

WSIS: A New Diplomacy?

Multistakeholder Approach and Bottom Up Policy in Global ICT Governance

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Is WSIS the beginning of a “New Diplomacy”? For the first time in the history of UN sponsored governmental “World Summits” non-governmental actors like private industry and civil society became directly involved into the political process. The so-called “multi-stakeholder approach” opens the door for a new bottom up policy development process (PDP). It challenges the traditional “secret diplomacy” with its “last minute horse trading behind closed doors”. And it introduces new principles like openness, transparency and rough consensus into global negotiations.

The WSIS framework was fixed in UN-Resolution 56/183 (December, 21, 2001). It invited the private sector and civil society “actively participate in the intergovernmental preparatory process of the Summit and the Summit itself” (para. 5).

Resolution 56/183 followed a practice, introduced by the “G 8 Digital Opportunity Task Force” (DotForce) and the „UN Information and Communication Technology Task Force“ (UNICT), which included both governmental representatives and experts from industry and civil society. However, the mandate of DotForce and UNICT was limited. They did not take decisions but recommended governments, what to do. WSIS, in contrast, adopted a „Declaration“ and an „Action Plan“ with a number of (politically) binding commitments.

The problem was, that para. 5 did not clarify what the “invitation” means in practice. The only thing the resolution said was, that the “intergovernmental preparatory committee” should “decide on the modalities of the participation of other stakeholders”. There was no specification, whether “other stakeholders” should have access, speaking, negotiation and/or voting rights.

Consequently, the vagueness of this “invitation” produced bitter controversies among governments themselves and between governmental and non-governmental participants. When PrepCom1 (June 2002) drafted the “WSIS Rules of Procedures”, the more restrictive oriented governments blocked any innovative mechanism. Rule 55 reduced the input of observers to the traditional UN mechanisms: written contributions and limited speaking rights “by invitation only”.

But the following process – more than ten PrepComs and regional conferences - undermined Rule 55. Efforts by some governments, to keep non-governmental observers out of the conference room, produced turmoil before the closed doors. During the “InterSessional” (July 2003), the chair of “Working Group 2” used its “right to invite” and opened the door to observers with limited speaking rights in negotiation groups. The idea was, that governments, if they start negotiations on a certain paragraph, interrupt formally the negotiations and invite observers to make a statement to the point. Such “stop-and-go-negotiations” would *de jure* not change the character of inter-governmental negotiations, but could bring *de facto* innovative input and transparency to the process.

As a result, the discussion on the practical meaning of “multi-stakeholder approach” became dynamized. And this invitation challenged the non-governmental stakeholders to counter the governmental argument, that “observers” are not representative and unable to speak with a coordinated voice by organizing themselves and demonstrating legitimacy, expertise and constructive engagement.

While the creation of a „WSIS Coordinating Committee of Business Interlocutors“ (CCBI), led by the „International Chamber of Commerce“ (ICC) and representing hundreds of transnational corporations and SMEs around the globe, was expected, the unexpected surprise was, that also Civil Society created an open, transparent and inclusive mechanism which gave the hundreds of institutions and individuals, representing thousands of citizens and netizens, a place in the process.

A “WSIS Civil Society Plenary” (CS-P), accessible for everybody, emerged as the main body. A subgroup - “WSIS CS Content & Themes Group” (CS-C&T) - coordinated the work of more than 25 WSIS Civil Society Caucuses, Families and Working Groups. Additionally, a “WSIS Civil Society Bureau” (CS-B), composed by 23 so-called “Civil Society Families” (from Media to NGOs to Trade Unions to Volunteers to Youth etc.) organized the formal interaction between civil society, the WSIS Secretariat and the Intergovernmental Bureau.

Such a structured bottom up policy development process – from individual experts and interest groups on the ground (NGOs/CSOs) to more formalized constituencies (Caucuses) to a coordination group (CS-C&T) to a political oriented plenary (CS-P) – produced a new quality of balanced and substantial “positions” and “negotiable language” and confronted governments with a new challenge: They had to deal not only with their own controversies on issues like human rights, internet governance or cyber-security, but also with substantial interventions from observers. While some governments saw this as enrichment, others felt this as undermining their sovereignty.

A good example is the discussion of Internet Governance. When governments created during the “InterSessional” (July 2003) an “Ad Hoc Working Group”, non-governmental observers participated in the meeting and offered welcomed special expertise. But during PrepCom3 (September 2003), when observers with their laptops started blogging live from inside the group sessions – as it is common in the meetings of the private “Internet Corporation for Assigned Names and Numbers” (ICANN) - some governments pushed the observers again out of the room. Also during PrepCom3bis (November 2003) and PrepCom3bis+ (December 2003), observers, like ICANN President Paul Twomey, had to leave the room. Ironically, some governmental delegates, who did not agree with the exclusion, informed privately in detail the observers, sitting outside the conference room.

Such a “revolving door” to the negotiation room with a total uncertainty, whether “Input” will lead also to “Impact”, provoked in particular civil society, to draft an own declaration. This was further pushed forward by the recognition, that governments are unable to agree on more than the lowest common denominator. Civil society argued, that when governments are blocked by the principle of consensus, other stakeholders have to step in to move things forward. Consequently the “Governmental WSIS Declaration” was complemented by a “Civil Society WSIS Declaration”. While the first one says, what *could* be reached by consensus today, the second one says what *should* be done to meet the challenges of tomorrow.

Nevertheless, some Civil Society proposals made finally their way into the governmental documents. While the idea, to enrich individual rights on free speech with access and participation rights, was watered down, some points on Internet Governance, Intellectual Property Rights and Privacy in Cyberspace were taken.

Again, Internet Governance is an interesting case. The “CS Internet ICT Governance Caucus” made a number of formal and informal interventions in the WSIS process, arguing, that no single organisation alone – ITU or ICANN – should “govern the Internet”. It proposed to develop a mechanism, where different constituencies with different core responsibilities should improve consultation, cooperation and coordination taking into account primarily the interests of Internet users. This is partly reflected in “Recommendation C6.13b” of the Action Plan, which asks UN Secretary General Kofi Annan “to set up a working group on Internet Governance in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries”. For the first time governments recognize *expressis verbis* that both private industry and civil society have to play an “important role” in future Internet Governance.

Such an “official recognition” of non-governmental stakeholders is an indicator, that “trilateralism” as a global governance model for the Information Age moves further forward. It is still unclear, how such a “triangular mechanism” will be designed and resourced in detail. It is still unclear how co-regulatory mechanisms with shared responsibilities can lead to a sustainable development. But WSIS I is only the beginning of a journey into the unknown territory of cyberspace. After Geneva 2003 it will be difficult, to sail back to the old top down power policy of the Industrial Age.