

## Global regulatory instrument on artificial intelligence: a critical analysis on the role of Unesco\*

### *Legislação global sobre inteligência artificial: uma análise crítica sobre o papel da Unesco*

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#### Abstract

Given the global expansion of discussions aimed at the need to define good practices for the development and use of artificial intelligence, efforts have progressed, in an international environment, to develop global rules related to the ethics and legality of the use of intelligent technologies. Given this scenario, it is relevant to analyze how the current discussions have developed to include the arguments and contributions brought by the Nation-States not situated in a place of hegemony in the narratives aimed at artificial intelligence and the development of protectionist legislation on personal data, as those in the global south. It questioned the possibilities and obstacles posed before the United Nations for effective action that seeks to promote multicultural and pluralist debate for the development of the global rules aimed at the ethical use of artificial intelligence. Based on a bibliographic review, through the dialectical method, the study will demonstrate the problems and benefits posed by the Global Artificial Intelligence Legislation, assessing what is the role played by UNESCO and what are the impacts and practical effects of the deliberation under construction, consisting of a list of recommendations of non-conventional origin. It concluded that the list of recommendations has indirect legal effects and, in addition, improves the legitimacy of actions by organizations and communities in the international system in the sense of protecting human rights.

**Keywords:** Artificial intelligence; International right; UNESCO; Multiculturalism; Pluralism.

#### Resumo

Ante a expansão global das discussões voltadas à necessidade de definição de boas práticas para desenvolvimento e uso da inteligência artificial, progrediram os esforços, em ambiente internacional, para elaboração de regras globais relativas à ética e a legalidade da utilização de tecnologias inteligentes. Diante deste cenário, importa analisar de que maneira as discussões atuais têm se desenvolvido para a inclusão das argumentações e contribuições trazidas pelos Estados-Nação não situados em local de hegemonia, nas narrativas voltadas à inteligência artificial e ao desenvolvimento das legislações protecionistas de dados pessoais, como aqueles do sul global. Questionam-se quais são as possibilidades e os obstáculos postos diante da Organização das Nações Unidas, para uma atuação efetiva que busque promover o debate multicultural e

\* Artigo traduzido por Inteligência Artificial.

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pluralista para desenvolvimento de regras globais voltadas ao uso ético da inteligência artificial. Dessa forma, a partir de uma revisão bibliográfica, e através do método de abordagem dialético, o estudo demonstrará quais são as problemáticas e os benefícios postos pela Legislação Global de Inteligência Artificial, avaliando qual é o papel desempenhado pela UNESCO e quais são os impactos e efeitos práticos da deliberação em construção, consistente em um rol de recomendações de origem extraconvencional. Conclui-se, portanto, que o rol de recomendações apresenta efeitos jurídicos indiretos e, além disso, potencializa a legitimação de ações de organizações e comunidades do sistema internacional no sentido de proteção de direitos humanos.

**Palavras-chave:** Inteligência artificial; Direito Internacional; UNESCO; Multiculturalismo; Pluralismo.

## 1 Introduction

With the accelerated increase in discussions about the need to develop guarantees that make effective the enjoyment of the right to the protection of personal data and, also, the ways in which judicial tools that use artificial intelligence will be developed in times of advanced technology, thinking about their legal suitability and the respective good practices for their use is essential. This is an essential reflection and research for the very maintenance of artificial intelligence within the limits imposed by the rule of law and, moreover, in a situation in line with the protectionist interests of fundamental rights in a global sense.

As it is noted that efforts are currently underway to promote discussions of international scope aimed at the development of recommendations of good practices for the use of artificial intelligence based on plurality, this scientific article proposes to investigate: what is the current situation of the debate, what are the means and tools used to develop rules and/or guidelines and, as well as to evaluate the existence or not of binding force linked to this instrument; in addition to the intention of measuring the role of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the face of the theme.

With the recent entry into force of personal data protection laws in numerous nation-states and even in the context of economic union, namely, in Brazil itself, through the General Data Protection Law (Law No. 13,709/18) and in the European Union, through the General Data Protection Regulation No. 2016/679 (*General Data Protection Regulation*), many questions link the protection of personal data to the legal use of artificial intelligence around the world. This study questions what are the possibilities and obstacles placed before UNESCO for an effective action that seeks to promote the multicultural and pluralistic debate for the development of global rules for the good use of artificial intelligence.

It is important to analyze, also from the perspective of the epistemologies of the South<sup>1</sup>, how Nation-States, situated on the margins of the polarization of theories on the subject, can effectively participate and develop arguments and actions that give them the possibility of meeting their interests during the construction of rules of international scope – even if these, eventually, they do not have normative or binding force.

The present research is justified, theoretically, by the questioning character that the theory of counter-hegemony aimed at the epistemologies of the South offers to Law. It is intended to address issues related to the ways of using artificial intelligence, both with regard to its suitability to a rule of law, and the need for ethical definitions for its use. This, in order to analyze the way in which Nation-States currently process personal data and implement intelligent tools. It is also important to verify possible situations of exposure and breach of personal data; and, perhaps, of transgression of fundamental rights inherent to the human condition.

It seeks to evaluate whether the debates about the production of rules and recommendations aimed at good practices of definitions of ethical action for the use of artificial intelligence are sufficiently comprehensive to include nations that are not in a situation of hegemony in the discourse that involves the protection of people in the use of artificial intelligence itself – being certain that the protection of their national interests. Likewise, it is of interest to all those who aim at the elaboration of an effectively pluralistic and multicultural global legislation.

Thus, it starts from a counter-hegemonic point of view<sup>2</sup> regarding the insertion of technologies in the internal environment, and, in addition, attention is paid to the problems

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<sup>1</sup> For the purposes of this research, it is pointed out as *epistemologies of the south* the general reflections that do not focus on knowledge in the abstract, but on knowledge practices that take into account the effects of factual events such as colonialism which, according to the definition of Boaventura de Souza Santos (In: SANTOS & Menezes 2010, p. 13), in addition to all the dominations for which it is known, "was also an epistemological domination, an extremely unequal relationship between knowledges that led to the suppression of many forms of knowledge typical of colonized peoples and nations, relegating many other knowledges to a space of subordination". Thus, adopting a perception "from the perspective of the epistemologies of the South" consists, at the end of the day, in analyzing the object of study considering the narratives that also echo from peripheral countries and located in the global south and that, as much as the others, aspire to participate in discussions that involve problems of a global order, such as the theme of access to and use of artificial intelligence and the processing of personal data at a level worldwide.

<sup>2</sup> Immediately, it is emphasized that the adoption of a "counter-hegemonic" view is due to the consideration, in this work, that the perception considered "hegemonic" on the subject is the one that tends to define as poles or centers of discussion on artificial intelligence and data processing in the United States and in the countries that make up the European Union, that discussions about such disciplines are not recent (as in Latin American countries and those located in the global south). As an example, it is mentioned that Brazil, since 1980, has had normative elaborations that expressly mention automated databases and computer advancement, such as in Bill No. 2,796, of

brought by the world history of addictions in algorithms, which sometimes act in an oppressive way in relation to those citizens located on the margins of the risk society.

It is clear that there is a current need to achieve interpretations regarding the expression of any digital or technological violence or vulnerability that may be created or developed – above all, through epistemological views different from those of Europe – which is now proposed, without intending to repudiate the macroscopic view, given the possibilities of exposure of personal data by those who hold them, to the detriment of those who dispose of them.

The current notion of the universality of human rights leads us to believe that its effectiveness depends, in fact, on universal theories and protectionist bodies of global scope so that it is possible to make efficient analyses about genealogy and the manifestation and violations. This thinking is linked to the repeated recurrence of European and North American epistemologies to think about preventive actions aimed at transgressions and violence – including those aimed at *cyberspace*. The present investigation, however, intends to look at the problem that involves the discussions about artificial intelligence, from a *decolonizing bias*<sup>3</sup>.

Socially, the present research is justified by the potential to affirm the existence and strengthening of a multicultural and pluralistic view of the use of artificial intelligence and algorithm programming as tools capable of promoting the improvement of economic and social well-being within the states, as a way of integration for the analysis of the elaboration of global rules, above all, those under development by UNESCO.

It is not possible to overcome universalist theories of human rights, of personal data protectionism, nor the idea that the elaboration of global rules aimed at artificial intelligence and their respective state implications are not a matter of global epistemological studies. It aims, rather, to point out the study based on the epistemologies of the south as an alternative and,

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November 4, 1980, available at: [https://www.camara.leg.br/propositoessWeb/prop\\_mostrarIntegra;jsessionid=FBF15270DD557906FEB1829EFEA68AED.proposicoesWeb1?codteor=1172300&filename=Avulso+-PL+2796/1980](https://www.camara.leg.br/propositoessWeb/prop_mostrarIntegra;jsessionid=FBF15270DD557906FEB1829EFEA68AED.proposicoesWeb1?codteor=1172300&filename=Avulso+-PL+2796/1980). Accessed in: 09/27/2021.

<sup>3</sup> The term *decolonizing* refers to Enrique Dussel's philosophy of liberation, as well as the *decolonial turn*, originally coined by Nelso Maldonado Torres, which deals with the movement of theoretical and practical, political and epistemic resistance to the logic of modernity, thus dealing with an intervention against coloniality and its effects. According to Ballestrin: "Basically, decolonization is a diagnosis and prognosis that is removed and not claimed by the *mainstream* of postcolonialism, involving several dimensions related to the coloniality of being, knowledge and power. Although it assumes the influence of post-colonialism, the Modernity/Coloniality Group refuses to belong to and affiliate to this current. The same applies to the other influences received that made possible the emergence and development of the theoretical construction of the group. However, what is original to decolonial studies seems to be more related to the new lenses placed on old Latin American problems than to the list of these problems themselves." (Ballestrin, 2013).

simultaneously, as a possible means of analyzing recommendations on the use of artificial intelligence, in order to ascertain its effects internally and the phenomena resulting from its effective implication.

In addition, the relevance of the socio-criminological view distant from European epistemologies about the phenomenon of the expansion of the use of artificial intelligence around the globe stands out, as well as the discussions on the subject, aiming to achieve applicable results that also cover the contribution made by countries that do not occupy the center of the narratives disseminated today on a larger scale. The adoption of this theory, in a contemporary moment in which globalization sometimes silences or represses regional problems related to *cyberspace*, may even show a non-dichotomy between the global and the local, which are increasingly simultaneous.

At first, therefore, the current panorama of the expansion of artificial intelligence and discussions directly linked to it will be analyzed, as is the case of legislative development in favor of the protection of personal data in a global sense. It also seeks to demonstrate the narratives on the theme under development, especially those related to the risks and challenges arising from the use of the technologies in question.

Subsequently, it is intended to carry out a brief critical evaluation of the ongoing efforts to prepare global recommendations for the good use of artificial intelligence, starting from a multicultural and pluralistic perspective, considering that this is the imprint given to the discussions then outlined within the scope of action of the United Nations. It seeks, then, to think about the demands and needs imposed by technology, in this case, embodied in artificial intelligence, based on the theory of epistemologies of the south.

Finally, it is intended to analyze the role currently played by UNESCO in the elaboration of a Global Legislation on artificial intelligence, measuring what are the limits and obstacles of its performance and, above all, evaluating the existence or not of normative or binding force of the rules that are intended to be developed at the international level. Therefore, it will be pointed out what will be the practical implications for Nation-States from this movement, which currently has the involvement of twenty-four experts from different parts of the world.

Thus, the study, through the bibliographic review and the adoption of a dialectical approach method, intends to demonstrate, within the possibilities imposed by the object that is still under construction, what are the problems and benefits posed by the Global Legislation on Artificial Intelligence under development by UNESCO, also aiming to evaluate what are its

limits and possibility of action on the theme to enable a greater degree of plurality in the discussions outlined in the environment international in contemporaneity.

## **2 The use of artificial intelligence and the right to personal data protection: global expansion, risks and challenges**

Artificial intelligence was initially designed to simulate the most diverse faculties of intelligence (human, animal, vegetable, social or phylogenetic) through the use of machines. It is a scientific discipline officially created in 1956 by researchers McCarthy, Marvin Minsky, Nathaniel Rochester and Claude Shannon – at Dartmouth University, in New Hampshire (USA) – based on the assumption that cognitive functions can be accurately described and reproduced, such as learning, perception and memorization. Since then, artificial intelligence has undergone transformations, from the development of *machine learning* algorithms (machine learning or machine learning), through the conjunction with robotics and *chatbots* in the 1990s, to the exploration of automated databases (Ganascia, 2018, p. 2).

Artificial intelligence in data science is related to the understanding of the overarching political and social context in which *big data* – as well as its provenance and implications – are situated. This, by the way, is directly linked to the ability to verify tacit human values, the development of politics, and the power itself incorporated into *big data*<sup>4</sup> and its applications from artificial intelligence (Fornasier, 2018, p. 121). Thus, it can be seen that there are many elements inserted in a Nation-State capable of contributing to the definition and performance of technologies in each place – in order to show that the problem addressed here is of a *glocal order*<sup>5</sup>.

In view of this, in times of *big data*, it is important to ascertain what are the limits effectively imposed by Nation-States on the forms of arbitrary exercise of powers when faced with situations involving the processing of personal data and the use of new technologies. Therefore, there is a growing concern about the conditions of use of technologies in accordance with ethical standards and limits imposed by legality.

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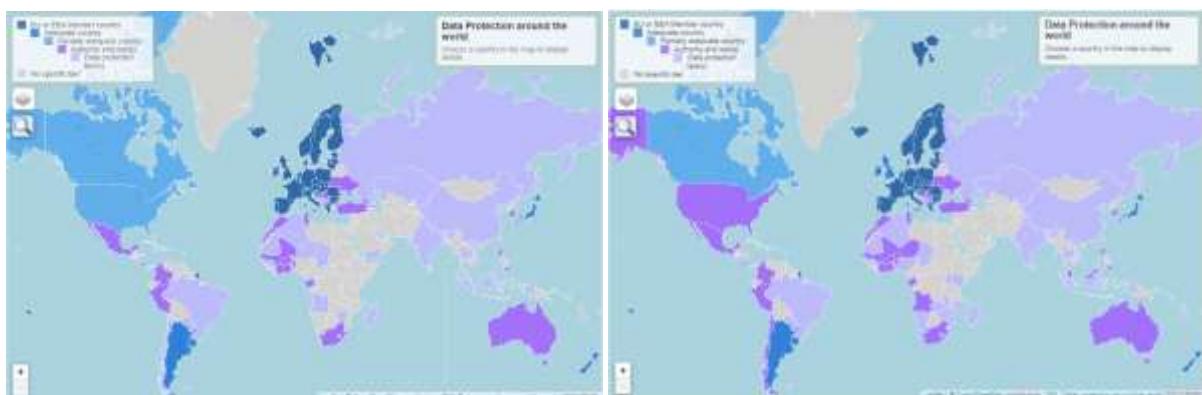
<sup>4</sup> According to Professor José Carlos Cavalcante, the concept of *big data* applies to information that, because it has characteristics such as volume, variety, and speed, cannot be processed or analyzed through traditional means of data reading (*in: Magrini, 2019, p. 23*).

<sup>5</sup> The term *glocal* was coined by Roland Robertson (1992) to indicate that the *local* and *global* do not exclude each other; on the contrary, they complement each other while the local must be taken, at a certain level, as a means of understanding the global; and globalization, in turn, understands a meeting of localisms.

With the global expansion of the use of technology, there is also a concern with the means available to develop guarantees that protect fundamental rights related to it, as is the case, of course, of the protection of personal data. This right, in fact, in the Brazilian domestic sphere, already has express legislative guarantees arising from the LGPD, and the Supreme Court, even before its entry into force, had already made express reference to the fundamental right to the protection of personal data and informational *self-determination*<sup>6</sup>.

Regarding the standardization of the right to fourth-generation data protection, as pointed out by the French National Commission for Information Technology and Civil Liberties – *CNIL*<sup>7</sup>, there is still continuous development and evolution, and legislative progress is visible in numerous parts of the globe. On 11/19/2019, the Commission released a mapping of this progress at the global level, later updated on 11/23/2021. Below is a figure of the maps published by the Commission:

Figure 1 – Maps *Data protection around the world*



Source: French National Commission for Information Technology and Civil Liberties, 2019 and 2020.

From the maps released from the survey carried out by the CNIL, it can be inferred that the level of legislative development on the discipline of data protection around the globe is in full progress, since all the countries that present blue and purple griffons on the map already

<sup>6</sup> The Federal Supreme Court (STF) recognized the fundamental right to the protection of personal data by endorsing the preliminary injunction granted by Justice Rosa Weber, in the records of ADI No. 6,387/DF, dated April 24, 2020, in which the right to informational self-determination was emphasized. The plenary of the Supreme Court suspended the applicability of Provisional Measure No. 954/2018, by jointly judging Direct Unconstitutionality Actions Nos. 6387, 6388, 6389, 6393 and 6390, thus preventing the sharing of non-anonymized fixed and mobile telephony data, by telephone companies, in addition to the address of consumers, between telephone companies and the IBGE – Brazilian Institute of Geography and Statistics Foundation.

<sup>7</sup> *Commission Nationale de l'Informatique et des Libertés*. Available on the institutional website: <https://www.cnil.fr/en/data-protection-around-the-world>, where the subtitles can be accessed interactively, with access to information related to each country. Accessed on October 20, 2020.

have, at different levels of adequacy and implementation, and within their internal systems, rules that include guarantees of non-infringement of data protection.

Such expansion stems from the fact that the activity of processing personal data, whether by the State or by the private sector, according to Doneda (2019, p.24), demands to:

construction of instruments that harmonize it with the parameters of protection of the human person present in fundamental rights and functionalized by regulatory instruments that enable citizens to have effective control over their personal data, ensuring access, veracity, security, knowledge of the purpose for which they will be used, among many other guarantees that are increasingly necessary.

In view of this visible global concern with the elaboration of regulations related to data protection and, linked to this, the attempt to build a list of recommendations that help in the ethical practice of the use of artificial intelligence<sup>8</sup>, it is clear that, in a substantial way, international society shares common problems and concerns. It is precisely for this reason, too, that the development of discussions and the construction of narratives must take place in an expanded, inclusive and multicultural scope.

International society, after all, has more common problems than national interests, because in the globalization process, more flexible borders have been shared, so that States tend to find it more difficult to deal with global problems in isolation. For this reason, there is a need to strengthen transnational civil society, especially because the Nation-State, in modernity, is not endowed with sufficient means to solve the common problems of humanity at a global level. (Miranda; Cademartori, 2018, p. 16). And this, certainly, is the case of the development of legislative rules, of a global order and effectively applicable within the internal scope of nation-states, on artificial intelligence in rapid expansion.

In addition to the considerations about the existence of a problem that involves thinking about the limits of the performance of artificial intelligence within the scope of state powers within nation-states, it is necessary to critically evaluate the narratives in development related to the risks arising from its expansion.

From the outset, it should be mentioned that the risk of constituting a human digital vulnerability resulting from the fragility of the protection of personal data as a result of the use of artificial intelligence is certainly a hypothesis that plagues the international community and

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<sup>8</sup> In order to exemplify the attention given to the topic by Brazil, domestically, mention is made of Bill No. 21/2020, approved by the Chamber of Deputies on 07/06/2021 and still in full process, which has the main purpose of creating the legal framework for the development and use of Artificial Intelligence (AI) by the public authorities, by companies, various entities and individuals. Available at: [https://www.camara.leg.br/proposicoesWeb/prop\\_mostrarIntegra?codteor=1853928](https://www.camara.leg.br/proposicoesWeb/prop_mostrarIntegra?codteor=1853928). Accessed on 09/29/2021.

– precisely for this reason – there is currently a meeting of efforts to elaborate norms in the sense – internal and external – to guarantee personal data. However, in addition to this evident risk, there are others related to the ethical conditions of the use in question.

According to Ganascia (2018, p. 2), one of the elements that today represents a worrying ethical risk of the use of artificial intelligence is the finding that machines have exceeded human cognitive capabilities in several areas, so that this risk can lead to a shortage of work, the limitation of human personal autonomy and, above all, incidents related to freedom and security. It points out, however, that its autonomy is purely technological – and not moral – so that it does not represent an existential threat to humanity.

The Director-General of UNESCO, Audrey Azoulay (2018, p. 2), asserts that artificial intelligence is a tool capable of providing opportunities to achieve the objectives stipulated by the Organization in the 2030 Agenda. On the other hand, it is thought that the aid in the acceleration of certain activities represents a threat, while automation and digitalization create situations of inequality, causing a decrease in cultural diversity, interfering in the labor market, creating job insecurities, increasing disparities between those who have access to technologies and those who are deprived of them.

Audrey Azoulay (2018, p. 2) also points out that UNESCO, in a meeting of efforts with the World Commission for the Ethics of Scientific and Technological Knowledge (COMEST) and the International Bioethics Committee (IBC), assumes the responsibility of:

to lead a universal and enlightened debate – not a technical debate, but an ethical debate – in order to enter this new era with eyes wide open, without sacrificing values, and to make it possible to establish a common global framework of ethical principles, if it is the will of the Member States.

In view of this, it is essential to understand and evaluate the level of action currently performed by the Organization in order to maintain this debate in the international space.

### **3 The ongoing efforts to develop global rules for the ethical use of artificial intelligence: the Global Artificial Intelligence Legislation being drafted by UNESCO from a multicultural and pluralistic perspective**

Recently, the Director-General of UNESCO, Audrey Azoulay (2018, p. 1), explained that the expansion of artificial intelligence tends to transform human life in an unimaginable way, noting that this transformation currently already directly affects society. In view of this finding,

Azoulay affirms that UNESCO has an important role to play in this change: first, because the use of intelligence affects the specialties of the Organization as a whole; and second, because it will cause an effective transformation in education, through changes related to teaching tools, learning methods, access and teacher training. Finally, it points to the direct interference of artificial intelligence in the cultural sector, through, for example, 3D technology for the reconstruction of cultural heritage – which, by the way, is under development in the city of Mosul, Iraq<sup>9</sup>.

In the meantime, it should be noted that there has been a considerable increase in research advancing in the technical field of artificial intelligence. Thus, and still in this regard, Azoulay (2018, p.1) asserts that, although it is the object of scientific investigation, even if the ethics of its application do not come to be. Precisely for this reason, the Director affirms that it is UNESCO's responsibility "*to lead a universal and enlightened debate in order to enter this new era with eyes wide open, without sacrificing our values, and to make possible the establishment of a common global framework of ethical principles*".

In view of this concern, UNESCO has begun the elaboration of the *World's First Standard-Setting Instrument on the Ethics of Artificial Intelligence (AI)*, <sup>10</sup>the elaboration of which stems from a decision taken by the Organization during the 40th session of the General Conference of the Organization, in November 2019<sup>11</sup>.

To start the project, UNESCO had the assistance of *ad hoc experts*, who prepared a document containing recommendations for the use of artificial intelligence, entitled *Preliminary Study on the Ethics of Artificial Intelligence*. Then, the instrument coined *First Draft of the Recommendation was elaborated*<sup>12</sup>, initiating the phases of inclusive and

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<sup>9</sup> The Iraqi city of Mosul will be rebuilt from a project entitled *The 5 Farming Bridges*, authored by architect Vincent Callebaut, who proposed the construction of five agricultural bridges, whose structures will be produced from 3D printing technology. It is emphasized that the raw material used for printing will be, precisely, the debris of the war itself.

<sup>10</sup> The instrument under preparation was thus defined by UNESCO on its *institutional website*, which, however, depending on the subject matter, sometimes calls it *Global Legislation on Artificial Intelligence*. Definition available at: <https://pt.unesco.org/news/consulta-online-primeira-versao-da-recomendacao-etica-da-inteligencia-artificial>. Accessed on October 28, 2020. Finally, it should be noted that, in the official document made available by the *ad hoc group of experts* mentioned by the director-general, the instrument was defined as *Recommendation on the Ethics of Artificial Intelligence*.

<sup>11</sup> UNESCO brings together every two years the 193 Member States for a general conference, at which the Organization's programme and budget are determined. In 2019, the conference took place in November, in Paris, France, and was included in the official agenda of the country's Ministry of Foreign Affairs, according to institutional information from Itamaraty available at: <http://www.itamaraty.gov.br/pt-BR/notas-imprensa/21085-calendario-de-eventos-entre-15-e-22-de-novembro-de-2019>. Accessed on October 28, 2020.

<sup>12</sup> Made available by the Organization on its *institutional website*, with a translation into six languages, for online consultation, available at: <https://unesdoc.unesco.org/ark:/48223/pf0000373434>. Accessed on October 28, 2020.

multidisciplinary public consultations for the development of the instrument. It can be seen that the Organization excelled, from the beginning, in the collective participation in the development of the document, aiming at the adoption of a pluralistic and multicultural nature.

The preliminary draft of the recommendation on the ethics of artificial intelligence<sup>13</sup> points out, at the outset, that, in accordance with the decision taken at the 40th General Conference (Resolution No. 40 C/37), in March 2020, the Special Group of *Experts* (GEE) built the document, although in a situation of adaptation to the new conditions imposed by the Covid-19 pandemic, which required the group to work virtually/remoteley.

The document narrated that between the months of June and August 2020, a broad consultation process with multiple stakeholders was carried out in the first version of the recommendation. The public consultation carried out: (a) had more than 800 (eight hundred) responses; (b) were virtual, regional and sub-regional, organized jointly with host countries and institutions in all regions covered by UNESCO, with more than 500 participants; (c) it included the holding of open *workshops*, organized by partners, for deliberation by multiple *stakeholders* and citizens, with about 500 participants. It was reported that the consultation process generated more than 50,000 comments on the text during preparation.

From this, it is clear that the Organization aimed, at the beginning of the development of the list of recommendations, at the incorporation of a participatory and comprehensive vision. Since the elaboration of the scope of the document, it has been concerned with an incursion into the theme of artificial intelligence, from the adoption of a counter-hegemonic view, to the development of a definition of conducts considered ethical and good practices, built by the largest possible number of interested parties.

The position adopted by the Organization demonstrates that, in a global sense, there is concern related to the necessary fragmentation of the then sedimented centralization of narratives on artificial intelligence, in the consistent poles in the United States of America and the European Union. After all, as an example, as the South African scientist and specialist Marwala (2019) observes, currently, countries in Africa are under the effect of the Fourth

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<sup>13</sup> The *Preliminary Draft Recommendation on the ethics of artificial intelligence*, carried out by the Special Group of Experts (GEE) in charge of preparing a draft recommendation on the ethics of artificial intelligence, was made available by UNESCO on its official institutional website on September 7, 2020. Available at: [https://unesdoc.unesco.org/ark:/48223/pf0000373434\\_spa?posInSet=2&queryId=130283e0-c962-4358-857b-46ba99a8d67b](https://unesdoc.unesco.org/ark:/48223/pf0000373434_spa?posInSet=2&queryId=130283e0-c962-4358-857b-46ba99a8d67b). Accessed on October 28, 2020.

Industrial Revolution (4IR<sup>14</sup>) and must make use of technology to drive internal economic improvements on the continent.

Such factual situations of growth and expansion of artificial intelligence in countries that were not, until then, part of the locations considered as central discussion centers of the theme, evidently, were considered by the Organization during the elaboration of the instrument under development for setting recommendations, after all, broad participation during the process was favored.

It is possible to assess, to a certain extent, that the posture adopted is in accordance with an action aimed at the development of actions aimed at a *decolonial construction*, based on the epistemologies of the South, with regard to the integration of perspectives and contributions different from those coming from the United States and the countries that make up the European Union. Thus, it is in view of its interest in considering the problem that involves the concentration of narratives related to themes that, certainly, are of global interest – as is the case of artificial intelligence and the regulation of their respective ways of use.

By adopting a counter-hegemonic stance – that is, an inclusive stance of the narratives, perceptions and contributions coming from countries located in the global south on the subject, which, it should be said, is of common global interest – and with a view to multicultural participation, it is possible to assert, in this case, greater success in the elaboration of legislative texts, especially because the results obtained from a broad participation in carrying out the study and construction of the document will be essentially linked to the analysis of data collected from a broader and more differentiated list of countries – that is, with other idiosyncrasies that deserve due attention – and which, in turn, also consist of regionalized data, which denote local specificities that are equally important for the development of rules or recommendations aimed at global compliance.

After all, it is quite likely that any carrying out of the same analysis, starting only with a view to the current Western panorama, would not meet the consultation objectives initially formulated and would not give rise to the broad draft that it expressly considered: the Universal Declaration of Human Rights (1948), the International Convention on the Elimination of All

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<sup>14</sup> The Fourth Industrial Revolution (4IR) is driven by emerging technologies, based on the combination of digital, biological, and physical innovations. These latest technologies, which are changing the way we live and work, include artificial intelligence (AI) and robotics, the internet of things, augmented reality, quantum computing, 3D printing, *blockchain*, additive manufacturing, neurotechnologies, geoengineering, and genome editing. (Ovanessoff; Plastino, 2017)

Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of Persons with Disabilities (2006), the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), the United Nations Declaration on the Rights of Indigenous Peoples (2007), among others.

These considerations made at the beginning of the developed document reinforce that the phenomena of technological advancement, *datatification*<sup>15</sup>, *dataism*<sup>16</sup> and numerous human practices and the use of artificial intelligence do not need to be thought of from theses carried out with a view to problems that plague the central countries. This is because, even countries located in peripheral locations, are certainly interested in the direction of the rules developed on the subject – either because they will make use of technology to leverage their socioeconomic situations, or because they will suffer, to a certain extent, consequences from these decisions.

It is essential to consider, from a global point of view, that the numerous localities that are directly interested in the results of the instrument in progress present remarkable cultural hybridity, given the heritage of plural colonialism, often added to the indigenous question and slavery. In this complex context, it is that (re)thinking human rights from heterogeneity proves to be an arduous task, but possible, even when the object of analysis includes technological, volatile and continuously expanding elements.

The primacy for the adoption of a multicultural and pluralistic posture also shows the feasibility of analyzing the phenomenon of global expansion of artificial intelligence from a geographical space point of view. This is in order to seek to observe the need to develop global rules, guidelines and/or recommendations that are based on the perspective that each form of geography is representative of a mode of production or one of its moments, given the economic, social, cultural and political peculiarities of a given place and period.

At this point, it should be clarified that, when pointing to geographical aspects<sup>17</sup>, it should not be forgotten that the advent of the use of artificial intelligence and the concern with the rules

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<sup>15</sup> It is a movement to transform human actions into technology, in the sense of automating or digitizing them. Term used by authors Stefania Milan and Emiliano Trerè (2019) when addressing the *southern data*.

<sup>16</sup> As Yuval Harari teaches, according to *dataism*, the Universe consists of a flow of data and the value of Any phenomenon or entity is determined by its contribution to data processing (2015, p. 374).

<sup>17</sup> In this regard, in fact, reference is made to the point made by Manuel Castells (2001, p. 4) about the apparent paradox brought about by geographical aspects: much was thought about the Internet and technologies contributing

regarding rights of non-infringement of the right to the protection of personal data are objects of analysis and of global common concern, without the need for geographical barriers between countries and continents when dealing with activities such as international data transfer and development of smart consumer goods. It happens, however, that when talking about the effective consideration of local perspectives and contributions of peripheral countries during the legislative processes for the elaboration of norms and rules on the subject, in a supra-constitutional sense, the countries of the global south have adopted a position of subordination – whether for social or historical issues, linked to colonialism.

When geography begins to intend to see human space as a historical fact, as it is and as it should occur, the history of world society, duly allied to local society, can serve as a foundation for understanding spatial reality and allow its transformation at the service of human beings. Thus, it is important that history is written from a certain space and not on the margins of it, since the possibility of an a-spatial society is not envisioned.

It is clear that space is social and, in this sense, Santos (1977, p. 37) questions whether it is possible to speak of economic and social formation without including the category of space, arguing that it is, in fact, a category of economic, social and spatial formation, more than a simple economic and social formation, as interpreted until today.

However, it should be noted that there is no intention here to justify situations of exclusion or restriction of countries during the development of narratives, instruments, actions, or actions related to artificial intelligence, solely based on the verification of the presence of local economic underdevelopment. It does not seek to link exclusively to socioeconomic issues every manifestation of the absence of inclusion or Westernism in a global space, but rather to the totality of peculiarities and characteristics that make up the countries of the South, or even those that differ from the central poles of discussions on the subject.

The unity of continuity and discontinuity of the historical process of evolution and spread of technology can only be achieved in the social and also geographical space. This is because both the evolution of social formation and the unleashing of artificial intelligence in a given

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to the disappearance of cities, in view of the possibility of remote work in remote environments. However, what is noticed with the advancement of time is the greater centralization of people in large centers of concentration and transfer of data and information – which evidently demonstrates that new technologies tend to influence circumstances linked to geography.

social sphere are closely conditioned by the organization of space, depending, above all, on the current social formation in which they are found.

For this reason, and also considering that the adoption of technologies involves, today, the establishment of guarantees that promote the protection of personal data – a fundamental right – thus seeking a means of complementing the universalist protectionist theories of human rights, for the idealization of a theory focused on the place where personal data is processed and artificial intelligence is effectively used.

In addition, the *decolonial* project seeks to create a link between colonized peoples – or those who suffer its effects – and the rest of global society, especially from the transmodernity idealized by Enrique Dussel. In his philosophy, Dussel proposes to go beyond current European epistemic considerations in order to confront Eurocentric modernity through a multiplicity of *decolonial critical responses* from the global south. It is also emphasized that when dealing with the global South, reference is not only made to those geographically located in the South, but to all whose wells and cultures have been subordinated by the Eurocentric project of modernity (Grosfoguel, 2010).

At this point, it is emphasized that the use of the term *decolonial* and not *decolony* stems from the sense of continuity implicit in the term adopted. In this regard, Walsh (2009, p. 18) clarifies that:

Suppressing the letter "s" and naming it "decolonial" is not promoting an Anglicism. Rather, it is to mark a distinction between the Castilian meaning "de" and "des". We do not simply intend to undo or reverse colonialism; that is, to move from a colonial moment to a non-colonial one, as if it were possible for its patterns and footprints to cease to exist. The intention is to punctuate and provoke a positioning – a continuous posture and attitude – of transgressing, intervening, rising up and influencing. Decolonialism denotes, then, a path of continuous struggle in which we can identify, make visible and encourage places of exteriority and alternative constructions. (our translation)

With regard to studies on coloniality and, specifically, on *decolonialism*, Grosfoguel and Mignolo (2008, p.31) mention it as a political option that can be defined as follows:

... Cuando decimos 'decolonialidad' (...) we are meaning a type of activity (pensamiento, giro, opción), de enfrentamiento a la retórica de la modernidad y la lógica de la colonialidad. Ese enfrentamiento no es sólo resistencia sino re-existencia, (...). To think decolonially, to inhabit the decolonial turn, to work in the decolonial option (understood in its singular profile that still manifests itself in various forms according to local histories), means then embarking on a process of detaching oneself from the Eurocentric bases of knowledge (as Aníbal Quijano explains) and of thinking *haciendo-conocimientos* that illuminate the dark zones and the silences produced by a way of knowing and knowing whose horizon of life was constituent in The Imperial Concept of the British David Slater.

In view of such findings, therefore, it is beneficial to adopt an analysis of the phenomenon of expansion of artificial intelligence and its effects under the gaze of a counter-hegemonic theory, in view of the indispensability of considering studies and authors focused on the idea of *decolonization* and the adoption of epistemologies from the south to promote actions and actions aimed at the development of pluralistic and multicultural projects on the subject.

It is essential, therefore, the presence of multiculturalism and the perspective of the south when approaching such constructions, in order to avoid the movement coined by Boaventura (2010) as *epistemicide* – that is, the suppression of local knowledge under the pretext of a colonizing or homogenizing mission, reducing the epistemological, cultural and political diversity of the world system.

#### **4 List of recommendations for the ethical use of AI: the practical implications and general effects of normative construction in the international system**

The Global Legislation on Artificial Intelligence being developed by UNESCO, having already gone through the public consultation phase and even reached the publication of a preliminary draft of the list of recommendations regarding the ethics of its use, with the contribution of experts from several Nation States, is a normative instrument that will bring, when finalized, real implications at the international level. The Organization seeks, through this meeting of efforts, not only to demonstrate its vision of the ethical development of technology in a broad sense and of artificial intelligence itself, but also to highlight the existence of socio-cultural references that need to be considered during the elaboration of a normative instrument of such breadth.

The instrument under preparation, as already expressed, aims to establish a list of recommendations for the ethical use of artificial intelligence, including in its preliminary draft, the existence of an express recommendation that Member States apply the provisions contained in the list when adopting appropriate measures, especially legislative measures or other measures that may be necessary, in accordance with the constitutional practice that corresponds to it, considering their internal structures and ordinances, in order to give effect to the rules and principles contained in the list and in their respective jurisdictions.

The document also recommends that Member States ensure, internally, that private sector companies dedicated to artificial intelligence technologies assume their responsibilities related

to the statements and principles contained in the list of recommendations, in addition to promoting that uses take place both in attention to solid scientific research and in attention to ethical analysis and evolution.

It can be seen, therefore, that the then Global Legislation on Artificial Intelligence will effectively be a list of recommendations – which, in turn, will include normative statements and principles related to the use of artificial intelligence –, defining a scope of application, purposes, objectives, values and principles, as well as scopes of political action, indicating an analysis of the evolution of the ethical impact, governance definitions, affirmation of a data policy of international cooperation and also demonstrating the implications related to the themes: environment, gender, culture, education, work, health and social well-being.

Above all, because the list extends to all Member States, in line with the protection of human rights, fundamental freedoms, human dignity and respect for the environment and ecosystems, it is necessary to assess precisely what its effects are.

It is pointed out, first, that the Member States will be responsible for the real development of cooperation policies and actions for internal normative compliance with the list of recommendations proposed by the Organization, especially if the non-compliance represents, at any level, a form of human rights violation.

In this sense, Ramos (2013, p.116) explains that the investigation of possible human rights violations, within the scope of the United Nations (UN), can be carried out in two areas: (a) conventional, which results from international agreements to which Member States are signatories; and (b) extraconventional, which results from resolutions of the UN and its organs, edited from the interpretation of the Charter of the United Nations and its provisions relating to the protection of human rights. Both were a *global* system of human rights protection.

Perceptible, therefore, are the effects of the instrument. First, because adherence to the recommendations defined by the Organization, by the Member States, tends to avoid notes of possible human rights violations linked to the extra-conventional area, as a result of the misuse of artificial intelligence at the domestic level. And secondly, because the Nation-States must promote legislative development in order to adapt the internal normative statements to the norms and principles of the list of recommendations, in addition to evolving political actions for this purpose.

It should be clarified, however, that, as pointed out by Ramos (2013, p. 356/357), the recommendation is a non-binding opinion, coming from an international human rights body

and "As a result of the existence of an international obligation to monitor and supervise protected rights (the so-called '*droit de regard*'). These instances, while active in monitoring, can only observe and suggest".

In the case of an instrument prepared by UNESCO, that is, a specialized agency of the UN System, its extra-conventional origin can be defended and, consequently, its non-binding character. However, although there is no binding nature of its terms in relation to the Member States that are signatories to it, its potential *power to embarrass* or mobilize shame must be considered. According to Ramos (2013, p. 357) "*these deliberations make up the so-called 'power of embarrass', which by definition is a political pressure, since it would lack the so-called binding force. The so-called 'mobilisation de la honte' is sought, so that the violating State, 'sponte propria', fully repairs the offense to protected human rights*".

It is observed that the responsibility arising from this instrument tends to be of a political nature – without having, as a consequence, the application of sanctions or the search for reparation – so that the feasible penalty would be that of a moral order, linked, therefore, to world public opinion. Furthermore, despite the absence of binding force of the list of recommendations aimed at the ethics of the use of artificial intelligence, this extra-conventional mechanism has an indirect legal effect, that is, the possibility of using the instrument as an evidential element for the instruction of another international judgment proceeding of a State, which – then – would make it subject to the recommendations, then, despised internally.

Thus, there is no need to speak of the lack of practical implications or legal effects of the list of recommendations being prepared by UNESCO, on the contrary. Although it does not have binding force due to its nature as an extra-conventional mechanism, its embarrassing force for the adherence of the Member States is evident. Furthermore, its indirect legal effects, whether for the formation of evidence in international judgment, or as material for political use by states and international organizations, represent a strong moral relevance that enhances the legitimacy of the action of other entities of the international community.

## 5 Final considerations

The growth and development of the forms of use and application of artificial intelligence at a global level, which is increasingly accelerated, shows the expansion of the technology to

geographical spaces no longer located between those centers hitherto recognized by the polarization of narratives and the dictates of its use and development.

In view of this scenario, UNESCO's aggregating attempt to propose the elaboration of a list of recommendations focused on ethics in the use of artificial intelligence is justified, created, above all, from a multicultural, comprehensive, integrative and pluralistic intent.

From the perspective of the epistemologies of the South, above all, such action constitutes a visible advance in terms of global cooperation during the elaboration of a normative instrument in the space of the international system – it being clear that elements of public consultation and participation of experts from a considerable number of Member States represent a maturity in the discourse and practice of the global normative construction designed to solve common problems of humanity.

When artificial intelligence is not just a mere means used in times of *datatization* of human life activities, but, moreover, a true technological disruption that tends to question the limits of its own adequacy, there are numerous risks and challenges that accompany the benefits that it promises to bring to human occupations. Precisely for this reason, every effort to elaborate norms linked to attempts at multiculturalism and inclusion of the global south in the development of discussions, investigations, narratives, and creations of world order is extremely relevant.

Finally, the list of recommendations being developed by UNESCO should be understood as an extra-conventional mechanism that – although it does not have binding force and functions as advice or exhortation – has its practical and real effects. It is necessary to circumvent or, at least, to resolve the feeling of ajuridicity of this international deliberation. First, because its indirect legal effects are considered; and, second, given its strength to legitimize the actions of organizations and communities of the international system in the sense of protecting human rights – a strength that also comes from its own condition of creation, based on pluralism and multiculturalism.

Therefore, one should aspire to the maturity of the Member States for the establishment of an internal practice, that is, a custom of adopting and complying with these deliberations, both for the development of legislative adequacy, and for the elaboration and implementation of related political actions at the domestic level.

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Received: 12/23/2020

Accepted on: 09/29/2021