THE ATHENS ROUNDTABLE
ARTIFICIAL INTELLIGENCE AND THE RULE OF LAW

2021 3RD EDITION REPORT

prepared by:
The Future Society

The premier international, multi-stakeholder forum on Artificial Intelligence and the Rule of Law, particularly within the prism of legal, judicial, and compliance systems.

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Foreword

It was our distinct honor to host The Athens Roundtable 2021 under the aegis of the President of the Hellenic Republic Aikaterini Sakellaropoulou. This event welcomed over 1,700 participants from 120 countries, constituting a fifteen-fold growth in attendance and a four-fold growth in the number of countries represented since our first convening in 2019. These statistics are eclipsed by the urgency of the discussions, which ranged from higher-level themes, such as US and European regulatory approaches to governing AI, to technical-level discussions, such as AI standards and benchmarking.

At this year's Roundtable, we announced the launch of a Massive Online Open Course (MOOC) on AI and the Rule of Law, a product of the Working Group on Judicial and Legal Capacity Building on AI. As of June 2022, the MOOC has enrolled over 4,400 students from 140 countries. The convening was also marked by the presentation of The Manifesto In Defence of Democracy and the Rule of Law in the Age of "Artificial Intelligence", a call for U.S. and European leadership to remain committed to coherent laws, the primacy of the public interest, and the shaping of the digital economy through democracy on both sides of the Atlantic.
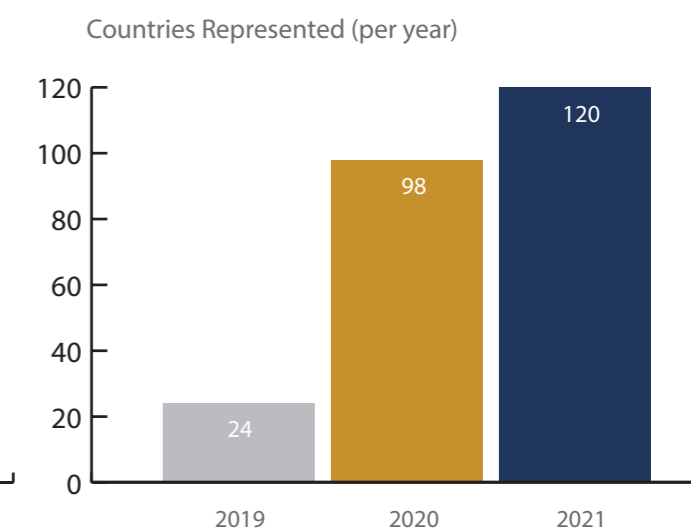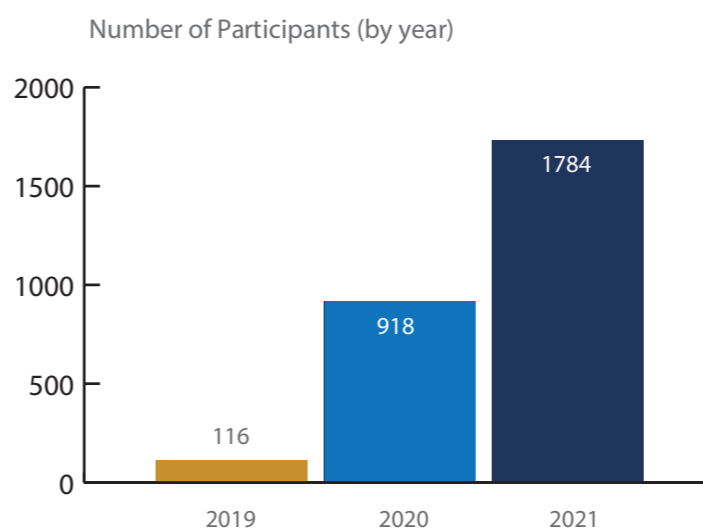
As a platform for second-track diplomacy, The Athens Roundtable helps us, hosts, speakers, and attendees alike, comprehend how AI is coming into contact with the rule of law. We believe that collective intelligence, which The Roundtable exemplifies, is instrumental for surmounting the challenges that AI presents to human rights and democratic values, and for utilizing AI to serve and empower citizens. We look forward to welcoming new faces, topics, and paradigm-shifting ideas in the years to come.

Nicolas Economou, Mantalena Kaili, Nicolas Miailhe
Steering Committee of The Athens Roundtable on AI and the Rule of Law

TOTAL NUMBER OF PARTICIPANTS
1.784

PARTICIPANTS JOINED OVER
120
COUNTRIES

TOTAL NUMBER OF SPEAKERS
51

Speakers came from diverse sectors, including representatives from intergovernmental organizations, national governments, justice systems, regulatory bodies, standard-setting institutions, industry, academia, and civil society

Number of Participants (by year)

2019	2020	2021
116	918	1784

Countries Represented (per year)

2019	2020	2021
24	98	120

"AI technology is already changing our worldview and perceptions. We need to set clear rules and standards in order to empower individuals with control-by default and by design. This is the only way we can ensure that AI technology will remain trustworthy and that the convenience of using intelligent systems will not put societies into a dilemma of compromising either our safety or human rights. The Future Society's work has shed vital light on the complex AI landscape and the challenges in building trustworthy AI systems. Through our collaboration on The Athens Roundtable, TFS has brought together key AI actors and facilitated crucial discourse for international cooperation towards a more responsible adoption of AI for the benefit of humanity."

Eva Kaili, Member of the European Parliament; Chair, STOA

The Athens Roundtable 2021 - Overview of Proceedings

Over two days (Dec. 6-7, 2021), the third edition of The Athens Roundtable on Artificial Intelligence and the Rule of Law gathered over 1,700 representatives of international regulatory bodies, governments, standard-setting institutions, industry, the judiciary, and civil society, to take stock of recent developments and contemporary challenges in AI governance.

The Athens Roundtable was co-founded in 2019 by The Future Society (TFS) and the European Law Observatory on New Technologies (ELONtech), under the aegis of the Presidency of the Hellenic Republic, and has since served as the premier international, multi-stakeholder gathering on artificial intelligence, legal systems and functions, regulatory compliance, and the rule of law.

The 2021 edition of The Athens Roundtable focused on three primary themes: 1) AI and Human Rights; 2) International legislative and regulatory developments, principally in Europe and the U.S.; and 3) AI standards and benchmarking.

This report provides an overview of key ideas, points, and takeaways from over 50 prominent experts and speakers. The text contained herein has been derived directly from transcripts and recordings taken during the event. We encourage you to listen to the recording of sessions of interest to benefit from the full context of the selected remarks below.

Opening Addresses

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- The Secretary General underscored that the rapid development of artificial intelligence is pushing the boundaries of what is possible in the years ahead-delivering further benefits for our societies, while also bringing with it dangers.

- Noted that a number of governments have taken initiatives on their own, but the nature of AI systems being designed and deployed across national boundaries means that a multilateral approach would be best placed to succeed.

Marija Pejčinović Burić, Secretary General of the Council of Europe

Tawfik Jelassi, Assistant Director-General for Communications & Information, UNESCO

- Remarked that artificial intelligence has unprecedented potential to improve lives and livelihoods across the world and that there are a number of examples of AI helping achieve remarkable progress toward the United Nations Sustainable Development Goals (UN SDGs).

- Pointed to UNESCO's Judges Initiative, which has so far trained more than 23,000 judicial operators from over 150 countries worldwide.

- Underscored that digital technologies offer the potential to strengthen access to justice and UNESCO is working with such technologies to help transform the justice system in a way that respects, protects, and promotes human rights. UNESCO is also working on the implementation of its recent Recommendation on the Ethics of AI, adopted in 2021 by 193 UNESCO member states.

Richard Blumenthal, U.S. Senator

- Stated that he and other lawmakers in Congress have been particularly focused on the harms that Big Tech companies like Facebook can have on our society. There is compelling evidence of these powerful companies putting profit ahead of people, especially our children.

- Noted that the harms we are witnessing from artificial intelligence extend far beyond our children. Algorithms designed to drive up revenues at all costs far too often prioritize inflammatory content and misinformation. Across the United States, he said, these dangerous algorithms have taken adults down rabbit holes of extremist content, leading sometimes to violence.

- Proclaimed that, in the digital age, we inescapably face these challenges together, as technology does not recognize or abide by national boundaries.

Keynote: AI and Democratic Values: Metrics for Progress

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UNESCO - The Future Society (TFS) Global Judicial Education Training Program MOOC

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Mark Rotenberg, President & Founder, Center for AI and Digital Policy

Merve Hickok, CAIDP Board Chair; Founder, Aiethicist

Prateek Sibal, Programme Specialist, Digital Innovation and Transformation, UNESCO

Niki Iliadis - Senior AI Policy Researcher and Project Manager, The Future Society

- Rotenberg presented the work of the Center for AI and Digital Policy (CAIDP) which leverages the OECD AI principles, to ensure AI is developed in alignment with human rights.

- Rotenberg said that these policy frameworks raise significant questions: how do we evaluate implementation? What will happen next? Where are the red lines for the deployment of AI systems? To inform answers to these questions, he pointed to CAIDP's work conducting a quantitative evaluation of AI policies and practices for 30 countries, as well as a basis for ranking countries.

- Hickok explained that CAIDP is focused on human rights, democratic values, and capacity building. They have cohorts of researchers who participate in weekly meetings and then are assessed based on a curriculum of AI on history, institutions, regulations, research methods, policy work; cohort members are also required to sign a statement of professional ethics.

- UNESCO's Sibal noted that the need for a Massive Open Online Courses (MOOC) on AI in the judicial context was born at the first edition of The Athens Roundtable, held in Greece (2019).

- UNESCO kicked off the development of the MOOC with a survey of judicial operators that received about 1,200 responses from judges, lawyers, prosecutors, and civil servants working across 100 countries. Over 85 percent of the respondents expressed interest in learning about AI systems, including in the administration of justice, civil and criminal litigation, and investigations and law enforcement.

- The Future Society's Iliadis described the course, which is composed of six introductory modules, looking at two important and interconnected angles: first, the course examines how AI can impact the administration of justice; and second, a discussion about the role of judicial operators in the responsible AI ecosystem.

• Judge Aldana of the National Judicial College noted that we are gradually seeing the introduction of AI into the court systems of various countries, including Brazil, China, Estonia, India, Norway, and the U.S. In sensitive areas such as pretrial release and sentencing determinations, courts need to be made aware of the possibility of inadvertently programmed AI biases. Judge Aldana stressed that the legitimacy of judicial decisions in democratic societies depends on public acceptance of the fairness of those decisions.

Hon. Benes Aldana - President, National Judicial College, United States

A Manifesto in Defence of Democracy

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Paul Nemitz - Principal Adviser, Directorate-General for Justice and Consumers, EU Commission

Charina Chou - Global Policy Lead for Emerging Technologies, Google

• Nicolas Economou, The Athens Roundtable's Principal Coordinator, introduced the panel by describing the Manifesto as a transatlantic initiative proposed by panelist Paul Nemitz. The Manifesto's Working Group, which was hosted by The Athens Roundtable, included academics and stakeholders from both sides of the Atlantic. Economou stated that the Working Group believes that common policy ground can and must be found between the U.S. and Europe-and other democracies-to ensure that fundamental values are safeguarded. Economou said that the Working Group believes that along with confidence in the power of technology for good, we must be concerned about the corrosive effect on democracy that excessive concentration of power technology can enable, either in the hands of governments or of the private sector.

• The EU Commission's Nemitz opened by stating that five years ago, it would have been impossible to reach agreement across the Atlantic-even among academics-that there should be a primacy of democracy over technology. The manifesto shows that this belief is not continuing in the future and that, to the contrary, there are problems traced to technology that must be addressed in a way that reestablishes the primacy of democracy over technology. Nemitz also noted that the Manifesto's Working Group was able to present the manifesto during President Joe Biden's visit to Brussels on June 14, 2021, a presentation which informed the U.S. Summit for Democracy.

• Google's Chou noted several areas of agreement. First of all, she noted, technology does not take primacy over the rule of law; human rights, democracy, and democratic values are the foundation of flourishing societies; and regulation of AI is critical. In addition to what is noted in the manifesto, it is important to say that AI can also strengthen democracy. Moreover, Chou said, AI can be used by governments to better deliver on promises and public services. She pointed to collaboration with the governments in India and Bangladesh to use the AI to develop early warning systems, which, in 2020 alone, served more than 100 million people and saved over 100 lives.

Moderated by Manuel Muñiz - Provost of IE University and Dean of IE School of Global and Public Affairs; Former Secretary of State for Global Spain, Spanish Ministry of Foreign Affairs, European Union and Cooperation

Keynote:

Brad Smith, President and Vice Chair of Microsoft

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• Smith stated that the topic of AI and the Rule of Law is important for our future, and, in some ways, the future of humanity. It's about the intersection between the needs of humanity and technology. He said he sees two goals: first, it is critically important that we harness the power of AI to serve humanity and advance the needs of our societies; and second, we need to protect people, we need to protect humanity from what otherwise could become the abuses of this new technology.

• Smith proclaimed that we are entering a thirty-year period where we must address two fundamental needs as a planet: move to a decarbonized future and a net zero economy by 2050; and adapt to changing demographics. Every five years, every decade, we will see more people retiring than entering the workforce, and so for the first time in history, we must reverse the effects of climate change while adapting to a shrinking population.

• To accomplish these gargantuan goals, we must put AI to work to help us advance the technologies needed to reduce carbon emissions to remove carbon from the environment, and to make people more productive while, hopefully, also allowing people to pursue more rewarding work.

Keynote:

Yoichi Iida, Deputy Director-General for G7/ G20 Relations,Ministry of Internal Affairs and Communications, Japan

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• Iida said that Japan recognized the high possibility that AI technology may have a huge impact on society and the economy, and started an expert-led discussion in 2016. The idea at the time was to maximize the potential of the technology and benefit all the people in the nation. Such inclusive AI policy is the basis for Japan's national policy strategy, called society 5.0, under which all people should be able to enjoy well-being and prosperity through the utilization of AI and other digital innovative technologies.

• Iida added that Japan proposed an international discussion on AI principles in the G7's ICT ministerial meeting in 2016. He believes this proposal was a precursor to the international discussion at the OECD and G7, and to the adoption of AI principles at the OECD in 2019 (also supported by the G20 and national leaders at the Osaka Summit in the same year).

• Through all of these discussions, the fundamental position is that AI society should be based on human-centered principles, and should be promoted with a free, open, and enabling environment grounded on non-binding software governance.

• Iida said that the Global Partnership on AI (GPAI) is also an important marker of progress, as it is a global initiative with multistakeholder participation and various experts from different fields working together to promote the implementation of responsible AI. Iida commented that the OECD's Committee on Digital Economic Policy is another critical marker of progress, as it recently decided to establish a permanent Working Party on AI.

Plenary Panel: AI and Human Rights

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Patrick Penninckx - Head of Information Society Department, Information Society and Action against Crime Directorate, Directorate General Human Rights and Rule of Law, Council of Europe

Marielza Oliveira - Director for Partnerships and Operational Programme Monitoring in the Communication and Information Sector, UNESCO

Elizabeth Thomas-Raynaud - Head of Secretariat, GPAI at OECD

Dr. Christina J. Colclough - Founder, Why Not Lab; Outgoing Steering Committee Member for workers/trade unions, GPAI

Cornelia Kutterer - Head of Rule of Law, Responsible Tech & Competition, European Government Affairs, Microsoft

Moderated by: Bruce Simpson - CEO, Stephen A. Schwarzman Foundation; Global Board Member, Human Rights Watch

- GPAI's Thomas-Raynaud commented on GPAI, which she called a values-based initiative, born of a shared commitment to the OECD's recommendations on artificial intelligence. GPAI's members identified four important topic areas for experts to collaborate around, which make up the four working groups of GPAI: responsible AI; data governance; future of work; and innovation & commercialization. GPAI experts aim to encourage responsible development of AI and offer insights for adaptation and risk mitigation. For example, she highlighted the data governance working group, which is working on projects involving data trusts, data justice, and a new proposal on privacy-enhancing technologies.

- UNESCO's Oliveira noted UNESCO's recent adoption of a voluntary framework for the protection of human rights and dignity demonstrates that we can actually agree on global principles. She said that we can't rely solely on voluntary arrangements-there is an important role for regulation, which is essential to the prevention, mitigation, and redressing of human rights violations. She noted that the mantra, 'move fast and break things,' means that we need regulatory frameworks that are also moving fast. Such regulation can foster innovation by promoting new AI investments.

- Mircrosft's Kutterer said that she believes that there are already rules that apply to technology. The question now is in part about how to specify these rules, in particular for the public sector, but also for the companies that are either developing or deploying the technologies. Kutterer noted that as Paul Nemitz said, governments have an institutional duty to put protections in place where they are necessary. She said the EU AI Act is one of the

first of this kind, and Microsoft is looking closely at it.

- Why Not Lab's Colclough said that rather than a singular convention, there should be many. In her view, once you peel the layers of the onion and look at the core features of artificial intelligence, you see that it is being deployed in the public sector, the private sector, and workplaces. She said that we are starting to see management introducing tools and systems, which, for the vast majority of third-party systems, have not necessarily been trained in identifying harms from the unintended consequences of the use of these systems (in terms of discrimination, bias, and so forth). To the extent these systems are being governed, it is from the perspective of cybersecurity, not from the perspective of a socio-technical system.

- The Council of Europe's Penninckx said that society faces a choice today. He expressed the belief that we can strive to be idealistic, but that we are confronted with human rights skepticism and democratic backsliding around the world, something digital developments do not necessarily help address. Penninckx also said that we must avoid a patchwork of regulation of AI-rather, we need to integrate existing frameworks, whether in one convention or a plurality of conventions, soft and hard law. He pointed to the Council of Europe's Cybercrime Convention, which was ratified by 66 states throughout the world, with about 130 countries aligning themselves to the Convention. They do so because the Cybercrime Convention is not only a law enforcement convention, but also a convention that is embedded in a number of democratic human rights and rule of law principles.

AI Standardization and Benchmarking

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Lucila Sioli - Director, Artificial Intelligence and Digital Industry, European Commission

Renaud Vedel - French National AI Coordinator; Co-Chair GPAI Steering Committee

Constant Kohler - Account Manager, Industry, Electrotechnology and ICT, CEN-CENELEC

Moderated by Karine Perset - Head, Policy Observatory and Network of Experts, OECD.AI

Elham Tabassi - Chief of Staff, Information Technology Laboratory,US National Institute of Standards and Technology (NIST)

Konstantinos Karachalios - IEEE SA Managing Director, Member of the IEEE Management Council

• IEEE's Karachalios introduced the IEEE as a global democracy of technical experts, who work to develop standards that enable engineers to better do their jobs. Such standards are also very often used by regulators and policymakers, but the main purpose is to help engineers design systems. When the IEEE turned to the issue of artificial intelligence, the organization listened to a wide range of voices, because it believes that these technologies and systems have the potential to be very intrusive and pervasive in our everyday lives.

• The EU Commission's Sioli noted that standardization has always been a key component of European Union policies, including the European Framework on AI, and plays a leading role in the creation of the single market. Sioli underscored how

important competition is and highlighted how harmonized standards and interoperability underlie this goal. She said that the European Commission wants to work with international organizations to develop standards and that it supports the facilitation of the compliance process for enterprises. At the moment, she said, the Commission is mapping the standardization work that has been done on artificial intelligence.

• CEN-CENELEC's Kohler introduced CEN-CENELEC, the European Standardization Organization, which brings together the national standardization bodies and national committees for 44 European countries to develop European standards and reports. Kohler noted that it's important to understand that once a European standard is adopted in Europe, it becomes the standard in many

different countries, often taking precedence over other conflicting standards and supporting the consolidation of a single market. Kohler referred to Strategy 2030, published several months ago, which focuses specifically on the green economy and digital transition, including a dedicated focus on artificial intelligence.

• US NIST's Tabassi explained that NIST has a broad portfolio of research and a long history of cultivating trust in technology. They do so by advancing measurement science, participating in standard development activities, bringing the technical contributions to center development discussions, and ensuring that standards are developed in a technically sound manner. Tabassi said that NIST has been working for the last three years or so on this effort, and with congressional mandate codified an AI risk management framework. NIST's approach is akin to bringing together a concert of stakeholders and experts to answer the question of what constitutes trust or trustworthiness. NIST wants to enable the creation of uniform, interoperable lexicon and language that can indicate risk.

• French National AI Coordinator Vedel indicated that France shares the vision of the global players who have spoken in the panel. He concurred that the voluntary standardization of AI is both a major challenge and a major lever for the sound development of AI. And consequently, France's national AI strategy gives it a substantial place in the plan. France believes that standards are powerful enablers of sound economic progress and trustworthy development of AI. Vedel said that earlier in December, France commissioned a study that found that only 10-15 percent of companies have truly industrialized AI solutions-there is still a huge gap and a lot of economic challenges ahead.

Keynote:
Hon. Dr. Justice D.Y. Chandrachud - Supreme Court of India, Judge and Head of e-Courts, India

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• Justice Chandrachud opened his remarks by acknowledging that artificial intelligence has had an enormous impact on the ordinary human experience. While its initial uses were restricted to more formal domains, progress in natural language processing, robotics and qualitative reasoning has made it impossible to live without AI in our daily lives. The judiciary, he said, and the larger legal community, are not immune to this trend.

• He explained that the integration of technology within the Indian judicial system began in earnest in 2005, with the launch of the e-codes project to ensure technology-enabled courts.

• He noted that a well-functioning judiciary is critical in India, given that it serves a population of 1.3 billion people. One of the big challenges

the courts face is the deluge of cases in district, state, and High Courts, which number in the tens of millions of cases. He said that artificial intelligence can provide a data-driven solution to this problem.

• Justice Chandrachud closed by quoting U.S. Supreme Court Justice Thurgood Marshall: "In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute," and said that the use of technology must not obfuscate our primary duty to deliver justice to all humans.

Fireside Chat

Robert Silvers - Under Secretary for Policy, US Department of Homeland Security,

interviewed by: Eva Kaili - Member of the European Parliament; Chair, STOA

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• Under-Secretary Silvers explained that DHS admires the potential of AI to advance business objectives, government objectives, and civil society objectives. At the same time, Silvers said, AI must be harnessed with safeguards. To this end, DHS developed its AI strategy and framework.

• Silvers said that citizens need to feel that AI is being used for their benefit and that it must not be perceived as a tool of oppression. He added that another element of trustworthy AI is security, as AI datasets can be filled with

sensitive data. Silvers stated that he believes that areas of convergence [on how to address governance challenges] are much bigger than the areas of divergence.

• Member of European Parliament Kaili commented that the challenge that Europe is facing with respect to the cross-border nature of AI, which means that countries have to reach agreement on basic standards and principles, and extends to their interactions with the U.S. In particular, in the assessment of high-risk applications.

Plenary panel: EU AI Act and Beyond: Regulatory Perspectives from Europe and the United States

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Eva Kaili - Member of the European Parliament (MEP); Chair, STOA

Jan Kleijssen - Director, Information Society - Action against Crime, Council of Europe

Moderated by Lee J. Tiedrich - Distinguished Faculty Fellow in Ethical Technology, Duke Initiative for Science & Society

Werner Stengg - Digital Expert, Cabinet of Executive Vice President Margrethe Vestager, European Commission

Lord Tim Clement-Jones - Member, UK House of Lords; Former Chair, House of Lords Select Committee on Artificial Intelligence

• Moderator Tiedrich commented that the world is truly at an inflection point where AI technology has advanced faster than the law.

• Council of Europe's Kelijssen shared details about the Council of Europe's work on AI. Two years ago, the Council of Europe-which, he underscored, should not be confused with the European Union and is geographically larger than the EU-started work to address two questions: first, should there be an international legal instrument or a treaty on artificial intelligence? And second, if so, what should the elements of such a treaty be? The Council of Europe determined an international legal instrument or legal framework is needed, because although both regulation and standards already apply to AI, there still are important gaps.

• EU Commission's Stengg was asked to comment about the draft EU AI Act, and responded by stating that he is not against AI as a technology overall-that is not the policy imperative. Rather, EU Commission Executive Vice President Margrethe Vestager is in favor of human-centric use of the technology to advance the interests of society. Stengg also addressed the definitional issue, agreeing that AI is evolving constantly. If we define it too narrowly or too strictly today, our laws will be outdated by the time they are adopted in Europe. As a result, the European Commission had to find a way of making their policies more future-proof.

• MEP Kaili highlighted the importance of an AI risk classification system and the need for better definitions of what type of systems fall under the regulation. She also said that we need to decide on a risk model that can be applied to harmful AI. Kaili also emphasized her belief that we need to avoid creating more friction. She said it's a misnomer that Europe is trying to create friction through regulation, to hamper innovation. She stated that there needs to be legal certainty to deploy AI tools in business and across the transportation, education, healthcare, financial, and other sectors.

• Lord Clement-Jones of the UK House of Lords commented on the work of the Council of Europe's Ad hoc Committee on Artificial Intelligence (CAHAI), which has been struggling with the decision about whether to proceed with sectoral vs. horizontal regulation. He expressed hope that there will be a considerable degree of convergence between the EU, UNESCO, and the Council of Europe, because there is a large need for a common platform of ethics and regulation.

Keynote:

U.S. Representative Jerry McNerney (California)

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• Rep. McNerney said that, as a scientist, he is very excited about the opportunity for AI to advance science issues in general, along with climate action, healthcare, and other societal challenges. He cautioned that despite these opportunities, we don't want to see AI become a tool for totalitarian or authoritarian-leaning countries, nor for the development of autonomous weapons.

• McNerney also spoke about the need to address the well-being of our workforces, both in terms of maintaining employment, and ensuring there is more diversity, especially in the sectors that are directly responsible for developing and deploying artificial intelligence.

• McNerney indicated that whereas the private sector can take the lead, with some investment and incentives from the public sector, governments will need to manage some issues, like bias, worker displacement, workforce development, data certification, and licensing. To this end, McNerney said, although the U.S. is behind Europe with regard to regulating AI, the nation can learn from the work taking place across the Atlantic.

Breakout Session: Who is Responsible for AI? Emerging Approaches to AI Civil Liability in the EU and US, and How Companies Should Prepare?

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Jim Pastore - Partner, Debevoise & Plimpton LLP

Hon. Katherine B. Forrest - Partner, Cravath, Swaine & Moore, LLP

Dirk Staudenmayer - Head of Unit for Contract Law of the Directorate-General Justice and Consumers, European Commission

Marco Bona - Co-Founder and Senior Partner, MB.O

Ina Ebert - Leading Expert, Liability and Insurance Law, Munich Re

Moderated by Anna Gressel - Senior Commercial Litigation Associate, Debevoise& Plimpton LLP

• Moderator Gressel opened the panel by commenting that AI has become a fundamental building block in business analytics and decision-making tools, as well as devices deployed everywhere in our homes and hospitals, and across our transportation infrastructure. This ubiquity has placed into focus a very important set of questions-who should be liable when these AI systems fail, such as when cars cause harm to individuals? Should it be the manufacturer of the device? And what evidence should be available in the resulting AI-related disputes to help prove liability, causation, or damage?

• EU Commission's Stuadenmayer said that one thing that makes AI special is its autonomy and opacity. By way of example on the unpredictability of algorithms, he pointed to an autonomous vehicle, where an AI system, faced with a precise traffic situation, will take a specific decision, doing exactly the same thing each time. However, he stated that, as there is no such thing as an identical traffic situation, what AI does will often be a mystery to us.

• MB.O's Bona concurred that the regime of liability is extremely complex, noting that we should focus on two main scenarios-the first is reviewing the product liability EU directive, to this end we are talking about the liability of production, and the regime, which is contemplated by the directive, sometimes called a strict liability regime.

• Cravath's Judge Forrest stated some key principles-that in the United States, the judges of court cases and juries that are assessing the facts are just human beings with only the knowledge that they come to a particular

decision with. Judges in the U.S. are appointed for life, Judge Forrest noted, and the typical age of a judge in the U.S. is over 50. This is very important to keep in mind as we think about how much information a particular decision maker has about artificial intelligence and high-tech issues in general. Judge Forrest pointed out that the concepts of liability are developing faster than the cases are actually moving through the system.

• Debevoise's Pastore said that a lot of decisions taking place in the U.S. reflect cautions with regard to whether a decision is right or wrong, placing emphasis instead on substantive due process. He wondered what the next five to 10 years will bring-whether people will gradually develop more trust, or perhaps whether there will be a loosening of the idea that we'll be able to look more at the results. He pointed to AI being used in cancer diagnosis and suggested we may focus on the outputs if there arecertain utilities associated with those systems.

Breakout Session: Harmony or Dissonance? What Business Should Expect from European and American Regulation of AI?

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Sebastian Wieczorek, Vice President, Artificial Intelligence Technology, SAP

Justin Antonipillai, CEO, WireWheel; Former United States Acting Under Secretary of Commerce for Economic Affairs

Moderated by Peter J. Schildkraut, Partner and Technology, Media, and Telecommunications Industy Group Co-Leader, Arnold & Porter

Emily Frascaroli, Managing Counsel, Product Litigation, Ford Motor Company

Gabriele Mazzini, Team Leader, Artificial Intelligence Policy & Regulation, European Commission

• Through the lens of business, Arnold and Porter's Schildkraut provided an overview of what the latest AI regulatory developments in Europe and the US mean for industry. He recognized the synergies as well as the differences in approaches, noting that the EU was more prescriptive with proposals for tools such as conformity assessments for high-risk AI applications.

• European Commission's Mazzini presented the key features of the EU AI Act, a regulatory proposal for both AI providers and users that takes a risk-based approach to AI safety and fundamental rights by grouping AI applications from a spectrum of no risk to unacceptable risk. Unacceptable risks are prohibited while high-risk applications are subject to compliance and no-risk applications are permitted without any restrictions.

• Former US Under Secretary of Commerce Justin Antonipillai provided a US viewpoint on AI regulation, stating that the US on a federal level is likely to take a different approach compared to Europe. However, he notes that some states, such as California, may take more similar approaches. For example, following the GDPR, California adopted 'opt-out' provisions which are likely to now be followed by other states in the US (i.e. Colorado, Virginia). In regards to the EU AI Act specifically, the US government is likely to respond to it via different channels such as security and trade.

• Ford Motor's Frascaroli gave a US-based business perspective on how to ensure regulation doesn't hinder innovation and also highlighted the importance of complementary governance measures, beyond hard law, to ensure the safe development of AI.

• SAP's Wieczorek highlighted the European perspective, recognizing the need for a risk-based approach to AI adoption. He called for further differentiation between the public sector and commerce, and shared his concern about potential side-effects from the EU AI Act that may make European companies less competitive on the global scale.

Fireside Chat: Empathy in AI - Disrupting the Natural Evolution of Technical Power

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Vilas Dhar - President, The Patrick J. McGovern Foundation

John Tasioulas - Director, Oxford University Institte for Ethics in AI

• Dhar related an anecdote about his experience calling a call center and dealing with a new AI software that relies on sentiment analysis to help humans respond in a way that helps achieve their preferred outcome. He noted that the stakes are raised substantially when we think of AI in the context of justice and other domains where people are vulnerable and experience power asymmetries. He also raised the question: where does empathy truly reside in the decision made by a human?

• Tasioulas noted that, in recent history, the process of globalization has been cast as an unstoppable, inexorable force, followed by a backlash towards the forms of economic globalization. He remarked that a similar worry should occur to us about AI as technological determinism is put forward. Dhar, in response, observed that the imagery of that "inexorable force that will sweep us away" is what renders many powerless in entering into public conversations, and that the role of an organization like the Patrick J. McGovern Foundation is to function as the connective tissue bringing together experts across policymaking, academia, and industry, to construct a more cohesive shared reality, and to facilitate such processes at scale.

• Dhar pointed out that trust is not defined by empathy, mercy, or another characteristic, but rather by a shared compact under which empathy and mercy and other characteristics are lifted up. As we have conversations about the development of AI systems, we are focused on the design of those systems, but have not yet stepped forward into a decision-making framework around what society we build when those tools are used. At the end of the day, civil society plays a particularly important role as to fill in the gaps between where governments and systems find friction in their interaction.

• Tasioulas emphasized that we need robust forms of democratic oversight in order for trust to be intelligent and well-placed, and that an important question moving forward will be whether we can, in fact, mobilize AI technology to enhance our capacity to exert that democratic oversight or whether, instead, AI will be one of the factors that corrodes our ability to exercise that kind of oversite.

Keynote: Ivan Fong - Executive Vice President, Chief Legal and Policy Officer and Secretary, 3M

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• Suggested that in addressing the question of what legal liability we should attach to AI harms, we should apply the traditional rules of legal liability-assessing, for example, whether the conduct was negligent, wreckless, or intentional, and then tracing the chain of causation to a human actor. He emphasized that as AI tools and algorithms become more complex and sophisticated, it becomes easier and more natural to fall into the trap of blaming the tools or algorithms for the harms that they cause.

• Expressed his hope that relatively small events, with proper attention in the right places, should lead to developments in the law that can help us move up and forward in the learning curve.

• Stressed that transparency is the key driver of accountability, and for AI, he believes that transparency means at least three things: disclosure of the algorithms or the actual code, having the equivalent of a flight data recorder to retain the inputs considered and the outputs rendered, and a requirement for manufacturers and providers to report adverse events so that we can learn from and make improvements to minimize those harms.

Keynote: Nadia Benaiss - Policy Advisor, Bits of Freedom

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• Noted that we do not need imagination to know why the protection of human rights is important when using AI, but we do need imagination to think about ways of how AI can have an impact on fundamental rights in the future because-although we've seen quite a lot of incidents already-we have not seen it all yet, and there is much more to come.

• Stressed the need to keep in mind the existing problems in our societies: we face discrimination, lack of freedom of speech and religion, violations of the right of privacy, and so forth, and the standards that many countries agreed upon many years ago when it comes to fundamental rights are still not effective in reality, therefore it is not strange that the data that comes from these societies are a reflection of the problems we're facing.

• Remarked that 120 civil society organizations published a joint statement which calls to ground the EU AI Act in fundamental rights.

Mantalena Kaili, Executive Director, ELONtech

Nicolas Miailhe, President, The Future Society

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Closing Remarks

• Remarked that we need disciplinarity and knowledge transfer between the fields of science and humanities. Building on a point made by Professor Tasioulas, she remarked that whether a condition is completed or dynamic defines how we explain this condition, and that this is a method that law can include and that policy makers can use.

• Stated that we need to proceed with an international convention-as we did with the Budapest Convention, we can do so with an Athens Convention-and thinks this could address the agonies and trust issues that are currently on the top of every agenda, whether it is in areas ruled by civil law or common law.

• Thanking all participants and the audience, TFS's Miailhe highlighted that the lively discussions during the roundtable surfaced the need for developing smart cocktails of self, soft and hard regulatory mechanisms. The smarter these cocktails are, the more equipped societies will be to collectively capture the upsides and minimize the downsides and risks of AI.

• Miailhe also insisted that transatlantic cooperation is needed to ensure AI governance defends and upholds the best from our democratic values, starting with the rule of law-its bedrock. Self regulation will not be sufficient because of corporations' lack of incentives; but without self-regulation, hard regulation may end up over-specifying and stifling innovation. He said that in this context, soft norms such as independent benchmarks and authoritative standards provide uniformity, diversity across industrial sectors, and agility. Thus, they serve as a necessary "connective tissue" as technologies and business models evolve. He called for the mobilization of all communities of practice and interests.

THE ATHENS ROUNDTABLE
ARTIFICIAL INTELLIGENCE AND THE RULE OF LAW

UNDER THE PATRONAGE OF H.E. THE PRESIDENT OF THE HELLENIC REPUBLIC
Ms. KATERINA SAKELAROPOULOU

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