

Surveillance Activities Conducted by State Intelligence Agencies: Human Rights-Based Approaches to Intelligence Oversight

The Workshop held on June 17, 2018 in Jerusalem on intelligence oversight focused on oversight mechanisms of online surveillance, particularly in light of various human rights approaches.

The oversight regime under the [UK's Investigatory Powers Act 2016](#) was presented to the participants, particularly expanding on the Investigatory Powers Commissioner's Office (IPCO) and its ex post inspection functions. Other oversight bodies such as the Investigatory Powers Tribunal and the Intelligence and Security Committee of Parliament were also mentioned, as well as softer safeguards relaying on internal controls.

Prof. Yuval Shany presented the Israeli legal framework pertaining to online surveillance, reviewing its with the [Draft Legal Instrument](#) on Government-led Surveillance and Privacy presented the Human Rights council on March 2018. The draft legal instrument serves to represent, in this context, a general understanding of major trends in the field. The participants then turned to discuss the Israel Security Agency's (ISA) bulk metadata collection, which operates under no substantial external oversight regime, and whether such oversight mechanisms should be put in place, while considering operational needs and the predictive purpose of bulk metadata collection in the context of national security.

Prof. Sarah H. Cleveland reviewed the UN Human Right Committee jurisprudence pertaining to online surveillance, addressing the applicability thereunder of legal standards such as the requirement for a publically accessible law for gathering and holding of personal information, temporal limitation on surveillance and data retention, and judicial warrants. Participants noted that the committee should also address data collection by private entities, given the latest scandals involving Cambridge Analytica, and the potential uses of such entities by intelligence agencies to circumvent any statutory limitations on data collection to which government bodies may be subject.

The presentation made by Ilia Maria Siatitsa served to note that while the legal analysis of online surveillance practices has traditionally regarded it as interfering with the right to privacy, the regulation of online content also raises questions regarding interference with the right to express one's personal opinions. Participants mentioned the chilling effect of surveillance as well as of regulated online content, and discussed whether viewing these issues through the lens of freedom of expression serves to expand the scope of review.

The concluding remarks referred to different aspects of intelligence oversight. Some mentioned the thematic review of IPCO as a promising oversight feature, whose scope of review should also related to the societal impact of various intelligence collection practices. Other comments noted the vast volumes that will be generated by IoT products, and the extent of the limitations on its collection that should be put in place. Some comments pointed out the difficulties for human rights lawyers, which are trained to examine individual cases, in addressing human rights violations caused by bulk collection, whose targets, due to its secretive nature, are rarely made aware of such violations.