

Resolution

on anchoring data protection and the protection of privacy in international law



Recalling that

- the 27th Conference in Montreux appealed to the United Nations to prepare a legally binding instrument which clearly and in detail sets out the rights to data protection and privacy as enforceable human rights,
- the 28th Conference in Montréal called for the improvement of international cooperation with respect to data protection and the protection of privacy,
- the 30th Conference in Strasbourg adopted a resolution on the urgent need for protecting privacy in a borderless world and for reaching a Joint Proposal for setting International Standards on Privacy and Personal Data Protection,
- the 31st Conference in Madrid adopted International Standards on the Protection of Data and Privacy (the Madrid Declaration),
- the 32nd Conference in Jerusalem urged governments to organise an intergovernmental conference with a view to developing a binding international agreement on privacy and data protection giving effect to the Madrid Declaration,

and recalling the importance of existing instruments in international law that provide rules and standards for the protection of personal data, in particular the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108)

The 35th International Conference observes

that there is a pressing need for a binding international agreement on data protection that safeguards human rights by protecting privacy, personal data and the integrity of networks and enhances the transparency of data processing while striking the right balance in respect of security economic interests and freedom of expression,

and resolves

to call upon governments to advocate the adoption of an additional protocol to Article 17 of the International Covenant on Civil and Political Rights (ICCPR), which should be based on the standards that have been developed and endorsed by the International Conference and the provisions in General Comment No. 16 to the Covenant in order to create globally applicable standards for data protection and the protection of privacy in accordance with the rule of law.

EXPLANATORY NOTE

The 35th International Conference notes that the ICCPR, adopted by the General Assembly of the United Nations in 1966 and ratified by 167 states, already provides a legal framework for privacy protection. Article 17 of the ICCPR states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

In addition, General Comment No. 16 to the ICCPR provides further specification on data protection requirements under Article 17. It states, among other things, that

- the collection and storage of personal information on computers, in data bases or other devices, whether by public or private bodies, must be regulated by law;
- states must take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it;
- uses of this information for purposes incompatible with the Covenant must be prevented;
- individuals should have the right to determine what information is being held about them and for what purposes and to request rectification or elimination of incorrect information;
- any "interference" with these rights must only take place on the basis of law which must comply with the Covenant.

These requirements are supplemented by the storing body's duty of transparency with regard to data processing, in particular as regards the provision of information, rectification and elimination as vital data protection principles.