologies either intervene *into* the brain or measure brain activity. These are the two modes of operation. Key rights protect against both of them: The right to privacy almost paradigmatically protects against unwanted measuring bodily or mental processes – and a right to *mental* privacy is logically entailed by the right to privacy, in other words, it already exists. I am not aware of scholarly opinions that deny this. There is of course no harm place emphasis on this in light of current developments, and the human rights system for good reasons likes reiterations. But one should not evoke the impressions that this is a *new* right that does not exist yet – this reading would undermine it.

With regard to the second mode of operation, interventions *into* the brain which change neurobiological processes, often with mental effects, fall under the right to security of the person (Art. 9 International Covenant on Civil and Political Rights). More recent instrument such as the Convention on Rights of Persons with Disabilities helpfully understand it as a right to physical and mental integrity that seeks to provide *holistic* protection to the person. The need for this comprehensive protection was already discussed during the drafting of the American Convention on Human Rights in 1969 (leading to Article 5.1. protecting “mental integrity”), and with explicit reference to novel biotechnologies during the drafting of the Charter of the European Union more than 20 years ago (motivating the right to “mental integrity” in Article 3.1.) These rights to integrity and privacy can cover virtually all interferences that write in or read out of the brain - there is no gap at this level and there is no need for novel rights.

In addition to the rights to integrity and privacy, there are even further context specific rights which the draft mentions, and of which, thirdly, I like to draw attention to one, freedom of thought. It is one of the few *absolute* rights in the international bills. There is hardly any jurisprudence on it, and its meaning is not fully settled. But if one transfers the established reasoning from its sister rights freedom of conscience, religion, and opinion, it protects against interference that detrimentally affect the forming and holding or having of thoughts, as well as against the revealing of thoughts against one’s will. One may further ask what “thought” means more precisely. I suggest a particular class of mental states – thoughts – and some types of mental action – thinking, which include mental actions such as remembering, reasoning, dreaming, and many more. In this understanding, many of the more serious interferences though neurotechnologies may qualify as interferences with freedom of thought, for instance the mind reading experiments recently in the news. As a consequence, they are prohibited in principle when carried out by the state without consent of the rightholder.

During the negotiations on the Declaration, partly here on these premises, the drafters were wondering about how the inner freedom of thought might be interfered with at all. They had a few, but not many examples. The remarkable point is that they decided to protect it nonetheless, because of abstract considerations about the relation between the person, society and the state. I think freedom of thought is a great intellectual achievement, and also, by the way, a political one because all countries – including those such as the Soviet Union that later abstained from adopting the Declaration - agreed to it. In other words, there was a worldwide consensus that severe interventions into thought are impermissible. I would suggest building on this achievement by recalling it and bringing it to life by actualizing the freedom for today’s challenges.

Allow me two further remarks on the draft. It addresses the non-therapeutic use of neurotechnologies under the heading “human augmentation”, but I think the issue is broader: People may want to use neurotech for all kinds of non-medical purposes: wellness, education, gaming, making music, changing themselves. The question is if human rights law provides them with a liberty to do so. It is a negative right, distinct from the positive right to provide access. Human rights law does not say much explicitly about this liberty, but I suppose general implicit principles such as autonomy of the person, which permeate and animate the human rights system, entail a prima facie liberty to change one’s mind, also with the help of such technologies. This liberty may be restricted, if, for instance, certain augmentation practices have negative societal consequences. But I think analytic clarity suggests recognizing a qualified right to change one’s brain and mind, and frame the topic from there.

Last but not least, I would recommend placing more emphasis on positive obligations of States. Many of today’s dangers arise from private actors such as big companies. States must check whether domestic laws provide an adequate level of protection. I have some doubts, and I suggest countries should adopt two criminal offenses – crimes against minds - that penalize reading out and intervening into brains without consent. But this of course concerns domestic laws over which states have much discretion. Positive obligations also seem to be the bright place to address data protection issues.

In conclusion, in over a decade of thinking about this matter, I have not come across a single case that existing rights could not adequately address, *if* they are reasonably interpreted and further developed. That is a big if. And it leads to my recommendation to the Committee: You can make a substantial contribution by showing that and clarifying how concretely existing rights such as mental integrity and freedom of thought apply to neurotechnologies. Use your soft law powers to shape existing hard law and provide guidance and legal clarity for courts, lawmakers, and most importantly, for the people negatively affected by neurotechnologies. This reaffirms the mutilayered protection of the person that human rights already afford.

Thank you.