Human Rights in the Information Society

Catrin Pekari*

1. Introduction

The coming of the information society has been one of the most disputed phenomena of the past decades, and the inflationary use of the term itself in politics as well as science or culture has blurred its weak theoretical foundations and the general incertitude about its implications. While on the one hand the positive impact of ICTs in terms of democratic participation and worldwide civic engagement, new development policies, economic growth and more effective forms of education and health networks is emphasized, on the other hand the digital divide keeps on widening, making scenarios of exclusion all too real. Whole countries or regions remain outside of the digital age and its alleged benefits, a development which contributes to the already existing unevenness of the distribution of resources and power in the world. Additionally, the increased technical potential creates threats to a variety of rights in developing as well as developed countries, such as the right to privacy, freedom of expression and the media and participation in cultural life.

The already existing regulations for information society issues at the international level, including mainly the work of the ITU, the UN, the UNESCO, the ICANN, the OECD, and the CoE, do not take into account all those concerns. Every institution deals with specialized matters only, be it internet governance, allocation of frequencies, cultural diversity, data protection or security, but so far, these single matters have not been put into a broader context. The first phase of the World Summit on the Information Society (WSIS), which was held in Geneva in December 2003, was the first attempt to create such a context. The two documents adopted, a declaration of principles[1] and a plan of action,[2] have left a lot of questions unanswered however, including, for example, financing and internet governance.[3] Nonetheless, the WSIS has brought human rights onto the information society agenda, and the present paper is meant to analyze the interrelationship between human rights and the information society more closely. After a short overview of some influential theories of the information society and their implications for regulatory policies, the vision of the information society put forward in the key principles of the WSIS Declaration will be evaluated against a human rights backdrop. The question whether the information society has created the need for new human rights, especially the right to communicate, or if the re-interpretation of existing rights is sufficient, will be discussed. Furthermore, the potential impact of the second phase of the WSIS, to be held in Tunis in November 2005, on the further progress on the human rights discussion shall be assessed, giving also some indications for future policy directions.

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* The author is research fellow at the Institute for International Law and International Relations of the Karl-Franzens-University Graz.

[1] UN/ITU Doc. WSIS-03/GENEVA/DOC/4 of 12 December 2003.

[2] UN/ITU Doc. WSIS-03/GENEVA/DOC/5 of 12 December 2003.

[3] A task force on financial mechanisms and a working group on internet governance has been set up to clarify these issues before the second phase of the WSIS in November 2005; further information on their work is available at the summit's official homepage at http://www.itu.int/wsis/.

2. Theories of the Information Society and their Implications for Regulatory Regimes

A. Some Remarks on Theories of the Information Society

Several theories have dealt with the transformation of society through the growing importance of information and knowledge, but there is no single school of thought defining *the* information society in a generally accepted way. Nonetheless, throughout the existing variety of information society theories,[4] three major conceptual lines along which the interrelationship between technology, economy, politics, culture and society in contemporary transformation processes has been explained, can be distinguished.

First, there are the early market-based approaches dealing mainly with the impact of technologies on the economy and employment and measuring the emerging knowledge industry. They emerged in the 1960s in the US, where *Machlup* measured the rise of the knowledge industries and attributed 29% of the GNP to them,[5] thus highlighting the transformative role knowledge played for the economy. *Porat* offered a more refined survey on the US information economy 15 years later, in which he found the US to be an information-based economy with 46% of the GNP generated by the information sectors.[6] Roughly within the same time framework, Japanese scholars such as *Umesao, Kohyama* and *Hayashi* began to develop concepts of the *joho shakai* (information society) or *johoka shakai* (informationized society), too.[7] These academic inputs were implemented by the Japanese government, which formulated as early as in 1971 "*a new national target, 'Realization of the Information Society'*."[8] Both approaches can best be understood against the backdrop of the looming economic crises of the 1970s, a time in which the most important role of information technologies was to increase productivity and foster competitiveness. As far as social effects were considered, they concentrated on the impact on mass communication in the US and on information flows[9] in Japan,[10] but without being translated into a more coherent theory.

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[4] For more complete accounts of information society theories, see for example D. Lyon*, The Information Society: Issues and Illusions* (1988); A. S .Duff, *Information Society Studies* (2000); C. May, *The Information Society: A Sceptical View* (2002); and F. Webster, *Theories of the Information Society* (2002).

[5] See F. Machlup*, The Production and Distribution of Knowledge in the United States* (1962).

[6] See M. U. Porat, *The Information Economy: Definition and measurement* (1977).

[7] On these developments, see T. Morris-Suzuki, *Information, Automation and Democracy in Japan* (1988) chapter 2 and 3.

[8] Japanese Computer Usage Development Institute, *The Plan for an Information Society: National Goal Towards the Year 2000* (1971), cited in Duff, 'The Past, Present and Future of Information Policy Towards a Normative Theory of Information Society', 1 Information, Communication & Society (2004) 72.

[9] Because of this methodological approach of measuring information flows across all media, the Japanese version of the information society thesis has recently attracted some attention; see for example Duff, 'On the present state of information society studies', 19 Education for Information (2001) 233.

[10] Ito, 'Cross Cultural Perspectives on the concept of an Information Society', in A. S. *Edelstein et al.(eds.), Information Societies. Comparing the Japanese and American Experiences* (1978) 254. On the Japanese approach, see also Duff, *supra* note 10, at 232.

Second, a number of other theories concentrate on technological change as a more or less autonomous cause for the coming of the economic and social "third wave" [11] of civilization after the agricultural and industrial revolutions. Although a rather popular version with only few exceptions of serious academic work,[12] theories focusing on the spread of information technologies have not remained without influence even today. For example, *Negroponte* evoked similar thoughts in 1995 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.[13]

This optimism, which does not take into account a wider political, cultural or societal context, is surely not the adequate theoretical foundation for the information society in a broader sense. Nevertheless, the IT-focused theories, of which not all are necessarily deterministic, have turned away from purely market-based approaches and therefore brought a second element into the information society discussion.

And finally, some theories have tried to give a more holistic account of the information society, thereby integrating technological, political, social, cultural and economic dimensions; two of them, *Bell's* post-industrial[14] and *Castells'* network society, are still among those most often referred to.[15] While *Bell* draws on the Machlupian concept of changes in the workforce and the shift from goods to services production, his focus lies beyond that on the new character of knowledge as codified and theoretical instead of pragmatic. The post-industrial is thus less an information but a knowledge society, an idea which remains appealing notwithstanding several critics.[16] The network society as conceptualized by *Castells*[17] builds upon the idea of informational capitalism, which is characterized by global financial markets and international production networks handled by network enterprises. He considers both economic changes and the centrality of information flows, but has been criticized for gathering empirical data instead of developing a sufficiently abstract theoretical framework.[18]

Although *the* theory of the information society does not exist, the primacy of information and knowledge as resources of production and productivity seems beyond controversy. This causes changes in the working environment and in the organizational structure of corporations, but through the advancement of technologies and the establishment of new means of

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[11] See A. Toffler, *The Third Wave* (1980).

[12] For the most influential among these exceptions, see S. Nora and A. Minc, *L'informatisation de la Société*, (1978).

[13] Negroponte, 'The digital revolution: Reasons for optimism', 6 Futurist (1995) 68. See also his main work N. Negroponte, *Being Digital* (1996).

[14] See D. Bell, *The Coming of Post-Industrial Society: A Venture in Social Forecasting* (1973).

[15] See for example Duff, *supra* note 10, at 236.

[16] See for example F. Webster, *supra* note 5, at 30.

[17] See M. Castells, *The Information Society: Economy, Society and Culture; Vol.1: The Rise of the Network Society* (1996); *Vol. 2: The Power of Identity*, (1997); *Vol. 3: End of Millennium*, (1998).

[18] See for example Duff, *supra* note 10, at 236.

communication it reaches out to the political and cultural spheres as well. Increasing internalization leads to a redistribution of power between different stakeholders, namely between states, the civil society and economic actors.

The WSIS undertook the ambitious attempt to translate these developments into key regulatory principles for an information society for all; the outcome of this attempt is discussed below.

B. The WSIS' Key Principles for an Information Society for all

The WSIS goes back to an initiative of the ITU,[19] an organisation entrusted with the coordination of the global telecom networks and services through telecommunication standardization, allocation of the radio frequency spectrum and telecommunication development. The original focus of the summit was thus rather technical, but due to the enabling environment for civil society participation during the intergovernmental Preparatory Committee (PrepCom),[20] a broader variety of issues, including human rights, was brought onto the agenda.[21] Accordingly, the vision of the information society developed in the WSIS Declaration is that of 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.[22]

Its key principles can be summarized as follows:

(1) In the development of the Information Society, not only governments, but all stakeholders, including the private sector, civil society and international organizations, have an important role to play. Cooperation and partnership among all stakeholders are thus a central issue.[23]

(2) Since universal, sustainable, ubiquitous and affordable access to ICTs is essential for digital inclusion, the information and communication infrastructure as a foundation of the Information Society has to be enhanced.[24]

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[19] At its Plenipotentiary Conference held in Minneapolis in 1998, the ITU adopted Resolution 73 considering the holding of a World Summit on the Information Society. The UN General Assembly Resolution 56/183 endorsed the framework for the summit thereafter developed and adopted by the ITU Council.

[20] The meetings of the PrepCom all took place in Geneva and were scheduled as follows: PrepCom-1, 1-5 July 2002; PrepCom-2, 17-28 February 2003, PrepCom-3, 15-26 September 2003, 10-14 November 2003, 5-6 December 2003 and 9 December 2003. Additionally, one Intersessional meeting took place from 15-18 July in Paris.

[21] See Leuprecht, 'Brave New Digital World? Reflections on the World Summit on the Information Society', 1 Revue québécoise de droit international (2004) 102.

[22] See para. 1 WSIS Declaration.

[23] See para. 20 WSIS Declaration; see further para. 8 WSIS Plan of Action.

[24] See paras. 21-23 WSIS Declaration; see further para. 9 WSIS Plan Of Action.

(3) Access to information and knowledge for all, including disadvantaged and vulnerable groups, must be ensured.[25]
(4) The capacities required to fully participate in and benefit from the information society and the knowledge economy should be strengthened.[26]
(5) Strengthening the trust framework is a prerequisite for the development of the Information Society and for building confidence and security among users of ICTs.[27]
(6) An enabling environment is central to the Information Society. This environment includes regulatory frameworks for competition, intellectual property rights, technology transfer and development strategies, standardization, management of the radio frequency spectrum and internet governance.[28]
(7) ICT-applications have the potential to create benefits in all aspects of life. To this end, they should be user-friendly, accessible to all, affordable, adapted to local needs in languages and cultures, and support sustainable development.[29]
(8) Since cultural diversity is the common heritage of humankind, its promotion and respect is important for the Information Society, including the availability of content in diverse languages and formats and the preservation of cultural heritage through new technologies.[30]
(9) Freedom of the press and freedom of information and an independent, pluralistic and diverse media in all parts of the world are essential to the Information Society.[31]
(10) The information society has important ethical dimensions such as justice, the dignity and worth of the human person, and the respect for human rights and fundamental freedoms of others, which should be promoted by all stakeholders.[32]
(11) Due to the global nature of the Information Society, international and regional cooperation among all stakeholders is essential and should be improved.[33]

Evidently, these eleven key principles have a certain focus on ICTs and reflect an almost naïve belief in their benefits, especially with regard to the digital divide. Although the depth of the digital divide cannot be denied,[34] it is not so much a problem in itself as it is the reflection of the generally uneven distribution of wealth and power between developed and developing countries, but also within developed countries.[35] Furthermore, the focus on ICTs also raises the question if the concept of the information society reflected in the WSIS Declaration is not too technologically deterministic, neglecting other aspects as described above. One of the issues that needs a more in-depth analysis is the future role of human rights.

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[25] See paras. 24-28 WSIS Declaration; see further para. 10 WSIS Plan of Action.
[26] See paras. 29-34 WSIS Declaration; see further para. 11 WSIS Plan of Action.
[27] See paras. 34-37 WSIS Declaration; see further para. 12 WSIS Plan of Action.
[28] See paras. 38-50 WSIS Declaration; see further para. 13 WSIS Plan of Action.
[29] See para. 51 WSIS Declaration; see further paras. 14-22 WSIS Plan of Action.
[30] See paras. 52-54 WSIS Declaration; see further para. 23 WSIS Plan of Action.
[31] See para. 55 WSIS Declaration; see further para. 24 WSIS Plan of Action.
[32] See paras. 56-59 WSIS Declaration; see further para. 25 WSIS Plan of Action.
[33] See paras. 60-64 WSIS Declaration; see further para. 26 WSIS Plan of Action.
[34] For some facts and figures on the digital divide, see for example World Economic Forum, Global Information Technology Report 2003-2004, available at http://www.weforum.org.

3. The Role of Human Rights in the Information Society

The WSIS could not entirely clarify the future standing of human rights, for it is not clear if they are seen more as a mere cross-cutting issue important in only a limited number of fields or as a guiding principle and the cornerstone of the information society. An analysis of the human rights language used in the Declaration gives more evidence for the former view. In addition to the general references to the UDHR in Paragraph 1, Paragraph 18 calls for the interpretation of the Declaration in accordance with the UDHR, and Paragraph 3 refers to the principles of universality, indivisibility, interdependence and interrelation of all human rights as enshrined in the Vienna Declaration. Apart from that, the specific relevance of human rights is emphasized only with regard to freedom of expression and in the context of security and the ethical dimensions of the Information Society. Paragraph 4 stresses the importance of freedom of opinion and expression, but it is followed by a reference to Art. 29 of the UDHR in the next paragraph. Since Art. 29 clarifies the circumstances under which the rights enshrined in the UDHR may be restricted, the order of these to paragraphs seems not completely coincidental. It is one of the many instances given in the Declaration that shows the partly highly conflictive interests involved. The same goes for security, where in Paragraph 36 the respect for human rights is contrasted with the necessity to prevent the use of information resources and technologies for criminal and terrorist purposes. It might be noted here that the Council of Europe's Cybercrime-Convention,[36] which entered into force only recently, has already triggered several discussions on the balance between security and individual rights in the use of ICTs, since it provides for far-reaching possibilities for law enforcement in cyberspace.[37] Within the section on ethical dimensions, a short reference to the human rights and fundamental freedoms of others, including personal privacy, and the right to freedom of thought, conscience, and religion is made.

To sum up, the general picture of the role of human rights the Declaration paints is one that acknowledges their central importance only very vaguely, without giving clear indications what the challenges and threats for specific rights could be. While it is made clear that in some fields special attention should be paid to human rights, in others, such as intellectual property, which is inherently connected to freedom of and access to information, or the access to technology, they are not even explicitly mentioned. This approach leaves many questions unanswered, most importantly so what human rights are particularly affected by the development of the Information Society and if the current human rights system is sufficient to provide fair and equal opportunities for all, or if is there a need for new forms of protection in the information age.

With regard to the first question, different approaches have been followed, partly proposing a very broad range of human rights on which contemporary developments do have a considerable impact,[38] ranging from freedom of information to access to technology, from

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[35] See also Leuprecht, *supra* note 10, at 111.

[36] Convention on Cybercrime, CETS 185, entry into force 1 July 2004.

[37] On the Cybercrime Convention, see for example Gabrys, 'The International Dimension of Cyber-Crime, Part 2: A Look at the Council of Europe's Cyber-Crime Convention and the Need for an International Regime to Fight Cyber-Crime', Information Systems Security (2002) 24.

[38] See for example D. Hurley, *Pole Star: Human Rights in the Information Society* (2003), and Hamelink,*:* 'Human Rights for the Information Society', in S. O'Siochru and B Girard (eds), *Communicating in an Information Society,* (2003) 121. See further the Civil Society Declaration to the World Summit on the Information Society "Shaping Information Societies for Human

education to cultural diversity, and from non-discrimination to the right to development. As a least common denominator, the role of the freedom of expression, broadly interpreted so as to include the freedom of and the access to information, the right to privacy, and the right to participate in cultural life play an essential role in the Information Society.

In the course of the preparatory works of the WSIS, a draft declaration on the "right to communicate" has been introduced,[39] stressing the necessity of a new human right, partly embracing existing rights, partly composed of new rights, such as the right to access to technologies or the right to be protected against cybercrimes and cyberterrorism. This approach has encountered heavy criticism because of its supposed too far-reaching consequences.[40] It is a discussion with a long-standing history stretching back to the 1970s and the discussions on a new information and communication order, which at that time led to the departure of the USA and the UK from the UNESCO.[41] Indeed it has to be carefully evaluated if there is a need for an all-new type of human right, notwithstanding that it has its roots in the existing human rights system, or if it would be enough to agree upon some less intensive adaptations of the status quo.

In any case, it should be clear that the human rights system as embodied in the Universal Declaration of Human Rights (UDHR), the two Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and a large number of treaties on various thematic issues as well as the regional human rights systems in Europe, the Americas and Africa, represents internationally agreed ethical values and common ideals. In the building of a new societal order, it is thus a necessary foundation.

4. Conclusions

The transformation processes generally associated with the coming of the information society have not remained without impact on the human rights system. While on the one hand several

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Needs" which was adopted by the WSIS Civil Society Plenary on 8 December 2003, available at http://www.worldsummit2003.de/download_en/WSIS-CS-Decl-08Dec2003-eng.rtf.

[39] See Hamelink and Stroosnijder, 'Draft Declaration on the Right to Communicate' (2002) available at http://www.ourmedianet.org/documents/wsis_2003/WSIS-CSCG.Declaration_of_CommRights.doc.

[40] See Article 19, 'Note on the Draft Declaration on the Right to Communicate prepared by C. Hamelink' (2003) available at http://www.article19.org/docimages/1502.doc, for a response see Hamelink, 'CRIS and the Right to Communicate: A brief Response to Article 19', (2003) available at http://www.crisinfo.org/content/view/full/157/. See also Article 19, 'Statement on the right to Communicate', (2003) available at http://www.article19.org/docimages/1512.doc.

[41] For a more extensive discussion of the right to communicate see for example L. S. Harms et al. (eds).: *The Right to Communicate: Collected Papers* (1977); D. Fisher, *The Right to Communicate: A Status Report* (1982); D. Fisher and L. S. Harms (eds), *The Right to Communicate: A New Human Right*, (1983); C. J. Hamelink, *The politics of World Communication: A Human Rights Perspective* (1994); S. O'Siochru and B Girard (eds), *Communicating in an Information Society,* (2003); and Weber, 'From "Many Voices One World" to "Information Society": Experiences with and lessons from the MacBride-Report for the future of the WSIS Principles', 4 CRi (2004) 97. For an overview of relevant resolutions on the right to communicate see http://www.righttocommunicate.org/viewGroup.atm?sectionName=rights&id=2.

human rights are threatened in the evolving social, economic, political, technological and cultural environment, on the other hand new chances for the human rights system have emerged as well, enabling better networking mechanism for civil society and increasing awareness for critical exclusion scenarios. Therefore, as much as human rights are influenced by the information society, they have also the potential to become an integral part and essential foundation of the international regulatory framework yet to be established. In this process, the WSIS plays a decisive role. Its first phase has set a rough policy agenda, which needs to be refined to develop a more coherent approach towards the issues at stake. The human rights language it uses should thus be reinforced and become more specific during the second phase to be held in Tunis in November 2005..