

INDIAN INSTITUTE OF SPACE SCIENCE AND TECHNOLOGY

MODEL UNITED NATIONS - 2019



UNITED NATIONS HUMAN RIGHTS COUNCIL

BACKGROUND GUIDE

Letter from the Executive Board

Greetings Delegates,

It is a privilege and honour for us to be a part of the Executive Board for UNHRC at IIST MUN.

UNHRC is one of the essential and paramount International Forum and an integral part of the United Nations, discussing issues pertaining the spectrum of agendas concerning not only the past and the present, but also the future.

The agendas for HRC at IIST MUN 2019 is technical in nature and all you need to realize is that this is an agenda with many layers and a lot of substantial points, which the executive board expects you to discuss during the span of the conference.

The UNA-USA rules of procedure will be followed in this committee. Those who are not very well versed with these rules of procedure, kindly have a look through it before the committee session begins. However, the Executive Board will take an orientation session in the beginning of the committee, especially for the first timers.

We look forward to amazing debate and lots of fun during committee.

Aaron Alvares (Chairperson)

Swetha Sakunthala (Vice Chairperson)

Agenda: Human rights of unaccompanied migrant children and adolescents

- **Definition of a migrant child**

For statistical purposes, the United Nations defines youth as “those persons between the ages of 15 and 24 years, without prejudice to other definitions by Member States.” Based on the UN definition of youth, the assumption would be that only persons under the age of 15 are children. However, the United Nations Convention on the Rights of the Child (CRC) defines a child as a “human being below the age of 18.” This definition was used so that the Convention can provide protection and rights to as broad an age-group as possible, but from a data perspective, it leads to an overlap since persons between the ages of 15 and 18 years are counted as both children and youth.

It is important to note that definitions of childhood have changed over time and often do not match what was historically seen as childhood even within the same country. Additionally, just as the concepts of “childhood” and “adulthood” vary across cultures, the definitions and categories used by governments which collect information at border entry and exit points and during the asylum process also vary. For instance, in Europe, government policy documents interchangeably use different terminology, including “child”, “minor”, “unaccompanied child”, “unaccompanied minor” and “unaccompanied migrant minor”. Data on child migrants may be disaggregated into those who are accompanied, such as those who travel with their family members or guardians, and those who travel alone, either because they are unaccompanied or because they have been separated from their family or guardian during their journey. Some data sources also have a category for those who are “accompanied-non-accompanied”, which means they are traveling with an adult, but the relationship with the adult is uncertain or defined by child marriage.

- **Recent trends**

According to United Nations Department of Economic and Social Affairs (UN DESA) data, the estimated number of people aged 19 or under living in a country other than the one where they were born rose from 28.7 million in 1990 to 36 million in 2017. In 2017, child migrants (aged 19 years and under) accounted for 13.9 per cent of the total migrant population and 5.7 per cent of the total population (of all ages). The estimated number of young migrants (aged 15 to 24) also rose from 22.4 million in 1990 to 27.9 million in 2017. In 2017, young migrants accounted for 10.8 per cent of the total migrant population and 4.7 per cent of the total population (of all ages).

The proportion and number of child and young migrants vary by region. As of 2017, the percentage of young migrants is higher in low and middle-income countries than in high-income countries. Since UN DESA started publishing its international migrant stock estimates in 1990, Africa has hosted the highest proportion of child migrants as well as young migrants. From 1990 to 2017, the proportion of migrant children in Latin America and the Caribbean has slightly increased, while it has continued to decrease in Europe and Asia. As a percentage of the total migrant stock, young migrants have steadily decreased in all regions except Oceania. The proportion of both child migrants and young migrants in Oceania’s migrant stock has stayed relatively stable during this period.

In recent years, the number of children migrating unaccompanied by guardians has increased. In 2015-2016, there were five times as many children estimated to be migrating alone than in 2010-2011 (UNICEF, 2017b). The number of unaccompanied and separated children applying for asylum in countries other than in the European Union increased from 4,000 in 2010 to 19,000 in 2015 (UNICEF, 2017b).

According to Eurostat, the number of unaccompanied minors among asylum seekers in Europe increased from 10,610 in 2010 to 95,208 in 2015, and then decreased to 63,280 in 2016.

This increase can be partly attributed to the overall rise in the number of asylum seekers on the continent in those years. Eight per cent of all arrivals across the Mediterranean to Italy in 2015 were unaccompanied children, which climbed to 14 per cent in 2016. An estimated 90 per cent of all children who crossed the Mediterranean were unaccompanied (UNICEF, 2017a)

- Data sources

Several sources provide data on child and young migrants by disaggregating data on migrant stocks and flows by age. Data on migrant stocks by age are collected or consolidated at the global, regional and national levels. Data on migrant flows by age come from sources ranging from administrative to expert reports.

Data collection at the global and regional levels

- Migrant stocks by age

UN DESA has produced estimates of international migrant stocks based on national census data every five years since 1990, and biannually since 2013, with the most recent year being 2017. Data on international migrant stocks are available for all regions, countries and areas of the world and are disaggregated by age and sex. UN DESA's migration statistics include the age category of young migrants (19 and younger). The data on child and young migrants are broken down into four age subcategories: 0-4, 5-9, 10-14, 15-19 and 20-24 years. These subcategories enable producers of statistics to monitor progress and inform policy makers on the capacities and vulnerabilities of each of the aforementioned age subcategories.

However, it is difficult to identify the precise number of "children" (using the Convention on the Rights of the Child (CRC) definition of under 18 years) in migrant stocks, as the age group 15-19 is one subcategory in the dataset. Based on UN DESA's figures, other available migrant data, and expert opinion, the United Nations Children's Fund (UNICEF) provides estimates of the number of child migrants in migrant stocks that fit the CRC definition.

Every four years since 2001, the Organisation for Economic Co-operation and Development (OECD) has published consolidated data on migrant stocks in OECD countries as well as in some non-OECD

countries. The data on stocks in OECD countries are generally disaggregated into five-year age groups (including 15-19 and 20-24 years) and the data on stocks in non-OECD countries are recorded in three age groups (15-24 years, 25-64 years and over 65 years). However, people aged 15 years old are missing for Spain, the United States of America and Sweden in these datasets because of how their respective national data are collected. The most recent public datasets are from 2011.

- *Migrant flows by age*

The Office of the United Nations High Commissioner for Refugees (UNHCR) publishes data on migrant arrivals by group (men, women, children and unaccompanied children) and collected from the national authorities of Greece, Italy and Spain. UNHCR also publishes data on the number of “people of concern” and/or registered refugees by age and/or the number of children for a number of countries or “situations”, including in the Syrian Arab Republic, the Thailand-Myanmar border, and the Democratic Republic of Congo. Data by age on migrants who go through the International Organization for Migration (IOM)’s voluntary return programs back to their home countries are released by IOM in its annual report, as well as by some countries, including Mexico.

Since 2009, Eurostat has published the annual number of immigrants who arrived in each member state by age, as well as pending asylum cases, asylum decisions made, and cases that have been withdrawn, divided into five age categories, including less than 14 years, from 14 to 17 years, less than 18 years, and from 18 to 34 years old. The number of unaccompanied minors is also included in these data.

The European Commission’s Knowledge Centre on Migration and Demography provides an interactive online map consolidating Eurostat data on asylum applications, decisions, residence permits and UNHCR’s data on populations of concern and arrivals to Europe disaggregated by age.

- *National administrative sources*

Several countries provide data on international migrant stocks and flows by different age categories. For example, Canada publishes monthly data on asylum claims in each province in six age categories, including 0-14 and 15-29 years old. The US provides statistics on the numbers granted refugee status at the national level each year and the number of “refugee arrivals”, divided by sex, marital status and 16 age categories, including 1-4, 5-9, 10-14, 15-19 and 20-24 years old. Mexico publishes data on the number of asylum applications made by unaccompanied minors disaggregated by sex and country of origin. Argentina also publishes annual data on asylum applications, as well as asylum decisions, divided by sex and five age groups, including 0-4, 5-11 and 12-17 years old.

Some countries also publish data on people under the age of 18 held in immigration detention. Canada publishes the number of minors who spent time in detention at the national level by year. In its annual migration report, Mexico publishes data on child migrants apprehended and detained by the state, by age categories 0-11 and 12-17 years old, and how many were accompanied and unaccompanied. The United Kingdom provides a summary number of how many children were in immigration detention annually.

- *Surveys:*

Since 2015, IOM has conducted surveys of refugees and migrants through its Displacement Tracking Matrix (DTM), gathering information about migrants' demographic details (including age and/or number of children), as well as their experiences of abuse, exploitation and trafficking. DTM collects data in many countries and regions, depending on the size and needs of populations on the move. Additionally, IOM's Mixed Migration Monitoring Initiative (4Mi) interviews migrants to collect and analyze data on mixed migration flows out of the Horn of Africa. Summaries of the results include the number of survey participants who were aged under 18.

- *Expert reports/datasets*

UNICEF produces monthly "Situation Reports", which include the number of migrant children who receive services from UNICEF and/or are in situations of displacement. UNICEF reports on risks faced by migrant children using both primary and secondary quantitative and qualitative data sources. Wherever possible, the dataset compiled by IOM's Missing Migrants Project includes information on the age of migrants who die or go missing during migration. However, due to the difficulties of collecting information on missing migrants (for less than 30 per cent of recorded incidents between 2014 and 2018 have information on age), these numbers are a gross underestimate of the true number of children and youth who die during migration.

- *Data strengths & limitations*

Migration data disaggregated by age can inform policymakers of the different protection and integration needs of migrants. However, realities on the ground make data collection and analysis by age, specifically on those aged under 18, extremely challenging.

- *Data collection challenges include:*

Incomplete, unreliable or duplicated data: Unaccompanied children who get separated from their guardians or lose them during their journeys may go undetected, avoid being registered by authorities, or claim to be older than 18 or accompanied by a guardian, so that they can continue their journeys and not be taken into custody. Others may not know how old they are or claim to be under 18 years old so that they can take advantage of the rights and privileges of being a child, such as shelter and schooling (Separated Children in Europe Programme, 2011).

There may also be cases of children who register for asylum in more than one country, who do not register for asylum at all, or who claim international protection but have not arrived by sea. For instance, Germany reported that more than 42,000 unaccompanied and separated children entered the country in 2015, but only 14,439 claimed asylum (European Commission, 2016).

Differing definitions for age categories: The comparison of data on stocks and flows of migrant children and other age groups is difficult because countries collect data on age using different definitions and categories.

Differing criteria for recording data: Countries differ in how they record data for the same categories. For instance, some European Union Member States record those who claim to be unaccompanied children in the statistics, whereas others only count those recognized as such following an age assessment by an authority (Humphries and Sigona, 2016).

Exclusion of children's agency over their lives: Reports of numbers of "missing refugee children" can be informed by the data/evidence of the dangers that children face as migrants, especially when they are unaccompanied or separated. However, challenges in data collection and the agency of

children should also be considered when assessing claims of missing children. For instance, a child may leave a shelter on their own accord to continue their migration journey (Humphries and Sigona, 2016).

On the United States (US)-Mexico border, the US Border Patrol (USBP) apprehended nearly 69,000 unaccompanied children in 2014, 40,000 in 2015 and 60,000 in 2016. In 2016, 61 per cent of apprehended unaccompanied minors in that year were from El Salvador and Guatemala

Extra care required when handling data on child migrants: Migration data by age should be collected and processed in accordance with legal instruments on data protection to ensure privacy, dignity and well-being of migrants. Data controllers need to anticipate adverse consequences especially while processing data relating to children (IOM, 2010).

Documents to be referred:

1. United Nations convention on the rights of child
2. Human rights council Panel discussions
3. A/HRC/RES/36/5

Agenda: Ensuring privacy by imposing regulations on the activities of Intelligence Organisations.

Introduction:

Article 12 of the Universal Declaration of Human Rights provides that “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.” In other words, there is universal recognition of the fundamental importance, and enduring relevance, of the right to privacy and of the need to ensure that it is safeguarded, in law and in practice.

Surveillance of electronic communications data can be a necessary and effective measure for legitimate law enforcement or intelligence purposes. Revelations about digital mass surveillance have, however, raised questions around the extent to which such measures are consistent with international legal standards and whether stronger surveillance safeguards are needed to protect against violations of human rights.

Examples of overt and covert digital surveillance in jurisdictions around the world have proliferated, with governmental mass surveillance emerging as a dangerous habit rather than an exceptional measure. Governments reportedly have threatened to ban the services of telecommunication and wireless equipment companies unless given direct access to communication traffic, tapped fibre-optic cables for surveillance purposes, and required companies systematically to disclose bulk information on customers and employees.

Concerns have been amplified following revelations in 2013 and 2014 that suggested that, together, the National Security Agency in the United States of America and General Communications Headquarters in the United Kingdom of Great Britain and Northern Ireland have developed technologies allowing access to much global internet traffic, calling records in the United States, individuals’ electronic address books and huge volumes of other digital communications content. These technologies have reportedly been deployed through a transnational network comprising strategic intelligence relationships between Governments, regulatory control of private companies and commercial contracts.

Definition of privacy:

UNHRC defines privacy as follows:

Privacy can be defined as the presumption that individuals should have an area of autonomous development, interaction and liberty, a “private sphere” with or without interaction with others, free from State intervention and from excessive unsolicited intervention by other uninvited individuals. The right to privacy is also the ability of individuals to determine who holds information about them and how is that information used.

International history of right to privacy:

The law of privacy can be traced as far back as 1361, when the Justices of the Peace Act in England provided for the arrest of peeping toms and eavesdroppers. The modern privacy benchmark at an international level can be found in the 1948 Universal Declaration of Human Rights, which specifically protected territorial and communications privacy. Article 12 states:

No-one should be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks on his honour or reputation. Everyone has the right to the protection of the law against such interferences or attacks.

Interest in the right of privacy increased in the 1960s and 1970s with the advent of information technology (IT). The surveillance potential of powerful computer systems prompted demands for specific rules governing the collection and handling of personal information. In many countries, new constitutions reflect this right. The genesis of modern legislation in this area can be traced to the first data protection law in the world enacted in the Land of Hesse in Germany in 1970. This was followed by national laws in Sweden (1973), the United States (1974), Germany (1977) and France (1978).

The regulatory model adopted by Europe, Australia, Hong Kong, New Zealand, Central and Eastern Europe and Canada is that of a *public official* who enforces a comprehensive data protection law. This official, known variously as a Commissioner, Ombudsman or Registrar, monitors compliance with the law and conducts investigations into alleged breaches. In some cases the official can find against an offender. The official is also responsible for public education and international liaison in data protection and data transfer. This is the preferred model for most countries adopting data protection law. It is also the model favored by Europe to ensure compliance with its new data protection regime. However, the powers of the commissions vary greatly and many report a serious lack of resources to adequately enforce the laws.

Some countries such as the United States have avoided general data protection rules in favor of specific *sectoral laws* governing, for example, video rental records and financial privacy. In such cases, enforcement is achieved through a range of mechanisms. The problem with this approach is that it requires that new legislation be introduced with each new technology so protections frequently lag behind. The lack of legal protections for genetic information in the U.S. is a striking example of its limitations. In other countries, sectoral laws are used to complement comprehensive legislation by providing more detailed protections for certain categories of information, such as police files or consumer credit records.

Data protection can also be achieved - at least in theory - through various forms of self regulation, in which companies and industry bodies establish codes of practice. However, the record of these efforts has been disappointing, with little or no evidence that the aims of the codes are regularly fulfilled. Adequacy and enforcement are the major problem with these approaches. Industry codes in many countries have tended to provide only weak protections and lack enforcement. This is currently the policy promoted by the governments of United States, Singapore and Australia.

Immediately following the Second World War, in 1947, the governments of the United States, the United Kingdom, Canada, Australia and New Zealand signed a National Security pact known as the "Quadripartite," or "United Kingdom - United States" (UKUSA) agreement. Its intention was to seal an intelligence bond in which a common National Security objective was created. Under the terms of the agreement, the five nations carved up the earth into five spheres of influence, and each country was assigned particular targets. The UKUSA Agreement standardized terminology, code words, intercept handling procedures, arrangements for cooperation, sharing of information, and access to facilities. One important component of the agreement was the exchange of data and personnel. The link means that operatives from the New Zealand signals intelligence agency GCSDF could work from the Canberra facilities of Australia's Defense Signals Directorate to intercept local communications,

and pass on the contents to the Australian intelligence agencies without either nation having to formally approve or disclose the interception.

The U.S. has led a worldwide effort to limit individual privacy and enhance the capability of its police and intelligence services to eavesdrop on personal conversations. The campaign has had two legal strategies. The first made it mandatory for all digital telephone switches, cellular and satellite phones and all developing communication technologies to build in surveillance capabilities; the second sought to limit the dissemination of software that provides encryption, a technique which allows people to scramble their communications and files to prevent others from reading them.

At the same time, the United States has taken a lead in promoting greater use of electronic surveillance and the weakening of bank secrecy laws. FBI Director Louis Freeh has travelled extensively around the world, promoting the use of wiretapping in newly free countries such as Hungary and the Czech Republic.

Allegations concerning the draft law which amends Germany's existing regulations on the surveillance of communications between non-German citizens have also been raised. Despite the expressed criticism the draft law was approved by the German Bundestag on 21 October 2016 and by the German Federal Council on 4 November 2016. The law permits the Federal Intelligence Service (BND) to undertake bulk surveillance of non-German citizens and institutions, as well as to collect and process, within Germany, the communications and associated data of non-German citizens without specifying an individual target or associated personal identifier.

Allegations regarding a number of provisions contained in the draft of "Investigatory Powers Bill" in UK was raised, which unduly interfere with the rights to privacy and freedom of opinion and expression, both within and outside the United Kingdom. The bill contains provisions governing the authorisation of warrants to identify "journalistic sources", warrants for mass surveillance and notices for the retention of data by telecommunications operators. Concern is expressed about the specific provisions of the bill that provide for overly broad exceptions of the right to privacy and freedom of expression without independent oversight and lack sufficiently clear definitions.

Role of intelligence organisations:

Intelligence services play a critical role in protecting the State and its population against threats to national security, including terrorism. Their main purpose is to collect, analyse and disseminate information that assists policymakers and other public entities in taking measures to protect national security and upholding the law. They help to enable States to fulfil their positive obligation to safeguard the human rights of all individuals under their jurisdiction. Hence, effective performance and the protection of human rights can be mutually complementary goals for intelligence services. This includes the protection of the population and their human rights.

Personal data is exchanged between intelligence agencies on a regular basis but this exchange and the consequences are not necessarily subject to oversight by independent agencies located in either the sending or receiving State. This gives rise to the the question of whether data transferred from one country to another, and thus the privacy of the individuals concerned, was currently protected to the same standards in both States involved.

Issue at hand:

Governments continue to justify surveillance measures to combat terrorism. Lawful surveillance can be a useful tool to target criminal and terrorist acts. However, as noted in a growing number of human rights experts' reports, surveillance must comply with international and domestic laws, notably by meeting the principle of legality, necessity, and proportionality.

Domestic and regional courts have also increasingly been called upon to consider issues of privacy and online surveillance. The Court of Justice of the European Union has held that access on a generalized basis to the content of electronic communications compromises the "essence" of the fundamental right to respect for private life. It has also ruled that mandatory retention of metadata and national legislation which provides for "general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication" are contrary to European Union law. The European Court of Human Rights requires demonstrable "reasonable suspicion" in the context of bulk interception in order for a proportionality test to be performed.

These limitations have not, however, removed the serious and continuing concerns around extraterritorial mass surveillance programmes, and proliferation of laws that authorize asymmetrical protection regimes for nationals and non-nationals. Such laws exist in Germany, France and the United States.

Measures should be undertaken to ensure security in the country should not interfere with fundamental rights and freedoms, such as freedom of expression and right to be protected, *inter alia*, against arbitrary or unlawful interference with their privacy and correspondence, guaranteed by the ICCPR. Progress is still required to ensure that adequate procedural safeguards and oversight of interception and surveillance are in place. The council is looking forward to have debate that address protection of information privacy, bodily privacy, privacy of communications and territorial privacy against international intelligence organisations. We wish to discuss the inconsistencies in surveillance capability of organisations of different countries, discrimination of nationals and non nationals under privacy protection on the national level, and effective preventive as well as remedial solutions for the current threats upon individual privacy.

Research tips :

- Avoid using Wikipedia, if at all it has to be used, it should be restricted to the basis for the research.
- Understand the territory of the Arctic circle before dwelling into the legal intricacies
- Identify the major stakeholders of the two agendas.
- Note down the important sub topics which you find during your research.
- **AVOID READING DIRECTLY FROM A NEWS ARTICLE WHILE MAKING YOUR SPEECH AND RESTRICT IT TO USING IT AS A REFERENCE**
- **FURTHER AVOID PLAGIARIZING ALL YOUR SOLUTIONS, IT SHALL RESULT IN DISQUALIFICATION FROM RECEIVING AN AWARD.**

All the best and good luck for your research. Kindly note this background guide shall not be the only source for research but rather it shall be your basis for research. Reading points from the background shall not fetch you as many points as it would if you substantiated it with further research. For any further doubts or clarifications. Feel free to contact us at either aaron.alvares@law.christuniversity.in (Mail) or sswetha565@gmail.com (Mail).