Introduction

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Since the mid-1990s, the term "global information society" (GIS) has gained currency in the lexicon of information and communication technology (ICT) policy discussions. The GIS has been invoked in analyses, policy statements, and initiatives undertaken by national governments, businesses, civil society organizations (CSOs), and academics. Similarly, it has been the subject of declarations and work programs in such international organizations and collaborations as the European Commission (EC), the Organization for Economic Cooperation and Development (OECD), the International Telecommunication Union (ITU), and the Group of Eight (G-8) industrialized countries. And most recently, the term has received even wider play as a result of the United Nations' 2002–2005 World Summit on the Information Society (WSIS) process.

There is no precise and widely accepted definition of the GIS. Even so, when employing the term in global policy discussions, participants appear to believe that they all mean essentially the same thing. The most common usage seems to be as a loose umbrella rubric for the wide array of national and global effects and policy issues resulting from the information revolution. Many people additionally embrace variants of the analytical propositions that the technologically enabled creation, distribution, and manipulation or application of information is becoming a key driving force and defining feature of social change worldwide, and that the resulting GIS is some respects qualitatively different from antecedent forms of social organization.

In principle, these constructions of the concept are essentially neutral with respect to policy prescriptions, in that one can embrace them without advocating any particular type of programmatic response. But in practice, critics on the political left maintain that they are ideological and

prescriptive, in that asymmetries in wealth and power mean that the information society is not really global, and because the term GIS is often invoked to argue that the combination of market liberalization and private control is the only logical and natural way to govern ICT. In addition, some of these critics disagree with the analytical propositions. They variously argue that the causal role of information pales in significance when compared with state and corporate control of material resources; or that information is indeed a driving force of social change, but it is overwhelmingly controlled by these power centers and manipulated to promote patterns of social order favorable to their interests.

Wherever one comes down on these and related questions, clearly the GIS term has caught on in global ICT discourse. Moreover, the vast range of policy issues the GIS is thought to entail—telecommunications and media regulation, digital convergence, radio frequency spectrum management, technical standardization, Internet governance, trade in networked goods and services, competition policy, intellectual property, privacy and consumer protection, freedom of speech and censorship, network security and cybercrime, cultural and linguistic integrity, development and the global digital divide, e-commerce, e-government, e-education, e-everything—are all pressing and moving up the global agenda. They also are increasingly interrelated, often intrinsically so; it is impossible to effectively address security without considering privacy, intellectual property without considering freedom of speech, trade without considering consumer protection, and so on across the board. There is thus a growing tendency to view these issues in a more holistic manner—as elements of a single overarching policy space rather than as a random assortment of disconnected topics that are somehow related to ICT. And regardless of whether or not one views the term GIS as misleading or ideological, it increasingly is being employed by governments and other stakeholders to refer to that space. Accordingly, while recognizing at the outset that the term is contested, in this volume we will use it to refer to the policy space described above.

Today, much of the GIS policy arena is in flux. Leading governments and transnational corporations are pushing for often sweeping changes in national, regional, and global policies. In general, the overarching objectives of these efforts are to increase private-sector control over the economic sphere and, particularly in the post-9/11 context, state control over

security-related matters. While some elements of this agenda have met with resistance from various quarters, overall the drive to transform ICT governance along these lines is moving ahead.[1] In the process, other perspectives and priorities generally are being pushed to the side, at best acknowledged but not really accommodated. One such perspective positions development promotion as the baseline for evaluating policy options and calls for the special and differential treatment of developing countries in ICT global governance arrangements. Another semimarginalized perspective, which has been advanced by progressive CSOs in particular, sets public-interest criteria as the evaluative baseline and calls, inter alia, for more democratic participation in policymaking, better oversight of state and corporate power, and a better balance between commercial and noncommercial objectives.

Even more marginalized in GIS debates has been the international human rights perspective. GIS policy discussions generally have not internalized as key criteria for evaluation the various human rights that have been recognized and institutionalized in treaties and related instruments since the late 1940s. Indeed, to the extent that analytical and programmatic links have been drawn between human rights and the issues arising from the information revolution, the focus typically has been on just two issues.

The first issue concerns the use of ICT to increase global awareness of human rights violations—pertaining in particular to civil and political rights—in authoritarian and semiauthoritarian countries. For example, the 1980s saw the burgeoning use of video cameras and satellite television links to reveal the violent suppression of political dissent within the Soviet bloc and various developing countries. In the 1990s, the focus of attention shifted to the Internet, which, insofar as some governments find it difficult to monitor and censor transmissions, provides a vital means for international and local actors to get out the word about human rights abuses.[2] The second and related issue concerns the efforts by governments, especially but not only in nondemocratic societies, to impose laws and regulations restricting privacy and free speech on the Internet. Despite all the talk about the Internet's ability to "route around" censorship, many governments have proven increasingly adept at extending state control into cyberspace. Accordingly, both traditional human rights and civil liberties groups and organizations specializing in the cyberspace environment have

been cataloging and publicizing the growing number of governmental restrictions being imposed around the world in the name of public morality, cultural integrity, and political control.[3] Some of these watchdog organizations draw explicit linkages between such actions and the internationally agreed human rights they violate, but others are less attentive to the human rights framing.

While these two issues are critically important, they are just the tip of the iceberg. International law and policy have enshrined a broad range of human rights pertaining to multiple dimensions and contexts of social life. These rights go well beyond the rights to freedom of expression and physical security involved in the above examples, to cover such matters as access to information, privacy, nondiscrimination, access to public services, freedom of assembly and political participation, due process, mobility, education, working conditions, women's rights, development, peace, and much more. The protection and promotion of these rights are often affected in a direct and negative manner by the ways in which ICT is used and governed by both public- and private-sector actors. Conversely, beginning assessments of ICT usage and governance from the baseline of human rights standards will often point toward policies and practices that are at variance, sometimes sharply, with the approaches currently being pursued.

Given the rapid pace and direction of change in GIS policy, there is an increasingly pressing need to put human rights considerations firmly on the global agenda. Whether the issue at hand is trade, intellectual property, Internet governance, "information security," or something else, compliance with the full range of internationally agreed human rights standards should be a key criterion for the development and evaluation of policy frameworks. Unfortunately, the communities of expertise and practice involved in human rights and ICT policy have not undertaken the sort of reciprocal and sustained dialogue required to move in this direction.

To the contrary, there has been a significant disconnect between the two fields. On the one hand, members of the ICT policy communities typically are not trained in the intricacies of human rights, are unsure how human rights standards might apply to issues such as Internet governance or intellectual property, are unclear on the potential practical implications of such an effort, and have not been under what they would consider to be salient political pressures to figure these things out. On the other hand, most traditional human rights groups have largely eschewed delving into the full

complexities of the GIS arena. Those which have launched programs on ICT issues usually focus on challenging governmental restrictions on freedom of expression rather than protecting and promoting the broader array of political, economic, and social rights in light of the information revolution. In parallel, the specialized CSOs launched in the 1990s to defend cyber civil liberties have usually stuck to their original mandates, such as freedom of expression and privacy protection, instead of expanding their focus to the broader human rights agenda. Moreover, their initiatives often concentrate on opposing specific new laws, policies, and programs rather on framing the issues in terms of long-standing and internationally agreed human rights. And, for their part, intergovernmental organizations concerned with human rights have only occasionally devoted any attention to the matter, and generally have done so in a loose, schematic, and aspirational manner.[4] In short, integrating human rights criteria into the assessment and development of GIS policies will require, as a first step, that members of both communities overcome these and other barriers and enter into sustained dialogue.

Over the past few years, elements of the human rights community at least have begun to take steps in this direction. The major impetus for this movement was the United Nations' World Summit on the Information Society (WSIS). As is discussed in more detail below, the WSIS comprised a pair of global summits held in Geneva in December 2003 and Tunis in November 2005, as well as an elaborate preparatory process involving a series of large regional conferences and meetings held between May 2002 and the Tunis summit. Broadly stated, the overarching objectives of WSIS were to foster a global dialogue about the GIS; adopt shared principles and a plan of action to help guide the international community's GIS initiatives; and define an approach to follow-up and implementation of efforts related to the action plan.

As part of a larger civil society coalition that came together around the WSIS, a group of concerned CSOs launched the Human Rights Caucus at the first preparatory conference (hereafter PrepCom) in July 2002. Comprising (at the time of writing) over sixty national and transnational organizations—including traditional human rights organizations, cyber-liberties organizations, trade unions, and more—from all continents, the Caucus pressed governments to make internationally agreed human rights principles an overarching consideration of the WSIS framework.[5] In the

end, the Caucus's efforts yielded decidedly mixed results: while the negotiated texts acknowledged the importance of some international human rights agreements and principles, particularly with respect to freedom of expression, others of direct relevance were overlooked. Moreover, there was little real engagement on how the broader corpus of human rights might apply to diverse GIS policy issues such as telecommunications regulation, network security, intellectual property, the global digital divide, or Internet governance. Human rights considerations simply did not figure much in the governments' negotiations on these topics, and many in their delegations would have been hard pressed to see the connections. As such, the WSIS experience demonstrated that there is a pressing need to flesh out the linkages between human rights and information society issues, and to translate these into concrete policy recommendations.

With these considerations in mind, the purpose of this volume is to provide an initial assessment of the relevance of internationally agreed human rights to the GIS. The cases examined herein by no means constitute an exhaustive listing of the human rights that are impacted by, and should inform, ICT policies and practices. Rather, they are particularly important and illustrative examples of a broader range of rights and related issues that merit sustained consideration and dialogue over time. They are also in some senses among the more controversial rights when considered in relation to the ICT environment.

The human rights considered herein include freedom of expression and access to information, the right to privacy, the right to development, the prohibition against discrimination, gender equality, freedom of association and assembly, procedural rights, the right to participate in public affairs, and the right to enjoy one's own culture. These rights are enshrined in the Charter of the United Nations and the International Bill of Human Rights—which, in consequence, are the principal starting points for the chapters' analyses—as well as in other multilateral instruments. In each case, activists, academics in different scholarly disciplines, and policy practitioners specializing in different fields or subfields may have varying perspectives on the interpretation and implementation of these rights. As such, it is hoped that the essays in this volume may contribute to some conceptual and programmatic bridge-building among these diverse analysts and stakeholders.

The chapter authors are activists and scholars who have been involved in the Human Rights Caucus or related advocacy work in the WSIS and

other ICT policy debates. At the time of writing, the volume's editor, Rikke Frank Jørgensen, and Meryem Marzouki, the author of chapter 8, served as the co-coordinators of the Caucus. Hence, while the authors come from different disciplinary backgrounds, they all share a firm commitment to promoting human rights standards as an essential baseline for the assessment and governance of the GIS.

To contextualize the chapters that follow, the remainder of this Introduction proceeds in three steps. First, it briefly surveys the international human rights arrangements that serve as points of departure in the subsequent chapters. Second, it summarizes the dynamics and outcomes of the WSIS process with respect to human rights. The WSIS is important here not only because it catalyzed the development of the civil society Human Rights Caucus, but also and more importantly, because it constituted the first serious encounter between human rights advocacy and policy debates on the GIS as a whole. Not surprisingly, then, if one enters the key words "human rights" and "global information society" into a Internet search engine such as Google, a majority of the top-ranked Web sites listed pertain to the WSIS. Third and finally, the Introduction provides an overview of the chapters that follow.

The International Human Rights Regime

The institutionalization of international human rights standards has constituted one of the most important normative shifts in world politics since World War II. Viewed in a broad historical perspective, the notion that human beings hold inalienable and universal rights simply by virtue of their personhood that should trump state prerogatives is fairly radical. Indeed, as one scholar has argued, "Virtually everything encompassed by the notion of 'human rights' is the subject of controversy . . . the idea that individuals have, or should have, 'rights' is itself contentious, and the idea that rights could be attached to individuals by virtue solely of their common humanity is particularly subject to penetrating criticism."[6]

Nevertheless, and despite the complaints from some governments that human rights are a matter of cultural relativism or are contrary to so-called Asian values, the core concept has been enshrined in international law and policy, and is now effectively uncontested. All but the more egregious vi olators have abandoned challenges to the concept of inherent, universally applicable, and multidimensional human rights, such as the once

persistent assertions that rights apply only to collectivities rather than individuals, or that a state's treatment of its citizens is a purely domestic matter. Nowadays they typically settle for denying charges that their actions violate international norms and/or seek positions on monitoring bodies such as the U.N. Commission on Human Rights so that they can influence the agenda and water down resolutions regarding their performance.

Of course, none of this is to suggest that human rights are not consistently violated all around the world, often on a massive scale. Compliance with human rights obligations is highly variable, and so are the incentives for noncompliance. There are the usual suspects of states with bad human rights records, but there are also states which will not subject themselves to standards beyond the nation-state or which trump civil liberties for state concerns in relation to national security and/or the "war on terror." Nevertheless, the existence of a global framework for human rights provides mechanisms through which political and legal pressure can be continually applied to inch states toward greater conformity. This is true not only for well established and obvious violations such as torture, human trafficking, or the violent suppression of expression, assembly, and political participation, but also for newly recognized problems, such as those covered in this volume. It should be noted that human rights traditionally concern the relationship between state and individual, but that "horizontal effect" is part of this relationship, implying that state obligations include a positive obligation to protect a private party against another private party, by legislation and/or preventive measures or by investigating violations.

The establishment of this global framework was a long time in coming. The idea that citizens should enjoy certain freedoms and protections from the arbitrary exercise of government authority took hold early in the development of some nation-states. The origins of guarantees provided by law to individuals against the arbitrary use of the state power can be traced back to the Magna Carta (or Great Charter) promulgated in 1215. Notions of humans holding innate and inalienable rights were subsequently elaborated by Enlightenment philosophers and incorporated into such constitutional texts as the Virginia Declaration of Rights and the American Declaration of Independence of 1776, as well as the French Déclaration des Droits de l'Homme et du Citoyen of 1789, but their rules were applicable only within the lands of the respective sovereign states. Early international mechanisms—such as the Conference of Vienna's Declaration on the Abo-

lition of the Slave Trade in 1815, the League of Nations' "minority treaties," and the Constitution of the International Labour Organisation—established multilateral mechanisms regarding slavery, minorities within states defeated in World War I, and workers, respectively—but these specialized agreements fell short of the contemporary conception of universal and multidimensional human rights.[7]

It was only in the context of World War II and its aftermath that this conception would be elaborated and enshrined in broad and binding international agreements. Revulsion against fascist atrocities played a catalytic role in expanding the scope and domain of human rights concepts. Let us note just a few of the key steps along the way. In a January 1941 speech to the U.S. Congress, President Franklin D. Roosevelt declared that freedom means the supremacy of human rights everywhere, and spoke of the centrality of four essential freedoms in particular—freedom of speech, expression, and religion, and freedom from fear. Eight months later, the U.S.–U.K. Atlantic Charter stated a desire to construct a postwar world in which "men [*sic*] in all the lands may live out their lives in freedom from fear and want"; while these words were probably not written with people living under colonial subjugation in mind, they did point toward the future universalization of human rights.[8]

In 1944, the American Jewish Committee supported the publication in New York of British legal scholar Hersch Lauterpacht's book *The International Bill of the Rights of Man,* and also issued a call for an International Bill of Rights that was signed by 1,300 prominent Americans. In 1945, the Committee met with President Roosevelt and Secretary of State Edward Stettinius to press for the inclusion of human rights protections in the pending Charter of the United Nations. As one of the most detailed accounts of these developments concludes, the Charter's "human rights provisions were products of [nongovernmental organizations'] determination and persistent lobbying in which the American Jewish Committee played the leading role."[9] In addition, a group of Latin American countries pushed for the listing and guaranteeing in the Charter of a complete set of human rights, perhaps in an effort to lock in protections against potential future nondemocratic governments.[10]

The United States and the other great powers were not willing to accept legally binding commitments on a detailed list of human rights. Nor did the Charter offer a clear definition of human rights. Nevertheless, it did

include seven important references to them. The Charter's Preamble positions the international community's "faith in fundamental human rights, in the dignity and worth of the human person, [and] in the equal rights of men and women and of nations large and small" as an overarching principle of the United Nations. Similarly, Article 1 states that the United Nations' mission is, inter alia, to "achieve international co-operation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." To this end, subsequent articles establish that the General Assembly is to initiate studies and make recommendations to assist in the realization of human rights and fundamental freedoms; the United Nations and its then relevant trusteeship system are to promote universal respect for, and observance of, human rights and fundamental freedoms; all member states are to take joint and separate action in cooperation with the United Nations to achieve these purposes; the Economic and Social Council (ECOSOC) may make recommendations to the same ends, and may call international conferences and prepare draft conventions for submission to the General Assembly on matters falling within its competence; and ECOSOC is to set up a commission for the promotion of human rights.[11]

Collectively and read in context, these seven references underscored human rights' multidimensional and universal character. In addition, they linked the promotion of human rights both to the progressive development of international law and institutions, and to the realization of objectives such as international peace and stability and economic and social progress. Going forward, such issue linkages to other valued objectives would prove to be tactically important in persuading states to accept the imposition of rules that could be seen as unilaterally imposing burdens without benefits.

In accordance with the Charter's mandate, the U.N. Commission on Human Rights (CHR) was established in 1946. Under the leadership of Eleanor Roosevelt, the CHR began deliberations in January 1947 on the development of an International Bill of Human Rights that would build out and translate into operational commitments the relevant principles contained in the Charter. The new body decided on a two-part structure comprising a nonbinding declaration by the General Assembly that could be taken up immediately, and a binding covenant that would require more

extensive negotiations. This decision contained the kernel of an approach that would be elaborated and generalized in the years to follow: "International human rights law now usually progresses through similar stages: issue identification, debate, adoption of nonbonding declarations, negotiation of binding agreements (treaties), establishment of supervisory institutions and procedures, and further elaboration of the rights through decisions and judgments of supervisory institutions."[12]

In December 1948, the U.N. General Assembly approved the resulting Universal Declaration of Human Rights (UDHR) by a vote of 48 to 0, with 8 abstentions. Later referred to by U.N. Secretary-General U Thant as the "Magna Carta of Mankind," the UDHR comprised thirty articles dealing with two broad categories of human rights: civil and political rights; and economic, social, and cultural rights. The General Assembly subsequently decided that the two categories would be detailed in separate treaty instruments—the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR), both agreed upon by the General Assembly in December 1966. Together, the UDHR, CCPR, and CESCR constitute the International Bill of Human Rights, which is the overarching framework for global human rights today.

The UDHR's Preamble states that the Declaration is meant to serve as a common standard of achievement for the international community, and that every individual and every organ of society is to strive, by teaching and education, to promote respect for human rights, and to secure their universal and effective recognition and observance by progressive measures, national and international. Article 2 elaborates on the U.N. Charter's nondiscrimination principle by holding, inter alia, that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Articles 3 to 21 then deal with fundamental civil and political rights, such as the right to life, liberty, and security of person; the prohibition of slavery, torture, and arbitrary arrest, detention, or exile; the rights to recognition as a person before the law, to the presumption of innocence until proven guilty, and to equal protection, effective remedies, and fair and public hearings by competent national tribunals; the rights to a nationality, to freedom of movement and residence within the borders of

each state, to leave any country to return to one's country, and to seek and to enjoy in other countries asylum from persecution; and the rights to marry, create a family, and own property.

As we will see in subsequent chapters of this volume, in addition to Article 2 on nondiscrimination, and the procedural rights laid down in Articles 7, 8, 10, and 11, particularly important civil and political rights in the GIS context are the following UDHR provisions:

> Art. 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
>
> Art. 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.
>
> Art. 20: Everyone has the right to freedom of peaceful assembly and association. . . .
>
> Art. 21: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right to equal access to public service in his country. . . .

UDHR Articles 22 to 27 deal with economic, social, and cultural rights. Under their provisions, everyone has the right to social security and is entitled to realization of the economic, social, and cultural rights indispensable for his or her dignity and personality development. Further, everyone has the rights to work, to choose their employment, to just and favorable conditions of work, to equal pay for equal work, to protection against unemployment, to form and to join trade unions, and to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. In parallel, everyone has the right to a standard of living adequate for their health and well-being, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other causes of lack of livelihood in circumstances beyond their control. Mothers and children are entitled to special care and assistance, and all children, whether born in or out of wedlock, are to enjoy the same social protection. Everyone has the right to education, which is to be free, at least in the elementary and fundamental stages. Finally, and of particular relevance in the GIS context, the UDHR in Article 27 embraces both cultural participation and authors' right to protection. Hence, it states that every-

one has the right to participate freely in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits; as well as the right to the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he or she is the author.

The UDHR concludes with three provisions on the application of the abovementioned rights. Article 28 lays down the ambitious requirement that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. In deference to the collectivist rather than individualist vision favored by the Soviet Union and like-minded states, Article 29 says that everyone has duties to the community in which alone the free and full development of his or her personality is possible. It further holds that in the exercise of these rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society; and that these rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. Finally, Article 30 specifies that nothing in the Declaration may be interpreted as implying for any state, group, or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth therein.[13]

A political instrument, the UDHR was drafted and approved in the remarkably short period of just two years. In contrast, negotiations over the two legal instruments dragged on for over a decade before concluding in 1966, and the process of national ratification, thus getting binding commitment from a large number of states, has taken much longer and is still incomplete. The treaties build directly on the UDHR, reinforcing through repetition and codification the strength of its injunctions. At the same time, some of the UDHR's principles are specified in more detail, and some new principles are added into the mix. To avoid repetition in this brief summary, and because those most directly related to this volume's concerns are cited in the chapters to follow, the principles contained in the two covenants will not be listed here.

The CCPR and the CESCR have elements in common, and the U.N. General Assembly and other relevant international bodies repeatedly have

affirmed that the rights they contain are all intrinsically interrelated and of equal status. Nevertheless, there are important differences between the two, some of which are particularly worth noting here. First, since the rights they cover have different historical origins, many observers distinguish between first and second "generations" of rights. Civil and political rights are referred to as first-generation rights because they were recognized at the national level in a number of eighteenth- and nineteenth-century constitutions, whereas economic, social, and cultural rights were generally developed in national constitutions and international instruments in the post–World War II era. As such, the former are more deeply embedded in multiple legal systems and traditions, and are usually what the layperson thinks of as human rights. Moreover, political and civil rights have often been described as "negative" rights, in that they proscribe state interference with individual freedoms, whereas economic, social, and cultural rights have been described as "positive" rights that require states to create the conditions in which individuals and collectivities can enjoy a certain quality of life, or to provide certain goods or services to that end. In operational terms, though, the distinction is not so clear-cut, as we shall see below.

Second, the CCPR calls for the strict and immediate application of human rights protections to individuals, whereas the CESCR calls for progressive realization subject to state resources. Many experts argue that while the CESCR also is a legally binding treaty, it is more aspirational and progressive in nature, and the realization or violations of the rights it entails are open to greater latitude in interpretation.[14] As one proponent of this view has suggested:

> Whereas the CCPR requires strict compliance with its stipulations, essentially its sister instrument boils down to a promotional obligation which, furthermore, is not owed to the individuals concerned. In fact, a close reading of the "rights" listed in the CESCR reveals that it deliberately refrains from establishing true individual rights. . . . Economic and social rights are to a large degree context-dependent, more than civil liberties. They have as their backdrop a concept of the state as a potent provider, but with the proviso that the duties owned to citizens can never be set out in absolute terms, but must take into account the scarcity of resources which any human community has to reckon with.[15]

In recent years, the "positive/negative" dichotomy stemming from the traditional distinction between economic, social, and cultural rights and

civil and political rights has been replaced by the tripartite typology *to respect, protect, and fulfill*, which has been adopted in a variety of contexts, thus adding more nuances to the types of state obligations entailed in the two set of rights.[16] The obligation to respect requires states to refrain from interfering with the enjoyment of human rights. The obligation to protect requires states to prevent violations of such rights by third parties, and the obligation to fulfill requires states to take appropriate legislative, budgetary, judicial, and other measures toward the full realization of such rights. Accordingly, the human rights obligations of the state should be examined at three levels, going from the predominantly cost-free and passive obligation to respect, to the gradually more active and costly obligations to protect and to fulfill. The Committee on Economic, Social and Cultural Rights has also chosen to incorporate this tripartite typology in its work.[17] As one scholar argued:

> The tripartite terminology bridges the two sets of rights by illustrating that compliance with each and every human right—economic, social, cultural, civil and political—may require various measures from (passive) non-interference to (active) ensuring of the satisfaction of individual needs, all depending on the concrete circumstances. A social right like the right to housing can be complied with by the State at the first or secondary level by abstaining from eviction or by preventing third parties from doing that, and the tertiary level is primarily activated if there is no home to *respect* or *protect*. Likewise, the civil right to freedom of expression may require that the State abstains from interfering with the enjoyment of the right or prevent third parties from doing so, and the tertiary level only becomes relevant if other obstacles stand in the way of individuals expressing themselves, such as lack of access to the media or—more seriously—lack of ability to express themselves due to illiteracy or disabilities.[18]

Third, the political configurations underlying the negotiation of the two sets of rights were different. At the risk of drawing an overly bald generalization, whereas the Western democracies attached particular importance to the civil and political rights of individuals, in keeping with their own constitutional traditions and limitations on state power, the Soviet Union and like-minded states were more favorably inclined toward economic, social, and cultural rights. To Western governments, economic, social, and cultural objectives were better realized via normal legislative means than by enshrining them as "constitutional" rights, but the aspirational character of the CESCR and the overall negotiated package made it acceptable. Even so, exactly how economic, social, and cultural rights are to be

interpreted and enforced remains a subject of some ambiguity and controversy.

Fourth, the two covenants take tellingly different approaches to monitoring compliance. The CCPR established a Human Rights Committee comprising a group of independent experts to review and comment on periodic reports that the treaty parties are obliged to submit, and provides for an optional interstate complaint mechanism. Moreover, the First Optional Protocol to the CCPR allows individual victims of violations to file complaints against state parties. In contrast, compliance with the CESCR thus far has been assessed only via periodic state reports, and there are no procedures for handling individual complaints, although an optional protocol is currently being considered.[19] In short, while both instruments are binding, it is reasonable to suggest that the CCPR is more demanding with respect to monitoring and compliance.

While the International Bill of Human Rights provides the overarching foundation, the global human rights system also entails a range of other universal instruments. For example, five additional core treaties, with their dates of conclusion, are the Convention on the Elimination of All Forms of Racial Discrimination (1965); the Convention on the Elimination of All Forms of Discrimination Against Women (1979); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). Many of the core treaties are supplemented by optional protocols imposing additional obligations on the states that have chosen to be parties to them.

In addition, there are many other universal instruments dealing with the interpretation and application of rights in particular issue areas or contexts. These take a variety of legal forms, ranging from "hard law" covenants and conventions to "soft law" declarations, guidelines, and recommendations. A nonexhaustive listing by subject area from the Web site of the Office of the U.N. High Commissioner on Human Rights (the lead U.N. official responsible for human rights, a post created in 1993) includes the instruments shown in the box below. Additional related instruments, which are not in the list below, include a number of conventions from the International Labour Organisation (ILO), specifically on the rights of

THE INTERNATIONAL BILL OF HUMAN RIGHTS

- Universal Declaration of Human Rights (1948)
- International Covenant on Civil and Political Rights (1966)
- International Covenant on Economic, Social, and Cultural Rights (1966)

UNIVERSAL HUMAN RIGHTS INSTRUMENTS

World Conferences on Human Rights and the Millennium Assembly

- Vienna Declaration and Programme of Action
- United Nations Millennium Declaration

The Right to Self-Determination

- United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
- General Assembly resolution 1803 (XVII) of December 14, 1962, "Permanent Sovereignty over Natural Resources"
- International Convention Against the Recruitment, Use, Financing and Training of Mercenaries

Rights of Indigenous Peoples and Minorities

- Indigenous and Tribal Peoples Convention, 1989 (no. 169)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities

Prevention of Discrimination

- Equal Remuneration Convention, 1951 (no. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (no. 111)
- International Convention on the Elimination of All Forms of Racial Discrimination
- Declaration on Race and Racial Prejudice
- Convention Against Discrimination in Education
- Protocol Instituting a Conciliation and Good Offices Commission to Be Responsible for Sseeking a Settlement of Any Disputes Which May Arise Between States Parties to the Convention Against Discrimination in Education
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- World Conference Against Racism, 2001 (Durban Declaration and Programme of Action)

Rights of Women

- Convention on the Elimination of All Forms of Discrimination Against Women
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- Declaration on the Elimination of Violence Against Women

Rights of the Child

- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
- Minimum Age Convention, 1973 (no. 138)
- Worst Forms of Child Labour Convention, 1999 (no. 182)

Rights of Older Persons

- United Nations Principles for Older Persons

Rights of Persons with Disabilities[20]

- Declaration on the Rights of Mentally Retarded Persons
- Declaration on the Rights of Disabled Persons
- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities

Human Rights in the Administration of Justice: Protection of Persons Subjected to Detention or Imprisonment

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of Their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (not yet in force)
- Principles of Medical Ethics Relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Noncustodial Measures (Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearance

Social Welfare, Progress, and Development

- Declaration on Social Progress and Development
- Universal Declaration on the Eradication of Hunger and Malnutrition
- Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind
- Declaration on the Right of Peoples to Peace
- Declaration on the Right to Development
- Universal Declaration on the Human Genome and Human Rights
- Universal Declaration on Cultural Diversity

Promotion and Protection of Human Rights

- Principles Relating to the Status of National Institutions (Paris Principles)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

Marriage
- Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages
- Recommendation on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages

Right to Health
- Declaration of Commitment on HIV/AIDS

Right to Work and to Fair Conditions of Employment
- Employment Policy Convention, 1964 (no. 122)

Freedom of Association
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (no. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (no. 98)

Slavery, Slavery-like Practices, and Forced Labor
- Slavery Convention
- Protocol Amending the Slavery Convention Signed at Geneva on September 25, 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- Forced Labor Convention, 1930 (no. 29)
- Abolition of Forced Labour Convention, 1957 (no. 105)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime

Rights of Migrants
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime

Nationality, Statelessness, Asylum, and Refugees
- Convention on the Reduction of Statelessness
- Convention Relating to the Status of Stateless Persons
- Convention Relating to the Status of Refugees

- Protocol Relating to the Status of Refugees
- Declaration on the Human Rights of Individuals Who Are Not Nationals of the Country in Which They Live

War Crimes and Crimes Against Humanity, Including Genocide

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes Against Humanity
- Principles of International Co-operation in the Detection, Arrest, Extradition, and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity
- Statute of the International Tribunal for the Former Yugoslavia
- Statute of the International Tribunal for Rwanda
- Rome Statute of the International Criminal Court

Humanitarian Law

- Geneva Convention Relative to the Treatment of Prisoners of War
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War
- Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Noninternational Armed Conflicts (Protocol II)

Source: Office of the U.N. High Commissioner on Human Rights, www.ohchr.org/english/about/hc/index.htm

indigenous people, discrimination in employment and occupation, and workers' rights more generally.

While the above list is not exhaustive, its breadth and diversity are sufficient to underscore two points of direct relevance to the analyses in this volume. First, while many of these instruments amplify rights previously established in the International Bill of Human Rights, there are also additions. These rights are often described as "third-generation" human rights. Leading examples include the rights invoked in the U.N. General Assembly's 1984 Declaration on the Right of Peoples to Peace and its 1986 Declaration on the Right to Development. The aspirational principles of these declarations have been affirmed in subsequent political statements or soft

law, but they have not been embodied in binding treaties. Moreover, the rights established would seem to be very multidimensional, contextual, and based on progressive realization, and their full enjoyment would require not only agreement on what constitutes peace or development, but probably also large-scale social, political, and economic changes at both the national and international levels. Not surprisingly, there has been a good deal of controversy about their proper interpretation and application, and efforts to develop the concepts and work through the programmatic implications for human rights advocates, governments, and international organizations are ongoing.[21] The right to development is of particular concern with respect to the GIS, and as such is discussed in chapter 12.

Second, the global governance of human rights is substantively and architecturally very complex. As the list indicates, it includes a wide array of principles and instruments of varying degrees of precision, scope, strength, and so on. Human rights is a deeply institutionalized field involving, at the global level, the U.N. Human Rights Commission, a multitude of monitoring mechanisms, interpretation guides (general comments on specific rights), special rapporteurs, and so on—working in a dense policy space to elaborate and interpret internationally agreed rights, build capacity, and promote compliance.

Despite this complexity, there is also an overarching unity and coherence between the core universal instruments—the U.N. Charter, the International Bill of Human Rights—and the other conventions, declarations, protocols, and related instruments. As such, these collectively may be said to constitute an international human rights regime. International regimes are conventionally defined as "principles, norms, rules, and decision-making procedures around which actor expectations converge in a given issue-area" of international affairs.[22] A number of international relations scholars have analyzed the human rights regime, using the same explanatory theories and conceptual vocabulary that have been employed to assess the formation, evolution, and transformation of international regimes in a wide variety of other global issue areas, from monetary and trade policy to arms control, the environment, and beyond.[23] While the participants in the present volume do not attempt to enter into the theoretical debates among political scientists about how best to explain the human rights regime's development, operation, and impact, we do take its key princi-

ples, norms, rules, and procedures as embodied in the abovementioned universal instruments as a starting point for the analysis of GIS issues.

The universal, U.N.-based human rights regime is not, however, our only baseline. There are also regional human rights regimes, and these, too, are at times directly relevant to the analyses. Not surprisingly, the regional regimes vary widely in constitution and effectiveness. Nevertheless, at least one—the European regime—is more "legalized," and hence stronger, than the international regime, and as such provides an impressively robust model when considering options for future progress.[24]

The European regime is based on the European Convention on Human Rights (ECHR), which was agreed upon by the Council of Europe in 1950 and in the years to follow took on a series of additional protocols. Developed in the shadow of World War II and in the gap between the completion of the UDHR and of the CCPR and CESCR—during which time it became clear that global compliance mechanisms would not be strong—the ECHR laid the foundation for the strongest and most institutionally developed human rights framework anywhere, and took the first steps toward making the International Bill of Human Rights' requirements truly operational. It established a European Court of Human Rights, to which unresolved cases could be presented for binding rulings. Governments are obliged to report on their compliance with these rulings, and routinely adjust their national laws and policies to achieve conformity. Reform of the Court is an ongoing topic of discussion, since it is overloaded with cases and judgments may take seven to eight years. The Council of Europe also has adopted a series additional human rights instruments. And in parallel, within the European Union (EU), the European Court of Justice and other EU institutions have been progressively expanding the scope and strength of human rights protections and have reinforced the ECHR's influence. The most recent example is the Charter of Fundamental Rights of the European Union, which is included in the proposed Constitutional Treaty for Europe.

The inter-American regime also is institutionally well developed, and shares broad commonalities with the European system. The Charter of the Organization of American States (OAS), signed in 1948, lists human rights as one of the organization's guiding principles. In 1959, the OAS created an expert Inter-American Commission on Human Rights, which later

acquired the ability to receive complaints from individuals. The American Convention on Human Rights, which was agreed upon in 1969 and came into force in 1978, created an Inter-American Court of Human Rights that can issue nominally binding rulings. But notwithstanding these institutional arrangements and the substantial improvements that have accompanied the spread of electoral democracy since the 1980s, the overall track record of compliance and enforcement falls rather short of the European model.

Regional regimes elsewhere are less developed and operate under far more difficult and constraining conditions. The African Charter of Human Rights and Peoples' Rights, adopted in 1981, is supposed to extend protections not only to individuals but to collectivities as well. It also contains an expansive menu of third-generation rights, including the rights to a healthy environment, development, and peace, and has bolder provisions on economic, social, and cultural rights than its counterparts in Europe and the Americas. The Charter also created an African Commission on Human and Peoples' Rights. Similarly, the League of Arab States adopted an Arab Charter on Human Rights in 1994, and there is an Arab League Human Rights Committee. In contrast, Asia lacks even an ineffective human rights regime.

Finally, complementing the international and regional regimes and associated organizations are a variety of national mechanisms. These include national human rights institutions (NHRIs), which increasingly interact and cooperate on promoting human rights compliance and national capacity-building. The NHRIs operate under a mandate established by the U.N. Paris Principles that were adopted by the U.N. General Assembly in 1993.[25]

In sum, as this overview indicates, the international community has made very significant progress in establishing human rights standards and mechanisms for the ongoing monitoring of progress toward their realization. Moreover, none of the rights listed in the core instruments has ever been withdrawn or formally curtailed by subsequent decisions; to the contrary, they have been progressively reinforced through reiteration and incorporation into successive intergovernmental agreements and court rulings. These successes can be attributed to a variety of factors, including the moral character of human rights claims and the desire of many states to avoid being publicly "named and shamed"; powerful democratic coun-

tries' interest in using human rights as a foreign policy tool against certain authoritarian regimes, and small and medium-sized democracies' interest in consolidating their own open societies; the substantial catalytic influence of CSOs at every stage and level of the process; the attendant development of a transnational "epistemic community" comprising committed experts in government, civil society, international organization secretariats, and, at times, the private sector and global media; and the attendant institutionalization of organizational programs mandated to carry the agenda forward through mechanisms of monitoring, assessment, and codification.[26]

Despite these gains, two major challenges remain. The first, of course, is promoting state compliance. Sanctions and other "hard" measures, such as the withholding of development assistance or curtailing of diplomatic and economic relations, have been employed in some extreme cases, but the realities of international power relations and larger foreign policy objectives generally limit the resort to such techniques. The newly established International Criminal Court could prove to be an important tool to dissuade dictators from undertaking particularly egregious violations of human rights, but it remains to be seen how thoroughly the United States will undercut its authority. In the meanwhile, normative pressure remains the principal means of promoting compliance with the international human rights regime, a circumstance that invites depressing gamesmanship around the composition of the U.N. Commission, the drafting of reports and resolutions, and so on. In the current context of globalization, the desires to attract foreign investment, development assistance, and political support have sometimes provided previously intransigent states with additional incentives to comply, although the strategic partnerships being formed in the "global war on terror" have provided new cover for others. Conversely, some of the regional systems, most notably the European regime, provide more effective methods for redressing individual grievances and bringing national policies into alignment with human rights standards.

The second challenge is to give greater detail to the internationally agreed rights, and to clarify their meaning and applicability under diverse conditions. In particular, as new types of behavior and policy emerge that were not envisioned when they were established, it is essential to consider how human rights can be not only respected but also advanced in the

resulting environments. On the one hand, this means ensuring that states refrain from establishing national or international laws, policies, and practices that erode the agreed principles and their application. On the other hand, it means proactively taking steps to create conditions in which they can be realized more fully and effectively. Increasingly important in the latter connection is the growing need to establish national and international public policy frameworks that discourage practices by private actors, most notably the business sector, that could undercut the strength of human rights protections.[27]

The present volume was organized with this latter challenge in mind. As we have indicated, there has been no sustained and probing discussion either within the human rights epistemic community or among governments and other actors about how the protections established by the international human rights regime and related instruments should be protected and promoted with respect to the GIS. To the contrary, with few exceptions, national, regional, and global ICT policies are routinely being formulated without giving any real attention to the relevance of or impact on internationally agreed human rights standards. Hence, as the following chapters demonstrate, governments are actively pursuing initiatives that may work against guarantees concerning freedom of expression, the right to seek information, privacy protection, the right to enjoy one's culture, the right to freely assemble and associate or participate in political processes, procedural protections, freedom from discrimination, the rights of women, minorities' rights, and the right to development. At a minimum, then, there is a pressing need to think through how these rights apply in a globally networked and information-intensive world, identify specific policies and practices that could be contrary to their preservation and promotion, and suggest specific reforms that would rectify such problems.

Collective analysis and dialogue along these lines will not be easy. Three examples illustrate the kinds of problems that must be confronted. First, in some cases, the relevant rights and violations thereof can be specified and observed with great precision. For example, nobody could plausibly argue that the increasingly common arrest and imprisonment without due process of Internet users who have simply expressed their political views on e-mail listservs, Web pages, or blogs does not constitute a significant

violation of human rights. But in many other cases, particularly involving so-called second- and third-generation rights, there may be greater ambiguity and less consensus. Does the right to express oneself, seek out information, or participate in political dialogue, culture, and development mean that governments are obliged to provide the technological means to these ends? Is the failure to provide affordable access to telecommunications or the Internet inconsistent with human rights obligations? Some analysts and advocates would argue that it is, but others would undoubtedly view this as an overly expansive claim that risks diluting the moral force and legal coherence of rights guarantees.

Second, the transnational character of cyberspace forces a direct collision between diverse national legal cultures and ways of balancing competing human rights standards. The celebrated French court case concerning Yahoo! and the distribution of Nazi memorabilia was just the tip of the iceberg with respect to the interplay of freedom of expression, on the one hand, and nondiscrimination, on the other. In such cases, there may be no consensus even within the epistemic community, much less in the larger global polity, in part because many advocates concentrate on defending the particular human rights they specialize in at the expense of a more holistic perspective.

And third, there are difficult questions concerning the role of private actors in the GIS. An obvious example here is the growing propensity of technology companies to provide authoritarian regimes with the technical tools to violate the personal privacy and suppress the speech of Internet users. Are governments of the countries in which these companies are incorporated obliged to adopt policies barring such complicity in authoritarian practices abroad? What about the lack of privacy protections, outside the European Union, for World Wide Web domain name owners, who are listed in the privately controlled and publicly accessible WHOIS data base?

Until recently, there was no organized setting in which the human rights and GIS policy communities could come together to begin working through such issues. The 2002–2005 WSIS provided the first serious opportunity to launch the collective analysis and dialogue that are required. Alas, on the whole, this opportunity was not taken, and we are still at the starting gate. Why the human rights agenda was not advanced further in the WSIS process is the subject we consider next.

Human Rights and the World Summit on the Information Society (WSIS)

First proposed by Tunisia at the ITU's 1998 Plenipotentiary Conference, the WSIS was endorsed by a U.N. General Assembly resolution in December 2001. Unlike previous U.N. summits, the WSIS was a two-phase event involving two summits and an elaborate preparatory process. The first phase included a series of preparatory committee meetings (hereafter referred to as PrepComs) and regional consultations begun in 2002 and concluded with a summit hosted by Switzerland in Geneva on December 10–12, 2003. The second phase included a series of PrepComs in 2004 and 2005 and concluded with a summit hosted by Tunisia in Tunis on November 16–18, 2005.

The WSIS process attracted hundreds of national and transnational CSOs from around the world that came together to form a broad civil society coalition. While these CSOs were quite heterogeneous in terms of their core missions and specific priorities in the WSIS, they were united in a desire to promote the inclusion of public interest and "people-centered" developmental objectives in the governments' negotiated outcomes. To facilitate dialogue and the development of shared positions on the many issues in play, coalition members launched over two dozen regional or thematic caucuses and working groups. In parallel, they established three peak organizations to coordinate the inputs from these groupings and the coalition's interface with governments, the private sector, and international organizations. These were the Plenary, an open forum of all interested civil society individuals and organizations, which served as the ultimate decision-making authority; the Bureau, which coordinated positions on procedural matters and represented civil society in consultations with the parallel governmental and private sector-bureaus; and the Content and Themes Group, which was responsible for coordinating collective inputs on substantive matters.[28] The Human Rights Caucus (HRC) was formed as part of this larger civil society coalition at the first PrepCom in July 2002, and served as the civil society focal point for organizations occupied with the human rights agenda of the information society.[29]

In WSIS Phase I, the HRC focused in particular on the intensive and extended negotiations over the Declaration of Principles and Plan of Action agreed upon at the December 2003 summit in Geneva.[30] The HRC called on governments not only to list internationally agreed human rights

injunctions as overarching and guiding principles of these two agreements, but also to ensure that all their other provisions—on everything from trade, intellectual property, spectrum management, and Internet governance to development programs, national ICT regulation, labor rights, and beyond—were fully consistent with them. While the first of these objectives was at least partially realized, the second met with less success. In contrast, in WSIS Phase II, the HRC and everyone else involved in the process shifted focus from the broad terrain of GIS issues to a narrower agenda of unresolved negotiation topics: Internet governance, development financing, and WSIS follow-up and implementation.

The work of the HRC can be divided into influencing the official negotiations and influencing civil society itself. On the second track, one of the contentious issues between HRC and other CSOs concerned a right to communicate, promoted as a new human right by the Communication Rights in the Information Society (CRIS) campaign.[31] Different rationales were expressed in support of such a right, which addresses a concern that the media are becoming increasingly homogenized and commercialized, and that minority, dissenting, or local voices are being excluded from decision-making processes due to a lack of information and access to the means of communication.

The idea of a right to communicate bears a heavy historical burden. It was at the center of an international diplomatic battle known as the New World Information and Communication Order (NWICO), which took place at UNESCO from 1973 to 1985, and which resulted in both the United States and the United Kingdom withdrawing from UNESCO. In short, the United States and others saw NWICO as a disguise for nondemocratic states to restrict freedom of expression, especially press and other media freedom, while the other side claimed that media should be under stricter (state) control, and that media concentration should be limited, in order to allow for a more pluralistic flow of information. At the onset of WSIS, organizations that had been involved in NWICO and newcomers gathered around the CRIS campaign, this time not calling for a state- or industry-led effort to create new global orders, but for democratization of media and communication.

However, the call for a new human right was opposed by a number of human rights groups. These argued that broader access to media and communication could be realized by enforcing existing human rights.

Furthermore, the broadly defined right to communicate could potentially harm core freedom provisions of UDHR Article 19. It was stressed by Article 19, a London-based CSO, that the right to freedom of expression is recognized to include positive state obligations. Thus, freedom of expression includes the right to diverse, pluralistic media and equitable access to the means of communication, as well as to the media. In addition, among related provisions of UDHR are the right to practice and express one's culture, the right to participate in public decision-making processes, and privacy rights, including the right to communicate anonymously.[32] In sum, enforcement of these provisions could provide for democratization of media and communication, the concerns of the CRIS campaign. The debate on this within WSIS CSOs was resolved by the end of WSIS Phase I, and there is now a more or less explicit agreement that the claim to a right to communicate need not invent new legal standards, but should, rather, call for enforcement of existing human rights standards.[33]

Another sore topic within civil society was the linkage between human rights and development. In the process of finalizing the civil society declaration for the Geneva Summit,[34] a number of organizations claimed that the issue of development (poverty reduction and economic and social development) was to take priority over human rights, thus insisting that the CS declaration should not be opened with the human rights language. This perspective presupposes a distinction between development and human rights rather than recognizing that the two are intimately related. The debate is also a reminder of the fact that a number of civil society organizations do not see human rights as the normative foundation for any society, independent on the level of development, but rather as something secondary to issues of development. On the other hand, many civil society organizations, especially from northern countries, demonstrated a more restricted understanding of human rights by focusing solely on civil and political rights—if not only freedom of expression and privacy.

In relation to the official negotiations, a core challenge for all CSOs involved in WSIS Phase I was to work with like-minded governments to give the DP a people-centered orientation, thus shifting the focus from infrastructure to people. HRC and its supporters had two objectives in particular: to establish links to the International Bill of Human Rights as overarching guiding principles, and to get treatment of specific ICT issues to incorporate HR-friendly language.

The aim of having explicit reaffirmation of human rights in the DP was realized only in the last days before the Geneva Summit; however, it was still unresolved whether all governmental delegations would agree to a reference to the Universal Declaration of Human Rights in the opening paragraphs of the DP. In the end this was resolved after strong pressure especially from the Western group of countries, but the struggle remains a reminder of the (low) level of state ambition when it comes to human rights and WSIS. Since formal commitment to human rights treaties is in place in most countries, it is ironic that a U.N. summit spends hours of plenary debate on whether it can agree to refer to the Universal Declaration of Human Rights in its political declaration. The aim of having the official declaration present a people-centered vision for the GIS was realized, to a lesser extent, which was part of the reason why CSOs decided, in November 2003, to stop providing input to the official process, and instead concentrate on developing their own civil society declaration for the Geneva Summit. "It is not about Digital but about Dignity," civil society stated at its press conference in November 2003.[35]

The HRC also fought to get specific ICT issues to incorporate HR language. The human rights provisions in play concerned in particular freedom of expression, the right to privacy, freedom of assembly and association, procedural rights and the rule of law, the right to participate in public decision-making processes, the right to development, and the principle of nondiscrimination, both as a general overarching principle and in relation to gender and minorities. All of these are issues which are covered in this volume.

The Caucus spent many sessions arguing that the current challenge is to address and improve the specific areas in which ICT can help realize human rights. The specific right which attracted most attention in WSIS, on a number of different but related themes, was freedom of expression. The baseline was to reaffirm respect for freedom of expression, as laid down in UDHR, in the WSIS documents. However, as mentioned above, freedom of expression entails positive state obligations. Thus HRC and other CSOs raised a much broader agenda of empowering people, not least vulnerable groups and regions, to actually be able to participate in the GIS, in order to have their human rights realized more effectively. The points raised included infrastructure, especially global inequalities in access and cost

schemes, and, more generally, questions around freedom and control: Who owns and controls the information resources? Who has resources to participate in the GIS? And how are commercial or state interests balanced against the public interest and the public domain of knowledge? In the end, full reference to UDHR Article 19 was included in the DP after strong lobbying efforts from many CSOs, especially press and other media organizations. The broader debate, touching upon existing regimes of information ownership and control, was never taken up in the official negotiations.

Another specific right that was addressed time and again, and that has specific importance in an online environment, was the right to privacy. Despite the crucial role of privacy standards to guide the collection, access, and use of personal information, the DP contains only a minor reference to privacy. During WSIS, the HRC and the Privacy and Security Working Group of civil society time and again expressed their concern with the strong focus on national and international security and criminal use of ICTs vis-à-vis a state commitment to respect and protect civil liberties such as privacy.[36] Furthermore, the Geneva Summit itself presented a number of privacy violations, such as radio frequency identification device (RFID) tagging of participants without prior notice, and without any privacy policy on the retention, use, disclosure, and deletion of the personal information being collected.

The right to freedom of assembly and association was brought up in relation to labor rights in the GIS, but was not included in the DP. Likewise, the right to political participation was mostly addressed in relation to the Internet governance debate of WSIS Phase II, but often not with explicit human rights reference. On the issue of procedural rights and the rule of law, much debate evolved around the notion of an "enabling environment." In the DP it is stated that the regulatory framework is expected "to reflect national realities," which to many ICT regulators means a business-friendly environment subject to local conditions, but which from a human rights perspective has different connotations since "national realities" are often used to circumvent the obligations of states according to the human rights treaties they have ratified. Despite the many interventions from the HRC on this issue, the language was kept in the final documents. The case is illustrative of the disjuncture between HR thinking and ICT policy think-

ing and the lack of cross-cutting reference points that are needed if ICT policymakers are to integrate HR standards in their policy formulation.

Cross-cutting themes such as nondiscrimination, including women's rights and minority rights, were advocated by a number of civil society groups, including the HRC, but were not addressed to any major extent in the final documents. The same goes for the right to development, though much of the language in the DP speaks to the need for development and for bridging digital divides.[37]

At the end of WSIS Phase I, the HRC proposed a specific follow-up mechanism for human rights and the GIS. Supported by the civil society Plenary, and the International Symposium on the Information Society, Human Dignity and Human Rights,[38] HRC proposed to establish an Independent Commission on the Information Society and Human Rights. This commission should be composed of qualified experts with a broad geographical representation to monitor state practices and policies in order to advance compliance with human rights in the GIS. At the time of writing, no WSIS follow-up mechanism focusing on human rights in the GIS exists.[39]

In sum, the main result of WSIS Phase I was human rights damage control. The DP in the end included reference to human rights as overarching principles, and to a few other central rights. However, the broad range of issues that CSOs tried to raise, and that is reflected in the civil society declaration, were not included in the official negotiations. As we shall see below, WSIS Phase II was essentially different in this regard.

After the Geneva Summit in December 2003, everyone involved in the WSIS process shifted focus. The broad range of GIS issues covered in Phase I was replaced by a narrower agenda of unresolved negotiation topics in Phase II. These topics concentrated on Internet governance, development financing, and WSIS follow-up and implementation.

Internet governance was by far the most heatedly contested focus of the Phase II deliberations. The WSIS process fundamentally transformed the global debate on this topic in a number of important respects. In particular, it brought to a head the profound disagreement between the United States and many other governments and stakeholders concerning U.S. control over the root zone file at the apex of the domain name system, and—via contractual relationships—over the Internet Corporation for

Assigned Names and Numbers (ICANN), which is responsible for setting global rules regarding Internet identifiers. This and related conflicts are unresolved at the time of writing, have been covered elsewhere, and hence need not be delved into here.[40] Rather, two points of direct concern to the role of human rights considerations in WSIS are more pertinent.

First, the WSIS process resulted in a fundamental rethinking of the character and scope of Internet governance. Previously, the standard practice had been to equate the term "Internet governance" with the social organization of Internet identifiers and the root server system and, by extension, the functions performed by ICANN. This narrow vision overlooked the fact that there are various internationally shared private- and public-sector principles, norms, rules, procedures, and programs that shape both the Internet's infrastructure (physical and logical) and use for communication and commerce. But as the WSIS discussions progressed, participants began to converge around the need for a broader, holistic conception that could encompass the full range of Internet governance mechanisms and facilitate their systematic evaluation and coordinated improvement. This demand would be met by a pair of reports issued in July 2005 by the U.N. Working Group on Internet Governance (WGIG). A multistakeholder group appointed by U.N. Secretary-General Kofi Annan in November 2004, the WGIG developed a broadly framed "working definition" of Internet governance that was subsequently embraced by governments and other stakeholders. The effect of this shift was to put on the table a broad range of governance mechanisms and issues, including those pertaining to freedom of expression versus content regulation, privacy, "information security" and network security, intellectual property, international trade, technical standardization, and other matters.[41]

Second, and in consequence, the new understanding significantly increased the number of contact points between human rights standards and Internet governance policies and programs. As such, human rights received greater attention in the Internet governance discussions of Phase II than they had in those of Phase I. For example, human rights standards were invoked in the WGIG's internal debates, and the group's main report noted that "Measures taken in relation to the Internet on grounds of security or to fight crime can lead to violations of the provisions for freedom of expression as contained in the Universal Declaration of Human Rights and in the WSIS Declaration of Principles." The report also decried the lack

of fully enforceable international standards on privacy protection.[42] Similarly, the WGIG's background report, which, unlike the main report, was not a fully agreed consensus document, made two specific references to human rights:

- There may be difficulties in reconciling the protections granted in Human Rights conventions and treaties with actions taken to combat criminalized behaviour;
- Privacy, a fundamental human right according to Article 12 of the Universal Declaration of Human Rights, becomes even more important over the Internet, where the intrinsic nature of the Internet makes it possible to effectively track an individual in cyberspace and use information about him/her illegally or without authorization. Threats to personal privacy increase the mistrust towards the Internet.[43]

In addition, during the open PrepCom debates, the HRC made several interventions noting that Internet governance has significant human rights dimensions and that the relevant international legal protections needed to be applied and enforced. Human rights principles also were mentioned from time to time by governments in relation to Internet governance, which was a new development. At the time of writing, governments also have tentatively agreed on the following statement, which represents progress from Phase I: "We affirm that measures undertaken to ensure Internet stability and security, to fight cybercrime and to counter spam, must protect and respect the provisions for privacy and freedom of expression as contained in the relevant parts of the Universal Declaration of Human Rights and the WSIS Declaration of Principles."[44]

A common feature of WSIS Phases I and II was the debate around Tunisia as WSIS II host country. The initial idea of holding a U.N. summit on the information society came from Tunisia, which is often overlooked in the debate. In terms of indicators of Internet use by the population, and thus from a strict infrastructure point of view, Tunisia as host country was not necessarily a bad choice. However, when addressing the summit from a broader societal and human rights perspective, Tunisia as the second host country was at best ironic, at worst an insult for the many victims and human rights organizations that have time and again pointed to the human rights violations in the country, including blocking of Web sites, police surveillance, press censorship, and imprisonment of individuals for their opinions.

The Human Rights Caucus pointed to the problems of having Tunisia as the second host country early on, and was, together with many other civil society groups, subject to continuous harassment, obstruction of meetings, and infiltration of various WSIS mechanisms, such as the CS Selection Committee (selection of speakers for the summit), especially in the second phase. The strategy pursued by the Caucus was not to boycott the Tunisia Summit nor keep silent on the human rights problems in the country,[45] but to act from inside the process, raise awareness among CSOs and governments, intensify the international spotlight, and give maximum support to the independent Tunisian NGOs. Initiatives in support of this strategy included a number of fact-finding missions to Tunisia; one initiated by human rights groups, others by a coalition of press organizations active around WSIS; an appeal signed by more than 100 CSOs to U.N. Secretary-General Kofi Annan; and, at the time of writing, organization of a Citizens Forum—a side event to the summit. This will be a space in which civil society actors from all over can meet and debate in solidarity with the independent Tunisian NGOs.[46]

Overview of the Book

The book is structured into three parts. The first part addresses information society issues related to freedom of expression, access to information, and privacy protection. Generally speaking, the themes covered in this section represent some of the issues that have been most contested since about 1995, and the areas where most human rights battles have taken place in relation to the GIS. In terms of linking human rights with the GIS, it is thus the most advanced debate covered in this book. The second part focuses on freedom of association, participation, and procedural protections. The rights covered in this section have a stronger procedural element, and have not received the same level of attention. However, they are increasingly evoking interest, not least in relation to the debate around international cooperation—for instance, in the field of so-called cybercrime and in relation to the WSIS Internet governance debate, in which the role of various stakeholders, democratic legitimacy, and the rule of law surfaced time and again. The third part, on equal treatment and development, is the least developed part within the GIS framework, and though many would recognize and praise the standards at a general level, there is

still a long way to go before issues of nondiscrimination and equal treatment are mainstreamed into global ICT policy thinking, not to mention the right to development.

Part I: Freedom of Expression, Access to Information, and Privacy Protection

In chapter 1, Rikke Frank Jørgensen (RFJ) examines the principles behind the right to freedom of expression and discusses some of the current challenges to this right in the GIS. The right is laid down in the UDHR Article 19 and CCPR Article 19, and has been reiterated and amplified in a variety of subsequent international instruments. The challenges addressed in the chapter include lack of access, privatized censorship, filters and other means of restricting online content, and regulation of Internet service providers. Many of the issues were hardly addressed within the official WSIS debates because they touch upon established systems of power and ownership; thus it is easier to speak of infrastructure than to speak of censorship, she argues. RFJ suggests some principles for effective protection of freedom of expression in the GIS, such as to assure that relevant qualifications are supported in the curricula of primary and secondary schools, to develop indicators to measure compliance of national regulation with freedom of expression standards, and to conduct reviews of national legislation and practice.

In chapter 2, David Banisar (DB) addresses citizens' right to access public information. The right is part of freedom of expression (UDRH Article 19 and CCPR Article 19), and has been transposed into national law in a large number of countries over the last years. With a number of national examples DB illustrates how the years since 1995 have seen an explosion in laws promoting legal rights to public information. Today, nearly sixty countries have adopted freedom of information laws, and another forty are currently reviewing proposals; over half the world is making their government more open. However, there are still considerable barriers to obtaining crucial information in many countries, and efforts to expand citizens' participation in governance have not been adequately developed. Developing a culture of openness is an evolutionary process, in which both governments and civil society must change, argues DB, who also looks at the development of electronic government and how that might affect a culture of openness.

In chapter 3, Kay Raseroka (KR) analyzes another aspect of freedom of information (UDHR Article 19 and CCPR Article 19): the role of libraries in providing information access, especially in developing countries. In the chapter, KR debates the challenges and opportunities offered by ICTs to extend communication systems of nonreading cultures through the use of libraries. The majority of the populations in the developing world rely on people-centered information networks and trust relationships for exchange of information and sharing of knowledge; hence the information society vision must reflect these social realities. The Botswana Vision 2016 pilot project, in which elders share local culture stories with rural primary school children in their mother tongue, is used as an example of how local content creation can be nurtured, and access to information improved, by breaking down cultural barriers in intergenerational information exchange. As part of the project, computers and software are provided, since it is envisaged that ICTs will serve the children in learning to word-process their stories as part of learning to use the keyboard as a tool for writing. The project has demonstrated that it is both challenging and rewarding when libraries engage with communities in the emerging information society, argues KR.

In chapter 4, Robin Gross (RG), focuses on access to knowledge and the development of a public domain of knowledge vis-à-vis intellectual property rights regimes. The rights most often invoked in this discussion are freedom of expression (UDHR Article 19 and CCPR Article 19) and the right to enjoy your own culture, including an author's right to protection (UDHR Article 27 and ESCR Article 15). RG examines the clashes between freedom of expression guarantees (the public) and intellectual property rights, which is currently one of the most controversial battlefields in the GIS. The increase in copyright holders' rights has come at the expense of the public's rights to communicate freely, argues RG, and illustrates her point with a number of current examples, such as digital rights management schemes, design of DVD players, Peer-2-Peer software, the U.S. Digital Millennium Copyright Act, the EU Copyright Directive and the related Enforcement Directive, plus WTO's Trade Related Aspects of Intellectual Property Rights Agreement. According to RG, the current trend is to impose the U.S. copyright agenda on the rest of the world, resulting in a one-way flow of ideas from the North to the South—a form of "information age

colonialism." In response, RG recommends some principles for creating balanced communication rights in a digital world.

In chapter 5, Gus Hosein (GH) examines one of the most directly affected rights in the digital era: the right to privacy. The right is laid down in UDHR Article 12 and CCPR Article 17, and has been reiterated and amplified in a variety of subsequent instruments, especially at the EU and OSCD level. GH starts by defining privacy, tracing its historical roots, and presenting the various dissenting views on privacy. After having outlined the legal and regulatory landscape, GH illustrates a number of current threats to privacy, such as mandatory retention of communication data, online tracking, exchange of passenger data, profiling systems, and use of biometrics in passports and identity cards, which is then combined with central databases. The current tendency toward still more invasive measures is alarming since privacy is a necessary foundation for an open and free information society, he argues. Without an adequate grounding in the politics of privacy, information society politics, as they manifest themselves in WSIS and other forums, may result in grave errors that will take years to reverse, GH concludes.

Part II: Freedom of Association, Participation, and Procedural Protections

In chapter 6, Charley Lewis (CL) addresses the right to freedom of assembly and association, laid down in UDHR Article 20, CCPR Article 21, and CCPR Article 22. With examples from Zimbabwe, Chiapas, and Seattle, CL illustrates how since the mid-1990s the development and spread of ICTs has fundamentally altered both the spaces and channels through which individuals and organizations interact, mobilize, and assemble in the face of government repression. Departing in the case of the Congress of South African Trade Unions, CL discusses the role that ICTs have played in strengthening the ability of unions to enforce their right to freely assemble and associate, and how ICTs have more practically changed the way unions work. Also, new means of blocking, limiting, or monitoring online activities are debated, and it is stressed that these restrictions are carried out both by regimes with a bad human rights record and by countries which are considered bastions of democracy and freedom.

In chapter 7, Hans Klein (HK) discusses the right to political participation, as laid down in UDHR Article 21 and CCPR Article 25, in the GIS.

HK starts by outlining the foundations for the right to political participation and next considers its relevance to the information society, depending on whether this is understood as an evolved version of the existing society or whether it constitutes a novel and distinct society in its own right. Using the free software movement and ICANN as cases, HK debates two settings for public affairs that create problems of participation in the GIS. A solution may require rethinking of the public–private distinction that lies at the core of the liberal state, in order for citizens' rights to be attached to private institutions, he argues. The alternative would be to bring new forms of political authority under existing governmental institutions, concludes HK.

In chapter 8, Meryem Marzouki (MM) debates procedural rights such as fair trial, presumption of innocence, effective remedy, and equality before the law, as laid down in UDHR Articles 7, 8, 10, 11, and CCPR Articles 2, 14, 15, and 26. MM argues that procedural rights are often overlooked in the information society context, though they present necessary conditions for the realization of the rule of law and thus for the effective enjoyment of all human rights. Furthermore, these rights have been particularly challenged by recent regulatory and legislative processes. With examples, such as the Council of Europe's Cybercrime Convention, the U.S. Patriot Act, French antiterrorism legislation, and EU privacy regulation, she argues that the recent trend has been to weaken the role of the judiciary, while extending the prerogatives both of the police and of private parties. Furthermore, there is a tendency for states to increase their monitoring powers over citizens without ensuring the necessary procedural safeguards. In the name of a war against terrorism, states are increasing their surveillance over citizens, and human rights, the rule of law, and basic democratic principles are paying the price, MM concludes.

Part III: Equal Treatment and Development

In chapter 9, Mandana Zarrehparvar (MZ) focuses on the right to be protected against any form of discrimination or hate incitement in the GIS. The right is laid down in UDHR Article 2, CCPR Article 2, ESCR Article 2, and a large number of international instruments. MZ explores the different ways in which discrimination manifests itself in the GIS, and suggests that more attention be paid to two dilemmas: the backlash against any commitment to combat racism or any other form of intolerance through

the Internet, and discrimination through lack of access to technology and means of communication. The structure of the Internet, its pervasiveness, and the possibility it affords for anonymity have made cyberspace a playground for those who wish to spread hateful propaganda and incite to hate and violence, she argues. The response should be to apply the principle of nondiscrimination as stipulated in the different human rights instruments and use this for stronger enforcement, while ensuring respect for freedom of expression. Regarding access to ICTs, information often has its source in the majority, and thereby excludes the minorities, MZ argues. She examines access to ICTs within the scope of public goods and services, and argues that it is the positive obligation of the state to guarantee the effective right to access to these goods and services for everyone, without distinction.

In chapter 10, Heike Jensen (HJ) continues the issue of discrimination (UDHR Article 2, CCPR Article 2, ESCR Article 2) with an examination of women's human rights as laid down in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and a number of additional instruments. HJ uses existing articulations of women's human rights as a lens to focus on the challenges women face in the information society. This is done using the dimensions of ICTs as tools, ICTs as careers, and ICT ideology. With regard to ICTs as tools, it is argued that strong policy measures are required if ICTs are to be tools for the promotion of women's rights. Most ICT decisions, be they concerned with infrastructure, networks, tariffs, regulation, or licensing, need specifically to take into account the situation particularly of women in the South, rural and poor women, and to promote their right of inclusion. Looking at ICTs as career options, the point is made that while women's occupations in the ICT field constitute new opportunities for employment, they have generally been characterized by low pay and low appraisal, repetitiveness of duties, and limited career opportunities. Finally, with regard to the underlying ideology, HJ argues that what is now canonized as information is heavily indebted to the positions of dominance and control under which it is produced. Thus, since most information is produced in a reality where women do not participate on the same footing as men, it is not representing the perspectives and knowledge of women.

In chapter 11, Birgitte Kofod Olsen (BKO) looks at the specific challenges posed to minority rights by the information society. The right to

minority protection is not laid down in the UDHR but is found in CCPR Article 27 and subsequent international instruments. BKO maps the traditional minority protection and argues that the challenges posed by the development in society toward increased communication and interaction, mobility and migration, as well as cultural, ethnic, and linguistic diversity, make it necessary to address minority rights, issues, and conditions in a new perspective. One major challenge and focal point will be to strike the balance between self-determination within a minority group and adequate safeguard mechanisms for external protection against restrictions on the rights of members of minorities set up by internal regulation within the minority group. Thus, the principle of pluralism should be applied in order to ensure that cultural life, religious practice, communication, and interchange of information in minority languages on minority and other issues are not restricted or in other ways interfered with in a way which is not compatible with international human rights norms and standards, BKO concludes.

In chapter 12, Ran Greenstein (RG) and Anriette Esterhuysen (AE) target the right to development. A right to development is not included as such in the International Bill of Human Rights, but is laid down in the subsequent Declaration on the Right to Development, which has been subject to much controversy. In the chapter, RG and AE start by outlining the right to development and its relationships to inequality within and between countries, and to collective versus individual rights. The notion is then linked to information and communications for development, including how this might be integrated into the broader discussion of human rights in the information society. Digital exclusion, or the "digital divide"—referring to unequal distribution of and access to ICTs—cannot be seen in isolation, since it is in fact a mapping of new asymmetries onto the existing grid of social divides, the authors argue. Accordingly, one of the most important challenges is to identify the main obstacles to development—whether social, political, or technological—and outline a way of overcoming these in the specific context of the information society, RG and AE conclude.

Conclusion

The WSIS process shifted the rhetoric around the GIS from infrastructure to a much broader human rights focus, and an increasing number of actors

within governments, industry, and civil society have started to address ICT issues within a human rights framework. As such the WSIS process initiated the first holistic assessment of GIS issues, catalyzed CS coalition development, and promoted collective learning and institutionalization.[47] It also represented the first real encounter between human rights advocates and issues and the broad GIS agenda. The challenges now are to sustain the momentum by building a coalition that can carry this agenda forward in the post–WSIS world. This will be an operationally demanding task since, in the absence of the interorganizational focal point the WSIS provided, GIS issues will once again be addressed primarily within a wide and heterogeneous array of institutional environments. It also will be conceptually challenging; as the HRC experience in WSIS demonstrated, there is a pressing need for analyses that flesh out the linkages between human rights principles and the GIS, and that translate these principles into specific policy requirements on the full range of issues. Without compelling arguments along these lines, it will be difficult to convince ICT policy makers specializing on any of the many ICT issues that engagement with human rights organizations and issues is relevant and necessary.

While the importance of international human rights standards for the GIS was raised in the WSIS process, the debates therein really just scratched the surface. Carrying the human rights agenda forward will require sustained, interdisciplinary analysis of and a globally inclusive, multistakeholder dialogue on, the interpretation and application of these standards to the full array of issues raised by the GIS. The participants in this project hope that this volume can contribute to the development of that analysis and dialogue.

Notes

1. For overviews, see William J. Drake, "Communications," in P. J. Simmons and Chantal de Jonge Oudraat, eds., *Managing Global Issues: Lessons Learned* (Washington, DC: Carnegie Endowment for International Peace, 2001), pp. 25–74, also at www.ceip.org/files/pdf/MGIch01.pdf; and William J. Drake, "Introduction: The Global Governance of Global Electronic Networks," in William J. Drake and Ernest M. Wilson III, eds., *Governing Global Electronic Networks: International Perspectives on Policy and Power* (Cambridge, MA: MIT Press, 2006).

2. For illustrative discussions, see Jamie Frederic Metzl, "Information Technology and Human Rights," *Human Rights Quarterly* 18 (November 1996): 705–746; David L. Richards, "Making the National International: Information Technology and

Government Respect for Human Rights," in Juliann Emmons Allison, ed., *Technology, Development, and Democracy: International Conflict and Cooperation in the Information Age* (Albany: State University of New York Press, 2002), pp. 161–186; the essays in Steven Hick, Edward F. Halpin, and Eric Hoskins, eds., *Human Rights and the Internet* (New York: St. Martin's Press, 2000); and Association for Progressive Communications (APC), *ICT Policy: A Beginner's Handbook* (Johannesburg: APC, 2003), which includes a number of global examples on the linkage between the Internet, ICT regulation, and human rights.

3. For key examples of these initiatives, see the Web site of the Global Internet Liberty Campaign, a coalition of human rights and civil liberties NGOs, www.gilc.org; the global censorship report *Silenced,* by Privacy International (PI) and GreenNet Educational Trust (London: PI/GreenNet Educational Trust, 2003); the annual survey *Privacy and Human Rights,* by Electronic Privacy Information Center (EPIC) and Privacy International (Washington, DC: EPIC/PI, 2004); Human Rights Watch, www.hrw.org/doc/?t=internet?; and the annual report by Reporters Without Borders, *The Internet Under Surveillance: Obstacles to the Free Flow of Information Online—2004 Report* (Paris: Reporters Without Borders, 2004). For a scholarly and empirical assessment of Internet restrictions in authoritarian and semi-authoritarian countries, see Shanthi Kalathil and Taylor C. Boas, *Open Networks, Closed Regimes: The Impact of the Internet on Authoritarian Rule* (Washington, DC: Carnegie Endowment for International Peace, 2003).

4. For example, the U.N. Commission on Human Rights adopted Resolution 1986/9, "On the Use of Scientific and Technological Development for the Promotion and Protection of Human Rights and Fundamental Freedoms," which calls upon states to "make every effort to utilize the benefits of scientific and technological developments for the promotion and protection of human rights and fundamental freedoms." On this and other examples, see Cees J. Hamelink, "Human Rights for the Information Society," in Bruce Girard and Seán ó Siochrú, eds., *Communicating in the Information Society* (Geneva: U.N. Research Institute for Social Development, 2003), pp. 121–163.

5. Detailed information is available at the Human Rights Caucus's Web site: www.iris.sgdg.org/actions/smsi/hr-wsis/.

6. Chris Brown, "Universal Human Rights: A Critique," in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge: Cambridge University Press, 1999), p. 103.

7. For particularly helpful overviews of the historical development of human rights, see Jack Donnelly, *Universal Human Rights in Theory and Practice,* 2nd ed. (Ithaca, NY: Cornell University Press, 2003); and Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen,* 2nd ed. (Philadelphia: University of Pennsylvania Press, 2003).

8. Quoted in Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford: Oxford University Press, 2003), p. 22.

9. William Korey, *NGOs and the Universal Declaration of Human Rights: "A Curious Grapevine"* (New York: Palgrave, 1998), p. 2.

10. In this vein, Andrew Moravcsik has argued that newly established democracies were the chief proponents of strong human rights agreements because they wanted to use international commitments to bind future governments. In contrast, the United States and United Kingdom joined with authoritarian and totalitarian states in opposing compulsory, enforceable human rights commitments. See Moravcsik's "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (Spring 2000): 217–252. This may explain the dynamics of the strong European system, described below, but at the global level it would be the looser framework supported by the United States and Soviet Union that would prevail.

11. See Charter of the United Nations, www.un.org/aboutun/charter.

12. Dinah L. Shelton, "Human Rights," in P. J. Simmons and Chantal de Jonge Oudraat, eds., *Managing Global Issues: Lessons Learned* (Washington, DC: Carnegie Endowment for International Peace, 2001), p. 439.

13. Quotes in the above paragraphs are from the Universal Declaration of Human Rights, at www.udhr.org/UDHR/default.htm. The original, gendered language referring to "his" rights has been modified in the above text.

14. These and related considerations pose significant challenges for human rights advocacy. For a discussion, see Kenneth Roth, "Defending Economic, Social and Cultural Rights: Practical Issues Faced by an International Human Rights Organization," *Human Rights Quarterly* 26 (February 2004): 63–73.

15. Tomuschat, *Human Rights,* p. 39.

16. Asbjørn Eide has become known as the originator of the tripartite terminology in the slightly different version of obligations to *respect*, *protect,* and *fulfill*, which he originally introduced in 1987 when he served as the special rapporteur to the U.N. Subcommission on Human Rights.

17. For a critical discussion on the tripartite typology and ESCR, see Ida Elisabeth Koch, "Dichotomies, Trichotomies, or Waves of Duties?" in *Human Rights Law Review* 5 (1) (2005): 81–103, also at http://hrlr.oxfordjournals.org/cgi/content/full/5/1/81.

18. Ibid, p. 84.

19. The Commission on Human Rights has established an open-ended working group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social, and Cultural Rights. Information on the working group is available at: www.ohchr.org/english/issues/escr/group.htm.

20. A new international Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities is currently being negotiated, as a follow-up to General Assembly resolution 56/168 of December 19, 2001. The draft convention is available at www.un.org/esa/socdev/enable/documents/chairtext.DOC.

21. For illustrations of these dynamics with respect to development, see Hans-Otto Sano, "Development and Human Rights: The Necessary but Partial Integration of Human Rights and Development," *Human Rights Quarterly* 22 (August 2000): 734–752; Brigitte I. Hamm, "A Human Rights Approach to Development," *Human Rights Quarterly* 23 (November 2001): 1005–1031; and Arjun Sengupta, "On the Theory and Practice of the Right to Development," *Human Rights Quarterly* 24 (November 2002): 837–889.

22. Stephen D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," in Stephen D. Krasner, ed., *International Regimes* (Ithaca, NY: Cornell University Press, 1983), p. 1.

23. For early and groundbreaking discussions, see John Gerard Ruggie, "Human Rights and the Future International Community," *Daedalus* 112 (Fall 1983): 93–110; and Jack Donnelly, "International Human Rights: A Regime Analysis," *International Organization* 40 (Summer 1986): 599–642. For more recent treatments, see Andrew Moravcsik, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (Spring 2000): 217–252; and the essays in Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

24. "Legalization" is a concept employed by some political scientists in assessing international institutions. It comprises three dimensions along which institutions vary: the *obligations* undertaken by states and other actors to be legally bound to rules or commitments and subject to the scrutiny of international and (often) domestic law; the *precision* of the rules involved; and the *delegation* to third parties of authority to implement, interpret, and apply the rules; to resolve disputes; and, in some cases, to formulate new rules. For a discussion, see Kenneth W. Abbott, Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidel, "The Concept of Legalization," in Judith Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter, eds., *Legalization and World Politics,* a special issue of *International Organization* 54 (Summer 2000): 401–419.

25. For a global overview of NHRIs, see www.nhri.net, which is a platform for national human rights institutions jointly provided by the U.N. Office of the High Commissioner for Human Rights and the Danish Institute for Human Rights. For a discussion on the role of NHRIs, see Morten Kjærum, "National Human Rights Institutions Implementing Human Rights," in Morten Bergsmo, ed., *Human Rights and Criminal Justice for the Downtrodden: Essays in Honour of Asbjørn Eide* (Leiden: Martinus Nijhoff, 2003), pp. 631–653.

26. "An epistemic community is a network of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain or issue-area. Although an epistemic community may consist of professionals from a variety of disciplines and backgrounds, they have (1) a shared set of normative and principled beliefs, which provide a value-based rationale for the social action of community members; (2) shared causal beliefs, which are derived from their analysis of practices leading or contributing to a central set of problems in their domain and which then serve as the basis for elucidating the multiple linkages between possible policy actions and desired outcomes; (3) shared notions of validity—that is, intersubjective, internally defined criteria for weighing and validating knowledge in the domain of their expertise; and (4) a common policy enterprise—that is, a set of common practices associated with a set of problems to which their professional competence is directed, presumably out of conviction that human welfare will be enhanced as a consequence." Peter M. Haas, "Introduction: Epistemic Communities and International Policy Coordination," in Peter M. Haas, ed., *Knowledge, Power and International Policy Coordination,* a special issue of *International Organization* 45 (Winter 1992): 3.

27. The Human Rights & Business Project of the Danish Institute for Human Rights develops concrete tools and training material on how companies can live up to human rights standards. Information is available at www.humanrightsbusiness.org/.

28. For an overview of the WSIS civil society organizations with contact details for the various groups, see www.wsis-cs.org/caucuses.html. For a collection of articles on the various steps of the WSIS process, from a civil society perspective, see www.worldsummit2005.org.

29. Members, documents, archives, and other materials of the Human Rights Caucus are available at http://www.iris.sgdg.org/actions/smsi/hr-wsis/.

30. See World Summit on the Information Society, *Declaration of Principles—Building the Information Society: A Global Challenge in the New Millennium,* WSIS-03/GENEVA/DOC/4-E, December 12, 2003, www.itu.int/wsis/docs/geneva/official/dop.html, and its *Plan of Action,* WSIS-03/GENEVA/DOC/5-E, December 12, 2003, www.itu.int/wsis/docs/geneva/official/poa.html.

31. For an analysis of the CRIS campaign by one of its founders, see Seán ó Siochrú, "Communication Rights," in *Word Matters—Multicultural Perspectives on Information Societies*. Caen: C&F editions, 2005.

32. Article 19, *Statement on the Right to Communicate by Article 19 Global Campaign for Free Expression* (London: Article 19, 2003), also available at www.itu.int/dms_pub/itu-s/md/03/wsispc2/c/S03-WSISPC2-C-0095!!PDF-E.pdf.

33. This was stressed during the World Forum on Communication Rights, organized by, among others, the CRIS campaign and the Human Rights Caucus as a side event of the Geneva Summit.

34. WSIS, Civil Society Plenary, *Shaping Information Societies for Human Needs*, adopted in Geneva, December 8, 2003, www.itu.int/wsis/docs/geneva/civil-society-declaration.pdf.

35. At the end of PrepCom 3a in November 2003, civil society representatives issued a critical statement on the state of affairs in the official negotiations, and published civil societies benchmarks for the Geneva Summit; see www.worldsummit2003.de/download_en/CS-Essential-Benchmarks-for-WSIS-14-11-03-final.rtf.

36. The potential use of ICTs by criminals and the new threats to international stability have been emphasized all through the WSIS process, not least by the U.S. and European delegations, which have promoted the Council of Europe Cybercrime Convention as a model for future global cooperation and agreement in this field.

37. For a human rights assessment of WSIS, see Meryem Marzouki and Rikke Frank Jørgensen, "A Human Rights Assessment of the World Summit on the Information Society," in *Information Technologies and International Development* 1 (3–4) (special issue, "The World Summit in Reflection: A Deliberative Dialogue on the WSIS") (Summer 2004): 86–88; and Rikke Frank Jørgensen and Meryem Marzouki, "Human Rights: The Missing Link," in *Visions in Process II—The World Summit on the Information Society* (Berlin: Heinrich Böll Foundation, 2005). For a collection of key documents from WSIS Phase I, see Electronic Privacy Information Center (EPIC), *The Public Voice: WSIS Sourcebook* (Washington, DC: EPIC, 2004).

38. International Symposium on the Information Society, Human Dignity and Human Rights, Statement on Human Rights, Human Dignity and the Information Society, www.pdhre.org/wsis/statement.doc.

39. It should be noted that the Council of Europe has taken the HR/GIS agenda on board and in May 2005 adopted a "Declaration of the Committee of Ministers on Human Rights and the Rule of Law in the Information Society," CM (2005) 56 final, available at www.bka.gv.at/Docs/2005/6/1/COE-minister13052005.pdf.

40. See, for example, the essays in William J. Drake, ed., *Reforming Internet Governance: Perspectives from the UN Working Group on Internet Governance* (New York: United Nations Information and Communication Technologies Task Force, 2005), www.unicttaskforce.org/.

41. The working definition is "Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet." See *The Report of the Working Group on Internet Governance* (Geneva: United Nations, 2005), p. 4. For a significantly more extended discussion of the issues, including the definition, see *The Background Report of the Working Group on Internet Governance* (Geneva: United Nations, 2005), both at www.wgig.org. William Drake was a member of the WGIG and drafted the material definition and related material. For a discussion of the need for such a definition

and other matters, see William J. Drake, "Reframing Internet Governance Discourse: Fifteen Baseline Propositions," in Don MacLean, ed., *Internet Governance: A Grand Collaboration* (New York: United Nations Information and Communication Technology Task Force, 2004), pp. 122–161. Also published as a working paper of the Social Science Research Council's Research Network on IT and Governance, 2004; see www.ssrc.org/programs/itic/publications/Drake2.pdf.

42. *The Report of the Working Group on Internet Governance*, p. 7.

43. *The Background Report of the Working Group on Internet Governance,* pp. 34 and 36.

44. See World Summit on the Information Society, "Chair of Sub-Committee A (Internet Governance), Chapter Three: Internet Governance Chair's Paper (After Fourth Reading)," WSIS-II/PC-3/DT/10 (Rev. 4)-E, September 30, 2005, p. 6, www.itu.int/wsis/docs2/pc3/working/dt10rev4.doc.

45. On October 14, 2005, the U.N. special rapporteur on the right to freedom of opinion and expression urged the Tunisian government to unconditionally release persons imprisoned for exercising freedom of expression. The statement is available at www.unhchr.ch/huricane/huricane.nsf/view01/4247E1D7DA2A9950C125709A0054AF1D?opendocument.

46. Details of actions taken by the Human Rights Caucus on Tunisia may be found at: www.iris.sgdg.org/actions/smsi/hr-wsis/tunis.html.

47. On the dynamics of collective learning, see William J. Drake, "Collective Learning in the World Summit on the Information Society," in Daniel Stauffacher and Wolfgang Kleinwächter, eds., *The World Summit on the Information Society: Moving from the Past into the Future* (New York: United Nations Information and Communication Technology Task Force, 2005), pp. 135–146. Also published as CPSR Working Paper no. 2, www.cpsr.org/pubs/workingpapers/2/Drake.