

THE INFORMATION SOCIETY AND ITS POLICY AGENDA: TOWARDS A HUMAN RIGHTS-BASED APPROACH

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This article reviews the existing broad variety of theories on the Information Society, including market or labour force-based approaches, stressing the expansion of the information sector and the increasing importance of knowledge work, technically deterministic concepts based upon the ideas of the information revolution and the computerization of society, and more comprehensive theories embracing those issues and aligning them with socio-political aspects. Against this backdrop, policy implications are evaluated, focusing on the results reached during the First Phase of the World Summit on the Information Society (WSIS). Although its relatively broad policy agenda, which favours an integrated approach for the coordination of Information Society issues, including areas such as health, development, education or the media, is, as such, a positive development, a coherent framework is still missing. The current paradigm remains rather technically deterministic, thus emphasizing the mainstreaming of information and communication technologies (ICTs), instead of calling attention to the underlying needs and rights that should be fostered and enhanced. It is argued that building an inclusive Information Society requires a paradigmatic shift towards a human rights-based approach.

Cet article examine l'étendue des diverses théories existantes sur la société d'information, des approches basées sur le marché et la main-d'œuvre qui accentuent l'expansion du secteur de l'information et l'importance grandissante du travail de connaissance, à des conceptions techniquement déterministes basées sur les idées de la révolution d'information et l'informatisation de la société, en plus des théories plus globales qui traitent ces problèmes et les alignent avec des considérations sociopolitiques. Les implications pour les politiques sont évaluées à la lumière de ces variables, en se concentrant sur les résultats de la Première phase du Sommet mondial sur la société de l'information (SMSI). Malgré la portée assez large des objectifs du Sommet et le fait qu'il favorise une approche intégrée à la coordination des sujets concernant la société d'information, incluant par exemple les domaines de la santé, du développement, de l'enseignement, ou des médias, soit un développement positif, il se trouve à manquer une structure logique et cohérente. Le paradigme actuel demeure plutôt techniquement déterministe, et donc concentre sur la popularisation des technologies de l'information et de la communication, au lieu d'attirer l'attention sur les besoins et les droits sous-jacents qui devraient être protégés et encouragés. L'auteure soutient que la construction d'une société d'information inclusive requiert un déplacement paradigmatique en faveur d'une approche basée sur les droits de la personne.

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Introduction

The Internet as a new communication medium has fundamentally changed the way we consume, work and interact, thus transforming our society into what is commonly known as the “Information Society”. The term itself has not yet been defined satisfactorily, nor are its implications fully clear. On the one hand, a lot of discussion has been taking place during the last few years on the new opportunities offered by information and communication technologies (ICTs), including increased democratic participation and worldwide civic engagement, new development policies, economic growth, and more effective forms of education and health networks. On the other hand, scenarios of exclusion are all too real, generally subsumed under the notion of the digital divide, which exists between developing and developed countries as well as within developed countries, where rural or less prosperous areas lag considerably behind in technological development. Threats to human rights, such as surveillance, censorship, or the ongoing litigation on the restriction of fair use of products protected by intellectual property rights, have also been highlighted. Furthermore, the fear of cyber-terrorism and digital attacks keeps rising, partly legitimizing the restrictive measures imposed in cyberspace.

All of these circumstances have created several challenges for policy makers seeking to find adequate strategies for taking advantage of opportunities and counteracting threats, while at the same time balancing the opposing interests of different stakeholders. As an additional difficulty, national law often provides insufficient solutions for the regulation of a ubiquitous medium like the Internet. International cooperation is thus more important than ever for the regulation of Information Society issues, and indeed some work has already been done, for example, by the OECD¹ and the Council of Europe.² These are, however, rather specific documents on themes like privacy, security and commercial activities, which are, so far, not embedded in a coherent international legal framework regulating the

¹ See OECD, OECD Council, *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders* (Paris: OECD, 2003); OECD, OECD Council, *Guidelines for the Security of Information Systems and Networks: Towards a Culture of Security* (Paris: OECD, 2002); OECD, OECD Council, *Guidelines for Consumer Protection in the Context of Electronic Commerce* (Paris: OECD, 2000); OECD, OECD Council, *Ministerial Declaration on the Protection of Privacy on Global Networks* (Paris: OECD, 1998); OECD, OECD Council, *1997 OECD Guidelines for Cryptography Policy: Recommendation of the Council* (Paris: OECD, 1997); OECD, *Declaration on Transborder Data Flows* (Paris: OECD, 1985); and OECD, OECD Council, *Guidelines on the Protection of Privacy and Transborder Flows of Personal Data* (Paris: OECD, 1980). Access all these documents online at: OECD <<http://www.oecd.org/>>.

² See *Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data*, 28 January 1981, Eur. T. S. 108 (entered into force 1 October 1985); *European Convention on the Legal Protection of Services Based on, or Consisting of, Conditional Access*, 24 January 2001, Eur. T.S. 178 (entered into force 1 July 2003); *Convention on Information and Legal Co-Operation Concerning “Information Society Services”*, 4 October 2001, Eur. T.S. 180 (not yet entered into force); *Additional Protocol to the Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data, Regarding Supervisory Authorities and Transborder Data Flows*, 8 November 2001, Eur. T.S. 181 (entered into force 1 July 2004); and *Convention on Cybercrime*, 23 November 2001, Eur. T.S. 185 (entered into force 1 July 2004). Access all these documents online at Council of Europe: <<http://conventions.coe.int/>>.

Information Society. A first attempt to establish such a framework was the World Summit on the Information Society's (WSIS) First Phase in Geneva, which led to the adoption of two documents, a *Declaration of Principles*³ and a *Plan of Action*.⁴ Originally conceptualized as a rather technically determined event under the auspices of the International Telecommunications Union (ITU), it developed a more human rights-based approach throughout the preparatory process, due in part to the massive participation of civil society. What is missing, however, is an underlying theoretical construct of what the Information Society really is and how its technical, economic, political, cultural and social implications interrelate in the process of establishing an international information policy agenda. Without such an assessment, a truly understandable, coherent and applicable framework for the regulation of Information Society issues remains out of reach, even in the WSIS' Second Phase and the summit to be held in Tunis in 2005. This paper aims to contribute to the ongoing discussion by exploring existing theories of the Information Society, identifying key definitions and putting them into the context of a human rights-based policy agenda.

I. Theories of the Information Society

The idea of the transformation of society through the growing importance of information and knowledge has fascinated more than a generation of scholars. Since it would be well beyond the scope of this paper to give a complete account of all the theories developed in this context,⁵ the following chapters will concentrate on three major conceptual lines along which the relationship between technology, economy, politics, culture and society has been explained. First, we will describe the early market-based approaches that deal mainly with the impact of technologies on the economy and employment and on measuring the impact of the emerging knowledge industry. Second, we will consider the theories that propose technological change as a more or less autonomous cause for the coming of an economic and social third wave, following agricultural and industrial civilizations. Finally, we will take a closer look at two of the most influential and comprehensive accounts of the Information Society: Bell's post-industrial society and Castells' network society.

³ UN, World Summit on the Information Society, 1st phase, 12 December 2003, *Declaration of Principles*, WSIS-03/GENEVA/DOC/4 [*Declaration of Principles*].

⁴ UN, World Summit on the Information Society, 1st phase, 12 December 2003, *Plan of Action*, WSIS-03/GENEVA/DOC/5 [*Plan of Action*]. Access these documents online at: International Communication Union <<http://www.itu.int/wsis/>>.

⁵ For more complete accounts of information society theories, see for example David Lyon, *The Information Society: Issues and Illusions* (Cambridge: Polity Press, 1988); Alistair S. Duff, *Information Society Studies* (London; New York: Routledge, 2000) [Duff, *Information Society Studies*]; Christopher May, *The Information Society: A Sceptical View* (Malden, Mass.: Polity Press, 2002); Frank Webster, *Theories of the Information Society*, 2nd ed. (London; New York: Routledge, 2002).

A. The Rise of the Knowledge Industry

Although references to the “Information Society” or the “Information Age” have multiplied throughout the last decade, the concept *per se* dates back almost half a century. In 1962, Fritz Machlup published his influential study on the production and distribution of knowledge in the United States,⁶ in which he analyzed the contribution of the knowledge industry to the U.S. gross national product. Although his rather broad definition of what constituted the knowledge economy triggered some criticism,⁷ (including, for example, the income foregone by students, the contribution of parents to education, the value of on-the-job training and the resulting high figure of 29% of the GNP attributed to the knowledge sector), it was his merit to highlight the transformative role knowledge played in the economy.

Drawing on this work, but differing on two major points, Marc Porat offered a more refined survey of the U.S. information economy 15 years later.⁸ First, he considered only economically quantifiable activities, therefore excluding some categories of Machlup’s presumed knowledge workers, and second, he distinguished between the primary and the secondary information sector. While the former comprises all industries which produce, process or transmit knowledge, communication and information goods or services, the latter consists of the production and consumption of internal information inputs like research, management or legal and marketing services in traditional industries. According to his calculations, both sectors together accounted for 46% of the U.S. GNP in 1967, with 25% and 21% respectively, making the U.S. an “information-based economy.”⁹

Despite his focus on economically quantifiable activities, Porat’s approach has some methodological weaknesses as well, in that he transferred some traditionally service-based occupations to the information sector (in the health sector, for example), and it has therefore been noted that “the analyses following from such assumptions lead at best to new glosses on occupational and national-income statistics, not to momentous scientific breakthrough.”¹⁰ Furthermore, neither the assumptions of Machlup nor those of Porat regarding the future growth of the knowledge economy or the information sector, more generally, could be verified during the 1980s.¹¹ Nonetheless – and more interestingly so in the given context – it should be noted that even these early market-centred works already evinced some concern for human rights. Porat, in an essay on the global implications of the

⁶ See Fritz Machlup, *The Production and Distribution of Knowledge in the United States* (Princeton, N.J.: Princeton University Press, 1962).

⁷ See Duff, *Information Society Studies*, *supra* note 5 at c. 2.

⁸ See Marc U. Porat, *The Information Economy: Definition and Measurement*, vol.1 (Washington: Office of Telecommunications, U.S. Govt. Print. Off., 1977) [Porat, *Definition and Measurement*].

⁹ See *ibid.*; see also Marc U. Porat, “Global Implications of the Information Society” (1978) 28:1 *Journal of Communication* 70 at 70ff [Porat, “Global Implications”].

¹⁰ Alistair S. Duff, “On the Present State of Information Society Studies” (2001) 19 *Education for Information* 231 at 234 [Duff, “On the Present”].

¹¹ See Michael Rogers Rubin, Mary Taylor Huber & Elizabeth Lloyd Taylor, *The Knowledge Industry in the United States, 1960-1980* (Princeton, N.J.: Princeton University Press, 1986); and Michael Rogers Rubin & Elizabeth Taylor, “The US Information Sector and GNP: An Input-Output Study” (1981) 17:4 *Information Processing and Management* 163.

Information Society¹² dating from 1978, noted some concerns for issues such as surveillance and privacy and asked, “[h]ow does a nation guarantee that an information system will be used to promote economic development rather than abuse human rights?”¹³ This question has lost little of its relevance today.

Roughly within the same timeframe that these developments took place in the U.S., Japan’s Information Society was getting off the ground as well. In 1963, Tadao Umesao published an article on the “Information Industry” (*Jōhō sangyō ron*) in which he argued that the societal change towards a more “spiritual” or information-based industry was analogous to the evolution of nature.¹⁴ Drawing on Umesao’s work, but also inspired by American concepts, Kenichi Kohyama, among others, proposed the notion of the “Information Society” (*joho shakai*), a society transformed by the information revolution and characterized by the central role of information processing. The more influential work, however, was Yujiro Hayashi’s book on the “informationized society” (*johoka shakai*), dating from 1969. He distinguished between the functional and the informational value of goods and services, and claimed that the content of production would become more and more information sensitive due to the increased importance of informational activities such as innovation, design, or marketing.¹⁵

Japan was also the first country to respond to this academic input by adapting its administrative structures to observable technological changes. As early as 1971, the Japan Computer Usage Development Institute (JACUDI) published a national plan stating that

in the advanced countries, de-industrialization is now under way, and the world is generally and steadily shifting from the industrialized society to the Information Society. Therefore, this committee proposes the establishment of a new national target, ‘Realization of the Information Society’.¹⁶

In the Japanese approach, the measurement of computerization and information flows has always played an important role, and in contrast with the American version, Youichi Ito pointed out that “the former is more concerned with the social effects of the content of mass communication, whereas the latter is more

¹² Porat, “Global Implications”, *supra* note 10.

¹³ *Ibid.* at 76.

¹⁴ On Umesao’s work, see Youichi Ito, “The ‘Johoka Shakai’ Approach to the Study of Communications in Japan” in G. Cleveland Wilhoit & Harold deBock, eds., *Mass Communication Review Yearbook 2* (Beverly Hills, Calif.: Sage, 1981) 671 at 672ff; and Peter Dale, “Ideology and Atmosphere in the Informational Society” (1996) 13:3 *Theory, Culture & Society* 27 at 30ff.

¹⁵ On these developments, see Tessa Morris-Suzuki, *Beyond Computopia: Information, Automation and Democracy in Japan* (London: Kegan Paul International, 1988) at c. 2-3.

¹⁶ JACUDI, *The Plan for an Information Society: National Goal Towards the Year 2000*, cited in Alistair S. Duff, “The Past, Present and Future of Information Policy: Towards a Normative Theory of Information Society” (2004) 7:1 *Information, Communication & Society* 69 at 72 [Duff, “The Past, Present and Future”].

concerned with the social effects of the amount of information flow.”¹⁷ By concentrating on information flows as such, little room remained for human rights concerns, although Yoneji Masuda’s idealistic version of increased civic participation and consciousness on the national and international level might give some indications in this respect.¹⁸

B. The Third Wave

Against the backdrop of the looming economic crises’ of the 1970s and based on empirical evidence of an increasingly important information sector, in terms of labour force distribution or product value, the market-based concepts of the Information Society understood new technologies as a means to increase productivity and foster competitiveness. In his book *The Third Wave*,¹⁹ Alvin Toffler makes a somewhat different claim and puts technology at the centre of all political, societal, cultural, and economic changes. His assumption is that the impact of new technologies, or as he puts it, “the widespread introduction of the computer, commercial jet travel, the birth control pill and many other high-impact innovations,”²⁰ is just as profound as that of the agricultural and industrial revolutions, thus introducing a third wave of civilization. *Inter alia*, he forecasts the de-massification of the media, the end of mass production, the rise of tele-working, a redefinition of corporations, and new forms of democracy- all in a very optimistic manner. Although these prognoses have not come true, and despite the rather simplistic nature of his three-stage model and its technological determinism, Toffler’s work has remained influential, representing elements of a school of thought that is still prominent. For example, Nicholas Negroponte evokes similar thoughts when stating:

Computers are not moral; they cannot resolve complex issues like the rights to life and to death. But the digital revolution, nevertheless, does give much cause for optimism. Like a force of nature, the digital age cannot be denied or stopped. It has four very powerful qualities that will result in its ultimate triumph: decentralizing, globalizing, harmonizing, and empowering.²¹

Slightly restated, Negroponte’s optimism – or that of Toffler’s – becomes unreasonable from a human rights perspective. The technological determinism that takes the information revolution for granted, while emphasizing the moral neutrality of ICTs, gives rise to a variety of concerns because the triumph of decentralization,

¹⁷ Youichi Ito, “Cross Cultural Perspectives on the Concept of an Information Society” in Alex S. Edelstein, John E. Bowes & Sheldon M. Harsel, eds., *Information Societies: Comparing the Japanese and American Experiences* (Seattle: University of Washington, 1978) 253 at 254. On the Japanese approach, see also Duff, “On the Present”, *supra* note 11 at 232ff.

¹⁸ See Yoneji Masuda, *The Information Society as Post-Industrial Society* (Washington: World Future Society, 1981).

¹⁹ See Alvin Toffler, *The Third Wave*, reissued ed. (New York: Bantam Books, 1990).

²⁰ *Ibid.* at 14.

²¹ Nicholas Negroponte, “The Digital Revolution: Reasons for Optimism” (1995) 29:6 *Futurist* 68. See also his main work Nicholas Negroponte, *Being Digital* (New York: Vintage Books, 1996).

globalization, harmonization and empowerment can well be overturned by surveillance, a widening digital divide, restrictions and disempowerment.

C. The Post-Industrial and the Network Society

Daniel Bell develops his concept of the post-industrial society²² along the lines of changes in the social structure, focusing on the transformation of economies from the production of goods to services,²³ on the one hand, and the redistribution of occupation in a labour market increasingly focused on professional and technical “white collar” work on the other.²⁴ Beneath these empirical trends lie the new character of knowledge: while in an industrial society the primary concern is the coordination and optimization of production, where empiricism plays a major role, in a post-industrial society, knowledge becomes more and more theoretical, is codified into abstract symbols, and can thus be used in different fields of experience. For Bell, this primacy of theoretical knowledge is the axial principle of the post-industrial society which is consequently a knowledge society, with universities and academic institutions as its axial structures. Further technological development, economic growth and policy-making are all determined by this paradigm.²⁵ Finally, he points out two more dimensions: the importance of the planning and control of technology, and the impact of the new intellectual technology on decision-making, since in a more complex and rapidly changing world, simulations and modelling are essential for future orientation.

Although Bell, partly drawing on Machlup, foresees a growth of service industries in terms of knowledge work (which has been empirically disproved), his idea of the primacy of theoretical knowledge remains appealing.²⁶ The post-industrial society is based less on information than on knowledge, but it acknowledges the centrality of information and the problems which might arise from its distribution and accessibility.²⁷ Following Bell’s distinctions between social structure (economy, technology, occupational system), polity (distribution of power, balance of conflicting claims) and culture (symbols and meaning), the struggle for an international information policy agenda is about redefining their interrelationship in society.

²² See Daniel Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting*, Special Anniversary Edition (New York: Basic Books, 1999).

²³ *Ibid.* at 123ff.

²⁴ *Ibid.* at 212ff.

²⁵ Before Bell, Drucker had already pointed out the centrality of knowledge for the economy and society as a whole: “The productivity of knowledge has already become the key to productivity, competitive strength, and economic achievement. [...] Economists still tend to classify the ‘knowledge industries’ as ‘services’. [...] But knowledge has actually become the ‘primary’ industry, the industry that supplies to the economy the essential and central source of production.” See Peter Drucker, *The Age of Discontinuity: Guidelines to our Changing Society*, 4th ed. (London: Transaction Publishers, 2003) at 264.

²⁶ For a critique of Bell’s theory see for example Webster, *supra* note 5 at 30ff.

²⁷ See Bell, *supra* note 23 at 467ff.

The network society, as conceptualized by Castells in his trilogy on the information age,²⁸ builds upon the idea of informational capitalism. Writing in the post-Cold War era, Castells sees a restructuring of capitalism and the diffusion of “informationalism” as the driving forces behind the establishment of a new system which is not, however, necessarily homogenous on a global scale, since “societies did act/react differently to such processes, according to the specificity of their history, culture, and institutions.”²⁹ Despite this cultural sensitivity, informational capitalism is global in nature and characterized by global financial markets and international production frameworks coordinated by network enterprises.

As enterprises rely increasingly on the organisational structure of the network to ensure flexibility and productivity, so does labour. Castells observes that in highly developed countries, two models can be distinguished. The first is the service economy model - to be found in the U.S., the U.K. and Canada – which has an increasing share of health care, education and managerial-based employment. The second is the Japanese and German industrial production model, where the share of manufacturing employment is still high, but integrated into the new socio-technical paradigm. Arguably, the latter countries are not less advanced than the former, so he rejects the post-industrialist viewpoint that the shift towards a service economy is an advancement on the informational scale. Rather, he argues, some countries tend more than others towards offshore manufacturing jobs, depending on the policies of enterprises and governments.³⁰ This global distribution of production and labour disempowers the single worker: “[N]ever were workers (regardless of their skills) more vulnerable to the organization, since they had become lean individuals, farmed out in a flexible network whose whereabouts were unknown to the network itself.”³¹ More generally, Castells points out that society as a whole gets more and more fragmented, with those who profit from informational capitalism on the one side and those who are left in its “black holes”³² on the other.

However, in contrast to these developments, Castells also sees a rise of new social movements,³³ networks which “do more than organizing activity or sharing information. They are the actual producers, and distributors, of cultural codes.”³⁴ Therefore, if power in the network society “is no longer concentrated in institutions (the state), organizations (capitalist firms), or symbolic controllers (corporate media, churches), [but] is diffused in global networks of wealth, power, information and images which circulate and transmute in a system of variable geometry and

²⁸ See Manuel Castells, *The Information Age: Economy, Society and Culture: The Rise of the Network Society*, vol.1, 2nd ed. (Oxford: Blackwell, 2000) [Castells, *Rise of Network*]; Manuel Castells, *The Information Age: Economy, Society and Culture: The Power of Identity*, vol. 2 (Oxford: Blackwell, 1997) [Castells, *Power of Identity*]; Manuel Castells, *The Information Age: Economy, Society and Culture: End of Millennium*, vol. 3, 2nd ed. (Oxford: Blackwell, 2000) [Castells, *End of Millennium*].

²⁹ See Castells, *Rise of Network*, *ibid.* at 20.

³⁰ *Ibid.* at 245ff.

³¹ *Ibid.* at 302.

³² Castells, *End of Millennium*, *supra* note 29 at 165.

³³ Castells deals with the new social movements extensively in the second volume of his trilogy; see Castells, *Power of Identity*, *supra* note 29.

³⁴ *Ibid.* at 362.

dematerialized geometry,”³⁵ then the social networks might be just as powerful as the economic ones. Again, international information policies must be ready to find an adequate regulatory framework.

II. Policy Implications for the Information Society

In the previous chapter, the existing variety of theories explaining the rise and major implications of the Information Society were analyzed. This undertaking does not paint a very coherent picture of what the Information Society really is or how it should be governed, but it may give us an idea of the existing issues at stake.

From the simple assumption that technological changes do have an impact on society, to more sophisticated concepts on what this impact means in economic and social terms on a national level, while eventually recognizing the increasing need for a more international approach, theories at all of these stages can be divided into market or labour force based approaches. These approaches stress the expansion of the information sector and the increasing importance of knowledge work, technically-deterministic concepts based upon the ideas of the information revolution and the computerization of society, and more comprehensive theories embracing those issues and aligning them with socio-political aspects. The dimensions in which the changes towards the evolving Information Society appear are modes of production and productivity, organizational and occupational structures, the advancement of technologies, the redistribution of power, the reformulation of culture and new scenarios of exclusion. Along these dimensions, policy formulations for the Information Society have to be found.

A. Policy Formulation in the Information Society

According to Monviloff, policy may be defined as “a set of principles and strategies which guide a course of action for the achievement of a given goal.”³⁶ Up to now, it seems that the main argument in the development of information policy has been centred around how Nation States should deal with the dissemination of official information, how the exchange of information among or between private and public entities should be regulated in terms of copyright as well as privacy laws, and how the underlying infrastructure of information and communication technologies should be regulated.

³⁵ *Ibid.* at 359.

³⁶ Victor M. Montviloff, *National Information Policies: A Handbook on the Formation, Approval, Implementation and Operation of a National Policy on Information*, 1990, UNESCO Doc. PG1-90/WS/11, online: UNESCO <<http://www.unesco.org/ulis/index.html>>.

More specifically, Alistair Duff identifies the following ten issues of information policy:³⁷

- (1) *Freedom of information* (FOI), which he understands as a narrower concept than freedom of speech, as such, for it leaves issues like artistic freedom to cultural or educational policies;
- (2) *Privacy*;
- (3) *Data protection and security*, both referred to as “the other side of the FOI coin,”³⁸ but listed separately from each other;
- (4) *Official secrecy policy* which Duff refers to as “a logical extension of FOI, albeit very much a specialism in its own right,”³⁹
- (5) Policies concerning *library and archives*;
- (6) Closely connected but more widely defined than the previous item, *scientific, technical and medical (STM) documentation networks*;
- (7) The distinction between the treatment of official information as private or public good, which Duff calls *economics of government publications*;
- (8) In this connection, he further mentions *copyright and intellectual property rights* as “absolutely crucial, not at least since hubristic private corporations started claiming copyright in the human genetic code;”⁴⁰
- (9) The *national information infrastructure* belongs to his list, from which he excludes IT industry policy, technical details of government computer systems and broadcasting, the latter belonging more to the field of media, and, more generally speaking, covering a broader variety of communication means;
- (10) Finally, *international information flows*, including international policies in the aforementioned areas as well as trans-border flows of data.

In the elaboration of this list, Duff has drawn from earlier works by Porat, who had already argued in 1977 that information policies, which he defined as “the issues raised by the combined effects of information technologies (computers and telecommunications) on market and non-market events,”⁴¹ should not merely consider a technological approach, but rather consider a broader variety of societal agencies.

³⁷ See Duff, *The Past, Present and Future*, *supra* note 17 at 76ff.

³⁸ *Ibid.* at 76.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Porat, *Definition and Measurement*, *supra* note 9 at 207.

He therefore stressed the necessity of establishing a coordinative institution within the government's structure to allow for the emergence of a horizontal perspective on these issues.⁴² Duff argues that in defining this horizontal approach, Porat has been too extensive, overestimating the future impact of technology on policy:

[H]is list went well beyond concerns naturally associated with information and telecommunications and became, arguably, unreasonably large [...] [H]e saw fit to deduce that information policy should incorporate education policy itself, and also literacy, job satisfaction, unemployment, quality of life, rehabilitation, recidivism reduction, copyright, school management library efficiency and equality of opportunity [...] [H]is information policy remit swallowed up most of the perennial challenges of journalism, including affordability of new technology, the impact of centralized editorial staffs on local diversity, alterations in the scope and content of news coverage, concentration of media ownership, survival of national dailies, and broadband and satellite capacity for electronic distribution of news. As regards non-information sectors, the reach of information policy was even wider: everything from energy planning to tanker safety [...] to national security.⁴³

In fact, Porat's broad approach correlates quite well with a human rights agenda, for he raises issues such as the affordability and accessibility of technology, capacity-building in terms of the education and literacy required, and equality of opportunity. But even Duff's narrower list clearly involves at least data protection and privacy, freedom of information (as part of the principle of freedom of expression), and problematic issues in intellectual property protection.

These two perspectives regarding which issues to include in information policy indeed reflect contrasting views on the whole range of discussions going on in this field.⁴⁴ Admittedly, their arguments stem from rather diverse socio-historical contexts, with Porat writing in the 1970s when the Internet, in its modern form, had not yet begun its triumphal procession around the world, although the belief in the determination of society by technology was rather strong, and Duff formulating his criticism in the period after the demystification of the Web and based on much more empirical evidence about its actual impact on society. However, information policy is not so much about the regulation of a specific means of mass communication as it is about the search for adequate legal and political solutions to broader Information

⁴² *Ibid.* at 241.

⁴³ See Duff, *The Past, Present and Future*, *supra* note 17 at 74.

⁴⁴ On information policy, see also: Michael W. Hill, "Information Policies: Premonitions and Prospects" (1995) 21 *Journal of Information Science* 273; Ian Rowlands, "Understanding Information Policy: Concepts, Frameworks and Research Tools" (1996) 22 *Journal of Information Science* 13; Mairead Browne, "The Field of Information Policy I: Fundamental Concepts" (1997) 23 *Journal of Information Science* 26; Mairead Browne, "The Field of Information Policy II: Redefining the Boundaries and Methodologies" (1997) 23 *Journal of Information Science* 339; Maureen Grieves, ed., *Information Policy in the Electronic Age* (London: Bowker-Saur 1998); and Hernan Galperin, "Beyond Interests, Ideas, and Technology: An Institutional Approach to Communication and Information Policy" (2004) 20 *Information Society* 159.

Society issues, and this is clearly observable in both theories. Both of them are focused on policies at the national level. Given the increasing importance of information policy debate at the international level, the global dimension of this will be considered next, starting with the discussions on the “New World Information and Communication Order” (NWICO), which can be seen as the first major attempt in this respect, and then turning to the on-going WSIS process.

B. The New World Information and Communication Order and the Right to Communicate

Under the keyword of the “New World Information and Communication Order”, vivid discussions on the existence and necessity of defining a special sub-category of human rights, so-called “communication rights,” had already emerged in the late 1960s. Jean d’Arcy was the first who stated in 1969: “The time will come when the *Universal Declaration of Human Rights* will have to encompass a more extensive right than man’s right to inform, first laid down twenty-one years ago in Article 19. This is the right of man to communicate.”⁴⁵ The discussion on the NWICO turned out to become a stumbling block for the elaboration of communication rights due not so much, as might be expected, to East-West relations characterized by the Cold War era, but rather because of relations between the North and the South, which eventually led to the departure of the U.S. and the U.K. from UNESCO in 1985 and 1986, respectively. Both State parties argued that the *MacBride Report*,⁴⁶ conducted under the auspices of UNESCO on disproportional flows of information between the hemispheres and the dominance of the North in all communication matters, including infrastructure as well as content, had politicized the debate too much. The report was clearly in favour of the establishment of a right to communicate; *inter alia*, it held:

Communication needs in a democratic society should be met by the extension of specific rights such as the right to be informed, the right to inform, the right to privacy, the right to participate in public communication – all elements of a new concept: the right to communicate.⁴⁷

Prior to this, developing countries had claimed that the unidirectional nature of mass media (mainly radio and television at the time), concentrated in the North, was not supportive of democracy and aided what they perceived to be cultural imperialism, with serious social and political implications for decolonization and

⁴⁵ Jean d’Arcy, “Direct Broadcast Satellites and Right of Man to Communicate” (1969) 118 EBU Review 14, as cited in William J. McIver Jr. & William F. Birdsall, “Technological Evolution and the Right to Communicate: The Implications for Electronic Democracy” (Paper presented at the Euricom Colloquium: Electronic Networks & Democracy, Nijmegen, Netherlands, 9-12 October 2002) at 11, available online: OASE <<http://oase.uci.kun.nl/>> [McIver, “Technological Evolution”].

⁴⁶ Sean MacBride, *Many Voices, One World: Towards a New, More Just, and Efficient World Information and Communication Order; Communication and Society, Today and Tomorrow* (Paris: UNESCO, 1980).

⁴⁷ *Ibid.* at 265.

national inter-ethnic conflicts.⁴⁸ The diametrically opposed concerns of developed countries, aside from economic considerations, were centred around the question of whether an amendment of Article 19 as laid down in the *Universal Declaration of Human Rights*⁴⁹ could give rise to any restrictions on the freedom of opinion, expression, and the media.⁵⁰ This discussion has lost little of its relevance today, and it has fully returned to the political and academic agenda during the course of the First Phase of the WSIS.⁵¹ Indeed, an early draft of the *Declaration of Principles* dating from March 2003 explicitly refers to the right to communicate: “The right to communicate and the right for citizens to access information are fundamental to the Information Society.”⁵² In the final version, however, no reference in this respect can be found.

The long-lasting NWICO debate clearly shows the major impact the human rights movement already had in the earlier stages of the development of the Information Society’s policy agenda, however, it is also a sign of the ambiguity of certain issues which still remain unresolved. Although its underlying concern for a fairer and more even distribution of information and knowledge is still of the utmost importance, the Internet, as a new means of mass communication,⁵³ has doubtlessly added new aspects. First, the Internet offers enhanced possibilities for “many-to-many” communication, instead of the classic radio and television “one-to-many” communication. On the one hand, it creates a more democratic environment while, on the other, it raises the concern about how to provide adequate local content.⁵⁴ Second,

⁴⁸ See McIver, “Technological Evolution”, *supra* note 46 at 8ff.

⁴⁹ G.A. Res. 217 (III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc A/810 (1948) 71.

⁵⁰ For a more extensive discussion on the right to communicate, see for example L.S. Harms, Jim Richstad & Kathleen A. Kie, eds., *The Right to Communicate: Collected Papers* (Honolulu: University Press of Hawaii, 1977); Stephen P. Marks, “Emerging Human Rights: A New Generation for the 1980s?” (1980-1981) 33 Rutgers L. Rev. 435 at 448-449; Desmond Fisher, *The Right to Communicate: A Status Report* (Paris: UNESCO, 1982); Desmond Fisher & L.S. Harms, eds., *The Right to Communicate: A New Human Right* (Dublin: Boole Press, 1983); Cees J. Hamelink, *The Politics of World Communication: A Human Rights Perspective* (London: Sage Publications, 1994); and Bruce Girard & Seán Ó Siochrú, eds., *Communicating in the Information Society* (Geneva: UNRISD, 2003). For an overview of relevant resolutions on the right to communicate go to Right to Communicate, available online: <<http://www.righttocommunicate.org/>> [Ó Siochrú].

⁵¹ See Cees J. Hamelink, “Draft Declaration on the Right to Communicate” (Draft presented at the World Summit on the Information Society, 15 December 2002, Geneva), available online: OURMedia <<http://www.ourmedianet.org/>>. For a critical discussion see ARTICLE 19, *Note on the Draft Declaration on the Right to Communicate Prepared by C. Hamelink*, January 2003, available online: ARTICLE 19 <<http://www.article19.org/>>. For a response, see Cees J. Hamelink, “CRIS and the Right to Communicate: A brief Response to Article 19”, *CRIS* (24 February 2003), available online: CRIS <<http://www.crisinfo.org/>>. See also ARTICLE 19, *Statement on the Right to Communicate*, February 2003, available online: ARTICLE 19 <<http://www.article19.org/>>.

⁵² UN, World Summit on the Information Society, 21 March 2003, *Draft declaration of principles*, based on discussions in the Working Group of Sub-Committee 2, WSIS/PCIP/DT/1-E at para. 21.

⁵³ For a history of the Internet from its emergence out of an ARPA research project to the rapid spread of the World Wide Web, see for example Katie Hafner & Matthew Lyon, *Where Wizards Stay Up Late: The Origins of the Internet* (New York: Simon & Schuster, 1996). See more specifically on the World Wide Web Tim Berners-Lee, *Weaving the Web: The Original Design and Ultimate Destiny of the World Wide Web* (San Francisco: Harper Business, 2000).

⁵⁴ Currently, approximately two thirds of all available Internet sites are in English, while more than half of web users speak a native language other than English; see WorldLingo, “World Language Statistical

the ubiquitous nature of the Internet has rendered the implementation of purely Nation-State based regulations rather difficult, making international action in more policy fields even more urgent.

C. The Policy Agenda of the WSIS

The WSIS can be seen as the first major attempt to constitute a broad policy framework for the information society on an international level. Referring back to the general definition of policy, given above,⁵⁵ the goal to be achieved can be set forth as:

[T]he common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the *Charter of the United Nations* and respecting fully and upholding the *Universal Declaration of Human Rights*.⁵⁶

This, of course, is very ambitious; however it might prove more useful to take a closer look at the principles and strategies which have already been agreed upon in the context of the WSIS to guide further action in this area. These can be listed as follows:

- (1) *Involvement of a broad variety of stakeholders*: For the development of inclusive and people-centred ICT strategies and an Information Society which is based on national and local needs, cooperation and partnership between governments, the private sector, civil society, and international organizations, is recognized to be vitally important. National e-strategies and private/public partnerships are the main action lines for this policy approach.⁵⁷
- (2) *Development of the information and communication infrastructure*: Since universal, sustainable, ubiquitous and affordable access to ICTs is essential for digital inclusion, it was acknowledged that the further enhancement of connectivity, the fostering of investment in infrastructure from the private sector, and access to underlying services, such as the energy and postal sectors, are required. The specified action lines include improved connectivity for publicly accessible institutions such as schools, libraries, hospitals, etc., the extension of broadband networks, the creation of regional ICT

Facts”, available online: Worldlingo.com <http://www.worldlingo.com/resources/language_statistics.html>.

⁵⁵ Montviloff, *supra* note 37.

⁵⁶ *Declaration of Principles*, *supra* note 3 at para. 1.

⁵⁷ See *ibid.* at para. 1. See also *Plan of Action*, *supra* note 4 at para. 8.

backbones, and the consideration of special needs of certain vulnerable groups in society – for example elderly or disabled people – in accessing ICTs.⁵⁸

- (3) *Accessibility of information and knowledge:* Information and knowledge provide the basis for the Information Society. The possibility to access and contribute to the available pool of information and knowledge is, therefore, a central issue, and should be facilitated by a rich public domain, appropriate software models and the like. The role of the Internet and its accessibility to all, including disadvantaged and vulnerable groups, was found to be crucial in this process.⁵⁹
- (4) *Acquisition of the necessary capacities and skills:* From literacy and universal primary education to adult education and life-long learning, the ability to fully participate in and benefit from, the Information Society and the knowledge economy requires a broad range of new means for capacity building. Furthermore, it was agreed that the creation of adequate local content and the enhancement of ICT research and development, as well as increased cooperation and technology transfer between developed and developing countries, in order to ensure their competitiveness, played an important role.⁶⁰
- (5) *Establishment of a trust framework:* Information and network security and the development of a global culture of cyber-security, including assurances of privacy as well as data protection, and also the fight against cyber-crime and terrorism, are mentioned as the foundation needed for building confidence in the use of ICTs. The avoidance of “spam” is another issue which falls into this category. In the actions set out, a focus is laid upon the importance of international cooperation in this field.⁶¹
- (6) *Enhancement of enabling factors:* While, on the one hand, ICTs are seen as enabling factors for economic growth, social development and poverty eradication, their fair and equal use in an inclusive Information Society, on the other hand, depends upon several external factors. In this respect, issues included are regulatory frameworks for competition or intellectual property rights, technology transfer and development strategies, standardization, management of the radio frequency spectrum and Internet governance.⁶²

⁵⁸ See *Declaration of Principles, ibid.* at paras. 21-23. See also *Plan of Action, ibid.* at para. 9.

⁵⁹ See *Declaration of Principles, ibid.* at paras. 24-28. See also *Plan of Action, ibid.* at para. 10.

⁶⁰ See *Declaration of Principles, ibid.* at paras. 29-34. See also *Plan of Action, ibid.* at para. 11.

⁶¹ See *Declaration of Principles, ibid.* at paras. 34-37. See also *Plan of Action, ibid.* at para. 12.

⁶² See *Declaration of Principles, ibid.* at paras. 37-50. See also *Plan of Action, ibid.* at para. 13. Since the issue of Internet governance remained rather unclear during the negotiations, the Secretary-General of the UN was asked to set up a working group on this matter.

- (7) *Benefiting from ICT applications*: ICT applications are expected to create benefits with respect to virtually all aspects of life, from government operations to health services, education and employment, from environmental protection to the fulfilment of agreed-upon development goals, just to name a few. To meet these ambitious expectations, the availability of user-friendly, affordable, culturally sensitive and development-oriented applications should receive from both government and local authorities. Action lines in this field include e-government, e-business, e-learning, e-health, e-employment, e-environment, e-agriculture, and e-science.⁶³
- (8) *Fostering cultural diversity*: Cultural diversity includes the respect for cultural identity, cultural and linguistic diversity, traditions and religions, and should be based upon the dialogue among cultures and civilizations. In the context of the information society, the special relevance of the availability of content in diverse languages and formats, and of the preservation of cultural heritage through new technologies, was pointed out.⁶⁴
- (9) *Strengthening the role of the media*: The role of a free and pluralistic media to enable the development of the Information Society is recognized, thus stressing the importance of freedom of expression. International imbalances in infrastructure, technical resources and the development of human skills need to be tackled.⁶⁵
- (10) *Acknowledgement of ethical dimensions*: The Information Society involves various ethical dimensions, of which justice, the dignity and worth of the human person, and respect for human rights and the fundamental freedoms of others were explicitly mentioned. At the same time, ethics also imply the prevention of the abuse of ICTs, for example, with regard to “hate speech”, child pornography or exploitation of human beings.⁶⁶
- (11) *Developing international and regional cooperation*: Considering the global nature of the Information Society and the necessity for cooperation among all stakeholders, the importance of effective international and regional implementation mechanisms, including technical and financial assistance, is stressed. Most prominent, but as

⁶³ See *Declaration of Principles, ibid.* at para. 51. See also *Plan of Action, ibid.* at paras. 14-22.

⁶⁴ See *Declaration of Principles, ibid.* at paras. 52-54. See also *Plan of Action, ibid.* at para. 23. On cultural diversity, see further the *Universal Declaration on Cultural Diversity*, UNESCO, 31st session of the UNESCO General Conference, adopted on 2 November 2001, available online: UNESCO <<http://www.unesco.org/>>.

⁶⁵ See *Declaration of Principles, supra* note 3 at para. 55. See also *Plan of Action, supra* note 4 at para. 24.

⁶⁶ See *Declaration of Principles, ibid.* at paras. 56-59. See also *Plan of Action, ibid.* at para. 25.

yet unresolved among the policy issues involved in this area, is the establishment of a “Digital Solidarity Fund.”⁶⁷

This policy agenda is relatively broad and favours an integrated approach for the coordination of Information Society issues including, for example, aspects such as health, development, education and media. In principle, such an integrated approach seems, indeed, preferable to more fragmented conceptions, because when talking about an Information Society, the prevalence of information policies about other fields is justifiable, if not unavoidable. Nonetheless, the current outcome of the WSIS is not completely satisfactory for one major reason: it fails to give sufficiently clear guidelines with respect to how the key principles could be implemented, either on a national or an international level. Admittedly, the Plan of Action attempts to identify certain goals, but these are neither very coherent nor satisfactory in the long term. Too much political compromise has been made in an attempt to balance the controversial interests of the North and the South, of democratic and non-democratic regimes, of civil society and the private sector. This leaves a rather weak and inexpressive memorandum that appeals the lowest common denominators. The ongoing discussions about issues such as intellectual property rights, data protection and security, Internet governance, or the Digital Solidarity Fund may serve as very good examples in this respect.

D. Conclusions: Towards a Human Rights-based Policy Agenda

So what can be learned from these findings? Certainly, the Information Society and its policy agenda necessarily comprise a broad variety of issues, and this has correctly— but roughly - been set out during the First Phase of the WSIS. However, an broader reaching goal is needed for its coordination and implementation. Unfortunately, it seems that the current paradigm is still based upon certain technical determinism, focusing upon the development of ICTs as such, rather than a more coherent approach addressing the underlying needs and rights that should be fostered and enhanced. For political reasons, this might be easier to handle than the alternative, which would be a paradigmatic shift towards a human rights based international information policy. There are, however, some very good arguments why such a paradigmatic shift should be advocated for more fiercely. International human rights law, established notably, but not exclusively, by the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*⁶⁸ the *International Covenant on Economic, Social and Cultural Rights*⁶⁹ and a large number of treaties about various thematic issues, as well as the regional human rights systems in Europe, the Americas and Africa, is a well-established field. In spite of recent discussions about differing cultural values, it still embraces some of the most accepted international standards. If we accept that new means of communication and

⁶⁷ See *Declaration of Principles, ibid.* at paras. 59-64. See also *Plan of Action, ibid.* at para. 26.

⁶⁸ 19 December 1966, 999 U.N.T.S. 171.

⁶⁹ 16 December 1966, 993 U.N.T.S. 3.

interaction have changed and are changing our society in its economic, societal, technological, cultural and political dimensions, as all theories of the Information Society imply, then we cannot talk about technological concerns alone, leaving other dimensions aside. It seems feasible to base a broader approach upon the core values and ethics provided by the human rights system.⁷⁰

In addition, the ubiquitous nature of the Internet provides another argument: if Nation States are – at least partly – no longer able to effectively regulate certain issues within their borders because these issues are *per se* transnational, then international regulations are the only practical solution. While Nation States usually guarantee certain basic rights in their constitutions, human rights can serve the same end on an international level. Without the integration of human rights into a regulatory framework for Information Society issues, there would be a risk of undermining standards that democratic countries adhere to on a national basis.

There already exists certain promising fundamentals which can be built upon in the future. Both of the already-existing documents recall the importance of an inclusive and people-centred information society and full respect for human rights, even if further along in the process of identification and specification they lose track of this goal by treating human rights as a mere cross-cutting issue. The Second Phase of the WSIS offers the unique opportunity to create a clearer vision of the Information Society based upon further research, to review the results of the first summit and to enhance them wherever necessary. From a human rights perspective, the basic question in developing a regulatory framework for the Information Society should not solely be how to prevent threats to human rights created by ICTs, but it should outline a method to ensure the full enjoyment of all human rights through the support of new technologies.

⁷⁰ For detailed overview on relevant the human rights provisions in the four dimensions of technology, culture, politics and economy, see Cees J. Hamelink, “Human Rights for the Information Society” in O Sióchrú, *supra* note 51 at 151.