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"CAUGHT IN THE WEB: AN ANALYSIS OF SOUTH AFRICA'S RESPONSE TO THE EMERGING GLOBAL INFORMATION POLICY REGIME"

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Abstract

This study provides a descriptive analysis of South Africa's response to the emerging global information policy regime. Compelled by a combination of hegemonic influences and its own self interest, this study argues that South Africa accepted the liberalising commitments of the emerging global information policy regime vis-à-vis the World Trade Organization Agreement on Basic Telecommunications. As a contribution to understanding inter-state cooperation in international relations, regime theory is utilised as the theoretical framework. The regime framework is used to explain the motivations behind South Africa's intention to liberalise its telecommunications sector as a result of power dynamics in the international system. The findings from the qualititative analysis note that South Africa's response is motivated by systemic and domestic factors. A willingness to enter the information economy and fulfil domestic social development means that South Africa has to balance its obligations to the WTO with the commitments to improve its domestic accessibility concerns. As a developing country with inadequate conditions for liberalisation, South Africa was unable to stop the strategic equity partners from capitalising on the poorly regulated telecommunications environment. The unfavourable result of high tariff charges and low fixed-line connectivity can be attributed to privatisation initiatives and lack of political will to promote competition.

South Africa is in the midst of dramatic change in its telecommunications sector which is aided by technological convergence, further privatisation of the incumbent and the introduction of the Second Network Operator. The international scope of this study

means that liberalisation is part of South Africa's broader commitments to the emerging global information policy regime. Entering the information economy is conditional on the successful implementation of international liberalisation policies so that the required investment and skills can assist in providing universal service to the majority of South Africa citizens. However, implementation requires a fair market structure, independent regulation and low interconnection charges. Without these important structures in place, this study notes that the goal of participation in the information economy and economic growth as a result of effective telecommunication utilisation is a distant reality.

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Acronyms and Abbreviations

EC	European Commission
ECA	Electronic Communications Act
CCIR	Consultative Committee for Radio
CCITT	Consultative Committee on International Telegraphy and Telephony
EASSy	East African Submarine Cable System
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade and Tariffs
GII	Global Information Infrastructure
GIIC	Global Information Infrastructure Commission
GIS	Global Information Society
GIP	Global Information Policy
IBA	Independent Broadcasting Authority
ICANN	Internet Corporation for Assigned Names and Numbers
ICASA	Independent Communications Authority of South Africa
ICT	Information and Communication Technology
Intelsat	International Satellite Corporation
IPO	Initial Public Offering
ITU	International Telecommunications Union
ISAD	Information Society and Development
MNC	Multi-National Corporation
OECD	Organization for Economic Cooperation and Development
PTSN	Public Telephone Switched Network
PTT	Postal, Telegraph and Telephone authority
SAPT	South African Posts and Telecommunications
SATRA	South African Telecommunications Regulatory Authority
SMME	Small, Medium and Micro Enterprises
SNO	Second Network Operator
TNC	Trans-National Corporation
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USAASA	Universal Service and Access Agency of South Africa
USA	United States of America
USF	Universal Service Fund
VANS	Value-Added Network Services
WIPO	World Intellectual Property Organization
WSIS	World Summit on the Information Society
WTO	World Trade Organisation

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1.0

INTRODUCTION

The accelerated pace with which technology has progressed in recent history has been demonstrated by the rise of a "network society"[1]. This society has encapsulated many related phenomena ranging from urban migration to instantaneous financial transactions from one part of the globe to another. It is difficult to ignore the way the world is changing. On a political terrain, the implication of technological innovation has arguably re-arranged the rules of engagement between different states. For political scholars and theorists alike, the debates between realism and liberalism within international relations are brought to the fore with the renewed focus on technological development. By conceptualising these two theories in an international political economy perspective, it is useful to note that the role of the state in realist terms seeks to maximise its power and international standing vis-à-vis other states. Through hegemony, powerful states are able to exert their influence over weaker states and create rules in the international system. In contrast, liberalism envisions a global marketplace in which open markets and the movement of capital determine the policies of governments. A globalising international environment and the rapid innovation of technology has forced states to create a global regulatory framework with shared norms and practices that will concentrate the flows of information through governable structures. It is this global regulatory framework that this study will investigate.

From domestic politics to multilateral negotiations, Information and Communication Technology (ICT) has become an important sector in policy formulation and the functioning of the neoliberal political economy. This study will examine a specific aspect within this broad trend by providing an analysis of the "emerging global information

[1] "A network society is a society where the key social structures and activities are organized around electronically processed information networks. So it's not just about networks or social networks, because social networks have been very old forms of social organization. It's about social networks which process and manage information and are using micro-electronic based technologies." This definition came from Manuel Castells when interviewed by Harry Kiesler, University of Berkeley, for the "Conservations with History" series in 2001. The full interview is available on http://globetrotter.berkeley.edu/people/Castells/castells-con4.html (accessed 23 December, 2007)

policy regime" (emerging GIP regime). The case-study used in this analysis occupies an important place in international relations literature as it accounts for the ways states are interacting through global governance in a system of sovereign nation states. The importance of cooperation is crucial as regimes foster rule-governed activity within the international system. Sovereign nation-states have demonstrated the utility of a rule-based system of cooperation through international regimes which create norms, rules and principles for specific issue-areas in the global system such as nuclear weapons, environmental issues and international shipping.

However, these rules are not always conditioned for the range of states that enforce them as domestic concerns have to be weighed against international commitments. In the case of ICT, a global regulatory framework had to be flexible enough to encourage developing and developed countries to join without compromising the national sovereignty of policy-makers and provide a set of rules and regulations that fully utilised this dynamic tool. This task is best understood as having been processed through the emerging global information policy (GIP) regime. To understand how these challenges interrelate in assessing South Africa's response to the emerging GIP regime, the following outline narrows down the study into specific theoretical borders and important international agreements.

1.1 – General Overview of the Study

The following study will provide a thorough analysis of the emerging GIP regime by discussing its composition, theoretical boundaries and current operation. By incorporating a case-study, this study will discuss South Africa's response to the emerging GIP regime's principles, norms and practices. The temporal examination will explore ICT governance[2] and policy formulation in the information economy by discussing the shift from the old international telecommunications regime[3] to the

[2] Braman, Sandra (ed.) (2004) *The Emergent Global Information Policy Regime* (New York: Palgrave Macmillan) defines *governance* as the formal and informal institutions, rules, agreements, and practices of state and non-state actors the decisions and behaviours of which have an impact on society.

[3] Cowhey, P. F. (1990) 'The International Telecommunications Regime: The Political Roots of Regimes for High Technology'. *International Organization,* 45 (2): 169-99 notes "the international telecommunications regime provided a multilateral framework that reinforced domestic monopolies and

operationalisation of the emerging GIP regime. Based predominantly on the consultations between the World Trade Organisation (WTO) members in the mid-nineties, the emerging GIP regime has a departure point that correlates with the 1997 WTO Agreement on Basic Telecommunications[4]. More commonly known as the GATS [General Agreement on Telecommunications] Fourth Protocol, "this agreement is the product of efforts by members of the WTO to introduce global competition in basic telecommunications services."[5] Although deliberations at the WTO signalled the concerted effort by member countries to liberalise their respective telecoms sectors, the move toward ending monopoly-run telecom industries dated back to the 1970s. Having been a founding member of the WTO and signatory of the GATS specific commitments in 1994, South Africa has had to align its telecommunication policy with the requirements of the GATS Fourth Protocol. South Africa's commitments largely reflected a general global tendency toward liberalisation through the opening of cellular and satellite services as well as ending Telkom's fixed-line monopoly by 2003. The partial privatization of Telkom as well as Ministerial intervention in the regulator's activities is just two events that demonstrate the domestic implications of adopting the Fourth Protocol. Tensions surrounding compliance have created an interesting debate between competing domestic policy goals and international trade objectives which is the focus of chapter four.

These events and debates are part of a broader governing system that influences the formulation of policy in a domestic context. The influences of the emerging GIP regime stem primarily from two approaches that are dealt with later in this chapter but require a brief explanation here. The two approaches are separate analytical tools that help explain how ICT policy is developed in a domestic context. One approach is rooted in social

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bilateral agreements in the global market and thereby created one of the most lucrative and technologically significant international cartels in history."

[4] "This was one series of negotiations which followed the Uruguay Round. Through global liberalization of the basic telecommunications services such as voice telephone services, it aimed at the introduction of competition, the reduction of service rates, and diversification of services." Sourced from http://www.soumu.go.jp/joho_tsusin/whatsnew/wto_agree-e.html (accessed 2 August 2007)

[5] Cohen, Tracy (2001) "Domestic Policy and South Africa's Commitments under the WTO's Basic Telecommunications Agreement: Explaining the Apparent Inertia" in *Journal of International Economic Law* no. 4 pg. 725

welfare projects such as developing tele-centres and distance learning while the other promotes the interests of business and foreign investment. Each approach has its own set of organisations and agreements that emphasise how ICT could be used to develop a social welfare agenda or electronic commerce (see Figure 1).

As a contribution to the literature on ICT in international relations, this study will synthesise a significant amount of the literature already compiled on the topic and supply an analysis that investigates South Africa's response to the emerging GIP regime. The literature on the emerging GIP regime has increased significantly over the past few years in areas such as e-commerce and intellectual property rights. To avoid a vague debate on the numerous factors that make-up the emerging GIP regime, this study will concentrate on South Africa's response to the WTO liberalisation agreements within the emerging GIP regime.

From an international political economy perspective, this study is firmly located in the neoliberal[6] environment of international trade liberalisation and privatisation as described by Williamson (2002). Coupled with the process of economic globalisation, the decision-making capacity of the state has become somewhat blurred with the advent of fast moving capital and powerful multinational corporations. However, cooperation between states has increased significantly given the collaboration needed in a liberalised trading environment in areas such as import tariffs. International governance structures, such as the General Agreement in Trade and Services, have therefore had to adjust to rapid changes in technology as well as an open-market system. Having had ICT assist in the fast transmission of information amongst markets around the world, the neoliberal era is the appropriate setting for a study in collective action among states and the subsequent

[6] An explanation of the neoliberal environment is best summed up in John Williamson's "Washington Consensus". Drafted by Williamson in specific regard for a development strategy for Latin America, it soon became a steadfast set of policies advocated by the US Treasury, World Bank and International Monetary Fund (IMF). It clearly encapsulated the neo-liberal agenda - its antecedents being the free-market and comparative advantage theories of Adam Smith and David Ricardo respectively - and became the universal growth strategy. Williamson (2002) notes: "The three big ideas…are macroeconomic discipline, a market economy, and openness to the world (at least in respect of trade and FDI)."[6] - Williamson, John., (2002) "Did the Washington Consensus Fail?" Speech for the Institute of International Economics, available on http://www.iie.com/publications/papers/paper.cfm?ResearchID=488.

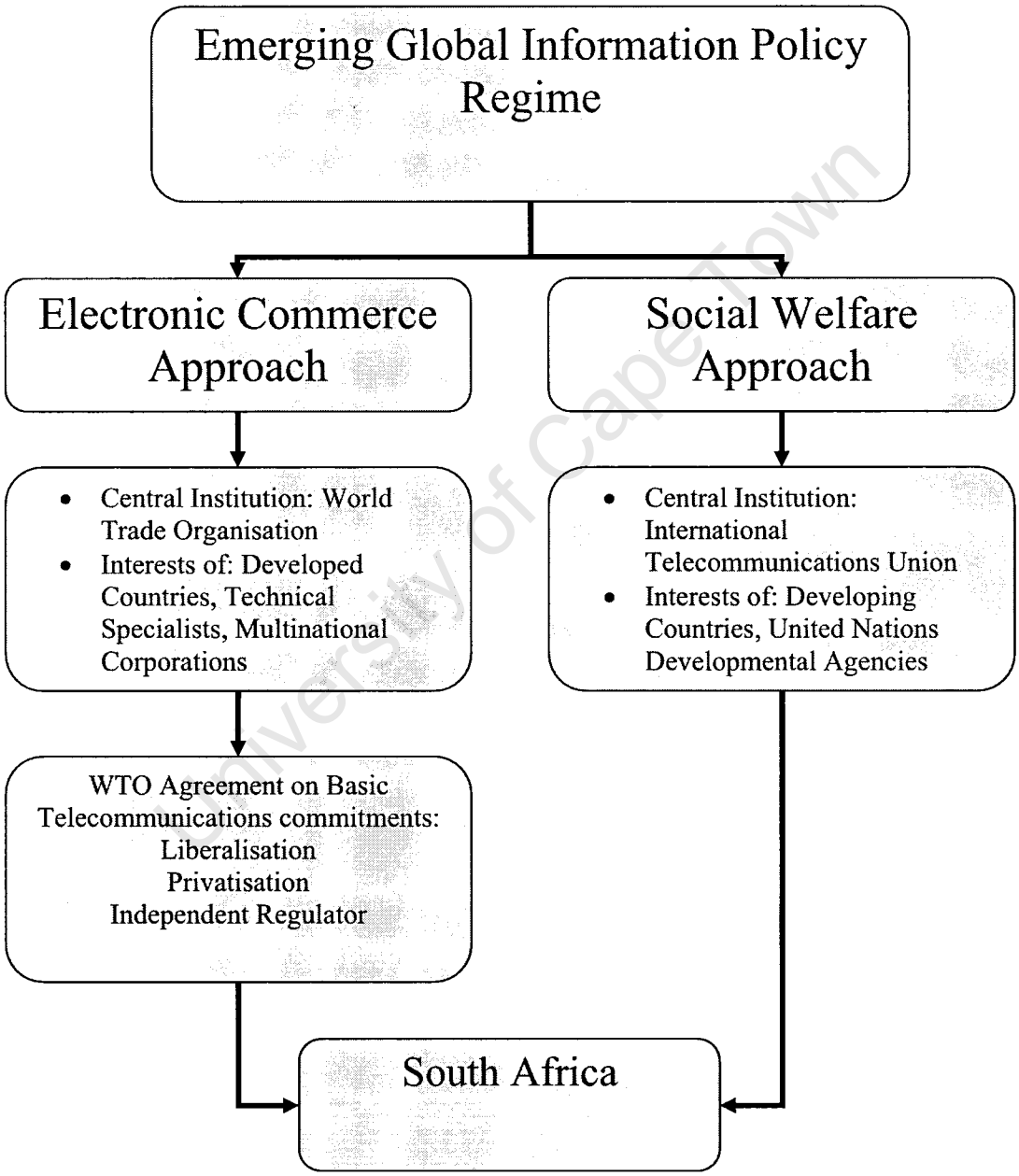
power relations among those structures. The study of the emerging GIP regime and South Africa's response requires a theory that keeps the debate within specific theoretical borders. At the macro, micro and meso-level, the use of regime theory facilitates the most useful discussion on international actors and domestic policy formulation.

Regime theory provides the appropriate theoretical framework as is demonstrated through the course of this study. As Braman (2004) highlights: "The regime approach to global information policy has utility because it offers a heuristic that helps identify common trends in phenomena and processes scattered across policy arenas historically treated as analytically distinct...It addresses one of the key problems facing information policymakers – the dispersal of decision making across numerous venues and players – by envisioning a common universe."[7] The various arguments that follow in this study show that such an accomplishment is dependent on a number of variables that include collective decision-making and a level playing field to determine the "rules of the game". These variables face obstacles for developing and developed states alike. Challenges include hegemonic states determining the imperatives of the regime through international institutions and deadlocks at negotiating tables regarding accepted principles that all countries should follow. This study does not negate the role of the state and adopts a realist approach to interstate relations and within regimes.

Figure 1 assists in illustrating the framework in which the emerging global information policy regime affects South Africa. It displays the associations that South Africa has with the electronic commerce and social welfare approaches of the regime. The intent behind Figure 1 is to recognise that South Africa has a dual responsibility to both approaches and therefore finds itself balancing international trade commitments with domestic social welfare concerns. Since there has been a concentrated effort to conceptualise the impact of ICT in international relations, the literature is vast and has considered a variety of fields, actors and theories. The methodology outline, conceptualisations and literature review that follows has cleared the path for a concentrated effort that outlines relevant concepts and analytical tools.

[7] Braman (2004) pp. 13

Figure 1 - South Africa's position in the emerging GIP regime



1.1.2 – Problem Statement

Cogburn (2003) [8] provides a study that looks at the broader implications of the emerging GIP regime on developing countries and his study utilises international regime theory to discuss the problem of the growing split between two agendas – one rooted in electronic commerce and the other in social-welfare programs (see Figure 1). It is important to highlight that the two approaches are not as analytically distinct as Figure 1 suggests. There are many areas in which they overlap, but for the purposes of this study, an emphasis is put on the two separate directions that each approach would take the regime in. Whilst discussing the nature of the new regime, Cogburn notes a potential problem regarding the direction of the regime's interests: "One possibility is that a very broad regime could emerge representing a plethora of diverse societal stakeholders and actors and exploiting the applications and services of the Information Society. However, another possibility, perhaps a more likely one, is that corporate-oriented interests may dominate the emergent regime formation process and skew its development away from these broad societal perspectives, to a narrower regime focused on global electronic commerce."[9] This problem highlights the tensions that the emerging GIP regime faces as it deals with competing interests from developed and developing countries regarding the direction it will take. Cogburn (2004) emphasises the importance of the Global Information Society (GIS) as a delivery platform for innovative applications such as telemedicine, distance learning and teleworking. For the purposes of this study, the role of epistemic communities[10] as determining the power relations within the emerging GIP regime is vital to understanding the divergent interests of the GIS. Briefly, Cogburn (2004) divides the Global Information Infrastructure into two fields, one that emphasises the future of electronic commerce and trade (dominated by the Business Dialogue for Electronic Commerce and WTO) and the other being a more diffuse development oriented group (influential groupings include the International Telecommunications Union and various other UN branches). These stakeholders represent the tensions and debates within the

[8] Cogburn D. (2003) "Governing global information and communications policy: Emergent regime formation and the impact on Africa" in *Telecommunications Policy,* 27, pgs. 125 – 153

[9] Ibid. pg. 137

[10] Baylis, J. and Smith, S. (eds.) (2001) *The Globalization of World Politics*, Second-edition, (Oxford: Oxford University Press) pg. 411 briefly define *epistemic communities* as: "Knowledge-based transnational communities of experts with shared understandings of an issue or problem or preferred policy responses." A full conceptualisation is provided later on in this chapter.

emerging GIP regime on various issues that will be explored later on. For South Africa, these competing interests present a serious dilemma as its telecommunication policy has had to negotiate the country's social welfare ambitions along with corporate interests and vice versa. As the emerging GIP regime shifts the importance of telecommunication policy from "low" policy to "high" policy, a number of global institutions and actors have aligned themselves within the new regime. The actors that have shaped governing structures include the (1) World Intellectual Property Organization (WIPO); (2) Organization for Economic Cooperation and Development (OECD); (3) Internet Corporation for Assigned Names and Numbers (ICANN); (4) Global Information Infrastructure Commission/Global Business Dialogue; (5) Group of 8 Industrialized Countries; (6) World Economic Forum (WEF); (7) World Bank Group; (8) European Commission; (9) International Telecommunication Union (ITU); and (10) Bi-lateral aid agencies.

The opposite approaches of the emerging GIP regime allow a study into the dominant *direction* of the regime and *South Africa's response* to the commitments of the dominant approach. Cogburn (2003) discusses potential outcomes the emerging GIP regime could accomplish. This study builds on those conclusions and provides a detailed look at South Africa's response to the emerging GIP regime. Having to accustom its domestic policy to the international agreements signed, South Africa is a useful example of a developing country negotiating the implementation of liberal reforms under the WTO. Balancing domestic socio-economic targets with international reforms is not unique to South Africa but given its powerful presence in Africa along with a private sector that wields a significant influence in policy formation, South Africa straddles the line between a developing and developed country. This situation highlights the dilemma developing countries face in having to delay the social development use of ICT in favour of the development of an international electronic commerce system prescribed by the WTO. The legacy that Apartheid has had on South Africa has challenged the present government to redress many of the structural imbalances that exist in many sectors of South African society. Telecommunication policy has been no different; "Measures to promote the realization of many of the Act's [Telecommunication Act, 1996] objectives,

for example universal service and ownership by historically disadvantaged individuals, must inherently clash with the fundamental underpinnings of the GATS – market access and national treatment. Universal service aims, as we have seen in the SA context, may serve to buttress a monopoly and contribute to sustaining a closed market."[11] The use of South Africa as a case-study will provide a useful reference because of its international political standing, geographical setting and growing economic presence among developing countries. These factors combined, place South Africa at the forefront of national telecommunication restructuring and provides an indicator of the severe socio-political disparities that exist in many other developing countries between the "haves" and "have-nots". The data collected thus far (from studies such as Cogburn, 2003, Braman, 2004 and Makhaya and Roberts, 2003, Gillwald, 2005, Horwitz and Currie, 2007) suggests that South Africa is engaging in a systematic attempt to leapfrog into the information age through a concerted strategy of infrastructure development, applications support, awareness raising, private investment, and public policy approaches. Despite championing global obligations for a liberalised telecommunication environment, South Africa faces considerable obstacles as it negotiates its pledge to uplift the poor with improved telecom access and roll-out the monopoly-run telecommunication infrastructure to under-serviced areas. These pressures stem directly from the emerging GIP regime and are a sign of international policy influencing domestic politics.

As the nature of the global economy has changed in the last three decades, so has the previous telecommunications regime. "As the historical processes of globalization and an information age continue to unfold and the demands of global electronic commerce continue to expand, the international telecommunications regime is facing tremendous transformative pressures. A wide range of social, political, economic, cultural, and technological factors are challenging this regime and pressing for the emergence of a new one, that might be called the *global information infrastructure/global information society regime* (GII/GIS)."[12] By placing South Africa into this context, this study highlights the need for South Africa to change its telecommunications environment through sequenced

[11] Cohen (2001) pg. 752
[12] Cogburn, 2003, pg. 136

and consultative reforms. Stemming from its obligations to the electronic commerce approach, South Africa is compelled to liberalise its telecommunications sector while simultaneously providing the infrastructure for large sectors of its under-serviced society.

1.2 – OVERVIEW OF SOUTH AFRICA'S RESPONSE TO THE EMERGING GIP REGIME

In addressing the problem statement described above, the analysis of South Africa reflects how it has adjusted to the norms, principles and decision-making procedures of the emerging GIP regime. This study looks specifically at three interrelated areas that are worth an in-depth discussion regarding South Africa's accession to the WTO Agreement. They are competition, regulation and social returns from telecommunications. Makhaya and Roberts (2003) attach these interrelated areas to the experience of many developing countries included in the emerging GIP regime[13]. Given these three critical areas of reform, this study concludes that the sector has not reformed sufficiently over the last decade to give the majority of its citizens the opportunity to participate in the information society. In addition to deep regulatory and anti-competitive problems, this study also contends that the vagueness of some regulatory principles within the WTO Basic Agreement on Telecommunications have not contributed to the development of the South African telecommunications sector. In an attempt to promote reform, partial privatisation provided the chance for opportunists to abuse the monopoly position of the incumbent with little fear of repercussion. The WTO Basic Agreement on Telecommunications has promoted liberalisation in countries where the necessary infrastructure and policies do not exist. Consequently, South Africa's compliance with the Agreement has been inconsistent due to its own domestic agenda and partial alignment with a developmental approach to the emerging GIP regime. Despite these sentiments, South Africa has had little other option than abide by the rules and norms of the emerging GIP regime.

Regarding the direction of the emerging GIP regime, South Africa has attempted to bridge the gap between the electronic commerce and social welfare approaches with debatable success. Its commitments to the latter have been indicated in the policies it has

[13] Makhaya, G. and Roberts, S. (20003) "Telecommunications in Developing Countries: Reflections from the South African Experience" in *Telecommunicaitons Policy*, (27)

adopted since 1996. Highlighting the need for universal access and the roll-out of infrastructure to poor areas of the country, the policy objectives of the government have been to equip all sectors of society with the opportunity to the enter network society. In terms of promoting electronic commerce, the government has recognised the need for a secure environment: "Government will provide support by setting policy and regulatory frameworks that are appropriate to the information communications technology sector while taking cognisance of the pervasive nature of e-commerce and the challenges pertaining to legal and security matters."[14] The last 15 years of telecommunications reform reveal that serious problems with the market structure and ministerial intervention have negatively affected the goals of universal service and the establishment of an independent regulator. In attempting to conform to the international requisites of liberalization and privatization, South Africa has skewed its development program by emphasizing privatization at the expense of other reform mechanisms (Gillwald, 2005). As a consequence, Horwitz and Currie (2007) note that "rent-seeking" and profit-maximisation by the telecommunications incumbent has left the reform process a relative failure.

Running concurrently to South Africa's reform process, was the international negotiations taking place within the emerging GIP regime. On an international level, South Africa has not fallen behind in the global shift of telecommunication policy relative to other developing countries. A major restructuring of the telecommunications sector took place soon after the first democratic elections in 1994. An important aspect of the restructuring process was the recognition by the South African government that all sectors of South African society would need to participate in the information society. Early on in its democratic transition South Africa recognised that the changing telecommunications regime – from a monopolised state-controlled entity to the current era of liberalisation and the drive to provide universal access to the information society[15]

[14] South African Department of Communications (2000) *A Green Paper on Electronic Commerce for South Africa*. Available at www.info.gov.za/greenpapers/2000/electronic_commerce.pdf (Accessed December 16, 2007)

[15] At the international level there has been a shift in responsibilities and power from older organizations such as the International Telecommunications Union towards newer organizations such as the World Trade Organisation. These organisations are increasingly complemented by a multitude of new organisations

– was having a dramatic effect on global governance and economic growth[16] and therefore needed to develop policies that would include them in the growth paths .Despite South Africa's intentions to provide ICT access to the majority of the population, it has had to align its policies with the prerogatives of the dominant electronic commerce agenda. To effectively participate in the global economy South Africa had to align itself with the interest of the developed countries to attract investment. Thus, by being a signatory on the WTO Agreement on Basic Telecommunications, South Africa is also committed to the liberalisation of its telecommunications sector.

1.2.1 - Research Question

Since the focus of this study is to deconstruct the emerging GIP regime in relation to South Africa and analyse its response, the question at hand should ultimately probe this relationship.

- *What has South Africa's response been to the emerging global information policy regime?*

Incorporating both South Africa and the emerging GIP regime, this question takes into account the nature of domestic politics on global decision making and vice versa. The term "response" refers to changes in government policy in the telecommunications sector. Given the liberalising trend of South Africa's macro-economic policy since 1994, the telecommunications sector attempted to adapt its policies toward liberalisation. However, its policy changes have caused considerable disruption in the roll-out and accessibility of telecommunications and therefore an area of study that requires a thorough analysis. A plethora of loaded terms such as globalisation, international regime theory, development and developing countries have been mentioned above with little reference to the relationship that exists between them. This research question has incorporated these terms in the body of the study as South Africa's response to the emerging GIP regime is

representing private, corporate and public interests, all trying to influence the international regulatory system.

[16] Wilson, E.J., 2006. The Information Revolution and Developing Countries. (MIT Press, Cambridge, MA). pg. 80

analysed. The use of theoretically loaded terms such as ICT, developing countries, regimes, global information society and digital divide requires clarification and an explanation of the relationship that exists between them.

1.3 - CONCEPTUALISATION OF KEY CONCEPTS

1.3.1 - Information and Communication Technology (ICT)

ICT has undoubtedly revolutionised mass communication over last three decades. However, it must not be assumed that ICT has caused such dramatic shifts in the global economy. As Castells notes "[T]echnology per se does not solve social problems. But the availability and use of information and communication technologies are a pre-requisite for economic and social development in our world. They are the functional equivalent of electricity in the industrial era."[17] In practical terms, "Information and communication technologies can be defined as 'electronic means of capturing, processing, storing, and communicating information'. ICTs are based on digital information held as 1s and 0s, and comprise computer hardware, software and networks."[18]

Examples of this distributive and storage technology are provided by Rosenau and Singh (2002) who include print and broadcast media and telecommunications (telephone, fax, cellphones and the Internet), channels of communication (satellite, fibre optic cables) and storage devices (CD/DVD ROMS)[19]. "ICT is defined not as machinery but as a scarce and valuable resource that people compete for and that benefits those who can manoeuvre themselves to avoid its downside risks. In this respect, information technology is not just a benign application like mobile phones, distance education, or Internet telephony. Instead ICT is like land and capital, which has differential impacts when diffused differentially across nations and social groups."[20]

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[17] Castells, Manuel. (1999) *"Information Technologies, Globalization and Social Development"* in UNRISD Discussion Paper no. 114 (Geneva) pp. 3

[18] Heeks, Richard. (June 1999) *"Information and Communication Technologies, Poverty and Development"* in Development Informatics: Working Paper, no. 5 (Institute for Development Policy and Management: Manchester) pg. 3

[19] Rosenau and Singh, (2002) Information Technologies and Global Politics: the Changing Scope of Power and Governance (State University of New York Press: New York) pg. 2

[20] Wilson (2004) pg. 3

Having an idea of what technologies make up ICT is important, however understanding the importance of ICT diffusion is more of a requirement. "A strong, flexible and modern national communication system has become a requirement for capital investment, both foreign and local. Transnational corporations regularly report that a modern national information infrastructure is a least as important as low taxes and low wages for where they will invest."[21] On a political and economic level, the above conceptualisation underlines the importance of telecommunication policy in South Africa. Combining the above conceptualisations of ICT, this study regards its use as a tool to integrate developing countries into the information economy as its main contribution. From the highest corporate level to rural farmers, affordable and accessible ICT provides the opportunity for faster and more efficient production capabilities as well as social upliftment. However, to utilise ICT for social change, political power and knowledge is needed among the epistemic communities that make up the international regulatory authorities.

1.3.2 – Epistemic Communities

Epistemic Communities occupy an important role in the decisions made by policy makers. They can be defined as "network[s] of professionals with recognized expertise and competence in a particular domain and an authoritative claim to policy-relevant knowledge within that domain"[22]. These communities stimulate the circulation of ideas from societies to government and among different countries.

These knowledge-based transnational communities with shared understandings have legitimacy because of their role in the bureaucratic apparatus of a country as well as the political power they wield in determining policy formulation. Adler and Haas (cited in Hasenclever et al, 1996) argue that epistemic communities can influence the creation and maintenance of international regimes at four stages of the policy process. They are: policy innovation, policy diffusion, policy selection and regime persistence[23].

[21] Ibid. pg. 6
[22] Hasenclever, A., Mayer, P., and Rittberger, V., (1996) "Interests, Power Knowledge: The Study of International Regimes" in *Mershon International Studies Review* (40) pg. 209
[23] Ibid. pg. 209 – 210

Conceptualising epistemic communities for this study is of central importance as it highlights how the electronic commerce approach usurped the social-welfare ambitions of the emerging GIP regime. Technical specialists and commerce-minded groups from developed countries have managed to shift the role of the emerging GIP regime to the interests of electronic commerce. This was done through policy creation in the structures of the international institutions (like the WTO) that dominate the emerging GIP regime. Consequently, the interests of poorer countries have not been taken into serious consideration as the norms, rules and decision making structures of the regime were created in the absence of developing countries, by an epistemic community made up of elites and their preferred interests in the development of e-commerce regime enforced by the WTO and ICANN. The resulting impact on South Africa contributes to a situation that many other developing countries also have to battle with. Understanding these battles can be achieved by conceptualising what a "developing country" is.

1.3.3 – Defining a Developing Country

The term developing country has been used frequently thus far with little clarification. Using Educardo Talero's (discussed and defined in Wilson, 2004) definition provides a useful context. Noted as "the group of countries in which the fight against poverty, malnutrition, infant mortality, illiteracy, gross social and income inequality, poor administration of justice, inefficient government, and environmental degradation is most pressing. The term does not imply homogeneity in any other respect or that other economies have reached a preferred stage of development."[24] Since South Africa falls into these categories and is a prominent campaigner for developing world solidarity, the term requires a conceptualisation that incorporates both over-arching characteristics and ICT. Wilson (2004) provides a few key points[25]:

- Developing country populations are severely bifurcated between poor and rich, and the poor find it nearly impossible to bridge the gap;

[24] Cited in Wilson (2004) pg. 10
[25] Ibid.

- Developing countries are likely to possess weak and inexperienced institutions and systems of economic governance that subvert the indigenous efforts to manage technological innovation and change (and to "leapfrog" the ICT gap); and
- Poor countries are less knowledgeable about, and less engaged in, the forums where the rules of the global information society are being written and enforced.

The incorporation of the debates about developing country inclusion in the network society in this study forms an important part of the international relations debate. Using the terms *network society, information society, global information society and global information infrastructure* interchangeably, the origins of this information-led drive for developing countries is important. The position of South Africa has been central to this drive as indicated in the 1995 G7 Ministerial Conference on the Information Society in Brussels: "At the G7 conference Mr. Thabo Mbeki, South Africa's then Executive Deputy President, challenged the organisation and the European Commission to organise a follow-up conference bringing together representatives of the developed and developing world."[26] The Brussels meeting indicated an important recognition of ICT access and the rise of the Global Information Infrastructure. Subsequently, the 1996 Information Society and Development (ISAD) conference took place in Midrand, South Africa to further discuss the potential of the GII for economic and social change. "This conference emphasized the need to adopt national plans to foster the development of the NII [National Information Infrastructure]. It called for coordinated action by G7 countries and the developing countries to promote the use of ICTS."[27] Instigating the need for continuous consultation, South Africa has seen ICT as a valuable stepping stone for developing countries to enter the network society. Within a neoliberal framework, developing countries have often suffered socio-economic hardship due to a number of international and domestic factors. Using aspects of dependency literature, this study conceptualises developing countries as being on the "periphery" of the capitalist order

[26] Audenhove, L., Burgelman, J., Nulens G., and Cammaerts, B., (1999) "Information society policy in the developing world: a critical assessment" in *Third World Quarterly* vol. 20 no. 2 pg. 389
[27] Ibid.

and therefore marginalised in receiving the fruits of the international economy[28] as well as being excluded in the epistemic communities that control the emerging GIP regime. Chapter three will highlight that signing the WTO Agreement on Basic Telecommunications was an indication of successful developing world involvement in assuring potentially preferable terms in the agreement. Despite their prominent involvement, the consequences have not been as successful as anticipated.

1.3.4 – Regimes

The integral inclusion of the emerging global information policy regime in the GII is just part of the wider discourse on the impact of ICTs in international relations. More specifically, a brief introduction into understanding the *regime* is important. A consensual definition by regime scholars is provided by Krasner (1982) who defines regimes as: "sets of implicit or explicit principles, norms, rules and decision making procedures around which actors' expectations converge in given areas of international relations."[29] Incorporating a range of concepts, from the very abstract to the very specific, a regime operates on a number of levels, "however; functionally specific regimes are often directed by technical specialists and mid-level administrators in participating governments while functionally diffuse regimes are more likely to be managed by diplomatic generalists and higher-level political officers."[30] ICT can therefore be classified as a functionally specific regime.

The regime dealt with in this study is still in its formative stages but has been subject to research that has indicated the functioning nature of its regulatory framework. "The policy network literature emphasises that policy-making takes place within a variety of networks that are more likely to be interpersonal than structural and which exist at the sectoral levels."[31] Braman (2004) goes on to conceptualise regimes into three forms.

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[28] See Hoff, K. and J. E. Stiglitz. (2001). "Modern Economic Theory and Development." In Gerald M. Meier and Joseph E. Stiglitz, eds., *Frontiers of Development Economics : The Future in Perspective.* (Oxford, UK: Oxford University Press) for a detailed look at the conditions developing countries have endured.

[29] Krasner, S. (1982). *International Regimes.* (Ithaca: Cornell University Press), pg. 2

[30] Braman (2004) pg. 22

[31] Ibid.

1. At macro-level, the regime has been applied as abstract conceptions of capital accumulation within certain material constraints: "The notion of a regime has been applied to fundamental elements of international relations such as free trade and reliance upon the market…The term has also been used abstractly to describe a decision-making procedure around which actors' expectations converge."
2. At a micro-level "are concrete approaches that define regimes narrowly as social institutions governing actions of those interested in very specific types of activities." Information as an issue area occupies a distinct example of changes in perceptions and behaviours by a series of coordinated bureaucracies that were dependent on the perceptions of the actors.
3. The dominating level of analysis in regimes is a meso-level understanding. It is described as "specific ways of shaping relationships among actors that embody abstract principles but are operationalised in a multitude of diverse concrete institutions, agreements, and procedures…Regimes thus understood are a cooperative, sociological, mode of conflict management." This study borrows directly from Krasner's (1982) definition stated above that is distinctly situated on a meso-level.

As regimes can function with or without a central institution, this study's use of a meso-level analysis will highlight the role of the diverse stakeholders involved in the emerging GIP regime. Despite the involvement of many state and non-state stakeholders, the realist approach this study adopts will concentrate on the power that hegemonic states use to maintain the regime by compelling members to participate.

1.3.5 – Globalisation

An important aspect of understanding ICT in international relations is to review the all encompassing process of globalisation. The multi-dimensional nature of globalisation requires a definition that is precise and highlights the importance of ICT. The use of globalisation in this study is situated within a political economy perspective. Castells (1999) recognises the importance of the economic dimension: "A global economy is an economy whose core activities work as a unit in real time on a planetary scale. Thus capital markets are interconnected worldwide, so that savings and investment in all

countries, even if most of them are not globally invested, depend for their performance on the evolution and behaviour of global financial markets."[32] Despite greater interaction between state and non-state actors in the global economy, many countries are marginalised. Those countries that do not fall into the well developed research centres that are situated in North America, Western Europe and parts of Asia are often excluded from the benefits provided in the global economy. As weaker nation states encounter the dilemmas involved from being excluded from the benefits of the global economy, the need for cooperation between the connected and under-serviced in the area of ICT takes priority. "Globalization and liberalization do not eliminate the nation state, but they fundamentally redefine its role and affect its operation...National governments, in order to maintain some capacity to manage global flows of capital and information, band together, creating or adapting supranational institutions, to which they surrender much of their sovereignty. So they survive, but under a new form of state that links supranational institutions, national states, regional and local governments, and even NGOs, in a network of interaction and shared decision making that becomes the prevalent political form of the information age: the network state."[33]

By understanding the political economy context, a definition of globalisation that closely follows the theme of this study is provided by McGrew (cited in Cogburn, 2000) who asserts that globalization "is the multiplicity of linkages and interconnections that transcend the nation-states (and by implication societies) which make up the modern world system. It defines a process through which events, decisions, and activities in one part of the world can come to have significant consequences for individuals and communities in quite distant parts of the globe."[34]

Despite the literature on globalisation being continually updated, this conceptualisation has stressed the marginalised role of developing countries and mentioned the need for supranational organisations or regimes to articulate diverse needs in an environment with

[32] Castells (1999) pg. 4
[33] Ibid pp. 5
[34] McGrew (1992) cited in Cogburn, D., (2000) "Globalization and Governance in Cyberspace: Mapping the Processes of Emergent Regime Formation in Global Information and Communications Policy", School of Information: University of Michigan pg. 5

shared norms and practices. The importance is stressed by Cogburn (2000) who notes that "One of the reasons that the Information Economy offers such promise to Africa is that each of these 'spheres' [social, political, economic and cultural] of globalisation is supported by the application of electronic commerce. Also, through strategic planning, the opportunity exists for key geographic areas in Africa to exploit information and communication technologies to become 'spaces' of globalisation."[35] This study therefore incorporates the above definitions and regards the process of globalisation as a social, political and economic phenomenon that creates the environment for ICT to be used to its maximum capacity and uplift marginalised areas to a level where competition in the trade of services is balanced. The dominance of electronic commerce in the emerging GIP regime necessitates that developing countries utilise the current globalisation environment to close the gap in the "digital divide" through liberalising its telecommunications sector and introducing competition where accessibility costs are high.

1.3.6 – Digital Divide

Linked to the processes of globalisation mentioned above is a term that has gained prominence in recent years. The *digital divide* represents a socio-economic condition and has been discussed in a substantial mass of literature on ICT in international relations. Although this study departs itself from developmental literature, understanding the digital divide is vital to placing the emerging GIP regime and South Africa in the appropriate context.

The term was thrust into the international limelight in the 1990s partly due to a renewed debate on the issue in the United States and Western Europe. The rise of the network society stimulated media and scholarly interest in the rapidly evolving information society. A single definition was difficult to come by since many meanings were attached to the term. Van Dijk (2005) notes that previously the "ancient problem of information inequality was framed in more abstract terms, such as knowledge gap, computer literacy, and participation in the information society…Commonly, the digital divide was defined

[35] Ibid. pg. 6

as the gap between those who do and those who do not have access to computers and the internet. *Access* first of all meant physical access: having a personal computer and Internet connection."[36] However, "access" to ICT has developed over time and its importance magnified in developing countries. Many developing countries aspire to "universal access", defined by Wilson (2004) as "ensuring some kind of ICT services within a 'reasonable' distance of most citizens, whether in the home or in public institutions like schools, community centers, and government agencies."[37] Providing universal access has its foundations in the appropriate policy-making circles at global conferences and meetings. Like South Africa, the provision of universal access is keenly anticipated in many developing countries but is still a distant reality as access is income driven and therefore crippled by high ICT accessibility costs.

Wilson's (2004) comments expand into a definition of the digital divide that "refers to an inequality in access, distribution, and use of information and communication technologies between two or more populations...digital divides are large structural impediments to equal access."[38] Despite attempts at conceptualisation, four pitfalls of the metaphor are noted by Van Dijk (2005). They include problems such as:

- reductionist understandings;
- wrong connotations;
- that the divide is absolute and unbridgeable; and
- that there is only one divide when many are running parallel to each other.[39]

Although the digital divide has been criticised for its ambiguity (Gunkel, 2003), the research undertaken on the topic thus far has produced achievements in conceptualisation. Van Dijk (2006) notes that progress was evident in the understanding of the types of access, from material access, motivational access, skills access to usage access. "A shift of attention from physical access to skills usage is observed. In terms of physical access the divide seems to be closing in the most developed countries;

[36] Van Dijk, Jan., (2005) *The Deepening Divide: Inequality in the Information Society*, (London, New Delhi: SAGE Publications) pg. 1
[37] Wilson (2004) pg. 300
[38] Ibid.
[39] Van Dijk (2005) pg. 4

concerning digital skills and the use of applications the divide persists or widens."[40] In terms of South Africa, Fuchs and Horak (2006) provide a useful analysis of the detrimental effects of the digital divide in many African countries. Understanding the context that South Africa engages in global telecommunications is closely linked to the above conceptualisation of the digital divide. Regarding South Africa's role in both power relations in the emerging GIP regime's epistemic community and among other developing countries is crucial in understanding policy decisions it has to take. This study incorporates aspects of the digital divide as it analyses the emerging GIP regime.

1.3.7 – Governance in Telecommunications

This literature review includes the impact ICT has had on international relations, allowing the regime analysis to be put in context. As mentioned earlier, telecommunication policy is located in governance issues within international relations. As opposed to matters related to instrumental and structural power, whereby ICT is enabling formerly underprivileged groups to play a role in global politics and reconstituting issue-areas, the changing scope of governance is arguably shifting the locus of authority away from the state because of the network society.[41] The information society, in which the emerging GIP regime overarches the global regulatory framework, has undoubtedly had an influence on the foundations of international relations over the past two decades. "The rise of information networks thus impacts patterns of governance in three distinct ways: (1) states are no longer the only actors in technological matters globally, (2) we now speak of technological plurality rather than of a technological order, and, (3) global advocacy networks, especially among underprivileged groups, are undermining the legitimacy of existing centres of authority."[42] Stimulating a valuable debate on the role of ICT in international relations requires questioning the realist framework this study adopts. Through analysing the role of collective action within the emerging GIP regime and the influence non-state stakeholders have in international

[40] Van Dijk, Jan (2006) "Digital divide research, achievements and shortcomings" in *Poetics* (34) pg. 221 - 222

[41] Rosenau and Singh (2002) pg.6, 18

[42] Ibid. pg. 19

power structures; this study will attempt to demonstrate the importance of global governance in current neoliberal environment.

As some authors have been reluctant to over-emphasise the impact of ICT in international relations (Keohane and Nye, 1998)[43], the recognition of policy frameworks that reassess the role of the state has been noticeable. "The most powerful engine of change in the relative decline of states and the rise of non-state actors is the computer and telecommunications revolution, whose deep political and social consequences have been almost completely ignored...Above all, the information technologies disrupt hierarchies, spreading power among more people and groups. In drastically lowering the costs of communication, consultation, and coordination, they favour decentralized networks over modes of organization."[44] Issues of global governance and the multiplicity of actors that have converged on global politics will be discussed later in the study. By now it should be clear that the emerging GIP regime is a governance structure over-arching state and non-state actors. An important aspect of this study is to look at the power relations that exist in those governance structures between the different stakeholders and between states.

1.4 - METHODOLOGY OF STUDY

The methodology that will be utilised in this study is qualitative in nature. A significant amount of this discussion will come from debates articulated by authors with specific points aggregated into a clear discussion within this study. The use of South Africa as a case-study will be the basis for a debate on the emerging GIP regime's effect on a developing country. The material on South Africa is accessed from research databases and scholarly articles by experts in the field. Defining the relevant terms, providing the theoretical framework and developing an analysis of the case-study will all be sourced from existing literature on the topic of ICT and regime theory.

[43] "Prophets of a new cyberworld, like modernists before them, often overlook how much the new world overlaps and rests on the traditional world in which power depends on geographically based institutions" Keohane, R. and Nye J (September/ October 1998) "Power and Independence in the Information Age" in *Foreign Affairs* 77(5) pg. 82

[44] Matthews, J.T (January/Feburary, 1997) "Power Shift" in *Foreign Affairs* vol. 76 no. 1 pgs. 51 – 52.

Secondary sources will come from books, journals and electronic sources such as newspapers and the internet. The provision of international agreements are important as this study will concentrate on international organisations and private sector organisations that are promoting the new era of liberalised telecommunication policies. This data will be sourced from the relevant institutional websites such as the World Trade Organisation, International Telecommunications Union, Development Gateway, UNDP, World Bank (PovertyNet), NEPAD, Global Development Network, Centre for Global Development, Stats SA and the Government of South Africa.

The arguments made in this study are based on the opinions of the different authors. The analysis of South Africa's response took the findings of the different authors into perspective and highlighted their concerns and recommendations for the South African telecommunication sector. Relying primarily on a descriptive analysis of the telecommunications sector, this study's analysis uses the literature as a basis for its argument that South Africa was ill-equipped to deal with privatisation of the sector. The recommendations made, are a reflection of the opinions of specialists in the field as well as the author's observations of how the sector can benefit from certain changes. These proposals evaluate an analysis based on a number of sources and opinions in a clear and distinct manner while keeping with the general trend of recommendations for the sector.

As discussed above, the emerging GIP regime is fast becoming a vast network of international stakeholders with different ambitions for the information society. Cogburn's (2004) attempt to differentiate between the electronic commerce and social welfare approaches of the emerging GIP regime provides a useful avenue for an important debate. Although the focus of this study is to understand South Africa's response to changing regimes, it will not be confined to those specific theoretical borders. This study aims to outline and briefly discuss the broader implications of accession to liberalisation agreements for developing countries. Having to negotiate domestic reforms with international agreements for developing countries will be discussed in greater detail while analysing the case-study, along with outlining the objectives of the emerging GIP regime.

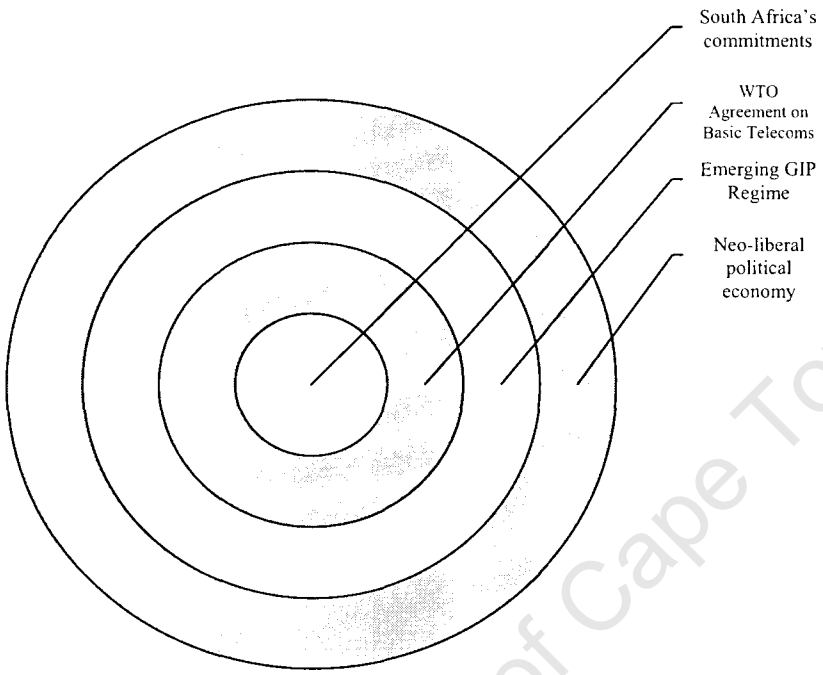
Having outlined the basic assumptions above, the focus of the following emerging GIP regime analysis can be narrowed down within clear theoretical borders.

1.5 - THE RELATIONSHIP BETWEEN INTERNATIONAL RELATIONS, REGIME THEORY AND ICT

The theoretical framework that this study utilises is made up of three themes. All are interrelated and with important links to international relations. Firstly, this study is located in a post-Cold War neoliberal timeframe. This means that the current era of economic globalisation whereby "all economic decisions and actions would transcend state boundaries and would only be determined by the price mechanism of the market"[45], is critical to understanding political economy dynamics of inter-state relations. Secondly, this study uses a regime theory's realist tradition to explain the attempts at collective action among states, and more specifically utilises hegemonic-stability theory to explain regime change and formation from a realist perspective. As a combination of the first two themes, the third theme is related to the power dynamics that exist between developed and developing countries and singles out the WTO Agreement on Basic Telecommunications to link all three together. An illustrated guide to the way these three themes interact is provided in Figure 2. It displays the international context that South Africa's response is placed in.

[45] Schrire, R.,(2000) "The Duality of Globalization: A View from the South," *Cambridge Review of International Affairs*, Vol.14, No.1, pp. 51-52. However, this study assets that state centrality is still of great importance as Gilpin, R., (2001) *Global Political Economy* (Princeton: Princeton University Press) pg. 3 notes that: "the extent and significance of economic globalisation is not nearly as extensive nor as sweeping in its consequences (negative or positive) as many contemporary observers believe. This is still a world where national policies and domestic economies are the principal determinants of economic affairs."

Figure 2: The interrelationship between the neoliberal paradigm and factors that influence South Africa's commitments



Source: Ranchod, Y. (2008)

The WTO Agreement on Basic Telecommunications is integral to the overall process of liberalisation that this study focuses on. Figure 2 makes this connection visible as it charts the Agreement as being part of the emerging GIP regime that is dominated by the neoliberal paradigm. To clearly understand the implications of liberalisation for states in telecommunications, we need to briefly look at the benefits of competition. Baer (cited in Dutton, 1996) highlights four areas of potential value[46]:

1. Price reductions, quality and variety of service offerings;
2. Expanded usage by a wider variety of citizens;
3. Investment in the telecommunications sector; and
4. Increased growth and output in other sectors.

[46] Dutton, W. H., (ed) (1996) *Information and Communication Technologies: Visions and Realities*, (Oxford: Oxford University Press) pg. 357 - 363

This study does not take the supposed benefits of competition as a truism. A number of factors need to be in place for the benefits to develop, especially in developing countries. Therefore, a rather critical stance is taken on the full adoption of liberalisation principles advocated by the WTO in the emerging GIP regime. It is important to mention this stance as power dynamics in the international political economy are directly linked to adoption and implementation of neoliberal reforms.

Any study conducted in the field of international relations cannot ignore the core concepts of the political science discipline. The study of power and governance is implicit to understanding the rise of the information network era. "Networking, entailing communication and information exchange, is changing both the way power is exercised and governance is organised in global politics."[47] The rise of this network society has provided the means for developing countries to leapfrog development stages into an arena where they can compete with industrialised nations in service-oriented areas. Despite the potential that exists, the nation state should not be disregarded in a multiple stakeholder arrangement such as the emerging GIP regime. As many authors have noted, the direction of the emerging GIP regime has gravitated toward developed country interests given the central organisation of the regime. This study has not made the assumption that all countries will fare well in a liberalised environment. It will track the role of influential countries such as the United States of America to highlight its hegemony in global power relationships.

For the theory-based analysis, Krasner's[48] approach to international regimes will be adopted. Briefly defined as "sets of implicit or explicit principles, norms, rules and decision making procedures around which actors' expectations converge in given areas of international relations", regime theory is a useful tool to understand the liberalisation of telecommunications. Regime theory has proved useful in understanding information policy on a global level. "It [regime theory] explained cooperative behaviours [and] was

[47] Rosenau, J. and Singh J. eds. (2002) pg. 2
[48] Krasner, S. (1982) pg. 2

the first approach that made it possible to address both conflict and cooperation in global power structures within the same theoretical framework."[49]

According to Cowhey (1990), regime theory suits the telecommunications transition because of the theoretical explanations it offers. The three approaches to regime theory, known as functional, international power based and cognitive frameworks note that even under anarchy, states have an incentive to look for cooperative solutions to collective action problems[50]. Given the rapid change in telecommunication technology and costs, change in the telecommunications regime was possible since a number of actors shifted domestic and international telecommunication policy away from monopoly-run entities.

As regime theory gained theoretical prominence in the late twentieth century, various arenas such as international shipping and atomic energy could also be classified into regimes. Since the emerging GIP regime is not fully mature, many of its features are still contested. Nevertheless, Braman (2004) notes that explicit features of the emerging global information policy regime include transparency, having organisational networks as organising principles, shared private and public sector responsibility for policy-making and realising informational power as the dominant form of power. As the emerging GIP regime is still in its formative stages, regime formation[51] is of central importance to this study. Despite regime theory's useful application, it has encountered criticisms by many authors (Strange, 1982, Frankel, 1991) as being a passing fad or being imprecise. These critiques are considered in later chapters.

Related to the emphasis on cooperation in regime theory is the use of a theoretical perspective of globalisation which will contribute a significant amount to this study. The expansion of the globalisation discourse into social, political, cultural and economic spheres has meant that a focussed definition and approach is needed. Taking into account

[49] Braman (2004) pg. 21
[50] Cowhey (1990)
[51] Braman (2004: 20) describes regime formation as the process by which new policy forms emerge out of the policy field. It occurs when factors internal and external to the issue area require transformations in law and regulation; in the case of information policy, technological innovation and the consequent processes of globalisation have been particularly important factors in stimulating the transformation of the global information policy regime.

that globalisation has numerous definitions, this study will utilise it as a phenomena defined in its economic and political understanding by Castells (1996), Gilpin (2001), Stiglitz (2002) and other political economy scholars mentioned above.

1.6 - OBJECTIVES OF STUDY

- To provide a detailed analysis of South Africa's telecommunications restructuring process in relation to the global liberalising trend over the last three decades by outlining the reasons and costs of delayed liberalisation in South Africa's telecommunications sector;
- To detail the power dynamics between developed countries, developing countries and non-government organisations in the emerging GIP regime;
- To assess whether the emerging GIP regime is an effective mode of international cooperation by utilising the WTO Agreement on Telecommunications as a coordinating tool; and
- Provide recommendations for a programme of reform that would make South Africa competitive in the information economy and make ICTs accessible to a wider variety of its citizens.

1.7 - LIMITATIONS AND MOTIVATION OF THE STUDY

The limitations relate to the time-span and scope of this study. Since this study concentrates on a specific aspect of ICT in international relations, the scope was narrowed down to international policy formulation and adoption within a certain regime. The emerging global information policy regime incorporates a variety of sectors that are worthy of intense investigation by themselves. However, by providing a descriptive analysis, this study examines specific power relations in the regime and the consequent effects on domestic policy. The time-span is fairly short and does not allow for an in-depth analysis of the case-study or a comparative analysis with other developing countries. The findings of this study relate specifically to South Africa, therefore they should not be generalised for other countries mentioned in the analysis of developing countries.

The motivation for this study stems from the dynamic nature with which international relations is being affected by globalisation and telecommunications. As the world enters the information age, global politics has had to adjust to a rapidly changing environment. The need to provide a regulatory framework is of critical importance since the structured formulation and implementation of telecommunication policy can attract much needed foreign investment for developing countries. However, the potential exists for the emerging GIP regime to incorporate developing countries from the periphery of the political, economic and social wilderness into the core decision making structures of the global economy. Accessible information has the ability to change the dynamics of power relations in a global and domestic context and therefore is an area of study that should be keenly viewed as an important discourse in international relations.

1.8 - CHAPTER OUTLINE

Chapter One has outlined the research direction and theoretical borders of this study. The complex interrelationship between the emerging GIP regime and the neoliberal political economy is tied to a debate that looks at the response from South Africa to this international environment. As a developing country, South Africa's domestic and international conditions are conducive to understanding how the emerging GIP regime operates and the faults that lie in its dominant electronic commerce approach. Through the conceptualisation of terms and research framework, this chapter has set the orderly flow of the argument and provided appropriate context in which to understand the contest between complying with international trade agreements and taking care of domestic socio-economic concerns.

Chapter Two provides a historical analysis of the international telecommunication regime. By providing a descriptive account of the old regime and the transition to the emerging GIP regime, this study provides the necessary background and theoretical foundations for the case-study. To maintain the specific focus of describing the emerging GIP regime and noting South Africa's response, a detailed explanation of international regime theory will provide the appropriate theoretical input. A concentrated effort is

made to keep the link between the emerging GIP regime, regime theory and the international relations disciplines visible. In understanding the power dynamics of regimes, a neo-realist approach will be used to explain regime formation and the influences behind the rules, norms, procedures and decision-making structures of the emerging GIP regime. By describing the theoretical basis for the emerging regime, the chapter concludes by introducing the specific agreements upon which the policy framework for the emerging regime depends.

Chapter three investigates the origins and implications of the WTO Agreement on Basic Telecommunications. With a specific focus on developing countries, the chapter highlights the neoliberal context the regime operates in and whether signatories of the Agreement have benefited. A brief discussion on the consequences of accession explores the power relationship between developed and developing countries and the commitments of the Reference Paper that have caused serious implementation problems for developing countries. This chapter effectively looks at the nature of an international organisation within the emerging GIP regime and concludes by discussing the domestic implications of the Agreement for South Africa as a developing country.

Chapter four is an analysis of the case-study. Having described the economic and political conditions of emerging GIP regime and the central agreement that makes it function in the first three chapters, chapter four explores South Africa's response to the emerging GIP regime. Keeping in mind South Africa's prominent role in the developing world as well as being a founding member of the WTO, this case-study is the ideal platform to discuss the implications of an international policy regime on a sovereign state. Specifically, the two areas of contention – market structure and independent regulation – highlight the problematic nature of liberalisation in a developing country. By guiding the study through regime theory and the emerging GIP regime, the case study debates the benefits regimes add to collective action among states.

Chapter Five concludes this study with a set of summaries and recommendations for South Africa's telecommunications sector regarding future liberalisation. These follow

from the various debates mentioned in chapters two, three and four, along with an emphasis on the specific objectives South Africa should take as it finds its place in the network society. The recommendations made are a reflection of the general trend of proposals that different authors have discussed in the literature on the South Africa telecommunications sector. Having taken a number of issues surrounding privatisation and the global trend toward liberalisation into account, the recommendations aim to reinforce the proposals for sequenced liberalisation and effective regulation in the sector.

2

REGIME THEORY AND THE EVOLUTION OF THE TELECOMMUNICATIONS REGIME

The international relations discipline within political science is often torn between two dominant theories. Table 1 highlights the key differences between these two approaches to regime analysis, namely liberal institutionalism and realism. Although they differentiate in areas such as power relations they both make the common assumption that regimes promote international order and that states are rational and unitary actors. One specific aspect of the debate centres on collective action between states. Although realism makes a strong case for the unlikelihood of strong mutually-representative collaboration, the emergence of the global information policy regime has provided a useful example for a counter argument. Regimes present evidence of states cooperating for mutual agreement on certain issues, while varying in degrees of institutionalism. "What many now call neo-liberal institutionalism arose, in part, to explain how cooperation could survive and even thrive at the international level – especially in fields of trade and monetary relations – in the face of the declining capacity of the United States to act as an effective hegemon."[52]

Table 1. – Liberal institutional versus realist approaches to the analysis of regimes

Liberal Institutionalists	Realists
1. Regimes enable states to collaborate	1. Regimes enable states to co-ordinate
2. Regimes promote the common good	2. Regimes generate differential benefits for states
3. Regimes flourish best when promoted and maintained by a benign hegemon	3. Power is the central feature of regime formation and survival
4. Regimes promote globalization and a liberal world order	4. The nature of world order depends on the underlying principles and norms of regimes

Source: Baylis and Smith (2001), pg. 301

[52] Ba, A. and Hoffman, M. (eds) (2005) *Contending Perspectives on Global Governance: Coherence, Contestation and World Order*, (London and New York: Routledge) pg. 88

As this chapter will indicate, cooperation among states is subject to the influences powerful states have over economic and political multilateral forums. Despite the constructive cooperation between states, there are dominant countries and organisations that lead the regime in a certain direction. To clearly understand how regimes make up an important part of international relations, this chapter has been separated into three sections. The first section will explore why regime theory was the most appropriate theoretical framework for this study. A brief investigation its origins, features and criticisms will set the foundation for understanding the next sections. Section two will provide a historical analysis of the international telecommunications regime that traces the rise of economic liberalisation in telecommunications while section three will explain the shift toward and characteristics of the emerging global information policy regime.

2.1 - THE FUTURE OF GLOBAL COOPERATION?

Over the last few decades, regime theory has emerged as a valid tool in synthesising analytically distinct theories such as realism and liberalism under the "institutionalism" umbrella. Although a fairly recent contribution to international relations discipline, regime theory has fulfilled its potential in providing an avenue of exploration for explaining cooperation among states. The following analysis will group writings about regime theory and explain how the emerging global information policy regime is a working demonstration of the theory.

Fitting into the broader field of "governance without a government", regime analysis has made a strong case for solutions to collective action problems[53]. As mentioned in chapter one, Krasner's (1983) widely accepted definition[54] has been regarded as the consensual explanation by international relations scholars for a fairly complex theory. However, Keohane (cited in Rittberger, 1993) noted that there are problems of interpretation with the above definition. "The most fundamental issue is whether regimes are to be identified

[53] Krasner, S. D., (April, 1991) "Global Communication and National Power: Life on the Pareto Frontier" in *World Politics* 43. notes that dilemmas of common aversions refer to situations in which actors must coordinate their policies by agreeing on some set of rules or conventions, to avoid mutually undesirable outcomes. (pp 338)

[54] Krasner (1983) "sets of implicit or explicit principles, norms, rules and decision making procedures around which actors' expectations converge in given areas of international relations"

on the basis of *explicit rules and procedures*, or on the basis of *observed behaviour*, from which rules, norms, principles, and procedures can be inferred. Defining regimes simply in terms of explicit rules and procedures risks slipping into the formalism characteristic of some traditions of international law (author's italics)"[55] Keohane steers away from sociological interpretations and settles on international regimes as being "institutions with explicit rules, agreed upon by governments, that pertain to particular sets of issues in international relations. Conventions are informal institutions, with implicit rules and understandings, that shape the expectations of actors."[56] This differentiation between conventions and regimes points toward the broader importance of explicit rules and procedures in international relations. Despite contestation in certain definitions, the conceptualisation of terms such as norms, principles, rules and procedures are necessary for any further discussion on regimes. As Krasner notes: "Principles are seen as beliefs of fact, causation or rectitude; norms are seen as standards of behavior defined in terms of rights and obligations; rules are specific prescriptions or proscriptions for action; and decision-making procedures are the prevailing practices for making and implementing collective choice."[57]

This study regards regime theory as a useful tool in understanding the current era of global governance. It picks up where traditional theories of international law and organisational theory left gaps which attribute governance to formal structures. The inadequacies of these formal structures in conceptualizing a forum where states cooperate with relatively equal representation, such as various United Nations (UN) agencies, have been demonstrated over time. Therefore the need for proposals that break away from UN reform mechanisms is clearly filled by the issue-specific and inclusive nature of regime theory.

[55] Keohane cited in Rittberger, Volker (ed). (1993) Regime Theory and International Relations (Oxford: Claredon Press) pg. 27
[56] Ibid. 28 – 29
[57] Krasner cited in Cogburn (2003) pg. 136

2.1.1 – A neo-realist framework

Given the theoretical dominance of realism in international relations, what chance does a theory that hinges on global cooperation stand? This line of thought questions whether regimes do indeed matter in an anarchic international system. Rittberger (1993) notes that "regime theorists have proposed a number of reasons why regimes should matter. Within a modified, neo-realist framework, international regimes can affect both the *capabilities* and the *interests* of states. International regimes can affect capabilities by serving as a source of influence for states whose policies are consistent with regime rules, or which are advantaged by regime's decision-making procedures."[58] Given the length constraints of this study, condensing the analysis of regime theory implies concentrating on a specific strand of the theory. In accordance with neo-realist and neo-Marxist interpretations that emphasise the role of power relations in international regimes, this study adopts the view that the power dynamics have taken the form of hegemonic states exercising their strength to influence the regime. Classified theoretically by regime scholars as hegemonic-stability theory, it is asserted that "regimes are established and maintained by actors who hold a preponderance of power resources relevant to a particular issue-area"[59] Originating out of Mancur Olsen's (1965) work on collective action, hegemonic-stability theory rests on the assumption that "in the absence of coercion or additional inducements beyond the potential benefits of the public good itself, large groups will fail to produce collective goods…Some small groups are 'privileged' by the fact that at least one group member will have sufficiently strong interest in the good to provide at least some amount of it even if no one else shares the costs."[60] It is especially important to recognise this realist strand of thought in the context of a developing country's ability to participate in the emerging GIP regime. According to Hasenclever et al (1993), regimes are supplied by hegemons and are dependent on their involvement in the issue area: "Thus, the ultimate explanation for the formation and persistence of regimes lies in there being a highly unequal distribution of power in a

[58] Ibid.
[59] Hasenclever, A., Mayer, P., and Rittberger, V., (1996) pg. 197
[60] Ibid. pg. 197

given issue-area."[61] Further chapters will elaborate on the role of powerful nations vis-à-vis international organisations influencing the regime.

With regime theory effectively trying to explain the "possibility, conditions , and consequences of international governance beyond anarchy and short of supranational government in a given issue"[62], the role of governance in the emerging GIP regime is contested between alternate visions for the application of services. Cowhey (1990) notes that regime analysis rests on three approaches[63], of which the international power approach reflects the influence hegemons have on the regime. This is not to say that regime theory has failed to explain an appropriate model of cooperation. Instead, regime theory has provided the theoretical framework to explain how states stand to benefit from cooperation. Firstly, regimes perform the functions of reducing uncertainty and the costs of carrying out transactions for their members. Secondly, international regimes that succeed in establishing relatively clear rules that provide standards for judgements of behaviour and stabilize expectations (thus reducing uncertainty) will become valued.[64] Effectively, the former will lead to the demand for the creation of international regimes, while the latter will lead to the maintenance of international regimes. Hegemonic influence aside, regime theory goes about enforcing the "rules of the game" for issues in a world system where collective-decision making is scarce. For regimes to fulfil their function of creating global governance in issue-specific areas, the creation and maintenance of the knowledge that drives the regime can be found in the epistemic communities that reinforce the strength of the regime which will be discussed next.

2.1.2 – The role of epistemic communities

The composition of regimes owes a lot to the power relations that exist within it. The role of epistemic communities has to be recognised within the broader study of regimes. "Politicians align with epistemic communities and invite them into the inner circles of

[61] Ibid. pp. 198
[62] Rittberger (1993) pp. 392
[63] Cowhey (1990) pp. 170: "One emphasizes the importance of functions (for example, regimes are designed to reduce transaction costs and are shaped by strategic gaming dynamics); another stresses international power (regimes are a result of the influence of a hegemonic power); and a third emphasizes cognitive frameworks (regimes influence how actors define problems and their solutions)."
[64] Rittberger (1993). pp. 36

power…Moreover, each community has its own social organization and methods to reduce internal coordination problems. For example, the belief that telecommunications was a 'natural monopoly' set the agenda for regulation, and international institutions such as the ITU provided a social organization (a quasi-corporatist framework) to improve the coordination of expectations."[65] Epistemic communities in the emerging GIP regime are explored later in the chapter, but using the telecommunications regimes are useful examples of members converging on specific issues to improve coordination.

As this study deals with a transitionary period in telecommunications governance, it is important to mention the process of change in regimes and epistemic communities as new sets of institutions and experts significantly alter the rules and principles in the new regime. Although change is not a common occurrence in many regimes, the body of literature dedicated to it has expanded over time. Shifts in the nature of decision-making have far-reaching consequences that ultimately change the complexion of previous institutions. "Change can involve not only destruction of existing institutions and the creation of new ones but, as in the case of information policy, coordination of expectations and perceptions around new focal points."[66] The importance of change is noted by Cowhey (1990), especially in the telecommunications industry; "The rise of a new epistemic community comes as a result of political reformers looking for an alternative knowledge and communities of knowledge. If an alternative community (a "counter-hegemony") can successfully show how to extend its ideas from the domestic to the global market, the international regime faces a formidable challenge."[67] With these fundamental changes in the institutions and focus of the regime, the transition that took place from the international telecommunications regime to the emerging global information policy regime is a useful display of regime transition through a change in the dominant epistemic community. Despite offering alternatives to understanding global governance through institutional structures and offering the opportunity of inclusion to a wider range of participants, regime theory has encountered serious criticisms ever since its inception.

[65] Cowhey (1990) pg. 173
[66] Braman (2004) pg. 26
[67] Cowhey (1990) pg. 173.

2.1.3 – Criticisms of regime theory

While regime theory has found support by explaining international cooperation on number of levels concerning global issue-areas such as atomic energy and environmental issues, its detractors have been quick to point out flaws in the theory. Among the critics, was Susan Strange who provided a brief yet concise criticism of regime theory's usefulness. Five points were provided that questioned the foundations of regime theory: "First, that the study of regimes is, for the most part a fad, one of those shifts of fashion not too difficult to explain as a temporary reaction to events in the real world but in itself making little in the way of a long-term contribution to knowledge. Second, it is imprecise and woolly. Third, it is value-biased, as dangerous as loaded dice. Fourth, it distorts by overemphasizing the static and underemphasizing the dynamic element of change in world politics. And fifth, it is narrowminded, rooted in a state-centric paradigm that limits vision of a wider reality."[68]

Strange positions her criticism in a political economy perspective and notes that the favourable results of a regime are not apparent on the surface. Instead, scholars should look at the bargains on which the regime is based to understand who benefits. In a world of powerful multinationals and financial organisations, the role of state is not always central as corporate entities can direct certain aspects of a regime.

Probably the most worrying criticism is noted by Braman (2004) and relates to the complexity of regimes: "Emergent systems in the international environment often involve such a high degree of causal complexity that traditional modes of analysis may not be adequate. Thus some shy away from regime theory simply because it is difficult to operationalise."[69] Despite its complexity, regime theory does provide the necessary theoretical tools to conceptualise aspects of international relations. While this brief analysis of regime theory has concentrated on a specific aspect of the literature and omitted a large portion of its characteristics, it has set an adequate outline by providing a clear definition, conceptualisation and criticism for the rest of this study.

[68] Strange, Susan. (1982) "Cave! Hic dragones: a critique of regime analysis" in *International Organization* 36, 2. pg. 479

[69] Braman (2004) pg. 29

Despite the specificity of this study, international relations scholars should keep in mind that key points are also made in cooperation and regime literature. As Krasner (1991) notes, the key question stemming from the need for actors to cooperate rather than defect when there are incentives to cheat is: "How can players move toward to Pareto optimal outcome of mutual cooperation?". This type of question probes the future of regimes within a counter-argument found in a liberal understanding of regimes. However the neo-realist position of this study is not particularly optimistic given the importance of relative gains for sovereign states. As a consequence power relations within the emerging GIP regime mirror that of the system where developing countries are subordinate to developed countries interests. However, developing countries did promote international coordination in the regime because of the relative benefits that were afforded through participation. Nevertheless, given the current globalised political environment, the use of regime theory signifies a growing trend to recognise the role of multilateral cooperation in international relations. Using the above analysis, the following section will have far more clarity as it outlines the international telecommunications regime that came to an end in the 1980s.

2.1.4 – The beginning of the end for telecommunication monopolies

The move toward economic liberalization and the reduction of barriers regarding the flow of communications has largely been a late-twentieth century process. As Zacher (cited in Rosenau and Singh, 2002) notes, "Through means such as divestiture, deregulation, re-regulation and privatization, states have transformed their telecommunications services industries from tightly controlled monopolies into competitive markets...the liberalization components of the international regime have been shaped by three general factors: the capitalist world political economy, the distribution of state power (particularly the existence of a dominant state or group of states), and technological change."[70] This international political economy perspective is critical in understanding the rise in international institutions such as the WTO. The rise of neoliberal institutions dealt a fatal blow to the domestic monopolies. But the rise of these international institutions has also come at a price for developing nations. Policy decisions were

[70] Zacher, Mark cited in Rosenau, J. and Singh, J. eds. (2002) pg. 190

predominantly nestled in the interests of developed nations and therefore socio-economic concerns were relegated off the agenda for developing nations in the interests of joining the international economy.

The international shift toward liberalization in telecommunications shares a similar pattern to the deregulation in global capitalist markets that took place in the 1970s. An event that is often cited as the most influential toward telecommunication liberalisation is the United States' liberalisation of its telecommunications sector that sparked the shift in other industrialised countries. Concurrently, the rapid innovations in communication technology had accelerated the liberalization process into motion with dramatic effects. The profitable 'cartel' between telecommunication fixed-line monopolies and suppliers excluded many of the basic tenets that would have made telecommunications universally accessible. The following analysis will explore these claims with an account of the origins, characteristics and procedures of the international telecommunications regime.

2.2 - AN OVERVIEW OF THE INTERNATIONAL TELECOMMUNICATIONS REGIME

A central characteristic that writers associate with the international telecommunications regime was its ability to stay unchallenged until the 1970s. Cowhey (1990) notes that, "like other service industries, telecommunications was traditionally oriented toward domestic markets, and competition in both services and equipment was limited. There were three important rationales for the system; it would increase reliability in the performance of tasks central to the public order...would tap economies of scale or scope in the provision of services...and would advance considerations of equity expressed in the ideal of 'universal service.'"[71]

These rationales put in place a regime that maintained a profitable 'cartel' for a substantial period of time. At a domestic level, the authority over communications was controlled by a state-operated monopoly which comprised of the telephone company and the government ministry that regulated it. "In addition, countries often mixed their postal and telephone services under one operation, which was called the postal, telephone and

[71] Cowhey (1990) pg. 174

telegraph authority (PTT)."[72] The combination of these three services under one government ministry became a common occurrence in many countries that complied with the rules of the international telecommunications regime. Singh (cited in Braman, 2004) notes that "telecommunications entities historically argued for monopoly control based on the claim that economies of scale were necessary to provide services, and they sought to recover the costs of these services by targeting institutional users (mostly government administrations and large corporate users)."[73] On an international level, bilateral negotiations were needed due to the point-to-point nature of international telecommunication traffic. These negotiations protected the respective monopolies in the two countries but support was needed in an international authoritative mechanism. Cowhey (1990) notes that the monopoly-run industries had to gain acceptance in the global community: "unless bilateral agreements were covered under a multilateral umbrella, they could easily have contradicted each other...Therefore, global coordination was simplified when a set of umbrella rules and standards was negotiated multilaterally."[74] For the regime to gain legitimacy as an international authority over telecommunications decision-making authorities had to be established from which rules and principles would emerge.

2.2.1 – Decision-making authorities in the regime

The origin of the central institution in international telecommunication regime was the International Telegraph Union which formed in 1865 in Paris by major Western countries with "mandates to facilitate the flow of telegraph transmissions and to improve commercial coordination."[75] The International Telegraph Union later merged with the signatories of the International Radio Telegraph Convention to form the International Telecommunications Union (ITU) in 1932. Without going into a deep description of the ITU, its central bodies developed recommendations about telecommunications standards and telecommunications facilities and networks and other tasks. The committees were the Consultative Committee on Telephones and Telegraph (CCITT), the International

[72] Ibid.
[73] Singh cited in Braman (2004) pp. 88
[74] Cowhey (1990) pp. 175
[75] Zacher (cited in Rosenau and Singh, 2002) pp. 191

Frequency Registration Board and the International Consultative Committee for Radio (CCIR). The system prevailed for over half a century with domestic policy geared toward the maintenance of the regime until technological innovation started to erode the dominance of the regime's rules. Recognising the parallel process of technological development is just as important in understanding the composition of the ITU. Zacher notes that "[T]he integration of computer technology with telecommunications also led to two particular developments in the 1950s that required extensive international standard setting – the introduction of the transoceanic telephone cables and the use of direct dialling."[76] Following the advent of these technological advances the ITU encountered serious criticisms as it attempted to set standards for telecommunications.

As the ITU had to adjust its standard setting, regulation of market access and rates to the rapidly evolving nature of technology, its failures and inadequacies became apparent. Cowhey (1990) was particularly sceptical, "So far, the ITU in particular sounds like a fairly anemic, technical, and dull organization. But under its auspices, the CCITT acted as a virtual telephone cartel for the PTTs...They were the anchor of a regime that facilitated bilateral monopolistic bargains, reinforced national monopolies, and limited the rights of private firms in the global market."[77] Zacher re-emphasizes the ITU's weaknesses: "The ITU occasionally failed in its attempts at standard setting over the last half century, but the key failures concerned consumer products...that are used for communication between services providers and consumers – not between commercial firms."[78] Centrally controlled, socialist and dirigiste states were able to maintain a global system of domestic monopolies since they could obstruct efforts toward liberalisation. To understand how the international telecommunication regime vis-à-vis the ITU failed in its task of providing market access but managed to maintain a cartel for almost a century, an analysis of the regime's principles and norms has to be provided.

2.2.2 – Exploring norms, rules, principles and decision-making procedures

[76] Ibid. pp. 195
[77] Cowhey (1990) pp. 176
[78] Zacher (cited in Braman, 2002) pp. 195

Cowhey's (1990) thorough analysis of the dominant international telecommunications regime paradigm utilises regime theory as its theoretical framework. As mentioned earlier, principles, norms and decision-making procedures are central to regime theory and therefore form an important part of any study on regimes. The international telecommunication regime described above "rested on the principle that monopolies of services and equipment were the most efficient and equitable way of providing public services both domestically and internationally. This principle assumed state control over international telecommunications."[79] The three resulting norms from the principle maintained the monopolistic character of the regime. The first norm was *jointly provided services*. International telecommunications at the time, which fell under CCITT rules, stipulated that communications were jointly provided services: "This allowed the PTTs to argue that communications services did not constitute trade; rather, they were the product of a joint investment by two or more nations in a common infrastructure connecting the nations. Monopolistic communications authorities were therefore simply extending the assumed economies of scale and scope from the domestic network to the international arena..."[80] The most obvious example of this was in the United States of America, where its domestic policies dictated the conduct of the regime. The collaboration between PTTs enabled the exchange of services and maintained authority over investments in infrastructure. "The regime rule essentially allowed each country's monopoly to charge whatever it wanted for originating an international call while paying a fixed fee to the receiving country...Together, these rules made international telephone services phenomenally profitable, and it allowed easy monitoring and negotiations for the cartel because all marketing deals were largely bilateral."[81]

The status quo among monopolies in the 1960s and 1970s encountered a possible challenge with the introduction of satellite technology. By altering the point-to-point system of communications, satellite communication would enable one sender to communicate with many destinations simultaneously. However, the possibility of a

[79] Cowhey (1990) pg. 177
[80] Ibid.
[81] Ibid pg. 178

competitive industry was unlikely as Intelsat[82] was owned by national telephone monopolies that controlled the interconnection and distribution of satellite services.

The second norm was *standardized networks and equipment*. As a means of linking national networks and equipment with global universal service, the international telecommunications regime required standardization. "This norm effectively linked the provision of services to the operation of the telecommunications equipment market."[83] To maintain control over the rapid diffusion of digital technologies, the ITU collaborated with other international organisations to design packaged services for interconnection. Although interconnection received support, there was controversy over the supply of telecommunications equipment: "Telephone authorities argued that the design of network equipment (central office telephone switches and communication satellites, for example) required intimate knowledge of how the network was engineered. These arguments led each major country to have a quasi-monopolistic national champion for equipment."[84] South Africa provides a useful example of this scenario as its equipment production was done domestically through long term contracts with South African companies.

As a result telephone service rates had to carry the significant burden of the regime's decision to cross-subsidise national telephone companies with domestic equipment makers. The maintenance of the monopoly was further shielded by the GATT which exempted telecommunications equipment[85] from competition. The third norm was *organized global commons*. As a visible case of intergovernmental bargaining within ITU structures, the norm concerned the allocation of outer space spectrum. "[T]he organizing norm stated that countries should avoid harmful interference with each other's transmission or orbiting satellites." [86]

[82] According to Braman (2004) the International Satellite Corporation (Intelsat) was coordinated by the US military and developed in an environment of monopoly-run telecommunication industries. Heavily influenced by its signatories, Intelsat was "unable to impose rules and regulations on private or public companies participating in the satellite industry, unless the rules were backed by the governments of the signatory countries." pg. 77

[83] Cowhey (1990) pg. 179

[84] Ibid.

[85] Ibid. pg. 180

[86] Ibid.

Despite being on the periphery of regime decision making, developing countries created significant tension in the negotiations on the allocation of outer-space spectrum. Fearing the dominance of developed countries in the allocation, developing countries were adamant that future provisions be made for their inclusion.

As regime theory indicates, principles and norms were further enhanced by rules and decision making procedures. As a means of reinforcing the authority of PTTs, the ITU had three sets o f rules which were: "the legally binding international law laid down in the ITU Convention, the regulations set forth by administrative conferences and the recommendations prepared for plenary assemblies of the CCITT and CCIR, which are not legally binding but enjoy wide acceptance."[87] Despite the major criticisms by Cowhey (1990) and Zacher (cited in Rosenau and Singh, 2002) levelled at the ITU regarding standard setting, it did promote a one-nation, one-vote system that favoured developing countries thus reducing US dominance. Intelsat's decision-making structures differed markedly as voting was based on a country's share of total use of the system. "For many years, the United States had more than 50 percent share of the total votes; therefore, to prevent a unilateral U.S decision on important questions, Intelsat was forced to require that approval be based on more than a simple majority vote."[88]

Despite attempts to minimise its power, the United States and other industrialised nations still dominated Intelsat. The international telecommunication regime was thus characterised by two institutions that legitimised the involvement of government agencies in shaping the international telecommunications market. Within international relations the subject is clearly defined by Zacher: "Mercantilist thinking (including fears of economic vulnerability) had an important influence on the international capitalism of the day, and definitely impeded certain dimensions of commercial liberalization."[89] The centralization of power in the state meant that challenges to the monopolistic structure of the telecommunications sector went unchallenged. States from all over the world subscribed to these norms, principles and decision-making procedures including South Africa whose PTT (South African Posts and Telecommunications – SAPT) operated in the

[87] Ibid. pg. 181
[88] Ibid.
[89] Zacher cited in Rosenau and Singh, 2002, pg. 199

monopolistic manner described above. Chapter Four expands fully on how this was done. On an international level, central authorities reinforced the interests of the developed nations therefore leading to weak competition. However, a combination of global economic and political factors signalled a change in this formidable setup.

2.3 – THE REGIME COMES UNDER PRESSURE

Signs of a transition in the international telecommunications regime began during the 1960s as pressure mounted on the United States government and internal private constituencies to allow competition against its telecom monopoly. Rosenau and Singh (2002) maintain that the move toward liberalisation has important roots in the United States. Three changes are highlighted as being central to the change; "First, pressure developed from multinational corporations to lease lines from the monopoly providers so that they could obtain cheaper and better customized services…Second, ways were found by some international telecommunications firms such as AT&T to bypass the monopoly firms in foreign countries so they did not have to accept the rate structures of those foreign monopolies…Third, international consortia of firms from different countries began to develop since the member firms judged that they could best pursue their own interests by cooperating."[90] It is important to note that the regime did not collapse when confronted by these transformative pressures, instead it persisted with the monopoly-run industry until the 1980s. As pressure mounted from the concurrent developments in technology, the regime's norms, rules and principles began to be undermined. The rules of the ITU were coming under increased non-compliancy as increased liberalisation led to competition and a relaxed trading environment between states. By the 1990s, liberalisation had made an important leap through the WTO General Agreement on Trade and Services (GATS). "Of considerable importance is that it required transparency with regard to states' competition and protection policies…At the time of the signing the agreements, and immediately thereafter, the developing countries did not support the provisions regarding telecommunications; but in the long run it is going to be difficult for them to reject the rules."[91] The international political economy of the time included a

[90] Ibid. pg. 199 – 200.
[91] Ibid. pg. 201

global change in trade policy. The rise of neoliberalism was further entrenched with the powerful political figures of Ronald Reagan of the United States and Margaret Thatcher of England endorsing an open and competitive system of economics. The details of this shift exceed the constraints of this study and this short explanation should not detract from the importance these countries had in promoting the origins of the current neoliberal political economy. Additionally, advancements in technology contributed to cracks emerging in the international telecommunications regime because digital and satellite services provided alternative technologies that could bypass the legacy of fixed-line monopolies.

2.3.1 – The parallel process of technological change

The argument for technological change influencing an end to the old regime is further emphasised by Strange (1996). "In the last decade or so, a rapid decline in this power has set in, set off by a combination of technological change, demand in the market and policy changes in the United States driven by the economic ideology of private enterprise."[92] Strange (1996) also identifies the five critical changes in technology which include improvements in transmission systems, large digital switches, wireless communication through cellular phones, earth-circling satellites and finally, rapid developments in computer technology. These factors combined along with American de-regulation shifted the telecommunications industry toward open markets. This is illustrated by the rise of transnational operating firms that have dominated communications systems in a number of countries. But what effect did this have on the regime? Strange (1996) notes the consequences: "What is perhaps more controversial is how these changes have affected international 'regimes' as reflected in inter-governmental organisations. Much of the relevant literature tends to underplay the dynamic forces working on these organisations. In telecommunications the question is whether, through them, US structural power is being converted into relational power over other states, legitimated by economic orthodoxy."[93] Strange's concerns about the hegemonic role the US would take, are expressed in a similar manner by other authors. There was also a constant concern about

[92] Strange, Susan., (1996) The Retreat of the State: The Diffusion of Power in the World Economy (Cambridge: Cambridge University Press) pg. 100
[93] Ibid. pp. 106 - 107

the representation developing countries would have in the ITU. The role of the state was slowly diminishing as transnational businesses were becoming central in the telecommunication environment. Keeping in mind that this study is looking at South Africa's response to the emerging GIP regime, the process of technological change is crucial in understanding the international nature of decision making structures. Despite being in favour of a developmental approach for the regime, South Africa's eligibility to gain the most out of the regime coincides with liberalising its telecom industry.

2.4 – THE EMERGENCE OF THE GLOBAL INFORMATION POLICY REGIME

As the emerging GIP regime is reinforced by the multitude of international actors and rapidly changing technologies, its features and operationalisation have characterised it as a functioning regime. The following description recognises that principles, norms, rules and decision making procedures have been formed under the guidance of a central institution (WTO). Therefore the emerging GIP regime possesses the rules and conventions made by actors who have coordinated their policies to avoid mutually undesirable outcomes. This section will explore the origins of emerging GIP regime in detail and identify the power relations that exist between developed and developing countries in the information economy. As the volume of literature on the emerging GIP regime is increasing, a focus on the digital divide and the power relations that exist within it provides an argument for this study as mentioned earlier. As with the international telecommunications regime, the emerging GIP regime has had a noticeable effect on domestic telecommunication policy. Moves toward liberalisation and privatisation of their respective telecommunications sectors have meant states cannot avoid the need to alter their policies to the neoliberal environment. The literature on regimes note that the origin of the emerging GIP regime are yet to be clearly defined as influential forces such as multinationals, politicians and powerful states converged on the shift at roughly the same time.

Given the multitude non-state actors, the emerging GIP regime is partly reflective of the neoliberal political economy that is underpinned by global commerce. With multinational corporations and international trade organisations influencing governing structures

through lobbying in their respective developed nations, the liberalisation of telecommunications has made international governance a more inclusive affair. The distinction between the numbers of actors in the emerging GIP regime compared to the international telecommunications regime is important to recognise as fixed-line monopolies and government ministries are now competing with a flurry of international telecommunications companies and mobile operators.

The plural nature of governance and authority structures in the emerging GIP regime is an example of the continued shift away from a state-centric system. Strange's (1996) remarks that these policy changes were "legitimised by the economic ideology of private enterprise"[94] provides a consensual realisation that the emerging GIP regime is a product of the neoliberal economic system. By using regime theory as a theoretical framework, the complex interactions between state and society domestically, as well as between international organisations and the states internationally, are understood through its norms, principles, rules and decision making procedures.

2.4.1 - Adjusting principles, norms, values and decision-making procedures

The key to understanding the difference between the two regimes lies in the emerging GIP regime's principles, norms and values. Cogburn (2003) provides a brief yet precise account of the emerging GIP regime's features as it negotiates itself toward becoming a regime. Cogburn (2003) attributes the creation of the principles to high-level meetings that took place at international conferences. Out of these conferences emerged eight key organising principles that came to be known as the "Brussels Principles"[95] (see Appendix B). Out of these principles, a number of common themes emerged that outlined the direction of the emerging GIP regime. "First, the importance of the role of the private sector in stimulating dynamic competition and attracting the private sector to invest in the infrastructure and applications for the Information Society, and an attempt to move towards universal service. Second, using a strategic policy approach to stimulate the development of an Information Society, with an appropriate legal and regulatory

[94] Strange (1996) pg. 100

[95] These principles are available at www.itu.int/osg/spu/wsis-themes/Access/BackgroundPaper/IS%20Principles.doc accessed 2 September 2007

framework. A third principle is that of working to stimulate the creation of content that is relevant to and reflective of many of the world's countries, cultures and languages. A final common principle emerging out of these important conferences is the idea of using the potential of an Information Society to stimulate employment creation."[96] For the purposes of this study, the second principle will be expanded upon given the international relevance of its function. Applied in the form of the WTO Agreement on Basic Telecommunications, this regulatory approach merges the interests of state and non-state actors through the WTO.

Since the emerging GIP regime has to take into consideration the wide variety of its stakeholders, its norms, values and principles has had to accommodate the vested interests in electronic commerce by dominant stakeholders. These include multinational corporations (Google, Microsoft, etc.) and international organisations that have an enforcement capacity to implement rules and principles of the emerging GIP regime. These include the WTO, World Intellectual Property Organisation, ICANN, World Bank and Aid agencies. Cogburn (2003) supplies a list of fifteen norms and values that stress the nature of the new regime[97]. The following table is a list of norms along with explanations found in the emerging GIP regime that are in contrast to the norms found in the international telecommunications regime:

Table 2: New norms explained in the emerging GIP regime. Adapted from Cogburn's (2003) analysis.

New Norms	Norms Explained
(1) Telecommunications and information infrastructure	The emerging principle focuses on the importance of liberalization, privatization and a pro-competitive telecommunications environment
(2) Customs/taxation	Principle that the Internet and e-commerce should continue to be a "tax free" zone
(3) Electronic payments	The emerging principle that multiple and competing options for e-payments should continue to be developed, and that these systems should be

[96] Cogburn (2003) pg. 139 – 140
[97] Ibid. pg. 140 - 141

	interoperable, and should allow for both anonymous, pseudonymous, and traceable methods
(4) Commercial code	A common global commercial code should emerge to provide for the global rule of law and protection for contracts and private property
(5) Intellectual property protection	IPR regulation needs to be revised to reflect the realities of the digital economy, while still providing an incentive for the production of information goods
(6) Domain names	Domain names are an important and contested commercial asset, and famous marks should be protected while not allowing them to abuse smaller enterprises, and that ICANN is the legitimate body charged with the responsibility to deal with domain name issues
(7) Personal data	Should be protected, while at the same time allowing for legitimate corporate uses of data profiling and targeted advertising
(8) Security and encryption	Is an important national and personal security concern that has to be balanced with personal privacy concerns
(9) Awareness/trust	Is a limiting factor for the growth of e-commerce
(10) Trust	Might be enhanced with the widespread use of authentication and digital signatures
(11) Technical standards	Should be technology neutral and industry driven to the fullest extent possible
(12) Local content	Should be promoted and protected, if e-commerce is going to reach its full potential
(13) Labour and society	Will be affected by the move towards a digital economy and society should work to minimize the negative impact, while harnessing the potential
(14) Universal service/access	Or lack thereof, as characterized by the "digital divide" is one of the most potentially limiting factors for global e-commerce
(15) Human resources and capacity	Requires immediate global attention.

Table 2 above highlights not only the norms of the emerging GIP regime but also reflects the dominant electronic commerce approach of the regime. The focus on electronic payments, domain names and taxation indicate that prerogatives of the emerging GIP regime have left the developmental ambitions far behind. A worrying factor about this is that the gap in the digital divide will grow, leaving a large number of people alienated from the information economy that the world is rapidly progressing toward.

Decision-making procedures in the emerging GIP regime are primarily developed by the WTO. As mentioned in chapter one, the WTO and a host of other non-governmental organisations are the authority in the new regime. These stakeholders not only represented some of the most powerful organisations in the world but many were also based in heavily industrialised countries. The consequence that many authors of the digital divide note is a shift of the locus of power further away from developing countries: "Perhaps most important amongst these developments for the emergence of this new regime is the role played by the WTO and the General Agreement on Trade in Services (GATS). The WTO is clearly going to be the centrepiece organisation in this emerging GII regime. Many of the most important aspects of telecommunications have already been ceded to the WTO, particularly under the GATS agreement, which has already had an impact on governing the global trade in services."[98] Despite the dominance of the developed countries and organisations "the emerging regime will rely on a host of governmental and non-governmental organizations to enforce its rules."[99]

The pluralism involved in the new regime was an encouraging sign of the transition away from the state based monopolies as competition would be introduced and stimulate innovation and a degree of independent regulation. Poorer countries would also attract much needed foreign investment to address the skills shortage. However, the introduction of new stakeholders did little to change global power dynamics between developed and developing countries as privatisation often took preference over the liberalisation process. Organised around the interests of developed countries, the commerce approach of the

[98] Ibid. pg. 158
[99] Ibid. pg.142

emerging GIP regime placed developing counties in a predicament. The example this study utilises is South Africa, which had to carefully balance its policies to fit international trade objectives while servicing its underprivileged citizens. Chapters three and four provide a focus discussion on the role of the international agreement and the implications it had for developing countries.

With the rules, norms and principles outlined in Table 2, the focus on the emerging GIP regime shifts to an important characteristic in the context of this study. As mentioned earlier, a significant debate within the emerging GIP regime is centred on the contested vision for the regime. Cogburn (cited in Braman, 2004) notes that "On the one hand, there is a broad vision for the GII that would focus on using its potential to maximise social-welfare and socioeconomic development. This vision is promoted largely by stakeholders in developing countries (such as South Africa, Egypt and Malaysia) and the international development community (the ITU, United Nations Economic Commission for Africa [ECA], the Economic Commission for Latin America and the Caribbean [ECLAC], Canada and some sections of the European Commission [EC]...On the other hand, there is a more narrow vision for the GII that would focus on its potential for economic growth and development. This vision is promoted by another group of stakeholders, located largely in the United States and other economically developed countries and organisations."[100] Well documented in the digital divide literature, contested visions pose serious problems for countries such as South Africa looking to gain the most out of electronic commerce but also aiming to provide universal access to its citizens.

The problem manifests itself in the form of commercial interests that neglect much needed areas of development in favour of areas where profitability would be high. Less involvement by government due to liberalisation and privatisation effectively leave the telecommunications sector in the hands of foreign profit-seeking firms that reduce the emphasis on the social objective of providing universal access/ service. Although this problem is not unsolvable, it does affect the regime as it navigates its way toward a

[100] Braman, (2004) pg. 155

global information economy. Therefore the following section will expand more on the epistemic communities that ultimately drive governance issues in the emerging GIP regime.

2.4.2 – Power relations in the emerging GIP regime

In a broader sense, the digital divide had become a concern in developed countries as well. In fact, Wilson (2004) notes that: "Beginning in 1999, there was a veritable explosion of private-sector interest in the digital divide and other distributional dilemma. These high-level expressions of private-sector interest in the digital divide were unprecedented."[101] Wilson provides a brief description of the four forces that stimulated the renewed interest. The four forces were (1) formal meetings on the divide at the World Economic Forum in Davos, (2) a new campaign on digital opportunity that was launched by leading corporations under the banner of the Global Business Dialogue (Electronic Commerce), (3) a Digital Opportunity Task (DOT) Force of leading global ICT companies and other nongovernmental groups tasked to provide recommendations to the G8, and (4) the Global Information Infrastructure Commission's (GIIC) drive to put the divide at the top of its agenda. But has this interest from powerful international organisations lost momentum within the regime? Cogburn's (2004) study of elite decision-making and epistemic communities investigates the stakeholders that influence the regime and attempts to verify which vision will direct the regime.

As a consequence of its influential stakeholders, the emerging GIP regime has had to deal with the dominance of the electronic commerce approach in the GIS. Despite conferences held to promote the developmental aspect of the information society, such as the World Summit on the Information Society, the tendency toward electronic commerce has tended to dominate. "Currently, the GIIC activities are organised into three 'committees': infrastructure development, electronic commerce and education. Structurally, all of these committees are in fact designed to support the continued growth and development of global electronic commerce."[102] This is not difficult to understand as sustainability in the

[101] Wilson (2004) pg. 337
[102] Braman, (2004) pg. 157

information age rested with the profits of online companies such as Microsoft, Amazon, Google and Yahoo! These multi-billion dollar corporations have driven research and development of hardware and software to a level that can influence the commerce-driven approach of the emerging GIP regime. The widespread liberalisation of the telecom industry has meant that these companies can now outsource their services and support capabilities and create a global industry in itself. Their influence has also flowed into the decisions that powerful states take in fostering the necessary environment to tap into these profits.

At an organisational level, the intention of the United States' private sector not to support the ITU as an international forum was made at the beginning of the liberalisation trend in the emerging GIP regime. According to Cogburn (cited in Braman, 2004), the ITU was perceived as being a mouthpiece for developing countries. As an alternative, private sector support tended toward the WTO and ICANN. "Western governments are actively supporting their TNCs in the ICT and telecommunications sector by influencing the rules of the international regulatory regime...Most Western governments are therefore trying to set the agenda of international institutions such as the G7, the OECD, the WTO, the World Bank and the ITU."[103] Given the broad nature of the emerging GIP regime and the number of relevant actors involved, concerns have been raised about the elite-centred decisions that have taken place in the emerging GIP regime. Cogburn (2004) notes that the problem with weak developing country influence is that "it appears that the lack of influence stems from the inability of developing countries and the international development community to influence the episteme, or fundamental knowledge, upon which the regime is built and to master the multiple processes of global regime formation."[104] Despite the process of globalisation flattening hierarchies and increasing decentralisation, the exclusionary tactics that Cogburn (2004) discusses are largely due to elites influencing international policy negotiations. This elite-driven process largely operates in the halls of international conferences:

[103] Audenhove et al. (1999) pg. 395
[104] Ibid. pg. 159

"These conferences can help to develop and promote the principles, values, norms and, on occasion, even rules for an emerging global regime by facilitating the spread of knowledge and promoting convergence of expectations amongst this diverse group of stakeholders."[105] The potential these conferences have to stimulate the formation of epistemic communities has become apparent over time. In the context of the emerging GIP regime, these conferences have developed the epistemic communities for the contesting visions of the regime.

As much of this study has discussed, the line has clearly been drawn between the contesting visions of electronic commerce and social development. With the WTO backing the interests of electronic commerce, its position of power has been increased relative to the ITU. But how can developing countries possibly compete in such an environment? Cogburn suggests that: "if we are to maximise the GII as a platform for socio-political development and economic growth, increased levels of global participation are required. This must go beyond access to these elite decision-making processes by the diverse voices of the developing world and the international development community to include finding ways to enhance their ability to influence the epistemic communities and knowledge networks."[106]

The probability of developing countries re-organising the power centres of the emerging GIP regime are weak, but having been signatories on the WTO Basic Agreement on Telecommunications does provide some optimism. South Africa's role in the emerging GIP regime is characteristic of the experience many developing countries are dealing with. Representation at the decision-making conferences is more of a symbolic gesture than constructive negotiation therefore leaving the interests of developing countries sidelined to priorities of an electronic commerce global framework. With Western European, Japanese and American interests at the heart of the electronic approach to the emerging GIP regime, South Africa's interests of social development through ICT clash with the rules that are forming in the decision-making structures of the regime. This

[105] Ibid. pg. 161
[106] Ibid. pg. 178

tussle is explored in chapter four. However, the theoretical base of this study notes that in the realist tradition of regime theory, states can cooperate through agreed-upon rules of conduct but that the regime is dependent on the hegemon to support the infrastructure and compel members to contribute to the maintenance of the regime. Additionally, the cooperation that takes place is based on the assumption that states are rational and act only to further their own interests. This explains why the power dynamics in the emerging GIP regime are distorted since rational actors do not act on behalf of the common interest, which amounts to a failure to provide the group with a public good. Olsen (cited in Hasenclever et al, 1996) sums up that "in the absence of coercion or additional inducements beyond the potential benefits of the public good itself, large groups will fail to produce collective goods."[107] In this case, the hegemon has directed the interests of the regime away from developmental objectives leaving South Africa to deal with a balancing act between international trade agreements and national development objectives.

The purpose of this chapter was to provide the theoretical base for understanding certain aspects of the above mentioned regimes. In the context of this study, power relations and the composition of the ruling structures were focussed on. This was important as the research question focuses on South Africa's response to a regime that is predominantly concerned with interests of industrialised countries. Another aspect was the influence collective action among state and non-state actors have on domestic policy. This tussle between state objectives and international trade objectives was a theme that was mentioned but will be explored in the case-study analysis. With a descriptive analysis of both the international telecommunications regime and the emerging GIP regime, the transformed rules, principles and decision-making procedures now require a specific focus that links the impact of agreements with developing countries such as South Africa. The following chapter deals with the WTO Agreement on Basic Telecommunications and the possibilities that exist for developing countries in the information economy. Despite the emerging GIP regime leaning toward commerce, the next chapter will explore

[107] Hasenclever, Mayer and Rittberger, 1996, pg. 197

whether developing countries have the possibility to balance the objectives of economic growth and social welfare in a neoliberal environment.

3

THE REGIME HAS TEETH: EXPLORING THE WTO AGREEMENT ON BASIC TELECOMMUNICATIONS

The previous two chapters have attempted to outline a specific argument in a fairly broad field of subject matter. By navigating a path through the regime theory literature and locating an argument that questions the direction of the emerging GIP regime in a realist framework, this chapter will discuss the tool used to implement the rules of the emerging GIP regime. This discussion will explain how states – like South Africa - are compelled to liberalise their telecommunications sectors because of their commitments to the rules of the emerging GIP regime. A brief investigation into the WTO Agreement on Basic Telecommunications provides the context in which developing countries are engaging in the emerging GIP regime. By emphasising the important role the WTO plays in establishing the rules, norms and principles of the emerging GIP regime, it is possible to understand what procedures and agreements are central to this international organisation's role as the regulatory authority.

The purpose of such an exercise is to continue the line of thought this study has been attempting to establish. With chapter one setting the conceptual boundaries and research direction of developing countries in the 'digital divide', chapter two went about using specific elements of a theory to guide the research on regimes by highlighting power relations that exist within them. By using a descriptive analysis of the international telecommunications regime and the emerging global information policy regime to highlight their differences, this study went about locating key characteristics and epistemic communities that led each regime in a certain direction. Recognising the power relations between developed and developing countries has not only served to explain regime dynamics but also provided the context in which the WTO's agreements should be understood. As the central organisation that effectively controls the regime, the WTO is regarded by many authors to be dominated by the developed nations. With the process

of globalisation enhancing the importance of communication technology, the regulations agreed to under the WTO framework is crucial in understanding the progression of power relations in the emerging GIP regime.

3.1 – The WTO Agreement on Basic Telecommunications

As noted in the regime theory analysis, decision-making procedures – along with norms and rules – define the way states interact on certain issues. The WTO Agreement on Basic Telecommunications is a display of states cooperating in the emerging GIP regime. The agreements that are discussed below represent specific agreements that have evolved out of consultations between the many stakeholders involved in the regime. By recognising the need to liberalise global telecommunications, the WTO's drafting of the telecommunications agreement demonstrated collective action amongst states toward the liberalisation of their telecommunications sectors. As one of the most dominant organisation in the emerging GIP regime, the WTO – utilising its General Agreement on Trade and Services[108] – set out to establish rules governing trade in basic telecommunications service. These services include[109]:

- Voice telephone services (local and long distance);
- Packet-switched data transmission services;
- Circuit-switched data transmission services;
- Telex services;
- Telegraph services;
- Facsimile services

As a process that began in the General Agreement on Trade and Tariffs (GATT) Uruguay Round in 1984, where initial proceedings went about setting up the GATS, the General Agreement on Basic Telecommunications was the end result of over a decade of

[108] Rosenau and Singh (2002) note that GATS was particularly important in telecommunications governance. "Formally, GATS consists of 29 articles, 8 annexes and 130 schedules of commitments. The annexures cover specific sectors, including telecommunications. GATS is enforceable by the newly-created dispute settlement body of the WTO and overseen by one of the three new councils established, the Council for Trade in Services." pg. 252

[109] http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_coverage_e.htm (accessed 23 December, 2007)

negotiations to provide both a measure of the extent of telecommunications liberalisation in its member countries, and a mechanism for deepening commitments by these countries to liberalise their sectors[110]. Table 3 is provided to show how the Agreement on Basic Telecommunications is an integral part to the global trade in services. It represents the framework from which liberalising principles are formed on a global level.

Table 3. The development of telecommunications commitments in the GATS structure

GATS STRUCTURE	APPLICABILITY TO TELECOMS
Framework Articles	Most Favoured Nation Transparency Domestic Regulation Monopoly Providers Business Practices
Annexes	Telecommunications Annex: - Members have to supply access to and use of Public Telecommunications Transport Networks and Services - Members have to ensure transparency - Members have to be technically cooperative - Members must recognise role of international organisations
Schedules of Commitments	Market Access National Treatment Reference Paper on Regulatory Principles

Source: Adapted from http://www.wto.org/english/tratop_e/serv_e/12-tel_e.htm and Tuthill (2003) pg. 15

Having been formulated in the multilateral structures of the WTO, the principles in the Reference Paper are designed to address fundamental telecommunications areas such as basic services. "On 5 February 1998, the Fourth Protocol, establishing rules governing the future trade in basic telecommunications services, came into force. That the focus of this agreement is on basic services is significant. For while value-added services were subject to the existing GATS, basic telecommunications services such as local, long-

[110] http://www.ictdevagenda.org/frame.php?dir=07&id=188&sd=10&sid=2 (accessed 24 December, 2007)

distance and possibly international services, were not."[111] The implication of basic services falling under GATS meant that anti-competitive practices of the incumbents would come under close scrutiny as the non-negotiable introduction of liberalisation by signatories would break down the barriers set up by high interconnection[112] costs. Lowering the costs of access to the incumbent's facilities had to be central to the principles if competition would be possible. For a developing country such as South Africa, the change of rules governing basic services enables the crucial twin processes of (a) allowing new entrants access to the incumbents network so that they can resell services and (b) that competitive voice, data and wireless carriers can have access to the "last mile" facilities to deliver services to end users. It is at the "last mile" point that bottlenecks often occur, therefore requiring interconnection to be fair and affordable. The gradual introduction of competition is crucial for the sector as it attracts much-needed investment and lowers access costs for users. The process is not as straight-forward though as South Africa has learnt during its reform period. A number of factors such as strong regulation and the absence of unnecessary political intervention are important for the trade in telecommunications to run smoothly.

By having telecommunications become a basic service, the opportunity for the information society to incorporate developing countries became a reality. The importance of services has become increasingly important in the neoliberal political economy. According to Zacher (2002) trade in services currently accounts for 25 percent of international trade.[113] Previously viewed as a non-tradable entity due to its intangibility, telecommunications services have become vital for providers of a dependent good since communications with the market is crucial for effective commerce. The importance of

[111] Henderson, A., Gentle, I. and Ball, E. (2005) "WTO principles and telecommunications in developing nations: challenges and consequences of accession" in *Telecommunications Policy* (29) pg. 205 – 206

[112] Interconnection allows new market entrants access to the network of an established or monopoly provider. Shared access to customers occurs through interconnection, and access to all customers is necessary both for successful entry and for continued competition. If the incumbent, with the vast majority of customers, does not interconnect with new entrants, it is unlikely that the new entrants will remain economically viable. The price of interconnection (or transport and termination), for example, could serve as a significant barrier to entry for new networks. An incumbent monopolist has an incentive to demand a high price to terminate calls originating on a new entrant's network and pay nothing for calls originating on its own network. (http://www.cybertelecom.org/broadband/intercon.htm - accessed 21 November, 2007)

[113] Zacher cited in Rosenau and Singh (2002) pg. 205

regulating services has increased and has been reinforced in the GATS (see Table 3). Under the WTO umbrella, GATS defines services as belonging to four categories:

- Services provided across national borders;
- Services consumed abroad;
- Services for which a commercial presence is required; and
- Services through the presence of a natural person.[114]

In the case of telecommunications, many nations realised the strategic importance that low-cost access would have on their competitive success. While GATS emphasised the role of liberalisation and the reduction of anti-competitive behaviour in telecommunications through its Articles VIII and IX, developing countries feared the allocation and provision of essential services to foreign entities. "Among the fears expressed then, and indeed today, are that any agreement would threaten the right of governments to maintain public services, that liberalisation of service markets under the WTO effectively means deregulation, and that foreign investment in the supply of services tends to lead to the development of the relevant local service industry being held back."[115] These fears aside, developing countries had to be involved in the Agreement due to the importance of low-cost telecommunications in domestic and international contexts.

Enforced by a set of interrelated Agreements and Annexes such as the Annex on Telecommunications, the Fourth Protocol on Basic Communications and the Reference Paper on Regulatory Principles (RP), the WTO provided the opportunity for telecommunication development across many nations. The nature of these agreements was to introduce competition into the telecommunications arena. "This rationale is particularly relevant in the WTO context where the effective and competitive global trade in goods and services is the focus with access provided to developing nations on an equal basis with more developed nations. It follows that access to communications services is

[114] Henderson et al. (2005) pg. 207
[115] Ibid.

essential to enable developing nations to compete on the world stage."[116] The following brief analysis will explain how these agreements operate.

To improve market access and the national treatment of foreign telecom providers, the Agreement on Basic Telecommunications included 55 schedules of specific commitments. Signatories to the agreement (out of the 69 that signed, 40 were developing countries), could determine the level of liberalisation on their telecommunications services sector. Whether it was local-distance services or mobile telephony, members were encouraged to make their telecommunications service sectors competitive. "Moreover, almost all the signatories to the ABT [Agreement on Basic Telecommunications] included additional commitments concerning regulatory principles in their schedules. These regulatory principles are included in the Reference Paper, a short document negotiated in 1996. Most members took the binding commitments on these regulatory principles by including the Reference Paper in their schedule of commitments (in the additional commitments section)."[117] Of central importance to the themes this study is analysing, is the Reference Paper which manages the issue of monopolistic incumbents holding up competition in a liberalised environment. The Reference Paper (also known as the Fourth Protocol) was a critical part of the liberalisation and regulatory process. "The widespread adoption of the RP is arguably the most important lubricant to the mechanics of the GATS and the realization of its objectives in telecommunications trade liberalization."[118] Despite being a guideline, the Reference Paper addresses the problem of monopolies relinquishing their interests in domestic markets through a transparent regulatory framework. Dealing with these domestic barriers, the Reference Paper was divided into five sections. They were:

1. Anticompetitive behaviour regarding sharing of technical information;
2. Interconnection of new entrants into the telecommunications market;
3. The administration of universal service obligations;
4. Transparency regarding the licensing process; and

[116] Ibid. pg. 208
[117] Blouin, C., (2000) "The WTO Agreement on Basic Telecommunications: a reevaluation" in *Telecommunications Policy* (24). pg. 137
[118] Cohen (2001) pg.729

5. A commitment to ensure the independence and impartiality of the regulatory body.

The Reference Paper is not without faults, as authors such as Cohen (2001), Henderson et al. (2005) and others point out. General concerns are grouped into two central criticisms of the Reference Paper. Both are of equal importance and in South Africa's case, have been to the detriment of its telecommunications sector. The first deals with the lack of precision of the Reference Paper. This vagueness and high level of generality are most concerning in the areas of interconnection where the Reference Paper fails to "specify a costing basis, the degree to which networks have to be unbundled and whether a regulator can enforce an interconnection agreement."[119] These factors have left the Reference Paper open to interpretation by the national incumbents who have capitalised on ambiguity of certain principles and furthered their position as the major-supplier of services.

The second criticism feeds off the first as it recognises that it is difficult to enforce vague rules[120]. The low level of particularity has meant that anti-competitive practices can be continued as exclusivity periods (without regulated accounting mechanisms) give incumbents the flexibility needed to phase in commitments at their will. Facing these challenges, the Reference Paper has been interpreted by scholars as being a crucial set of commitments that facilitate the introduction of competition, but flawed in ensuring compliance. Although the structures exist to monitor implementation such as dispute settlements structures and trade policy reviews, the Reference Paper is obligated to respect the rights and regulatory autonomy of sovereign nations. This is important as developed and developing nations stress the need to manage their domestic affairs without the intrusion of neoliberal arrangements. However, the Reference Paper is still part of a fairly recent set of Agreements and will therefore take time to adjust to the wide range of domestic arrangements it accommodates in its generality.

[119] Ibid. pg. 739
[120] Blouin, (2000) pg. 58

Having been created in a multilateral forum with input from a number of countries, the Agreement on Basic Telecommunications may give nations the opportunity to manage their own liberalisation programmes but is also subject to international and domestic problems in the form of profit-driven foreign firms and domestic operators protecting their monopoly. It is therefore important to explore the proposed benefits for developing countries as they negotiate the pros and cons of the WTO Agreement on Basic Telecommunications.

3.2 – Questioning the benefits of the WTO agreement for developing countries

Before an analysis of how developing countries have fared as a result of the Agreement on Basic Telecommunications, it is necessary to step back and look at the role developing countries played in the negotiations leading up to the Agreement. As mentioned before, the international relations standpoint this study has taken is located within the hegemonic stability theory strand of regime theory. This neo-realist understanding notes that states are compelled to participate in the regime by a hegemon and are interested in their relative gains. This point lends itself to the discussion on developing country involvement in the negotiations leading up to the Agreement. Interestingly, developing countries were not completely marginalised in an environment where developed countries are often dominant. Instead, as briefly documented below, developing world representation and influence was evident in the negotiations. Following on, this study investigates the consequences of developing country accession to the WTO Agreement on Basic Telecommunications.

Northern versus Southern hemisphere negotiations is recognised in international relations scholarship as a being skewered toward industrialised northern states. The legacy of exploitation by the North and consequent corruption in the South has left a massive power imbalance between the two. However, given the dynamic possibility ICTs have to alter those power relations along with widespread liberalisation in global markets since the 1970s, the Agreement on Basic Telecommunications, according to Singh (2002), was negotiated under different conditions. There are two contentions about developing world participation in the information age. The first was mentioned in chapter one, whereby

developing countries have the opportunity to leapfrog stages of development so that they can engage in the information age. The second contention is that developing countries continue to be at the mercy of developed countries and powerful multinational corporations. This would effectively rule out any influence at decision-making in multilateral negotiations. Both contentions affect developing countries to a certain degree and an example of this is displayed by the power relations between developing and developed countries in the emerging GIP regime. A useful illustration of developing country coordination (in a realist tradition) is seen in the gains made during negotiations. As Singh (2002) notes, developing countries did make significant gains at the bargaining table. Developing countries ensured that:

1. Their participation in the negotiations ensured that they could influence the agenda in their favour;
2. That having moved away from inward-oriented investment policies allowed global investment;
3. That they could phase in the commitments into their domestic policies in a sequenced fashion; and
4. That a one-size-fits all package was avoided due to the fact that commitments could be made in several sub-issue areas.[121]

This effectively slowed down the pace of transition so that developing countries would not encounter a "shock therapy" plan of liberalisation.

How did these achievements come about? As a recent trend in global politics has shown, the rise of South-South cooperation has started to alter power relations among developed and developing countries. In the case of ICT, the newly liberalised markets of developing countries were able to negotiate a more inclusive approach by using certain strategies. The first strategy was inclusion and agenda setting which enabled developing countries to influence the agenda in the WTO, making their presence felt. The second strategy was trade-offs and issue linkages in which Singh notes that "the fact that countries were making several different types of *sub-offers* within the rubric of the WTO telecom negotiations, which themselves were part of the GATS framework allowing several types

[121] Rosenau and Singh (2002) pg. 241

of commitments and exemptions, allowed them to tailor the agreement to their context to a large extent."[122] The third strategy included coalition building, between developing countries and strategic companies and governments from industrialised countries, which gave developing countries assistance in the WTO negotiations. Finally, by using technocratic and legalistic strategies, developing countries were able to negotiate on terms that were on par with developed countries. Given the advantages of being able to negotiate with greater influence, developing countries were given the opportunity to participate in global rule and norm formation. In the context of this study, exploring the purpose of these strategies and developing country participation is important in understanding how the emerging GIP regime accommodates a wide range of interests despite being aligned to the electronic commerce approach. As an indication of the applicability of regime theory, the inclusion of developing countries interests demonstrates that coordination in the international system is possible between sovereign nation-states. The strategies used, emphasises the theoretical argument that this study has established by noting that coordination among states serves their interests rather than the international system as a whole. On a systemic and domestic level, developing countries created favourable outcomes in an environment dominated by neoliberal-minded developed countries. Despite having little other alterative than signing the Agreement, developing countries coordinated their interests to the relative benefit of their domestic conditions and therefore furthering the collaborative purposes of the regime.

Understandably, developing countries did not want to be left out of an agreement that could alter the development patterns and allow them to participate in the information economy through affordable telecommunications access. Therefore the negotiations that took place along with the consequent agreement should be placed in the power dynamic framework this study has utilised. The developments that took place in the GATT Uruguay Round were a dense network of discussions that cannot be covered in this analysis. Instead the above description of strategies used merely sought to highlight the important role developing countries have played in assuring preferential conditions for their domestic telecommunications liberalisation process. By doing so, proponents of the

[122] Ibid. pg. 244

liberal institutionalist tradition would note that favourable outcomes have resulted out the regime's tendency to promote the common good. Realists would note that states were acting in their own interests and were concerned about their relative gains as opposed to international collaboration.

Both approaches have a point, but as mentioned in chapter two, the focus of the international relations discipline in this study is located in a neo-realist regime context. Therefore, the following section takes into account that states are primarily influenced by a hegemon and are self-interested in relative gains for themselves. For both developed and developing countries, the negotiations served their individual interests as being an attractive destination for investment (developing countries) and the entrenchment of the neoliberal system (developed countries). As Singh notes "the negotiations not only involved multiple issues but also a variety of actors which would allow developing countries to define attractive alternatives. The first type involved other international organisations [UNCTAD, ITU, World Bank]. Second, telecommunications operators, large users and, to some extent, equipment manufacturers, were involved in direct lobbying either through their home governments or directly in Geneva." Acknowledging these groups is important, especially since this study's context is largely located in a neo-liberal era with open capitalist markets and the resources multinational corporations have in influencing domestic policies. For developing countries, the benefits accrued by their negotiation strategies have to be compared against their obligation to adopt neoliberal principles and allow foreign firms to assist develop its telecommunications industry. Demonstrating the benefits and costs of the above scenario is South Africa and its domestic liberalisation schedule enforced by the WTO Agreement on Basic Telecommunications.

The above discussion is tabulated in Table 4 as a means of highlighting the costs and benefits of developing country accession to the WTO Agreement on Basic Telecommunications. It highlights the key points that signatories to the Agreement have to take into consideration as they reform their telecommunications industry to allow participation in the electronic commerce approach of the emerging GIP regime.

Table 4. – Illustrating the benefits and costs of developing country accession to the WTO Agreement on Basic Telecommunications

	BENEFITS	COSTS
SYSTEMIC	- Cooperation in the international system - Inclusion in the emerging GIP regime - Participation in global rule formation - Signs of developing world solidarity	- Subject to neoliberal market system - Dependence on developed countries for services and skills
DOMESTIC	- Commitments can be sequenced into the sector - Provision to roll-out infrastructure through exclusivity periods - Inflow of foreign investment	- Incumbent still has monopoly on services - Generality of Agreement allows political interference - Lack of compliance can lead to further marginalisation of the poor from the information economy

Source: Ranchod, Y. (2008)

South Africa's commitment to domestic liberalisation as a result of signing the Agreement demonstrates that compliance is not necessarily ensured. A detailed description is provided in chapter four; however certain points require mentioning in this discussion. Recognising that a substantial amount of foreign capital investment was available once the Agreement was signed, South Africa committed itself to liberalising its telecommunications sector in a sequenced fashion. The partial privatisation of its incumbent brought in capital and skills but in the process displayed the flaws of the Reference Paper. South Africa's incumbent operator, with assistance of its business partners and the government, capitalised on the lack of specificity and prolonged its exclusivity period. What can be concluded from the above discussion is that the South African case highlights the centrality of state self-interest in the emerging GIP regime. Regime coordination assisted the government in bringing in capital and also ensured that

South Africa's social objectives could be addressed through managed liberalisation. Although preferential terms were acquired for South Africa's liberalisation process, the resulting events over the last decade can be attributed to poor internal compliance which is discussed in detail in chapter four.

The important point made through the discussion on the benefits of accession to the Agreement on Basic Telecommunications is that states are afforded the opportunity to benefit from the signing the central agreement of the emerging GIP regime. Although weaker states were compelled to sign by international pressures such as a dependence on the neoliberal political economy and the regime's hegemon, potential benefits do exist since developing countries provided valued input in the negotiations leading up to the agreement and have the chance to develop their electronic commerce capabilities in the neoliberal environment. Although developing countries are committed to develop neo-liberal policies through the direction of the WTO vis-à-vis the US, regime theory allows for international coordination to take place in the international system. This sets a minimum floor of agreed-upon standards that states have to follow to avoid disputes with the WTO. In telecommunications, domestic liberalisation is difficult to achieve given opposing factions of the implementation debate. With domestic monopolies, government agencies and enriched individuals opposing liberalisation because of the introduction of competition and multinationals and international organisations favouring it, the implementation of the WTO Agreement on Basic Telecommunications in developing countries requires careful consideration. Through the above debate, this study has concluded that in terms of regime theory, all states have the inclination to coordinate on an international level. However compliance is not necessarily ensured as areas of the Agreement allow for private interests to obstruct a planned liberalisation process and therefore stunt growth in the domestic telecommunication industries. The specific areas of contention are important to understand and are expanded upon in the following section.

3.2.1 – Commitments of contention

Thus far, the attempt at the international level to arrange an agreement that satisfied both developed and developing countries had been relatively successful. However, a look at the specific commitments in the Reference Paper highlights the disparity between international agreements and domestic implementation. The first issue regards setting up an *independent regulatory authority*. With a goal of achieving impartiality between the regulator and market participants, the independent regulator is a crucial aspect of the commitments found in the Reference Paper. The task of a regulator can best be described by looking at South Africa's regulatory authority, ICASA. Its tasks include[123]:

- Making regulations and policies that govern broadcasting and telecommunications;
- Issuing licenses to providers of telecommunication services and broadcasters;
- Monitoring the environment and enforce compliance with rules, regulations and policies;
- Hearing and decide on disputes and complaints brought by industry or members of the public against licensees;
- Plan, control and manage the frequency spectrum; and
- Protecting consumers from unfair business practices, poor quality services and harmful or inferior products.

Fulfilling these tasks is equally important as the independence from government needed by the regulator. "It is widely accepted that independent regulation is an essential ingredient of structural reform in a country's telecom sector and that its presence or absence will directly affect the quality and speed of that reform. It is, *inter alia*, crucial to raising investment capital and to ensuring efficient and responsive service delivery, whether in a competitive or exclusive supply market."[124] The consequences of

[123] http://www.icasa.org.za/Content.aspx?Page=17 (accessed 24 October, 2007)
[124] Cohen, T. (2003) "Rethinking (Reluctant) Capture: South African Telecommunications and the Impact of Regulation" in *Journal of African Law* 47, 1. pp. 70

interference and the reversal of decisions made by the regulator is a critical blow to its credibility as an authoritative institution.

As Henderson et al. (2005) notes, there are two dimensions to regulating the telecommunications sector. The first is to have separation of the regulatory function from the operating function and secondly to have separation of the regulatory function from policy function.[125] Despite being a straightforward task within the sector, both dimensions take into account international and domestic factors as independent regulators have faced political intervention in developing countries. In the first dimension, problems surrounding the making of technical standards as well funding of the regulator has caused tension in many developing countries. In both cases, the involvement of the monopolistic incumbent has blocked the implementation of international standards and efficient regulation of the sector. The second dimension has often been obstructed by political intervention. "This is because political influences often occur at the individual (person or company) level whether through favouritism or animosity. Political influences therefore directly impact upon the ability of a country to comply with the impartiality aspect of the principle of separation of policy and regulatory functions contained in the Reference Paper."[126] A combination of inefficient resources and delays in decision making procedures makes the Reference Paper a tough set of commitments to follow given the resource problems and lack of expertise developing countries face.

The second issue of contention regards *competitive safeguards* against telephone network providers exploiting their market position. Baer (cited in Dutton, 1996) highlights that the failure to introduce fair competition would result in a loss of benefits such as[127]:

- Lower prices to telecommunications users;
- More variety of, and faster innovation in, service offerings;
- Greater usage of telecommunications services;
- More investment in the telecommunications sector;

[125] Henderson, Gentle, Ball (2005) pp. 210
[126] Ibid. pp. 211
[127] Dutton, (1996) pp. 357

- Productivity gains by telecommunications users, leading to increases in growth and output in other sectors; and
- Increased overall GDP growth arising from positive externalities associated with telecommunications networks.

Taking these points into consideration, it is vital that the actions of major suppliers[128] of telecommunication services are not harmful to the sector. The Reference Paper states that "appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices."[129] These practices include cross-subsidization, improper use of information obtained from competitors and withholding technical and commercially relevant information about essential services. The conflict that stems from non-compliance with this commitment relates to government ownership of the incumbent which compromises the liberalisation commitments of the Reference Paper as government would have national objectives to support its 'own' telecom operator as its main interest. Therefore, the introduction of competitive policies by government does not necessarily proceed swiftly due to their shareholding interests. The stagnant introduction of competition is due to the fact that government derives huge dividends, through phone revenues, by controlling its own monopoly operator. This situation places developing countries in a tangle as they desperately seek foreign investment in an environment where governments are not keen to relinquish their hold to the commitments in the Reference Paper.

The third commitment, and possibly the most important, is the *interconnection* requirements. As discussed earlier, interconnection enables new entrants access to the network of the monopoly provider. If cost for this process is kept high, the chance of competition is slim as new entrants would not be able to compete with the monopoly.

[128] According to Cohen (2001: 738) a 'major supplier' is one defined as one that can materially affect the terms of participation (price and supply) in the relevant market for basic telecoms services as a result of its position or its control over 'essential facilities'.
[129] Cited in Henderson, Gentle, Ball (2005) pg. 212

Some of the provisions made in the Reference Paper for interconnection with the major supplier ensure that it is provided[130]:

- At any technically feasible network point;
- Under non-discriminatory terms, conditions and rates of a quality no less favourable than provided for its own like services, those of non-affiliated suppliers or subsidiaries or other affiliates; and
- Sufficiently unbundled so that the supplier need not pay for network components it does not need.

Interconnection essentially allows smaller operators to compete with monopolies and large operators. "Further, regulation of interconnection is fundamental where major suppliers exist, being suppliers with market power which have no incentive to open their networks may levy monopoly rents when providing access."[131] Problems such as these have been apparent in the South African case and will be explored in the next chapter.

The final commitment that this study looks at is the provision of *universal service*[132] and infrastructure investment. As a goal that many developing countries have as well as being established in the Reference Paper, the provision of universal service is a complicated process given the vast degrees of under-development across countries. The provision often has mixed results because of exclusivities granted to the incumbent. The unfavourable results have become apparent in South Africa whose goal to address the inequalities of the apartheid era were stated early on, but have not materialised over the last decade. A number of internal factors have obstructed the roll-out and affordability of telecommunications in South Africa. While the Reference Paper is adamant on improving

[130] Tuthill, L. (October, 2003) *Telecom Regulations and GATS Rules,* Regional Seminar on Telecom and Trade Issues, (ITU-ESCAP-WTO, Bangkok). Available at www.unescap.org/tid/mtg/ituwtoesc_s4_wto.pdf (accessed 3 January, 2008)
[131] Ibid. pg. 214
[132] The ITU defines universal *service* as: "policies focused on providing individual household connections to public telecommunication network." And universal *access* as: "policies focused on ensuring that all people have reasonable means to access a publicly available telephone in their community (but not necessarily in their home) through shared use of lines or terminals including public payphones, community telecentres, teleboutiques or community Internet access centres." Available on http://www.itu.int/ITU-D/treg/Events/Seminars/2003/Mongolia/37-Universal%20Service-Access.pdf (accessed 2 November, 2007)

accessibility, part of the blame is located at the intentions of the Ministry to grant Telkom an exclusivity period without the adequate regulatory mechanism to marshal the roll-out. Another part includes the Reference Paper's vague language used to articulate this principle and how to determine who should be a universal service provider which could lead to signatories designing measures to protect local firms[133]. But in this vagueness, signatories are granted the flexibility to fashion their policies on their unique circumstance.

These commitments are central to understanding how the Agreement on Telecommunications would go about liberalising domestic industries. The vague nature of some commitments indicates the wide spectrum of countries that have signed the agreement. "Although GATS Members have committed to a common vision on liberalization in signing the Protocol, it is evident that within the divergent country membership, non-economic policy objectives, often appearing contrary to the GATS ideals, will be pursued. These cannot always be quantified in empirically measurable ways, and will mean different things to different countries at different times."[134] Taking into account these divergent interests, the guidelines of the Reference Paper suited the interests of developing countries sufficiently for them to subscribe to the electronic commerce approach of the emerging GIP regime.

This chapter discussed the WTO Agreement on two levels – systemic and domestic. On both levels there were conditions such as potential investment and sequenced liberalisation that suited domestic countries. However, the commitments also meant that developing countries would be subject to the neoliberal system of reduced government intervention for social development projects (see Table 4). Through the cooperation of state and non-state actors on a certain issue, the WTO Agreement has become an enforcement mechanism of the regime. Although countries - such as South Africa - were compelled to join or risk suffering exclusion from the information economy, their interests were sufficiently satisfied and therefore contributed to maintenance of the

[133] Cohen, (2001) pg. 743
[134] Ibid.

emerging GIP regime. The following chapter will now build on the analysis provided above. With a historical overview of the South African telecommunications industry at first, the next chapter will progress into a study of South Africa's response to the emerging GIP regime with a specific focus on the WTO General Agreement on Telecommunications and the Reference Paper.

4

THE TELECOMMUNICATION REFORM EXPERIENCE: A CASE-STUDY OF SOUTH AFRICA

Before an analysis of telecommunications restructuring in South Africa can take place, it is necessary to briefly locate this case-study in the theoretical scheme of this dissertation. Thus far, a determined effort has been made to understand the position of developing countries in the emerging GIP regime. To do so, a detailed analysis of regime theory and the telecommunication regimes was required. This was necessary because there is a need to explore in which direction the emerging GIP regime is heading. Having established that an electronic commerce had trumped a welfare motivation for the regime, it became clear that the current neoliberal environment has shaped the norms, rules and principles of the emerging GIP regime. Within this context, it is important to remember that developing countries did not gain a significant amount of leverage due to the influence developed countries have in the central organisation of the regime – the WTO. However, unlike past circumstances, developing countries, with the aid of non-state organisations, were not sidelined in the negotiations leading up to the WTO Agreement on Basic Telecommunications. As a result, developing countries could determine their level of liberalisation in their respective telecom industries but subsequently became dependent on the neoliberal system for participation in the information economy. The conflict that resulted involved balancing domestic socio-economic concerns whilst observing their obligations to liberalise their industries as required in the WTO Agreement on Basic Telecommunications. At this stage, it becomes important to introduce South Africa into the debate to justify the claims made throughout the study. As a developing country with ambitious ideals in its telecommunications policy, South Africa has had to deal with hurdles such as a profit-seeking monopoly that controls the infrastructure, problems with establishing an independent regulator and government intervention in the liberalisation

process. The challenges South Africa's telecommunications sector faces are a significant part of its response to the emerging GIP regime.

This chapter takes this context into account as it provides an in-depth analysis of South Africa's telecommunications restructuring process through the lens of its commitments to the rules, norms and principles of the emerging GIP regime. The chapter has been divided into four sections. The first section provides a brief history of South Africa's telecommunications industry on a domestic and international level. It takes into account the socio-economic disparities caused by Apartheid and describes the transition of the telecommunications industry in the 1990s. The second section discusses South Africa's response to the emerging global information policy regime. A number of factors are involved as the analysis looks into the general liberalising trends of the global neoliberal environment and South Africa's subsequent response to competitive practices negotiated at the WTO. South Africa's role in the epistemic communities that have formed in the emerging GIP regime is explored to highlight its position in the developing world vision for the information society. Section three looks specifically at South Africa's response to the WTO Agreement on Basic Telecommunications. The discussion takes issues such as anticompetitive practices and the role of the regulator into account as it applies it to South Africa's telecommunications restructuring process. This section will also assess whether South Africa has made its telecommunications industry accessible to its previously disadvantaged citizens or susceptible to privatisation efforts. Section four concludes the case-study by evaluating South Africa's response to the emerging GIP regime's enforcement mechanism – WTO Agreement on Basic Telecommunications. Explained through the theoretical lens of regime theory, South Africa's response highlights the important role of international and domestic factors as it creates a telecommunications sector that abides by international trade objectives and domestic accessibility concerns.

4.1 – AN HISTORICAL OVERVIEW OF SOUTH AFRICAN TELECOMMUNICATIONS

When looking at South Africa's response to telecommunications reform vis-à-vis the emerging GIP regime, it is important to understand the broader socio-political transformation that the country went through. Until 1994, the majority of South Africans

were ruled by a white minority that enforced a ruthless system of segregation. This racially based system inhumanely subjugated non-white South Africans and distorted geographic areas of development within the country. Consequently, large groups of citizens within South Africa lacked the necessary infrastructure and skills to enter the information economy. As democratic reform was realised in 1994, the South African government had to go about restructuring an imbalanced economy and telecommunications industry. Despite the clear socio-economic disparities in its society, South Africa has one of the most sophisticated ICT infrastructures in Africa. As early as 1998, it was noted that: "There are more than 4.2 million telephone mainlines installed throughout the country. Over 70 percent of the South African public-switched telephone network is digitalized, with over 259,000 kilometers of fiber-optic cable."[135] Nevertheless, the South African government could not escape the fact that the concentration of resources was in predominantly white areas while many rural areas did not even have basic access to telephones.

The telecommunications authority during apartheid rule operated under similar conditions of other countries in the international telecommunications regime. A postal, telephone and telegraph (PTT) monopoly ran the state's telecommunication system. Specifically, the South African Posts and Telecommunications (SAPT) controlled the industry through "legally monopolizing postal and telecommunications services and operating a system characterized by internal cross-subsidies."[136] The first of the three norms of the international telecommunications regime – jointly provided services – was apparent in pre-democratic South Africa. At the time, it was regarded as necessary to have communications organized as a single, interconnected and integrated network that demonstrated economies of scale and scope.[137] The thinking behind 'natural' monopolies in the telecommunications sector is not unique to South Africa and was an accepted means of providing basic networks universally. However, in the case of South Africa, this picture was distorted as the concentration of resources was in line with discriminatory

[135] Cogburn, D. (1998) "Globalization and state autonomy in the information age: Telecommunications sector restructuring in South Africa" in *Journal of International Affairs*, vol. 51, issue 2, Spring
[136] Horwitz, R. B. (1994) "The Uneasy Relation Between Political and Economic Reform in South Africa: The Case of Telecommunications" in *African Affairs,* 93. pg. 362
[137] Ibid.

apartheid policies. Therefore, unlike other countries that used their monopolies which "typically marshaled cost-averaging and value-of-service pricing mechanisms to extend service universally, the SAPT historically utilized these practices to extend service mainly to whites and to business."[138] The second norm of the international telecommunications regime – having standardized networks and equipment – once again applied to the South African telecommunications sector. Largely facilitated through an industrial policy between the SAPT and domestic equipment providers, equipment production was done domestically through long term contracts with South African companies. These contracts set in place local manufacturing capacity that was not threatened by international companies. Contributing to the shortage of skills contemporary South Africa now faces, was the reservation of jobs in the manufacturing sector for whites only. Job reservation was not the only case of government involvement as the SAPT was classified as 'state business enterprise' that was run through the office of the Minister of Transport and Communications. The ideology behind Ministerial intervention – apparent in other PTTs – would have implications that account for the current failure in liberalizing the telecommunications industry. As section three of this chapter will indicate, the apartheid hangover of state intervention has caused significant delays in the liberalizing process.

The two norms of the international telecommunications regime mentioned above place South Africa in the framework of the consensual international practices of the time. As part of an international system that legitimised government involvement in running the telecommunications industry, the SAPT could control tariffs and service delivery but lacked capital input to rollout further projects. In addition to the monopolistic structure that South Africa, like many other countries, established was the apartheid system that further distorted the socio-economic conditions for the majority of people as well as stifling access for quality service and a competitive environment for businesses. The downfall of the SAPT as an apartheid-run organisation ran parallel to the international trend of liberalization in telecommunication sectors. A combination of domestic political and economic factors meant that South African telecommunications would enter an era of

[138] Ibid. pg. 363

proposed reform whereby a celebrated democratic transition would set the tone for policies that redressed the inequalities of the monopoly-run industry and the apartheid government. Despite the optimistic rhetoric of change, the transition of the telecommunications industry would not be as successful as anticipated.

4.1.1 – South African telecommunications in transition

Due to the wave of global liberalization and technological innovation as well as domestic-related pressures such as the anti-apartheid movement and dealing with a debt-ridden department in the 1980s and 1990s, the need came to separate the SAPT for the improvement of telecommunication access and affordability in South Africa. As has been mentioned in previous chapters, the shift toward liberalization did not necessarily reflect the end of monopoly operators. In 1991, the telecommunications and postal operations of the SAPT were separated, "with the telecommunications functions being vested in Telkom, a new 'commercialized' enterprise maintaining a monopoly in the provision of fixed telecommunications services."[139] The highly profitable industry of telecommunications meant that the South African government had a vested interest in having a majority share in Telkom. This shareholding has been contentious over the last decade, leading to irregularities with the regulator and the delayed introduction of a second network operator (SNO). As Cohen notes, "Beyond structural modifications affecting financial operations and corporate governance, the locus of power and the mechanics of monopoly however, remained largely unaltered."[140] But South Africa was determined to redress many of the social inequalities that persisted in its democratic era. With high-level leadership encouraging the development of ICT infrastructure and an ambitious socially-driven government policy, South Africa detailed its objectives in the 1996 Telecommunications Act[141]. With dedicated objectives that were located in the public interest, the Telecommunications Act stressed important policy goals such as universal service, consumer protection, competition and innovation, growth and investment and the ownership and control of services by historically disadvantaged

[139] Cogburn,D and Adeya, C. A. (September 2001) "Prospects for the Digital Economy in South Africa: Technology, Policy, People and Strategies" in *WIDER,* (United Nations University) pp. 5
[140] Cohen, T. (2003) pg. 66
[141] Telecommunications Act No. 103 of 1996, amended by Act No. 64 of 2001 available on www.info.gov.za/gazette/acts/2001/a64-01.pdf (accessed 3 October 2007)

groups[142]. To honour these goals, the government envisioned these development priorities in its White Paper on telecom policy. The ideals of the White Paper were put in the Telecommunications Act but more significantly changed the way telecommunications would be regulated by establishing an independent regulator to achieve the above stated goals. This separation of policy formulation, operations and implementation was done through the South African Telecommunications Regulatory Authority (SATRA).

In 2000, SATRA would merge with the Independent Broadcasting Authority (IBA) through the Independent Communications Authority of South Africa (ICASA) Act to form a new regulator, ICASA. Meanwhile, the government's notion of gradually introducing competition into the sector meant that Telkom would be granted an exclusivity period to concentrate on the rollout of service and infrastructure to previously disadvantaged areas until 2002.[143] While being granted exclusivity, Telkom was partially privatized in 1997 as part of the reform process. "The government sold a 30 per cent stake in Telkom in March 1997 to a 'strategic equity partner', Thintana Communications, formed by the US company SBC and Telekom Malaysia. The details of the shareholder contract remain confidential, however SBC appeared to assume a significant degree of control over much of strategic and operational decision-making, effectively meaning Telkom is driven by private-sector imperatives."[144] Critics such as Horwitz (2007) and Makhaya and Roberts (2003) attribute a significant part of the troublesome liberalization process at the feet of government's interference with the regulator. Criticisms such as these will be dealt with in further sections.

The tendency toward widespread social reform witnessed in South African telecommunications quickly faded by 2001. As Cohen (2003) notes, "A new 'development speak' removed from the lofty goals of the initial Reconstruction and Development Program, now sees articulation in the "maximization of state assets", as

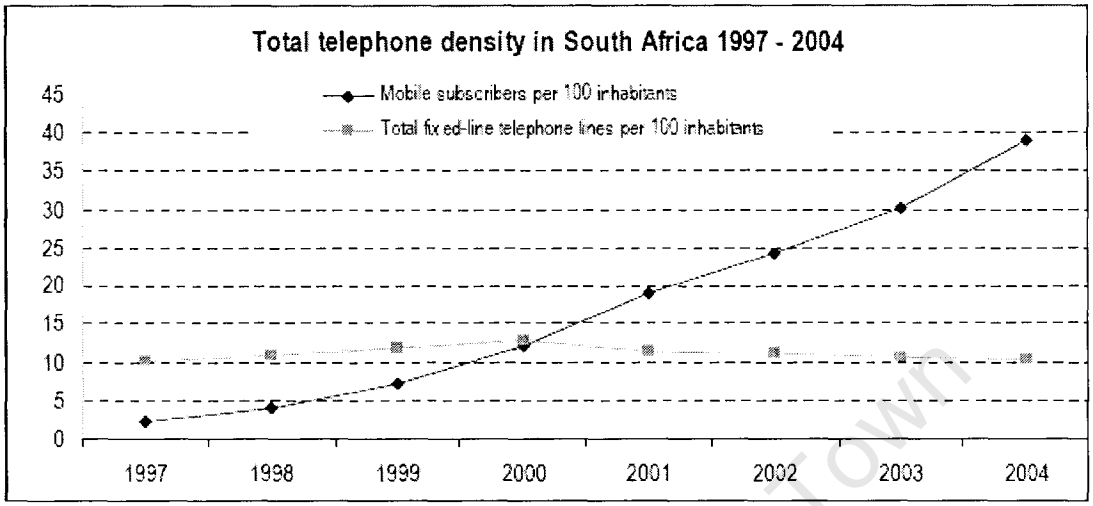
[142] Cohen, (2001) pp. 731
[143] Telkom was awarded exclusivity in fixed-line voice telephony for 5 years (to 7 May 2002) with a range of conditions that included the rollout of 2.6 million lines in total of which 1.6 million would be set aside for under-serviced areas.
[144] Makhaya and Roberts, (2003) pp. 47

part of a broader plan to restructure state-owned enterprises."[145] With a shift in focus toward improving revenue for the state, the government added legislative innovations that secured their stake in all major licenses. An example includes the SNO that was licensed in 2006 (three years after the agreed-upon date). As a direct competitor to Telkom, the SNO would contain a 30% stake that belonged to Esi-Tel and Transtel, the communications division of the state-controlled electricity and transport utilities respectively.[146] The idea behind employing other sources of telecommunications service involved the need to seek alternatives to Telkom's predatory actions. The introduction of the Neotel (the SNO) has recently occurred with its composition made up of Empowerment Enterprise Nexus Connection (19%), Eskom and Transnet (30%). The remaining 51% is held by a number of domestic and foreign private sector companies[147].

Constrained by high tariffs and Ministerial intervention, the business and public sector have undoubtedly been harmed by the exclusivity period granted to Telkom as a result of South Africa's commitments in the Reference Paper to liberalize and privatize its telecom sector. The ambivalent nature of government rhetoric about universal access and Ministerial intervention against the regulator leaves the telecommunications sector in an unsettling state. Numerous reports note that while access to telephones has improved since 1994, the rising rate of connectivity can almost solely be attributed to the boom in mobile communications meaning that Telkom's exclusivity period ultimately failed. Figure 3 is a useful representation of this failure as the seven year period from 1997 to 2004 yielded little progress in the fixed-line users. In contrast, mobile subscribers increased dramatically over the same period. A primary reason for Telkom's poor performance is the high tariffs it charged which left subscribers with no alternative than to disconnect their lines. The portability, relatively low cost and pre-paid structure of mobile phones enabled a far wider spectrum of users to have access to ICT.

[145] Cohen (2003) pg. 68
[146] Ibid. pg. 69
[147] "Neotel Issues Challenge to Telkom" in *African Business*, no. 327, January 2007, pp. 20

Figure 3: Total Telephone Density



Source: Gillwald, A. and Esselaar, S. (December, 2004) "South African 2004 ICT Sector Performance Review" in *LINK Centre Public Policy Research Paper, no. 7* (WITS University: LINK Centre) pg. 17

The rate of disconnections on land-lines far outnumbering that of connections in under-serviced areas was a direct consequence of high tariffs imposed by Telkom which was protected by the Ministry and profit-seeking motives of the private firms that made up the incumbent. "The South Africa experience shows that the incumbent will tend to have the Ministry's ear, and – perhaps because – the Ministry is keenly attentive to the company's share price in the event of future public offerings."[148] The consequence of such actions cannot be taken lightly as this study earlier argued that telecommunications is a crucial tool for South Africa to successfully compete in the international economy. This brief overview focused on certain aspects of the telecommunications sector, while the following summary adopted from Barendse (2004) provides the highlights of the period 1993 – 2007. Reform of the South African telecom market was characterized by:

- Phased opening up of the market in distinct stages (1993–2007);
- Partial privatization (1997, 2002); and
- Re-design of the regulatory authorities (1996, 2000).

[148] Horwitz R. B. and Currie, W. (2007) "Another instance where privatization trumped liberalization: The politics of telecommunications reform in South Africa – A ten-year retrospective" in *Telecommunications Policy* (31), pg. 460

As part of a program of massive legislative reform, numerous telecom initiatives were enacted (Telecommunications Act of 1996, Competition Act of 1998, Independent Communications Authority of South Africa Act of 2000 and Amendment to the Telecommunications Act of 2001), various authorities were created (Convergence Regulator, Competition Commission, Universal Service Agency and Arbitration Board) and various projects/funds initiated (Public Information Terminals, Multi-Purpose Community Centres, Universal Service Fund, etc.).[149] Despite the delayed introduction of the SNO and Ministerial intervention, South Africa has grudgingly aligned its policies with the liberalization precedent set in the WTO Agreement on Basic Telecommunications.

The brief history above was meant to provide a look at the transitionary period that South Africa has engaged in since 1992. With a particular look at the relationship between the government and the incumbent, the brief outline was necessary to understand the dual nature of the problem that faces South Africa. As the problem statement notes in chapter one, South Africa has had to balance its welfare ambitions through establishing government projects with the liberalisation imperatives of the emerging GIP regime. Understanding the above transition is crucial in relating the agreements signed at the WTO to how telecommunication policy was formed in South Africa. Understanding the correlation between the Fourth Protocol and South Africa's telecommunication history is made easier by the looking at South Africa's commitments to the Agreement on Basic Telecommunications.

4.1.2 – South Africa's commitments under GATS

As a signatory on the Agreement on Basic Telecommunications, South Africa signaled its intentions early on to include itself in the emerging GIP regime. The liberalizing trend in other developed and developing countries was clear as the 69 signatories on the Agreement, including South Africa, accepted the inevitable shift away from domestic monopolies and toward increased competition. However, as South Africa has

[149] Barendse, A. (2004) "Innovative Regulatory and Policy Initiatives at Increasing ICT connectivity in South Africa" in *Telematics and Informatics*, 21. pg. 64

demonstrated, the shift was not always fruitful for mass consumers, but rather for firms involved in the privatization process. Under the GATS though, South Africa committed itself to the following pro-competitive and non-competitive changes (See Appendix B for the full list). Its commitments to the Fourth Protocol and Regulatory Reference Paper require that:

- Service sectors are opened which include facilities based and Public Switched Telephone Network (PTSN), mobile and satellite services;
- No bypassing of South African facilities for routing both domestic and international traffic;
- Telkom monopoly on all facilities and voice services until 31\12\2003;
- Resale to be liberalized between 2002 – 2003;
- Cellular service duopoly until 2000, after which a third mobile operator would be licensed; and
- Full adoption of the Regulatory Reference Paper which emphasizes the key criteria of low interconnection costs, competitive safeguards and universal service.

An in-depth discussion on South Africa's GATS commitments will occupy section three of this chapter as the complexities are worth discussing in detail. More importantly, the need to assess how South Africa has responded to the general requirements of the emerging GIP regime's e-commerce approach is necessary for an overall view of its international commitments.

4.2 – SOUTH AFRICA'S RESPONSE TO THE EMERGING GIP REGIME

As it has been mentioned through the course of this study, the neoliberal environment that the information economy has operated within has set the boundaries and regulations for the way telecommunications is handled in domestic markets. With private sector imperatives guiding the way in most sections of the South Africa economy, the telecommunications sector strikes an interesting paradox between the honouring international trade objectives of electronic commerce and the need for domestic development of the sector. Despite these issues, South Africa has strived to harmonize its

policies with the requirements of the global electronic commerce economy. This can be demonstrated by looking at the norms of the emerging GIP regime outlined in chapter two. By applying these to the current state of South Africa's telecommunications restructuring process, this study will assess whether the emerging GIP regime has had any effect on policy formulation.

4.2.1 – How South Africa has adopted the norms of the emerging GIP regime

According to Cogburn (2003), South Africa has adjusted its domestic policy to align itself with the electronic commerce economy. A full list of the norms adopted is not necessary due to the specific focus of this study but a few are worth highlighting. Length constraints do not allow an in-depth discussion of the various facets of change, but key norms such as telecommunications infrastructure, universal service/access, intellectual property rights, electronic payment systems and domain names are explored. These norms are central to the electronic commerce approach as they incorporate the explicit use of ICT to attract foreign investment and safeguard important sectors of the economy.

Probably the most important norm for the progress of telecommunications is the state of its *infrastructure.* As this study has noted, infrastructural inequality is a serious problem in South Africa but initiatives have been made to address accessibility issues. These initiatives, regarding universal access and affordable ICT, rest on a market structure that promotes a modern network that supports the needs of electronic commerce. For ICT to fulfil the promise that the South African Department of Communication envisions, there needs to be a pro-competitive environment for telecommunications. Facilitating this need is the WTO Agreement on Basic Telecommunication that South Africa signed as an indication of their commitment to liberalising the sector. Despite the numerous challenges in achieving an efficient infrastructure system that this study is yet to document, South Africa has made the effort to fulfil its mission by enhancing "The well-being of the people of South Africa, the African continent and the world, through the creation of a sustainable and enabling Information Communication Technology environment."[150] Achieving this aim is part of government's ambitions and evident in the

[150] South African Department of Communications Annual Report, 2006/2007. pg. 11

latest infrastructural developments noted by the Deputy-Minister of Communications: "The Department of Public Enterprises is presently engaged in the construction of a fibre-optic backbone to be used for accessing affordable broadband. The Sentech Wireless Broadband infrastructure is to be expanded in pursuance of the same objective. In order to ensure affordable access to international ICT infrastructure, the country is investing in the NEPAD initiated East African Submarine Cable System (EASSy)."[151]

The second norm rests on the availability of a capable infrastructure. *Universal access* provides the opportunity for all sectors of society to participate in electronic commerce and enter the information economy. Stated as an objective in the White Paper on telecommunications, providing universal access has been attempted through various initiatives. These initiatives include multi-purpose community centres, telecentres and cyberlabs, public information terminals and libraries.[152] Despite having these initiatives run under another innovative organisation known as the Universal Service and Access Agency of South Africa (USAASA)[153], ICT penetration rates have not fared well in rural areas. This disparity is seen between provinces that have a high level of urbanisation and therefore a higher concentration of ICT infrastructure as displayed in Figure 4. As an illustration of this disparity, Figure 4 highlights the effect of decades of under-development caused by the apartheid government. The consequences of such marginalisation means that "areas with poor ICT availability are likely to be considered less favourable for economic investment, thereby limiting enterprise development, job creation and restricting the growth of Small, Medium and Micro Enterprises (SMMEs), which are currently seen as a key driver of economic growth."[154] As a norm of the emerging GIP regime, universal service occupies an important part of South Africa's determination to provide ICT access to its citizens. The progress made however, indicates

[151] Radakrishna L. Roy, *Keynote Address at the BMI-T Digital Cities Forum 2006.* pg.5, speech available at http://www.doc.gov.za/images/stories/Speeches/forum_digital_cities_oct06.pdf (accessed 14 December, 2007)

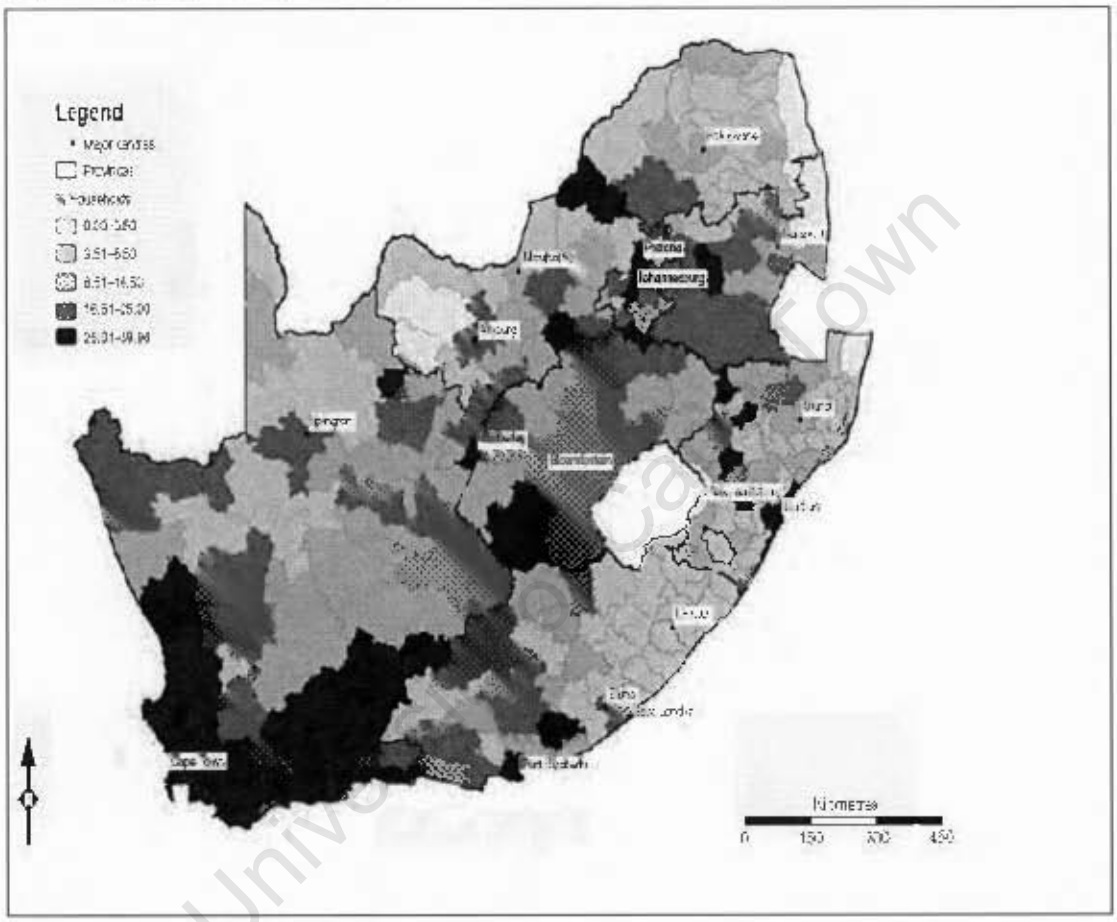
[152] Tlabela, K., Roodt, J., Paterson, A. and Wier-Smith G. (2007) *Mapping ICT access in South Africa*, (Cape Town: HSRC Press) pg. iii

[153] The Department of Communications Annual Report 2006/2007 notes that USAASA facilitates and offers guidance on the evaluation, monitoring and implementation of schemes which propose to improve universal access and service. In addition, it is involved in setting up telecentres, which provide ICT services, especially in rural areas, on a cost recovery basis.

[154] Tlabela, K., Roodt, J., Paterson, A. and Wier-Smith G. (2007). pg. 58

that the process is complicated and will take time and considerable investment if it is to become a reality.

Figure 4: Percentage of South African households with access to landlines



Source: Tlabela, K., Roodt, J., Paterson, A. and Wier-Smith G. (2007) pg. 11

The third norm that South Africa has incorporated is central to the flow of money over electronic systems. *Electronic payment systems* have facilitated the increased speed of transactions from one side of the globe to another. It is therefore crucial, that sufficient provision is made to safeguard both the consumer and the banks in an age of "cyber-criminals". The passing of the Electronic Communications Transactions Act[155] ensured that objectives such as secured regulation and the facilitation of electronic transaction in

[155] Electronic Communications Transactions Act, Act No. 25 of 2002 available on www.info.gov.za/gazette/acts/2002/a25-02.pdf (accessed 4 November 2007)

South Africa were provided for. Additionally, objectives of the Act included the development of national e-strategy, to prevent abuse of information systems and encourage the use of e-government systems[156]. These objectives signify that the emerging GIP regime's norms were not taken lightly by the Department of Communications as the need to attract foreign investment into the sector was important for South Africa to ensure participation in an electronic commerce global society. It is therefore fair to conclude that the Department was successful in its task of attracting investment and creating an effective electronic payment system, relative to other developing countries.

The fourth norm concerns *intellectual property rights*. Regarded as a global problem in areas such as weapon and electronic manufacturing, the protection of intellectual property rights has been made more difficult by the scope and interchangeable nature of ICT. South Africa recognises this danger as it attempts to engage in the emerging GIP regime as a competitive partner. Therefore "South Africa has already made an attempt to comply with the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) by amending its Intellectual Property Laws Amendment Act (Act 38 of 1997)."[157] Other sections of the government such as the Department of Trade and Industry have also taken a consultative stance with the World Intellectual Property Organisation (WIPO) regarding its treaties that would negotiate how countries participate and benefit from electronic commerce. As a critical aspect of the way countries will utilise ICT, this norm highlights the need for international consultative bodies that define the way state and non-state actors engage with one another to achieve mutually-beneficial outcomes. The final norm concerns *domain names* which have become a concern in the electronic commerce environment. Recognising that trademarks are an important commercial asset within the information economy, South Africa has ensured that it protects famous trademarks while avoiding the abuse of smaller enterprises. The establishment of the .za Domain Name Authority (.zaDNA) was set up to provide SMME's with the chance to utilise the internet as a business outlet and a marketing tool[158] as well as prevent domain names from being

[156] Maphatane, M., (2006) *The ICT Research Bulletin*, South African Department of Communications, December. pg. 21
[157] Cogburn (2003) pg. 148
[158] http://www.zadna.org.za/adr/ (accessed on 17 December, 2007)

"hijacked" by international companies. By protecting and regulating the domain names of South African companies, this government initiative is an indication of the commitment to electronic commerce agenda of the emerging GIP regime.

The above outline of South Africa's response to the norms of the emerging GIP regime highlights (a) the usefulness of regime theory in assessing the way actors' expectations converge on certain issues and (b) that South Africa has realised that it cannot compete for investment if it does not adopt the electronic commerce approach to its telecommunications industry. In the scheme of this study, these critical norms advance the importance and centrality of regime theory in policy formation in countries that are part of the regime. Subsequently, recent decisions by South African telecom authorities such as the privatization of the incumbent and drafting of the Electronic Communications Transactions Act in 2002 indicate that South Africa has adopted the required principles and norms to engage in the information economy. Although dominated by an electronic commerce approach, South Africa has challenged the emerging GIP regime by including socio-economic concerns such as universal service and an exclusivity period granted to the incumbent to roll-out telecommunications infrastructure to under-serviced areas.

The need to address both welfare initiatives and electronic commerce requirements rests on the fact that South Africa is still a developing country. This means that the norms of the emerging GIP regime mentioned above are important requirements that South Africa should adopt if it is to enter the global information economy. But as can be seen, these norms do not always stress the importance of social welfare initiatives that the emerging GIP regime also should be focussing on. Partly due to the dominance of the electronic commerce approach, the norms were the product of developed country interests. "The developed country governments decided that the tough issues of international rules and standards for electronic commerce should not be hammered out in large, inclusive intergovernmental forums like the United Nations, where developing countries could exercise their leverage, but in a body like the OECD, which was dominated by wealthy states and also had a high degree of technical expertise and organizational capacity."[159] In

[159] Wilson (2004) pg. 348

an attempt to bridge this disjuncture between developed and developing countries, South Africa has taken the momentum of the norms it has adopted and furthered the importance of the information revolution in social development approach of the emerging GIP regime. On an international level, it has aligned itself with the development agenda and become part of an epistemic community that wants to utilise ICT for the benefit of many.

4.2.2 – South Africa's place in the epistemic community of the emerging GIP regime

Examining South Africa's response to the emerging GIP regime, the focus has thus far been on certain policy changes within its legislature since 1992. Having been settled with a yawning domestic digital divide, the decisions taken by the government have rested on the need to include all sectors of society in the information economy. Although mixed results and little reform over the last decade have dampened the early optimism, South Africa has not given up its objectives for a developmental program domestically and on an international level. This has been evident by the number of conferences and organisations South Africa has been involved in. Most notably, South Africa's involvement in the G7 Developing World Information Society and Development (ISAD) Conference and the World Summit on Information Society (WSIS) affirms its role in the epistemic community of the developmental approach to the regime.

However, South Africa has still found itself on the periphery of decision-making structures in the emerging GIP regime. Like many other developing countries, the ability of South Africa to influence the direction of the key decisions has been weak. Cogburn (cited in Braman, 2004) attributes the lack of developing country influence to the inability of developing countries to marshal sufficiently the knowledge resources required to influence the process at five strategic points in the information policy and regime formation processes[160]. The five strategic points that relate to the influence epistemic communities can exert in the international conference environment are:

1. Pre-conference activity;
2. Activities during the conference;
3. Rule/ agreement formulation;

[160] Braman (2004) pg. 174

4. Post-conference activities; and
5. A presence in key information policy cities, called glocal policy nodes.

As discussed through the course of this study, the lack of influence is due to the central role played by the WTO in the emerging GIP regime. Many authors (such as Wilson, 2004 and Singh, 2002) note that the WTO has predominantly furthered the interests of the developed countries. As a result the electronic commerce approach took priority over a broader inclusive approach. The resulting scenario effectively means that while developing countries are participating in rule and norm formation in the emerging GIP regime, their presence is more symbolic than instrumental. With rule and norm formation created by an epistemic community that predominantly includes developed countries and technical specialists, the interests of developing countries will hardly feature in such a functionally specific regime. Participants from developing countries that reap the rewards of the electronic commerce will therefore only be a small elite within certain countries. Replicating the elite-driven nature of the emerging GIP regime, domestic governments often concentrate on the profitability of telecommunications within its structures or through certain private sector avenues. As critics of the South African telecommunications reform period have noted, the results of public consultation has had little bearing on the Minister's various decisions regarding the lowering of tariffs and not condemning anti-competitive behaviour by the incumbent.

Despite South Africa being part of an epistemic community that has had little influence on the electronic approach in the emerging GIP regime, it has pioneered a developmental agenda in Africa. The most recent initiative is the NEPAD ICT broadband infrastructure network for Eastern and Southern Africa that would lay an undersea cable to transfer high-speed data that would be under the control of African states. For these initiatives to be successful, domestic policy and regulation need to be clearly aligned with the developmental and infrastructural programmes of the host states. Linking Africa to affordable ICT has been reiterated by high-level authorities in the South African government. In a recent speech by the Minister of Communications, Dr. Ivy Matsepe-Casaburri, she noted the importance of policy making: "Policy makers and regulators in

the field of ICTs should not close themselves away from prevailing realities; rather they should follow events and processes in the other fields of governance and development. It is for this reason that I wish to suggest that future ICT policy and regulatory forums should include other participants in the social and economic fields, including security and administration in order to harmonise our respective governance and development strategies."[161] The acknowledgement of outside influences in the policy-making process highlights that multiple stakeholders have an important role in the emerging GIP regime. By not recognizing the important role of other stakeholders, developing countries will not be able to enter the electronic commerce approach or get the developmental programmes off the ground. South Africa has become aware of this through its reform period and committed itself to a leadership role in ICT on the African continent.

Taking all these factors into consideration, this study contends that South Africa's response to the emerging GIP regime has thus far been a balancing act between two important programmes. On the one hand, South Africa has aligned itself with the developing world in making ICT widely available and enabling the welfare capacity of ICT. On the other hand it has had to comply with the dominant electronic commerce approach whose epistemic community has focused the imperatives of the emerging GIP regime on making global markets work efficiently and faster through greater liberalisation and increased competition. South Africa's position is therefore not surprising as it drifts between both developing and developed world ideals. In terms of the emerging GIP regime, it has clearly spoken one way and acted another. Having followed the norms mentioned above and been a signatory on the WTO Agreement on Basic Telecommunications, South Africa has complied with some aspects of the electronic commerce approach realizing that it needs to gain financially out of ICT. However, it has also promoted social welfare ideals among developing nations that do not correspond with a policy needed to promote electronic commerce. With little support amongst developed nations and international institutions for the welfare approach,

[161] Dr. Ivy Matsepe-Casaburri, *Opening Address to the CRASA Workshop on the Impact of Convergence on ICT Policy and Regulation Indaba Hotel, Johannesburg,* 25 June 2007. pp5. Speech available at http://www.doc.gov.za/images/stories/Speeches/minister%5C%27s_speech_crasa_conference_25jun2007.pdf (accessed 26 December 2007)

developing countries face an uphill battle if their calls are to be heard in international decision-making procedures. At best, developing countries like South Africa should clearly state their intentions to comply with the WTO Agreement and build a telecommunications sector that is self-sufficient and then address the socio-economic problems that ICT can help alleviate. It can be argued that South Africa's complex reform path has tried to do this but has failed. To further understand the response, this study must look at South Africa's response to the WTO Agreement to clearly underline the problem at hand.

Given these ideals of an information revolution for the African continent, South Africa has not provided the best example in leading the way to affordable and accessible ICTs. Building on the overview of South Africa's response to the emerging GIP regime, this study now focuses on South Africa's response to the WTO Agreement on Basic Telecommunications.

4.3 - SOUTH AFRICA'S RESPONSE TO THE AGREEMENT ON BASIC TELECOMMUNICATIONS

The signing of the WTO Agreement on Basic Telecommunications by South Africa signaled a dedicated effort to align its domestic policies with international agreements. In line with the dominant approach of the emerging GIP regime, South Africa recognised the need to build a widespread network of fixed-line and wireless telecommunications so that all sectors of society could participate in the information economy. Chapter three touched on the central purpose of the Reference Paper, that being ending the role of the incumbent in holding up competition in a liberalised environment. The importance of the Reference Paper cannot be overstated and therefore occupies a detailed discussion in this section. This section specifically explores this scenario in the case of South Africa over the last thirteen years with a specific focus on two areas of the Fourth Protocol. *Competition* and *independent regulation* have become non-negotiable commitments in many countries. By replicating these commitments in the domestic Telecommunications

Act, South Africa set about following the international rules with little experience or the necessary skills in liberalising its telecommunications market.

Competition and regulation are not the only commitments of crucial importance for developing countries. The Fourth Protocol also stresses the interconnection of new entrants into the telecommunications market, the administration of universal service bodies and transparency regarding the licensing process. Collectively, these commitments underline the purpose of the WTO Agreement on Basic Telecommunications which is to develop telecommunications across the globe via the introduction of competition into domestic markets. Given the interrelated nature of these commitments, the three above mentioned commitments are explored after regulatory bodies and competitive safeguards are addressed. This enables a concise discussion that can incorporate the various themes of this study while reflecting on the role of international agreements.

4.3.1 – Dealing with competition in the sector

Much to the dismay of consumers and specialists of ICT in South Africa, reform of the telecommunications market structure has failed to address cost and accessibility issues. The brief historical overview of the South African telecommunications sector explored above dealt with standard procedures toward liberalisation of the sector. However, deeper analysis shows that the process of liberalisation was obscured by the privatisation process. According to Gillwald (2005) the South African case reflects an international problem among developing countries surrounding liberalisation moves. "South Africa, like most developing countries, had little local expertise in the area of policy, regulation and specifically privatisation, though this was often not adequately acknowledged. It was highly dependent on the advice of its international financial and policy advisors who proposed the three pronged strategies that underlay the international reform model."[162] These three strategies included having the incumbent partially privatised, creating a sector regulator to implement policy and licensing a third cellular operator to stimulate competition.

[162] Gillwald, A., (2005) "Good Intentions, Poor Outcomes: Telecommunications Reform in South Africa" in *Telecommunications Policy* (29) pg. 474

Focussing on the first strategy, this study agrees with the views of many authors that partial privatization of the incumbent severely affected the progress of telecommunication access in South Africa. Furthermore, the market structure, which was designed around a vertically integrated incumbent operator, provided the opportunity for the incumbent to exploit its monopolistic position with little repercussion from the regulator. The reform strategy of partial privatisation and the extension of Telkom's provision of fixed-line services was originally setup to equip Telkom with "the revenue generating-capacity it needed to invest in doubling the size of the fixed-line network".[163] Despite these intentions, the reality played out differently with a reduction in fixed-line subscribers and tariff hikes. It is not difficult to imagine why a partially privatised company would wish to capitalise on its monopolistic position in such a lucrative industry. As this study has noted, the deep disparities in developing countries increases the likelihood of internationally-developed reform mechanisms to go wrong in an environment of inefficient regulation. South Africa demonstrates this clearly as the political transition in the country and relative inexperience of the policy makers created the conditions for profit-seeking companies to take advantage. Makhaya and Roberts (2003) explain the actual outcome of the reform process for the incumbent: "By providing very limited access to lines required for the provision of data services and instituting high price rises it has stifled competition in the market for value-added network services [VANS] and has favoured its own operations."[164]

But where did it start to go wrong? Horwitz and Currie (2007) attribute the "original sin" moment to the alteration of the White Paper as draft legislation went to Parliament in 1996. "The Telecommunications Act vested in the Minister several of the powers the White Paper had reserved for the regulator and eliminated the White Paper's painstakingly achieved liberalization timetable in favour of ministerial discretion regarding when and if various segments of the sector would be opened to competition."[165] The implications of this move effectively caused jurisdictional conflicts between the regulator and the Minister, which enabled Telkom to strengthen its position as the

[163] Ibid. pg. 471
[164] Makhaya and Roberts, (2003) pg. 57
[165] Horwitz and Currie, (2007) pg. 448

monopolistic operator. With Telkom preying on the inefficiencies of the regulator and guided by its business-minded equity partners, it doubled its exclusivity period and blocked potential competition by keeping tariffs and equipment usage costs high.

Despite complaints brought against Telkom by VANS license holders, anti-competitive practices continued in full view of the Ministry and public. These practices in part can be attributed to the equity partner's strategy. It was to maximise the value of Thintana's investment during Telkom's five year exclusivity period then exit quickly.[166] This type of thinking is not surprising given the fact that Telkom was obliged to provide a competitive environment by 2003 and therefore saw profit maximisation as a priority. "Profit maximisation means that there is no incentive to examine the sustainability of services – the targets will be met in the cheapest way possible with little regard to high rates of disconnection, which means a continued bias to urban and peri-urban areas."[167] The consequent effect on the South African telecommunications industry is therefore troublesome as universal service ambitions and the roll-out of infrastructure are not the main priorities of the incumbent.

The above scenario is not unique to the South African case as the moves toward liberalisation starts in the electronic commerce approach of the emerging GIP regime. Signatories of the Agreement on Basic Telecommunications recognised the role of the incumbent as being potentially harmful given the vertically integrated structure of the monopolistic operators. It was therefore imperative that effective competition in the sector be dependent on policies that governed the initial structure of the competitive segments of the market, the conditions of entry into the market and conditions surrounding access to the monopoly network facilities[168]. Implementing these provisions have proven to be difficult given the conditions of the five-year monopoly Telkom was granted that allowed a monopoly on services and a non-standardised approach to exclusivity periods. "Many commentators have criticized the RP provision as 'toothless', most notably for the failure to specify a mechanism with which to address such practices,

[166] Ibid. pg. 450
[167] Makhaya and Roberts, (2003) pg. 56
[168] Gillwald, (2003) pg. 43

leaving members to determine their own, non-standardized measures."[169] Telkom provides the most appropriate case for underlining the inability of the WTO to take action against members that have been granted exclusivity periods and therefore blurred the line between competitive and exclusive services.

The focus on promoting privatization in developing countries has been the standard driver of reform during the shift toward liberalisation. Recognised by neoliberal international organisations, such as the WTO, as the primary mechanism to promote foreign market access, privatization commitments in the Reference Paper leave developing countries with little clarity on implementation or guidance. As a result the state's intention to maximise the selling of state assets undermines the other processes of liberalisation such as competition. "The efficiencies competition is intended to bring into the market are therefore not introduced, prices remain high for telecommunication users and consumer's choices remain limited. The most significant outcome of this pre-occupation with privatization in South Africa is that the number of citizens connected to the fixed-line network today, at the end of the private monopoly period, has barely changed since before the monopoly was privatised in 1997."[170] Although the Reference Paper advises that appropriate measure be taken to prevent major suppliers from engaging in or perpetuating anti-competitive practices, the ambiguity of the commitments regarding incumbent exclusivity places reform at the mercy of national development policies.

This study does not conclude that privatisation of the telecommunications sector is necessarily a mistake. As many developing countries have to deal with a lack of funds and resources, attracting a substantial amount of foreign investment and introducing competition is the key to addressing social conditions and balance of payments crisis. However, a number of factors have to be considered and carefully administered if the liberalisation of a sector is to be beneficial to a country. As Gillwald (2005) notes: "Privatisation without the regulatory capacity or political will to manage the behaviour of

[169] Cohen, (2001) pg. 739
[170] Gillwald, (2005) pp. 486

the incumbent as a private monopoly or subsequently in a more competitive environment, can be entirely counter-productive to the achievement of the very goals intended by liberalisation, not least of which is affordable access."[171] For a competitive market to function efficiently in any country, it is critical for an independent, non-aligned regulator to implement and maintain the market's procedures. The following section will expand on how this process went wrong in the South African case.

4.3.2 – An Incapacitated Regulator

A condensed version of the regulatory problems in South Africa is provided here as the details exceed the constraints of this study. It is also important to relate the regulatory issues to the central WTO Agreement that this study is focussing on. Therefore, it must be noted that the Reference Paper requires that: "The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by the regulators shall be impartial with respect to all market participants."[172] Given the clarity of the regulator's purpose, Cohen (2001) notes that the Reference Paper is silent on the need for regulators to be separate from and not accountable to government.[173] As this brief discussion will show, this has been to the detriment of the telecommunications sector in South Africa due to the joint jurisdictional structure. The problem of regulatory independence is not unique to South Africa as this commitment is widely acknowledged as central to the liberalisation movement. Since many developing countries were part of the negotiations and signatories of the Agreement on Basic Telecommunications, the Reference Paper had to deal with an emerging industry in many countries. Highlighted as a commitment of contention in chapter three, the setting up of an independent regulatory body in developing countries, such as South Africa, has had problems in the separation of its functions. Both the separation of regulatory function from operating functions and policy functions have raised compliancy issues between South Africa and the Agreement on Basic Telecommunications.

[171] Ibid.
[172] Article 5 of the Reference Paper cited in Henderson, Gentle, Ball (2005) pg. 210
[173] Cohen, 2001, pg. 746

To understand the problems with compliance between South Africa and the Reference Paper, a brief synopsis of South Africa's regulatory problems is required. Problems surrounding the perceived independence of the regulator started as early as 1993 when the IBA, while given the power to formulate and implement policy, was funded by government and therefore influenced by the interests of the state rather than the market. These fears played out over the following years as SATRA displayed high levels of inefficiency and financial mismanagement regarding the licensing of the third cellular operator[174].

The role of government occupies a precarious place in the South African telecommunication environment which is highlighted by its actions in the downfall of SATRA as the independent regulator. Along with Horwitz and Currie's (2007) "original sin" moment noted above, the dual jurisdiction structure hampered the authority SATRA had over regulating Telkom's actions. Having been a major shareholder in Telkom, the government muddled its roles in becoming the policy-maker for a liberalised telecommunications market while simultaneously protecting its interests in the highly-profitable incumbent operator. "As a result, policy in the sector has unfolded in fits and starts, marked by many controversial incidents and abrupt reversals of strategy, the cancellation of ICASA regulations by the Minister, and the delay of competitive entry notably in the licensing of a third mobile and a second network operator."[175] These moves by the Ministry to delay competition into the sector illustrate a noteworthy problem in the requirements of the Reference Paper.

As this study has noted, the balancing of domestic social concerns with international trade objectives in developing countries is a combination that needs careful attention and sequenced implementation. South Africa's attempt at 'managed liberalisation' was an ambitious strategy to occupy dual roles for the state on regulatory issues. Given the lack of capacity and relative inexperience in the liberalisation process, the Ministry often subscribed to protecting its state asset at the cost of promoting the broader interests of

[174] A chronology of the third mobile license events is available on www.cellular.co.za/third_license_timeline.htm (accessed 2 October, 2007)
[175] Horwitz and Currie, (2007) pg. 447

society. In this environment, it is difficult to imagine the commitments of the Reference Paper being carried out without flaws. Following the various breakdowns between SATRA and the Ministry, a merger between the two regulators seemed the appropriate measure to reintroduce confidence into the regulatory process.

Following the merger of the IBA and SATRA into ICASA in 2000, the regulatory framework set out objectives that included ensuring investment, growth and development in the broad public interest. But similarly to SATRA's problems, ICASA has been hampered by a lack of resources and capacities to regulate telecommunications with a monopolistic incumbent still in place. Once again, Ministerial interference meant that ICASA regulations and licenses had to be approved by the Ministry which led to bottlenecks and critical sector development regulations being delayed for long periods of time.[176] Coupled with Ministerial interference was the source of funding for ICASA. Often cited as a serious impediment to effective regulation in the sector, the lack of financial resources and financial independence from the Government meant that political interference has been unavoidable. Henderson (2005) sums the situation up well by noting that inadequate funding inevitably leads to over-reliance on the incumbent's resources and inadequate regulation in particular areas of importance.[177] With the Treasury as the source of funding, policy implementation, and more importantly – the reputation of the regulator, was in serious doubt of being free from Government influence.

An analysis of South Africa's regulatory environment cannot ignore the obstructive role the Ministry had in promoting a competitive environment in the telecommunications sector. However, it is important to recognise that developing countries like South Africa have weighed their options in light of the commitments set forth in the Reference Paper. While the Reference Paper requires that regulatory bodies should be separate from suppliers of basic telecom services, the lack of clarity on schedules as well as the social conditions within developing countries necessitates that government's role is not independent from the sector. "While almost all countries recognize the need for a

[176] Gillwald, (2005) pg. 483
[177] Henderson et al, (2005) pg. 211

separate regulator, the myriad and complex relationships with government and industry result in many manifestations of that ideal which cannot simply be measured by structural separation alone... Many country regulators report to sector ministries; some, like SA, report to Parliament and others to their Head of State. All tend to reflect, however, that while a baseline of separation from government is required, independence cannot be absolute."[178] Cohen's (2003) comments reflect the reality in many developing countries as the separation of state and the market has not been possible. Accompanied by the presence of the incumbent operator, many developing countries' regulatory failures have been due to endogenous barriers to competition such as political intervention and the effects of vertical integration.[179] As the description of the market structure pointed out, vertical integration leaves little room for the regulator to do its job in making sure that the market is functional and fair.

As the two central commitments of the Reference Paper, both competitive safeguards and an independent regulator are crucial points of discussion when analyzing South Africa's response to the emerging GIP regime. However, there are two other commitments that are of equal importance and interrelate with the above mentioned commitments. The first is that of interconnection. As an important requirement to fulfill the WTO mandate, interconnection rests on the willingness of the monopoly operator to let new entrants into the market. In relation to competition and regulation, interconnection acts as the mechanism that enables successful completion of the two. "In order to achieve effective competition, interconnection must be assured. Without interconnection, smaller operators would have no prospect of competing with larger operators with more extensive network and customer coverage. Further, regulation of interconnection is fundamental where major suppliers exist, being suppliers with market power which have no incentive to open their networks in order to promote competition or having opened their networks may levy monopoly rents when providing access."[180] Recognizing the important relationship between these factors enables a better understanding of the South African situation. Much of this analysis has commented on the role of the incumbent in holding back competition.

[178] Cohen, (2003) pg. 71
[179] Makhaya and Roberts, (2003) pg. 54
[180] Henderson, Gentle, Ball (2005) pg. 214

This has been done through charging high costs for interconnection thereby keeping competitors, who are dependent on Telkom's lines, out of the sector.

In terms of the interconnection requirements in the Reference Paper, South Africa has distanced itself from compliance over the last decade. Telkom, along with government's, actions were deemed so obstructive that action was taken against them by the USA's AT&T on the grounds of Telkom's anti-competitive behavior. A combination of Ministerial intervention and regulatory incompetence rendered South Africa's commitments to promoting liberalization an extremely difficult objective. The charges brought against Telkom sum up the implications of poor interconnection. "The claim suggests that Telkom's refusal to provide facilities is contrary to SA's WTO obligations to provide market access and national treatment for VANS. It is further claimed that SA is obligated to prevent Telkom from abusing its monopoly position when competing in the supply of a service outside the scope of its monopoly rights." [181] Telkom's violation may have gone relatively unpunished through out-of-court negotiations, but it had caused significant delays in another commitment of the Reference Paper, the provision of universal service.

The pursuit of universal service has in some cases run contrary to the liberalization imperatives of the WTO. South Africa falls into the category of having non-economic policy objectives while pursing the ideals of the Reference Paper. The need to recognise divergent circumstances in developed and developing countries is acknowledged by GATS. This is evident in GATS allowing Members to regulate services in order to meet divergent national policy objectives. Additionally, the Reference Paper allows for exclusivity periods for the incumbent on certain conditions of infrastructure rollout. Although critics of the Reference Paper regard this move as self-defeating in terms of making national policy goals susceptible to the monopoly operator's profit-maximisation motives, the provision of universal service cannot have a standard procedure given the varying domestic environments. Despite South Africa's telecommunications industry being held up by high interconnection costs, the government has instituted a number of

[181] Cohen, (2001) pg. 742

initiatives at providing universal service to citizens that were excluded during the apartheid era. These provisions were made early on in the White Paper on telecommunications and have been observed under the GATS requirements as well. The provision of universal service is an idealistic goal, especially in the environment of the monopolistic incumbent, but with government backing and compliance with the Reference Paper's requirements of transparency and non-discrimination, the exclusivity period can work.

4.3.3 – Evaluating South Africa's response to the Reference Paper

The analysis provided above adopted a descriptive approach to South Africa's response to the Reference Paper. In an attempt to remain concise, this study has omitted a large percentage of the events and negotiations that took place during South Africa's transitionary phase. This was necessary so that two positions could emerge in the debate on South Africa's response. By putting the different contexts into perspective, the debate handled the neoliberal requirements of the WTO and the South African government's priorities in assisting previously disadvantaged citizens acquire ICT access. These two positions form the crux of South Africa's overall response. Much of this study has detailed the international implications of the emerging GIP regime on developing countries, but specific examples are necessary to highlight how a developing country would adapt to an international agreement that is part of the emerging GIP regime.

One of the criticisms of the Reference Paper mentioned in chapter three noted that the level of generality of the Reference Paper allows countries to interpret the competition and interconnection principles in a number of ways therefore contributing to further protection of the incumbent. Coupled with the weakness of failing to specify regulatory independence from government, South Africa's compliance with the liberalization reforms were obstructed by private sector and government interests.

This study doubts that there was a deliberate attempt by South Africa to undermine the intentions of the Reference Paper. Instead the issue of non-compliance can be attributed to the problem statement this study has been dealing with. Domestic and international

factors placed South Africa's reform process in an uneasy predicament. On the one hand, South Africa's commitment to the Reference Paper meant that the introduction of competition and the establishment of an independent regulator were non-negotiable principles for the sector. Opening the sector to foreign investment was an important move to relieve the debt-ridden incumbent of its losses. On the other hand South Africa has had to deal with the deep social inequalities resulting from the apartheid era. The democratic government emphasized the importance of redressing past imbalances through the Telecommunications Act which promoted universal service aims that inherently clashed with the GATS reforms. South Africa's domestic agenda played into the flaws of the Reference Paper and raises interesting questions regarding the benefits of accession to the WTO Agreement on Basic Telecommunications for underdeveloped economies.

Despite the Reference Paper lacking particularity, the weakness of the South African telecommunications sector cannot be solely attributed to Reference Paper's flaws. As Cohen (2001) notes: "Arguably, less than satisfactory results in SA's case, are attributable to weak regulatory design and the implementation, but this is not a burden the regulator should bear alone: the legislature needs to loosen the purse strings and clothe the regulator with ability to carry out its functions." [182] Another serious impediment to accessible and affordable ICT in South Africa was the way the liberalization process was conducted over the last fifteen years. Horwitz and Currie's (2007) aptly titled article – "Another instance where privatization trumped liberalization" – sums up the major fault in South Africa's telecommunication reform process. A mixture of political interference, profit-maximisation motives of the incumbent and an incapacitated regulator kept the goal of universal service a distant reality. But how much of the blame can be attributed to the Reference Paper? Many authors have noted that the document is a guideline and therefore not a strict checklist of measures that characterised previous neoliberal reform documents such as the Washington Consensus. But, according to Cohen (2001), therein lies the ability for domestic governments to shape their prerogatives while abiding by the principles of the Reference Paper. The flexibility granted to domestic governments enables checks and balances to be put in place thereby avoiding full deregulation which

[182] Cohen, (2001) pg. 753

would not reap any rewards for the state. Achieving its national policy goals is high on South Africa's list of objectives and evident in the various legislations that have been passed to facilitate the provision of universal access. Concurrently, South Africa has also abided by the norms and rules of the electronic commerce approach of the emerging GIP regime and in that process managed to obstruct development through not having a suitable market structure and regulatory functions.

When looking at South Africa's response to the Agreement on Basic Telecommunications there are a number of factors that need to be taken into consideration. There is little doubt that the reform process has not yielded optimal results but as Gillwald (2005) notes, "The strategies of economic regulation of telecommunications sectors have been instituted all over the world to deal with the imperfect market conditions that tend to exist in the early stages of market liberalization, especially where there is a dominant incumbent."[183] Taking comfort in that South Africa is not alone in the problems it has encountered as well as the fact that the GATS Fourth Protocol is still in its infancy stages provides some relief for scholars looking forward to an efficient and affordable telecommunications sector. With the requisite safeguards of the Reference Paper installed in domestic law and with the convergence of technology breaking down the monopoly on services, South Africa's telecommunications environment is in the midst of a momentous change. Through the GATS Fourth Protocol, the problems of South Africa and other newly-liberalizing sectors are on the decline.

Formulating a conclusion on this analysis will take up a substantial amount of the following chapter. Looking at South Africa's response to the emerging GIP regime cannot focus solely on the Reference Paper. Rather a conclusion is required that incorporates the discussion that has taken place throughout this study and tying them together in a summarized manner.

[183] Gillwald, (2005) pg. 486

5

SUMMARY, CONCLUSION AND RECOMMENDATIONS

5.1 – Answering the Research Question

In summarizing this study, there is an immediate need to address the research question - "What has South Africa's response been to the emerging global information policy regime?" – posed in chapter one. On a domestic level, South Africa can affirm that since its democratic transition, it has formulated policies that have promoted liberalization in the sector. Legislative measures include the Telecommunications Act of 1996, ICASA Act of 2000 and the Electronic Communications and Transactions Act of 2002. However, below the surface, its commitment to liberalize the sector has been plagued by a vertically-integrated market structure and regulatory incompetence which has deeply affected the development of telecommunications in South Africa.

These set-backs are not mutually exclusive from its international obligations to the WTO. This study has noted that on a systemic level, South Africa was susceptible to the international liberalization commitments in the Agreement on Basic Telecommunications. As a developing country with an under-developed environment for privatization and insufficient political will to block the actions of the monopoly operator, South Africa's response is characterised by disjointed efforts to provide social upliftment through ICT and make the telecommunications market more competitive.

At the heart of the response was the need to alter policy formulation toward the interests of the market and provide universal access/ service. It is difficult to criticize South Africa for its focus on providing universal service to many to of its previously disadvantaged citizens. Commendable projects such as the Universal Service Fund (USF) and the establishment of rural telecentres indicate that South Africa was keen on addressing its unjust history. The pressing need to facilitate these innovations meant that government

had an important role to play in the telecommunications sector. Unfortunately, the intervention of government went further than structuring universal service programs into a dual jurisdiction role with the regulator. As the analysis on South Africa's response noted, the main problem in carrying out the liberalization process was the market structure and Ministerial intervention regarding the regulators actions. The vertically-integrated market structure allowed the incumbent to maintain its monopoly by charging high interconnection costs therefore blocking the entrance of new market players into the sector. Surprisingly, government did not act against these actions and overruled the regulator's decisions on occasion.

To further understand South Africa's response in the context of this study, it is important to mention a term that is linked to the overarching entity under which we have looked at South Africa's response. The term "emerging" is of critical importance when understanding the emerging GIP regime. Little mention has been made of the fact that the emerging GIP regime is constantly evolving and adapting to the neoliberal political environment and rapid pace of technological innovation. Consequently, its rules, norms, principles and decision-making procedures are a product of multiple stakeholders and therefore constantly influenced by new developments in areas such as technological convergence[184]. Instead of a hindrance to a set of definitive rules and obligations, the emergence of the GIP regime reinforces the claims of globalisation, namely, that policy formulation is rapidly adapting to a new set of international factors such as technology.

5.2 – Summary

Chapter one clearly set the conceptual and methodological outline of this study. By highlighting the two-fold nature of the problem statement - the *direction* of the emerging GIP regime and South Africa's *response* - it was able to discuss the international and domestic implications of the regime. In addition, the utilization of a case-study methodology assisted in providing tangible observations about the effects of the emerging GIP regime on developing countries. Theoretically, the use of a neo-realist

[184] See Mlitwa, N. (2004) "Implications of Convergence on the Regulatory Regime, e-Commerce, the Industry, and the Society at large in South Africa" as a research paper submitted to the Link Centre (Wits University) for detailed analysis on the importance of convergence.

approach that stressed the centrality of the state to facilitate global cooperation helped explain the context in which South Africa participated in the emerging GIP regime. A branch of the neo-realist theory – hegemonic stability theory – also provided the necessary framework to understand how the regime was formed and which states and epistemic communities control the emerging GIP regime. The framework that was provided for this study in chapter one had the central aim of exploring the battle South Africa faces as it balances international trade commitments with domestic socio-economic concerns.

Chapter two assisted in proving a theoretical framework in which this negotiation would take place. By using regime theory to explain international cooperation, South Africa's seemingly contradictory shift toward liberalization (considering that it wanted to provide centrally-controlled socio-development projects across wide areas of South Africa) was explained in the context of a global hegemon (US) that compelled states to be part of the electronic commerce approach in the emerging GIP regime. With little other alternative than to adopt neoliberal practices, South Africa's shift in macro-economic policy demonstrated the global shift in the international political economy toward deregulation and open markets.

Additionally, the neoliberal international political economy is heavily influenced and managed by developed countries such as the US. A noticeable shift was made toward: "structural and institutional reform with elements of corporatization, licensing of competitive operators, privatization, and establishment of explicit regulatory structures and specialized regulatory agencies."[185] Powerful commercial internet companies such as Google, Microsoft and Amazon all originate from the US, therefore contributing to its significant financial and organisational capabilities. "The macro-economic rationale is at the heart of the decision to privatize in the telecommunication industry. In this context it is hard to disentangle the effect of market liberalization that occurred in response to technological change and demand growth from the effects of privatizations resulting from

[185] Henten, A. (2004) "Telecommunications Development in Africa: Filling the Gap" in *Telematics and Informatics*, 21, pp. 3

global government restructuring."[186] This trend was discussed in the descriptive analysis of the telecommunications regimes and accounts for the neoliberal policy formulation in the emerging GIP regime. The interrelationship is therefore difficult to separate but a mechanism to facilitate the privatization movement did develop in WTO structures.

Chapter three analytically discussed the WTO Agreement on Basic Telecommunications as tool to facilitate coordination in the international system. This chapter re-emphasized that the US facilitated the dominance of the electronic commerce approach through the WTO Agreement on Basic Telecommunications. This multilateral agreement acts as an extension of the US's hegemonic position and the neoliberal political economy. By shaping domestic policies toward liberalization, the WTO Agreement on Basic Telecommunications acts as an enforcement mechanism of an international economic system that promotes open markets and increased cross-border trading. The commitments that signatories had to implement were not clearly achievable as hoped. Due to the lack of skills and infrastructure in developing countries such as South Africa, the commitments were contentiously implemented and with little guidance from international organisations.

Nevertheless, the WTO Agreement on Basic Telecommunications demonstrated the applicability of regime theory as a tool in understanding international coordination. This display of international coordination was evident in the systemic and domestic gains developing countries would achieve through accession to the WTO Agreement on Basic Telecommunications. Through the debate in chapter three, this study concluded that all was not lost for developing countries that accepted neoliberal reforms. Evidence of this is seen in the influence developing countries had in negotiating the WTO Agreement on Basic Telecommunications. Asserting their influence in such an important multilateral platform highlights that through solidarity, developing countries are able to make a space for themselves in the decision-making forums of the emerging GIP regime. A

[186] Bezzina, J. and Sanchez, B. (eds) (November, 2005) "Technological Convergence and Regulation: Challenges Facing Developing Countries" in *Communications and Strategies: Special WSIS Issue,* (InfoDev: IDATE) pp. 48

considerable amount of effort is needed if they are to influence the epistemic communities that construct the regime.

With the theoretical and implementation tools analysed, chapter four utilized the South African case-study to explain a developing country's response to the emerging GIP regime. For South Africa, the pressing need to enter the information economy is demonstrated by its liberal macro-economic policies. It understands that to be competitive in the international system, it must adopt the norms of the emerging GIP regime through adopting the Reference Paper and promoting the liberalization of its telecommunications industry. However, the adoption of neoliberal economic policy did come at the expense of reduced government involvement in social development projects. The ideal of greater efficiency and reduced costs with the implementation of privatisation has not been as forthcoming as expected by neoliberal proponents. South Africa demonstrates the pitfalls of liberalization but more so the general tendency of developing countries to implement policies they are not adequately equipped to deal with.

In its commitment to both approaches of the emerging GIP regime, South Africa has demonstrated the willingness to liberalise its sector as well as provide developmental infrastructure for the multi-purpose use of ICT. Its response has highlighted the negative effects of these commitments as a vertically-integrated market structure and inefficient regulation can lead to underdevelopment and non-compliance. However, through adopting norms such as guarding intellectual property rights and domain names, rolling out infrastructure and establishing electronic payment systems, South Africa is creating a space for itself in the electronic commerce approach and participating in the information society. Moves toward improving country-wide access is not as swift though, but South Africa is making universal access a priority for its citizens. Despite getting its reform period in a state of disrepair during liberalisation, South Africa has stayed committed to its objectives stated in the White Paper on Telecommunications. It also recognises that the introduction of the SNO will have to be protected from Telkom's anti-competitive practices. This was acknowledged in the 2003 WTO Trade Policy Review minutes: "The prevention of anti-competitive behaviour by Telkom towards the SNO is to be regulated

by the Independent Communications Authority of South Africa (ICASA), the telecommunications regulator, as well as by the Competition Commission. The Competition Act of 1998 was changed to accommodate concurrent jurisdiction between South Africa's regulatory bodies and the Competition Commission."[187] This is vital if South Africa is to align its domestic agenda with the trend of liberalisation in other developing countries and promote competition in the sector. Through the descriptive analysis of South Africa's response, the following findings were made that address the problems of implementing the Reference Paper and being part of the electronic commerce approach of the emerging GIP regime.

5.3 – Findings from the study

From the evidence stated above, there can be little doubt that the emerging GIP regime has adopted the electronic commerce approach. This study contends that the influential factor was the role of the hegemon (USA) in determining the direction of the regime. As the description of hegemonic-stablity theory noted above, the US was able to influence the formation of the regime because of its global political and economic standing. It was also able to compel other states and private companies to adopt the principles it saw fit for the regime. Authors such as Braman (2004) and Wilson (2004) back this claim by noting that the Clinton administration assisted the prominence of the electronic commerce approach by pushing privatization in important sectors such as the domain name system.

The analysis in chapter four highlights that while South Africa is ambitious in promoting a more development-oriented epistemic community, the reality of shifting the political and economic interests of developed countries and transnational corporations will require a paradigmatic shift in the emerging GIP regime. The likelihood of this shift is slim and therefore necessitates that signatories on the WTO Agreement on Basic Telecommunications adopt the liberal practices of privatization and liberalization responsibly so that their twin objectives of increased participation in the information

[187] Minutes from WTO Trade Policy Review for SADC, (2003) available on http://docsonline.wto.org/GEN_highLightParent.asp?qu=%28+%40meta%5FTitle+South+Africa+or+SACU% (accessed 4 January 2008)

economy and providing universal service can be carefully administered. Accompanied by independent regulation, the liberalization of their respective telecommunication industries holds promise for many developing countries battling to attract investment and address its skills shortage.

Understandably, developing countries have been less than optimistic with privatization of their incumbents since it has made little change in cost or accessibility. The problem of "cherry picking" is a real concern as incoming investors will choose profitable sectors of the industry while neglecting much needed development in rural areas. Checks and balances within the regulatory authority coupled with a high degree of independence are of critical importance to make sure that fair infrastructural development happens. In policy realms, developing countries will need to introduce the information society objectives into their wider development strategies as ICT now covers a wide range of sectors. Collaboration among Ministries will go a long way to developing a set of agreed-upon objectives in domestic policy formulation. South Africa is one example of the realization that the interests of different sectors need to converge for the development of its ICT capabilities. As the case-study demonstrated, the task is long and often painful to customers and the government.

Recent domestic developments indicate that South Africa has overcome the difficulties of the liberalization process and is now benefiting from the norms, rules and principles it abided to in the emerging GIP regime. Two pieces of legislation are worth noting as a demonstration of South Africa being aligned to both approaches of the regime. The first is the Electronic Communications Act, 2005 (ECA) which took effect on 19 July 2006. The ECA was a response to the rapid development of technology and the occurrence of convergence between telecommunication and broadcasting technologies. As a measure to stimulate competition in the sector, the ECA also promotes the empowerment of historically disadvantaged people in this sector and to ensure that electronic communications services and broadcasting services are provided by and to persons from a diverse range of communities. These are admirable qualities that government is trying to achieve. However, the persistent presence and inefficiency of government leaves

regulation matters in an unconvincing state. "The ECA certainly represents a step forward for the liberalisation of the electronic communications market. Its implementation, however, has imposed significant regulatory burdens on ICASA. ICASA's task in giving effect to the ECA is not made any easier by the fact that some of the ECA's provisions have been formulated in imperfect terms. The result is that the new regulatory system will take some time to be established."[188] South Africa is heading toward the electronic commerce approach; however bumps in the road will always be persistent. To ease the momentum, the South Africa government has relied upon itself to provide the necessary infrastructure for ICT connectivity.

The second piece of legislation once again delves into the blurry area of government involvement in telecommunications. The broadband infrastructure initiative, Infraco, is a government owned enterprise that would drive down the cost of broadband internet in South Africa. This government initiative, owned by Eskom and Transnet, involves laying down fiber-optic cables that would link South Africa's major cities and run under the sea along the West Coast.[189] The piece of legislation involved with this initiative was recently approved by Thabo Mbeki and is related to the Electronic Communications (EC) Amendment Act of 2007 and the Broadband Infraco Act of 2007. It is worth mentioning the EC Amendment Act of 2007 as it empowers communications minister Ivy Matsepe-Casaburri to initiate and facilitate strategic government ICT infrastructure investments such as Infraco[190]. The impact of this empowerment is of concern to analysts as history has shown that government involvement in telecommunications has not led to positive results. The presence of government and its R627 million investment in Infraco will make market participants nervous; however this legislation highlights the policy of bringing down connectivity costs. "The promulgation of both Acts brings SA closer to government's goal of lowering telecommunications costs, and increasing productivity and

[188] "The Electronic Communications Act: An Overview", Press and Publications, available on http://www.bowman.co.za/LawArticles/Law-Article.asp?id=2132417221 (accessed 2 January 2008)
[189] "State Company Infraco to Cut Telecoms Costs" (13 February 2007) available on http://www.ioltechnology.co.za/article_page.php?iArticleId=3679673&iSectionId=2884 (accessed 2 January 2008)
[190] "Mbeki Signs Infraco Laws" (17 January 2008) available on http://www.itweb.co.za/sections/telecoms/2008/0801171036.asp?A=LEG&S=Legal%20View&O=FPLEAD (accessed 20 January 2008)

economic growth, says the Department of Public Enterprises."[191] South Africa is indeed heading into a brighter future in terms of telecommunications access. The above-mentioned legislative measures will have to be assessed at a later stage as time will tell whether the intervention of government will have a positive effect.

5.4 – Conclusion

This study concludes that South Africa is part of the international cooperation endeavour that is the emerging GIP regime. In line with regime theory, South Africa accustomed its domestic policies with the precedent set at the international level. This has been demonstrated by the adoption of the WTO Agreement on Basic Telecommunications and the Reference Paper. Critics might point out that South Africa's government had altered the industry toward an inward looking strategy through an exclusivity period for the incumbent, but these actions still form part of the emerging GIP regime's liberalization principles. "Privatizations initially often come with exclusivity periods (i.e., temporary monopoly power). According to the author's [Wallsten, 2000] computations, granting a monopoly in fixed local service would more than double the price private investors pay for the firm. The advantage of exclusivity periods seen in the sale price comes at the cost of reducing network growth relative to privatization without exclusivity periods."[192] Taking this into consideration and that South Africa's White Paper outlined the liberalization motives of government in the early 1990s, it is possible to locate South Africa in the liberal program of the emerging GIP regime[193]. It is equally important to recognise hegemonic stability theory as the theoretical framework that influenced South Africa's obligations, vis-à-vis international power relations, to participate in the emerging GIP regime. Operating on the periphery of global decision-making has provided South Africa with little hope of promoting its social –welfare aims. It therefore has to accommodate its vision for universal access in the framework of the electronic commerce approach that is driven by developed countries.

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[191] Ibid.
[192] Bezzina and Sanchez (2005) pp. 46
[193] The second stage of the privatisation of Telkom commenced with the Initial Public Offering of Telkom shares on the JSE Securities Exchange in South Africa and the New York Stock Exchange on 4 March 2003. This has reduced the government's ownership of Telkom to 39.3% of the total ownership. Thintana LLC (consisting of SBC and Telekom Malaysia) owns 30%, 27.7% is publicly owned and Ucingo owns 3%. – WTO Trade Policy Review, 2003.

The objectives of entering the information economy and providing universal service indicates that South Africa's response is directed by the norms, rules and principles of the emerging GIP regime. Contributing to the importance of this emerging regime in international relations is its emphasis on information policy. This study agrees with Braman's (2004) observation that there are three processes by which information policy has emerged as a distinct issue area in which a regime is forming: via a shift in perception, via empirical change, and via a change in political status.[194] All three contribute to the formation of a regime that makes information policy an important field in international relations. For developing countries, there is optimism that the power balance in the international system might shift toward a less hierarchical structure that would include them in decision-making procedures. As the above study has documented, this optimism is conditional on a number of other factors in the international system that are extremely difficult to overcome.

This study does not dispute that government has an important role to play in ensuring universal service, however its interference in the regulation of the sector has to be minimised so that the market can be competitive and contribute to the growth and scope of ICT in South Africa. Both social development and liberalization highlighted South Africa's eagerness to participate in the information economy and provide access to the vast majority of its citizens. The outcomes were not positive, as many of the fears developing countries had when signing the WTO Agreement on Telecommunications manifested in the South African reform period. The introduction of liberal reforms in an under-prepared environment, the high level of generality in the Reference Paper and domestic political intervention that obstructed the role of the regulator contributed to the stunted growth of South Africa's telecommunications sector. South Africa's response can therefore be attributed to its neoliberal commitments to the WTO and domestic politics.

[194] Braman, (2004) pp. 31

5.5 – Recommendations

The twin objectives of entering the information economy and providing universal service indicate that South Africa's response is directed by the norms, rules and principles of the emerging GIP regime. The future of information policy entails greater liberalisation, however South Africa will have to fill the gaping holes in its policy implementation strategies. This study provides the following recommendations for international and domestic changes in the liberalisation of the WTO principles.

- Government's role should not be separated from the process of liberalisation. Makhaya and Roberts (2003) frame this recommendation in a clear manner: "The policy regime therefore needs to take into account regulatory capabilities and the state continues to have a central, but changing, role to play in the extension of telecommunications services. There are no shortcuts – the wider telecommunications service provision that is required for broad-based economic growth needs strong and effective government for its realisation."[195] However, government's participation should not obstruct the important role played by the regulator in promoting competition in the sector;
- The vertically integrated market structure opens up the opportunity for anti-competitive behaviour and therefore needs to be restructured. Gillwald's (2005) suggestion that: "A market that is horizontally separated, through unbundling of the vertically integrated incumbent into its various components (network infrastructure, applications, services, and content) would be more likely to reduce incentives for non-competitive behaviour"[196], is in line with an alternative that this study poses to the current market structure. The market should therefore move toward the horizontally structured approach allowing for less regulation and problems with interconnection costs;
- On an international level, flaws in multilateral agreements such as the WTO Agreement on Basic Telecommunications need to be addressed with input from developing countries. Privatisation is an important process for increased

[195] Makhaya and Roberts, (2003) pp. 58
[196] Gillwald, (2005) pp. 488

investment and development; however it needs have sequenced implementation schedules with the appropriate checks and balances in the domestic and international forums; and

- Interconnection costs need to be carefully monitored by an independent regulator so that market entrants have the opportunity to participate in the sector and not be subject to high costs by the incumbent.

Investigative TV-show, Carte Blanche, recently aired a feature on the problematic telecommunications sector in South Africa. When addressing government's shareholding structure in the monopoly operator, the Director-General of Communications repeatedly mentioned that its actions were "On behalf of the people of South Africa"[197]. By protecting its R30 billion stake in the incumbent, its response to the emerging GIP regime has unfortunately alienated the people they were trying to help and plunged the sector into a hole that it is slowly trying to dig itself out of. This study anticipates that a rapid transition for South Africa's telecommunications industry is about to take place. With further privatization of Telkom on the horizon, the formulation of policy will be heavily influenced by the rapid innovation of ICT and the increasing domestic need for a strong, reliable network. The presence of the emerging GIP regime is growing stronger and it is only a matter of time before the regime demonstrates its utility as a means for international cooperation and shaping domestic policy for a functioning network society.

[197] "Telkom", *Carte Blanche* (9 April 2006) full transcript available on http://www.mnet.co.za/Mnet/Shows/carteblanche/story.asp?Id=3051 (accessed 20 December 2007)

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Appendix A:

ADDITIONAL COMMITMENTS BY SOUTH AFRICA
REFERENCE PAPER

Scope

The following are definitions and principles on the regulatory framework for the basic telecommunications services.

Definitions

Users mean service consumers and service suppliers.

Essential facilities mean facilities of a public telecommunications transport network or service that:
(a) Are exclusively or predominantly provided by a single or limited number of suppliers;
(b) Cannot feasibly be economically or technically substituted in order to provide a service.

A major supplier is a supplier which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant market for basic telecommunications services as a result of:
(a) Control over essential facilities; or
(b) Use of its position in the market.

1. Competitive safeguards

1.1 Prevention of anti-competitive practices in telecommunications

Appropriate measures shall be maintained for the purpose of preventing suppliers who, alone or together, are a major supplier from engaging in or continuing anti-competitive practices.

1.2 Safeguards

The anti-competitive practices referred to above shall include in particular:
(a) Engaging in anti-competitive cross-subsidization;
(b) Using information obtained from competitors with anti-competitive results; and
(c) Not making available to other services suppliers on a timely basis technical information about essential facilities and commercially relevant information which are necessary for them to provide services.

2. Interconnection

2.1 This section applies to linking with suppliers providing public telecommunications transport networks or services in order to allow the users of one supplier to communicate with users of another supplier and to access services provided by another supplier, where specific commitments are undertaken.

2.2 Interconnection to be ensured

Interconnection with a major supplier will be ensured at any technically feasible point in the network. Such interconnection is provided.

(a) Under non-discriminatory terms, conditions (including technical standards and specifications) and rates[198] and of a quality no less favourable than that provided for its own like services or for like services of non-affiliated service suppliers or for its subsidiaries or other affiliates;

(b) In a timely fashion, on terms, conditions (including technical standards and specifications) and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided;

(c) Upon request, at points in addition to the network termination points offered to the majority of users, subject to charges that reflect the cost of construction of necessary additional facilities; and

2.3 Public availability of the procedures for interconnection negotiations
The procedures applicable for interconnection to a major supplier will be made publicly available.

2.4 Transparency of interconnection arrangements
It is ensured that a major supplier will make publicly available either its interconnection agreements or a reference interconnection offer.

2.5 Interconnection: dispute settlement
A service supplier requesting interconnection with a major supplier will have recourse, either:
(a) At any time or
(b) After a reasonable period of time which has been made publicly known to be an independent domestic body, which may be a regulatory body as referred to in paragraph 5 below, to resolve disputes regarding appropriate terms, conditions and rates for

[198]The authorities may determine different rates in respect of different services rendered in different areas under different circumstances or may determine rates which may be higher or lower than the normal rates providing that the determination of such rates is done on a non-discriminatory basis.

interconnection within a reasonable period of time, to the extent that these have not been established previously.

3. Universal service

Any Member has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive *per se*, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Member.

4. Public availability of licensing criteria

Where a licence is required, all the licensing criteria and the terms and conditions of individual licences will be made publicly available.
The reasons for the denial of a licence will be made known to the applicant upon request.

5. Independent regulators

The regulatory body is separate from, and not accountable to, any supplier of basic telecommunications services. The decisions of and the procedures used by regulators shall be impartial with respect to all market participants.

6. Allocation and use of scarce resources

Any procedures for the allocation and use of scarce resources, including frequencies, numbers and rights of way, will be carried out in an objective, timely, transparent and non-discriminatory manner. The current state of allocated frequency bands will be made publicly available, but detailed identification of frequencies allocated for specific government uses is not required.

Source: World Trade Organisation website (www.wto.org)

Appendix B:

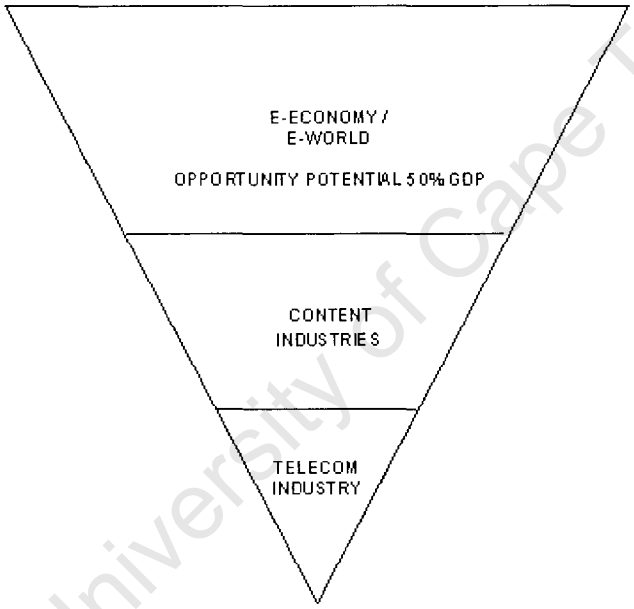
Principles for a Global Information Society

G7 Brussels Principles for the Information Society	G8/Developing World Principles for the Global Information Society
Promoting dynamic competition	Universal service
Encouraging private investment	Clear regulatory framework
Defining an adaptable regulatory framework	Employment creation
Providing open access to networks	Global co-operation and competitiveness
While	Diversity of applications and content
	Diversity of language and culture
Ensuring universal provision of an access to services	Co-operation in technology
Promoting equality of opportunity to the citizen	Private investment and competition
Promoting diversity of content, and	Protection of intellectual property rights
Recognizing the necessity of worldwide co-operation	Privacy and data security
	Narrowing the infrastructure gap
	Co-operation in research and technological development

Source: Braman (2003) pp. 141

Appendix C.

"The point of entry to participation in the e-economy and information society is the telecom network that provides both access to services and information, and opportunities for participation. The productivity improvements and benefits that are actually realised by people, organisations and countries will depend upon how effectively these networks can be used. But those opportunities rest entirely on the telecom network foundation of the e-economy – the coverage, access, quality, services and prices of the telecom network. South Africa's telecom network includes other players besides Telkom, and will include more in the future. It will require the contributions of many players to develop a complete national network capable of meeting the many diverse needs for an increasing variety of telecom services."



E-world triangle

Source: Melody, W. H., (November 2002) "Assessing Telkom's 2003 Price Icrease Proposal: Price Cap Regulation as a Test of Progress in South African Telecom Reform, and E-economy Development" in *LINK Centre Policy Research Paper No 2,* (University of Witwatersrand: LINK Centre) available on http://link.wits.ac.za/research/wm20021130.htm