



# TranState Working Papers

THE IMPACT OF PARTICIPATION:  
HOW CIVIL SOCIETY  
ORGANISATIONS CONTRIBUTE  
TO THE DEMOCRATIC QUALITY  
OF THE UN WORLD SUMMIT  
ON THE INFORMATION SOCIETY

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Staatlichkeit im Wandel • Transformations of the State  
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Quality of the UN World Summit on the Information Society***

**ABSTRACT**

The World Summit on the Information Society (WSIS) was held by the United Nations in 2003 to draft a programmatic declaration for the information age. The involvement of civil society organisations (CSOs) in the drafting process was innovative and led to WSIS becoming an especially instructive case in order to assess the potential of civil society participation in global governance. The author analyses the preconditions that were provided for CSOs to participate within this policy process and how it influenced the policy output. The all-encompassing rhetoric of the multi-stakeholder approach at WSIS and its good performance with regard to conceding access, transparency and inclusion to non-state actors suggest that the summit would be responsive to arguments from civil society and therefore a likely case for a deliberative policy process. However, the impact of CSOs on the policy documents has only been marginal. Despite favourable conditions for CSO participation, WSIS was not as responsive towards civil society arguments as could have been expected. A content analysis of policy documents and civil society statements with regard to three selected issue areas – Internet governance, intellectual property rights and communication rights – reveals that CSOs were, in many cases, not able to influence the outcome. Their argumentative input only led to minor changes in the policy documents. The case of the World Summit on the Information Society indicates that favourable conditions for CSO participation alone do not necessarily provide a solution for the democratic deficit in global governance.

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## **LIST OF ABBREVIATIONS**

CCBI .....	Coordinating Committee of Business Interlocutors
CPSR.....	Computer Professionals for Social Responsibility
CRIS.....	Communication Rights in the Information Society
CS C&T .....	Civil Society Content and Themes Group
CSB .....	Civil Society Bureau
CSD .....	Civil Society Division of the Executive Secretariat
CSO.....	Civil Society Organisation
CSP .....	Civil Society Plenary
ECOSOC .....	Economic and Social Council
EPIC.....	Electronic Privacy Information Centre
HRIS .....	Human Rights in the Information Society
ICANN.....	Internet Corporation for Assigned Names and Numbers
ICT.....	Information and Communication Technology
IFJ .....	International Federation of Journalists
IFLA.....	International Federation of Library Associations and Institutions
IPA.....	International Publisher's Association
IPR .....	Intellectual property rights
ITU.....	International Telecommunication Union
LDC .....	Least Developed Country
NGLS .....	UN Non-Governmental Liaison Service
NGO.....	Non-governmental Organisation
NWICO .....	New World Information and Communication Order
PCT .....	Patents, Copyrights and Trademarks
PrepCom/PC .....	Preparatory Conference (Meetings of the Preparatory Committees)
UN.....	United Nations
UNESCO .....	United Nations Educational, Scientific and Cultural Organisation
WPFC.....	World Press Freedom Committee
WSIS.....	World Summit on the Information Society

***The Impact of Participation:  
How Civil Society Organisations contribute to the Democratic  
Quality of the UN World Summit on the Information Society***

**INTRODUCTION<sup>1</sup>**

When the United Nations (UN) organised the World Summit on the Information Society (WSIS) in Geneva in 2003, its innovative multi-stakeholder design was widely praised. The inclusion of non-state actors developed into one of the defining and legitimising goals of the summit. The WSIS ought to be “the scene of a new world dialogue, a new form of international communication based on the values of responsiveness, exchange, solidarity and sharing” (WSIS Executive Secretariat 2002: 3). The WSIS symbol stands for a flower, whose four petals around the dot on the ‘i’ represent governments, international organisations, businesses and civil society organisations (CSOs), which all contribute to the common vision of an ‘Information Society for All’ (WSIS 12.12.2003: 3). In fact, civil society organisations as well as other observers actively participated during the whole preparatory process as well as at the summit by contributing to the drafting process of the policy documents. When it became apparent that the summit would not be a success with regard to substance, the WSIS aspired even more strongly to promote the announced multi-stakeholder approach. The participation of civil society actors was supposed to allocate legitimacy to the policy output.

In line with the deliberative approach to democracy (Habermas 1992; Cohen 1996; Elster 1998; Dryzek 2000), the World Summit on the Information Society could be a likely case in order to observe a democratic and legitimate decision-making process, as it provided favourable formal conditions for CSO participation. Formally, CSOs had a wide degree of access to the negotiations. The policy process was transparent in that it allowed full access to policy documents and background material. The WSIS also provided some, although not sufficient, measures to ensure inclusion of marginalised stakeholders. This leads to the assumption that CSOs were able to bring in substantial arguments and potentially shape the discussions and the policy output – in other words, that the WSIS was responsive to CSO demands.

Despite the exhilarated rhetoric of the WSIS organisers with regard to the multi-stakeholder approach at the WSIS and the assumptions that can be drawn from a deliberative approach to democracy, many CSOs were frustrated about their marginal impact on the policy output. They felt that they were more like a fig leaf, legitimising the policy outcome without having any real power to influence it. In the end, civil society drew

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<sup>1</sup> The case study contributes to the project “Legitimation and Participation in International Organisations” (B5) of the Collaborative Research Centre 597 “Transformations of the State”.

back from the official policy process and published its own Declaration of Principles ‘Shaping Information Societies for Human Needs’ (WSIS 08.12.2003). This CSO criticism suggests that favourable conditions for civil society participation and their input do not necessarily lead to an awareness of and reaction to their concerns in international policy processes.

This case study evaluates the World Summit on the Information Society using criteria for democratic quality based on a deliberative approach in order to see if it lived up to its demands. The criteria that were used to measure the participation of CSOs and their impact on the policy process by means of deliberation are

- (1) access of CSOs to deliberation;
- (2) transparency and access to information;
- (3) inclusion of all stakeholders; and
- (4) responsiveness of the WSIS documents to CSO concerns (Nanz and Steffek 2005: 7).

Even though the variables access, transparency, and inclusion will be taken into consideration in order to indicate the relatively favourable preconditions for civil society participation at WSIS, responsiveness is the focus of this paper. Responsiveness is the most decisive criterion when assessing the democratic quality of the negotiations, since it best captures the legitimacy of the policy output: responsiveness encompasses not only the CSO input that was incorporated into the final documents but also those arguments that have not been considered, provided that they were discarded after a rational discourse took place. In the deliberative approach to democracy, the latter instance would be an indicator for justification, whereas the first could be referred to as an adjustment. Justification means that governmental actors take the arguments of CSOs into account and justify their positions with regard to them. As justification is hard to observe directly in a document analysis of a stylised negotiation process such as the WSIS, it is here subsumed under the indicator of responsiveness and assessed only indirectly by looking at how the contents of the documents changed over time. The variation over time adds to the understanding of how arguments of CSOs and other actors are being discussed, discarded, or included in the course of the entire preparatory process.

The paper proceeds as follows: *First*, it briefly introduces deliberative democracy as a way to enhance the democratic quality of an international decision-making process by securing civil society participation under certain conditions. Based on this democratic ideal, the four indicators are developed as benchmarks which are then used to measure the World Summit on the Information Society. *Second*, it gives an overview of the involvement of civil society actors in the World Summit on the Information Society in Geneva 2003 and its preparatory phase. *Third*, access to the negotiations, transparency

of the documentation and the inclusiveness of the negotiations are analysed in order to assess the preconditions for civil society participation. *Then*, the paper gets to the core of the matter and analyses the influence of CSOs on the content of the policy output, a Declaration of Principles and a Plan of Action, at various stages. Hence, it determines the responsiveness of the WSIS process towards CSO arguments by means of a content analysis of key policy and background documents with regard to three conflicting issues that have been discussed at WSIS. On the basis of the empirical evidence, conclusions are *finally* drawn on the democratic legitimacy of the WSIS.

## **THE IDEAL OF DEMOCRATIC QUALITY IN INTERNATIONAL DECISION-MAKING**

Global Governance is a concept that describes not only the growing interdependence in our contemporary world and the decreasing ability of nation states to solve problems across national boundaries, it also highlights possibilities of governance beyond the nation-state (Zürn 1998a). These new forms of governance through international institutions which include a variety of actors other than governments potentially suffer from a democratic deficit. The involvement of civil society actors in global governance may be a possible cure for the frequently diagnosed democratic deficit of international politics and institutions.

The increasing importance and the role of non-governmental and civil society organisations is stressed extensively in the global governance debate, a popular strand of International Relations literature (for an overview of the literature see the following reviews: Zürn 1998b; Risse 2002; Price 2003). Some researchers have empirically analysed whether civil society organisations matter in international policy processes at all, under what conditions this occurs and for what reasons and purposes (Princen and Finger 1994; Risse-Kappen 1995; Keck and Sikkink 1998; Florini 2000). Their involvement in the United Nations in general and UN world summits in particular have been studied (Weiss and Gordenker 1996; Clark, Friedmann et al. 1998; Hochstetler, Clark et al. 2000). On normative grounds, others have argued that CSOs should matter. Especially their potential to enhance international democracy by awarding legitimacy to international decision-making processes has been discussed (Wolf 2002; Beisheim 2004; Nanz and Steffek 2004).

This case study is based on normative and empirical guidelines by Nanz and Steffek (2005) for the analysis of the relationship between CSO participation and the legitimacy and democratic quality of international organisations (Steenbergen, Steiner et al. 2003; Steiner, Bächtiger et al. 2004). Their analytical framework is theoretically founded in the deliberative approach to democracy (Habermas 1992; Cohen 1996; Elster 1998; Dryzek 2000; Schmalz-Bruns 2002). The basic idea of deliberative democracy is that those who are affected by policy-decisions should take part in its formulation. The par-

ticipation of citizens is seen as the constitutive aspect of democracy, without at the same time denying that there are other factors as well, such as the rule of law and the distribution of power. An ideal policy process would be founded on an exchange of reasonable arguments and justifications between all those who are affected. Public scrutiny and the consideration of all relevant concerns will always enhance legitimacy.

The meaningful participation of citizens in decision-making processes seems to be especially important in international policy-making due to a widely perceived democratic deficit. Representatives of national governments in international organisations only indirectly represent the citizens worldwide, although their decisions have far-reaching consequences (Nanz and Steffek 2004: 314). An approximation to the deliberative ideal of democracy could make decisions made in international organisations more legitimate.

Civil society organisations are key actors in this process as they are understood to be a transmission belt between the citizens and the policy-makers. They observe international policy processes, report back to their constituency and empower marginalised groups to actively participate in policy-making (Nanz and Steffek 2004: 315). This case study assesses whether the meaningful participation of CSOs could be a cure to the democratic deficit of international governance. The normative criteria of access, transparency, inclusion and responsiveness serve as benchmarks which measure the degree and type of civil society participation at (and therefore the democratic quality of) the World Summit on the Information Society.

## **CIVIL SOCIETY AT THE WSIS**

The World Summit on the Information Society is organised by the International Telecommunication Organisation (ITU), a specialised agency of the United Nations, and which took place in two phases. Its first phase, leading to the summit in December 2003 in Geneva, is the object of investigation in this paper, whereas its second phase culminated in a second summit in November 2005 in Tunis<sup>2</sup>.

The governmental representatives gathered at the WSIS to develop a framework or a common vision of an information society to bridge the digital divide<sup>3</sup>. The ‘information society’ is a loosely defined and contested concept, and an uncommon issue on the

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<sup>2</sup> An extension of the analysis on the second summit in Tunis 2005 and a comparison of the two WSIS phases may lead to further understanding of civil society participation and the legitimacy of the policy output of WSIS. This has not been the focus of this article but is currently being analysed by the author in her dissertation project at the Graduate School of Social Sciences, University of Bremen, Germany.

<sup>3</sup> “Digital divide” means the unequal distribution of information and communication technologies nation- and worldwide, which widens the gap between those who have access to ICT and those who don’t.

global policy agenda.<sup>4</sup> At the WSIS it comprised a variety of issues, ranging from the regulation of the Internet to communication rights to reaching the UN Millennium Goals through Information and Communication Technology (ICT), often leading to conflicts between economic and societal or developmental claims.

The preparatory process of the WSIS was comprehensive (see Fig. 1). In nearly two years six preparatory conferences, five regional conferences and one intersessional meeting were held. A large amount of written documentation was produced and several conflicts were discussed so extensively and controversial that even the three newly convened ‘last-minute’ PrepComs 3a, b and c were not able to solve them.

**Figure 1:** *The WSIS process timeline*

PC1	PC2	Intersessional	PC3	PC3a	PC3b/c	WSIS
Geneva	Geneva	Meeting, Paris	Geneva	Geneva	Geneva	Geneva
1-5 July 2002	17-28 Feb 2003	15-18 July 2003	15-26 Sep 2003	10-14 Nov 2003	5-6/9 Dec 2003	10-12 Dec 2003

*Regional Conferences:*

- *African:* 25-30 May 2002, Bamako (Mali)
- *Pan European:* 7-9 November 2002, Bucharest (Romania)
- *Asia-Pacific:* 13-15 January 2003, Tokyo (Japan)
- *Latin America and Caribbean:* 29-31 January 2003, Bávaro (Dominican Republic)
- *Western Asia:* 4-6 February 2003, Beirut (Lebanon)

Two documents were passed at the WSIS in 2003: a Declaration of Principles and a Plan of Action, which are neither visionary nor binding; rather, they are the least common denominator between governments and merely outline the agenda for the implementation of a world wide information society. Whereas the WSIS can be criticised due to the vagueness of its subject, its difficulties when reaching out to a broader public, or its disability to provide concrete solutions for those that are actually affected by the digital divide, it has been an innovation; not so much with regard to substance, but regarding the actual process.

The organisers of the WSIS declared that they will involve all stakeholders already in the preparatory phase and asked civil society, businesses and international organisations to shape the negotiations and to participate in drafting the documents (WSIS Executive Secretariat 2002: 3; Kleinwächter 2004b: 34). Civil society participation was institutionalised in the Civil Society Division of the WSIS Executive Secretariat. This ambi-

<sup>4</sup> Information and communication have been on the global agenda twice: 1948 at the UN Conference on the Freedom of Information and from the mid 1970s to the mid 1980s during the debate on the New World Information and Communication Order. For further reading see (Kleinwächter 2004b; Ó Siochrú 2004).

tious policy design evolved as a benchmark of success for the summit. Civil society demanded the actual implementation of this approach, which proved to be difficult in the absence of viable rules and procedures. The multi-stakeholder approach was constantly under discussion at the preparatory conferences and a reason for severe controversies. Its implementation evolved over time and through a mutual learning process, both on the side of civil society as well as governments.

**Table 1:** *Participation of representatives of different stakeholder groups during the preparatory process and the WSIS*

<i>Representatives of</i>	<b>PrepCom1</b>		<b>PrepCom2</b>		<b>PrepCom3</b>		<b>WSIS</b>	
		<b>%</b>		<b>%</b>		<b>%</b>		<b>%</b>
<i>Governments</i>	607	<b>66</b>	910	<b>59</b>	889	<b>54</b>	3.759	<b>42</b>
<i>NGOs/CSOs</i>	223	<b>24</b>	394	<b>25</b>	537	<b>32</b>	3.425	<b>39</b>
<i>International Organisations</i>	56	<b>6</b>	186	<b>12</b>	164	<b>10</b>	1.157	<b>13</b>
<i>Business Sector Entities</i>	34	<b>4</b>	60	<b>4</b>	68	<b>4</b>	525	<b>6</b>
<b>Total</b>	920	<b>100</b>	1.550	<b>100</b>	1658	<b>100</b>	8.866	<b>100</b>

Sources: ITU (2002), Final List of Participants, PrepCom1, 1-5 July 2002, Short Form, 5 July 2002<sup>5</sup>; WSIS PrepCom2 Participant Information<sup>6</sup>, WSIS PrepCom3 Participant Information<sup>7</sup>; ITU (2003), Final List of Participants, 28 January 2004<sup>8</sup>, own calculations.

Table 1 illustrates that civil society participation is relatively high in comparison to other stakeholder groups and that it increased steadily. In the run-up of the summit it matched almost the number of representatives from governments that were accredited.<sup>9</sup> Interestingly, the private sector has by far not been as present as CSOs.

Civil society participation did not only rise in quantity, but complex civil society structures emerged over time during the preparatory process. The structure is multi-layered and may be divided into entities with different functions. The involvement of

<sup>5</sup> [http://www.itu.int/wsis/docs/pc1/administrative/list\\_participants\\_short.pdf](http://www.itu.int/wsis/docs/pc1/administrative/list_participants_short.pdf) (last access 15.02.2006).

<sup>6</sup> <http://www.itu.int/wsis/participation/prepcom2/> (last access 15.02.2006).

<sup>7</sup> <http://www.itu.int/wsis/participation/prepcom3/> (last access 15.02.2006)

<sup>8</sup> [http://www.itu.int/wsis/docs/geneva/summit\\_participants.pdf](http://www.itu.int/wsis/docs/geneva/summit_participants.pdf) (last access 15.02.2006).

<sup>9</sup> In relation to the non-governmental participation on other UN world summits, the WSIS is not outstanding. At the UN Conference on Environment and Development in Rio (1992), 2,400 CSO representatives were accredited while 17,000 people attended the parallel NGO Forum (<http://www.un.org/geninfo/bp/enviro.html>, last access 15.02.2006). At the WSSD 2002 in Johannesburg, 8,092 individuals of 925 organisations were representing the so called ‘major groups’, which comprised CSO as well as private sector representatives. [http://www.johannesburgsummit.org/html/major\\_groups/mgroups\\_wssd\\_participants.pdf](http://www.johannesburgsummit.org/html/major_groups/mgroups_wssd_participants.pdf) (last access 15.02.2006).

civil society at WSIS was institutionalised by a top-down approach through organisational structures provided by the UN, but also developed from below in a process of self-organisation (Padovani and Tuzzi 2004).

The UN installed the Civil Society Division of the WSIS Executive Secretariat (CSD). It was included in the tripartite WSIS structure from early on, along with a division for governments and the private sector. The CSD enabled civil society participation, e.g. by providing a web page. It worked as a knowledge disseminator and service provider for civil society. It distributed information and working material to CSOs and conducted workshops and seminars. It briefed CSOs about events pertinent to the summit and created contact and networking among civil society. The CSD also represented civil society concerns towards the media and other WSIS participants as well as in the Executive Secretariat. It processed requests for accreditation and participation and raised funds.<sup>10</sup> After its adoption the CSD also acted as a secretariat for the Civil Society Bureau.

In addition to this UN-initiated institutionalisation of CSOs, civil society created complex structures from below. The highest decision-making body of civil society is the Civil Society Plenary (CSP), which is a meeting open to all present during the preparatory conferences and the summit itself. The CSP legitimises civil society action. For the time in between the actual meetings, a virtual CSP group was established.

The main element of civil society that has been occupied with procedural (as opposed to content) questions was the Civil Society Bureau (CSB), which was founded during PrepCom2 as the great diversity and large number of CSOs active at the WSIS called for an additional coordination mechanism.<sup>11</sup> It comprises representatives of each of the civil society groups (so-called families, working groups and regional caucuses) and had exclusive organisational functions: suggesting the representation of civil society at the PrepComs and the summit; organising civil society events; and connecting the different groups within civil society.<sup>12</sup> The real innovation was its close connection to the governments through consultation meetings between the Civil Society Bureau and the Governmental Bureau.

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<sup>10</sup> Civil Society & NGO Open Ended Bureau, Proposal, 30.01.2003, [www.worldsummit2003.de/download\\_en/CS\\_Bureau\\_30Jan\\_ENG.doc](http://www.worldsummit2003.de/download_en/CS_Bureau_30Jan_ENG.doc) (last access 15.02.2006).

<sup>11</sup> The foundation of the CSB was accompanied by severe critique from within civil society because of the fear that a hierarchical structure would emerge and the manner in which it was established was quite non-inclusive. Heinrich-Böll-Foundation, The proposed civil society bureau receives heavy criticism, but it will be too late to stop it, Geneva, 18.02.2003, <http://www.worldsummit2005.de/en/web/214.htm> (last access 15.02.2006).

<sup>12</sup> Ibid.

When it came to creating content, i.e. the argumentative input for the negotiations, the diverse caucuses and working groups, which were organised into families, and the Content and Themes Group (CS C&T) were key entities. The ground-level work was done in seven regional and more than twenty thematic caucuses and working groups: Issues were discussed, arguments developed and statements produced. The considerable but still unsystematic input was compiled by the CS C&T. The group created draft versions of the Action Plan and the Declaration, priority lists, benchmarks and - in the end - an independent CS Declaration was issued, specifying a common civil society position and showing its disapproval of the official documents.

This bottom-up process was probably the greatest and most sustainable success that civil society achieved at the WSIS: It independently organised a complex institutional structure in the course of the negotiations; it developed common strategies and goals; and it created new networks.

## **PRECONDITIONS OF CIVIL SOCIETY PARTICIPATION**

The preconditions of CSO participation are evaluated by drawing on three indicators: access, transparency and inclusion. These are necessary preconditions for democratic and legitimate decision-making. Stakeholders may only voice their arguments with institutionalised access to the deliberative settings. Transparency is crucial in order to provide CSOs with the necessary information so that they can participate meaningfully in the negotiations and so that the decision-making processes are exposed to public scrutiny. This is guaranteed by the disclosure of policy documents as well as the possibilities of accessing information on the background of the WSIS. Inclusiveness ensures that arguments of all stakeholders that are possibly affected are included in the policy process. This can be achieved with the support of marginalised stakeholder groups, taking part in the negotiations through institutional settings such as scholarships.

### **Access to deliberation**

Broad and active participation of all stakeholders was a defining and legitimising aspect of the WSIS. However, as a primarily intergovernmental summit, there were formal restrictions for CSOs and other observers when accessing the negotiations. In the course of the preparatory process, though, the formal rules disintegrated and access for CSOs to the deliberations improved.

Except for CSOs that are in consultative status with the UN Economic and Social Council (ECOSOC), the other CSOs needed to accredit themselves at least six weeks before each PrepCom and more than four months before the summit. The application process demanded detailed information on the organisation, which is used by the Executive Secretariat, with the assistance of the UN Non-Governmental Liaison Service (NGLS), to decide upon the relevance and expertise of the CSOs willing to participate.

The emanating list of recommended observers was then distributed to the Member States which could request more information and delay or overturn the accreditation process. Since some states, notably China and Pakistan, tried to block civil society participation, NGOs that had no legal status in the states of their origin were not accredited, as was the case with Human Rights China (EPIC 2004: 196).

Once accredited, civil society actors were able to take part in the preparatory process and the summit within the scope of the Rules of Procedure and the Arrangements for Participation. The Rules of Procedure did not allow exceptionally far-reaching participation for non-governmental actors:

*“1. Non-governmental organizations, civil society and business sector entities accredited to participate in the Summit may designate representatives to sit as observers at public meetings of the Summit and its committees.*

*2. Upon the invitation of the presiding officer of the body concerned and subject to the approval of that body, such observers may make oral statements on questions in which they have special competence” (WSIS 12.09.2003).*

Observers were allowed to take part in the plenary meetings, but not in the meetings of the governmental Bureau, the subcommittees and the working groups. They had no voting rights in public meetings. This handling of civil society participation is rather conservative in that it resembles the rules that are enforced at other high level world summits (see ECOSOC 19.03.2001: rule 64; UN 27.02.2002: rule 64).

In practice, the rules on civil society participation at the WSIS were constantly discussed and interpreted during the preparatory process. Informally, CSOs were able to gain more participation rights than those that were officially provided.

Especially since the Intersessional Meeting in Paris in July 2003 observers were increasingly accepted to take part in the working groups and subcommittees. At the end of the Intersessional Meeting, the governmental WSIS Bureau officially consulted the Civil Society Bureau (CSB) and the Coordinating Committee of Business Interlocutors (CCBI) for the first time in order to exchange views on the multi-stakeholder procedures (Kleinwächter 2004b: 55). Kleinwächter (2004b) argues that this disintegration of the Rules of Procedure in favour of civil society participation was triggered by practical constraints. Governmental representatives were simply swamped with the discussions about technical details, for example on Internet governance. Some CSO representatives were helpful experts that were able to explain the complex context of the questions at stake to the diplomats.

The Working Group on Internet Governance was another example of the tug-of-war when it came to civil society participation. At PrepCom3 the non-governmental participants were first allowed to speak for five minutes at the beginning of the session. However, when CSO representatives started to directly report out of the conference room via

Internet, they were again excluded from the sessions. As a consequence, some diplomats that opposed this decision briefed civil society actors outside the negotiation rooms on the discussions that were going on inside (Kleinwächter 2004b: 61-62).

CSO representatives as well as business actors were, in parts, also accepted as members of national delegations. The decision to include them within the national delegations rested with the respective nations. Switzerland and Denmark were outstanding in this respect; they included civil society and business advisors from an early stage on.<sup>13</sup> Germany started to include two non-state actors out of six national delegates at the intersessional meeting in Paris.

As an informal part of the preparatory process, eight multi-stakeholder roundtables were organised to specific themes around the topic “An Information Society for All: Opportunities and Challenges”.<sup>14</sup> These talks took place at the beginning of PrepCom2 and all stakeholders, including civil society, were invited to a free exchange of ideas with government representatives. The outcome was a Chairman’s summary of the discussion.<sup>15</sup> However, these roundtables seemed to have had little influence on the working documents. Furthermore, the practice with regard to the selection of civil society speakers by the Secretariat was criticised as being quite arbitrary (Ó Siochrú 2004).

In sum, CSOs had access to the negotiations; they could speak in meetings and submit their own documentation. Although their right to actively participate at the working level was restricted by formal rules, civil society actors have de facto been increasingly able to access most of the deliberations. Therefore one major precondition for democratic and legitimate decision-making was fulfilled by the WSIS process.

### **Transparency – Access to documentation**

The policy process and background of the WSIS is comprehensively documented. All documents are available on the website of the world summit<sup>16</sup>: official documents, working documents, non-papers<sup>17</sup>, administrative documents and contributions by the different stakeholders. Additionally, statements, speeches and presentations of the diverse sessions are offered on the website. The meetings since PrepCom2 and the WSIS

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<sup>13</sup> For example, Denmark’s delegation included Rikke Frank Jorgensen from the Danish Institute for Human Rights as an advisor. Switzerland’s delegation at PrepCom2: [http://www.itu.int/wsis/participation/prepcom2/cty\\_results.asp?CountryID=SUI&B1=++Submit++](http://www.itu.int/wsis/participation/prepcom2/cty_results.asp?CountryID=SUI&B1=++Submit++) (last access 15.02.2006).

<sup>14</sup> <http://www.itu.int/wsis/geneva/roundtables/index.html> (last access 15.02.2006).

<sup>15</sup> WSIS, Arrangements for participation adopted at the first session of the Preparatory Committee (Geneva, 1-5 July 2002), WSIS/PC-1/DOC/0011(annex2).

<sup>16</sup> [www.itu.int/wsis](http://www.itu.int/wsis) (last access 15.02.2006).

<sup>17</sup> A non-paper is an unofficial presentation of government policy.

2003 have also been taped by the ITU's Internet Broadcasting Service. Civil society on its part distributed the information via a plethora of mailing lists and own websites.

Background information is offered through press releases and summaries of 'daily highlights' of the WSIS process. The ITU website provides external links that - in a wider sense - deal with the world summit, its goal of using information and communication technology for development and with WSIS related events.

In the intersessional period between PrepCom2 and PrepCom3, the ITU put additional effort into giving an overview on governments and observers positions on the working documents. Working documents have been released with an additional section comprising 'Observers contributions' (WSIS 21.03.2003a; WSIS 21.03.2003b). This enhanced transparency; however, it also provoked critique with regard to the seemingly arbitrary selection of non-state actors input (CPSR 31.05.2003).

The Reference Document (ITU 12.06.2003) was another endeavour by the ITU to compile contributions by both governments and observers to the Declaration of Principles and the Action Plan. Since the Reference Document ended up being very voluminous, an additional Reading Guide (ITU 02.07.2003) was produced as a summarising version of the divergent views of the different stakeholders.

Despite these efforts critique was voiced by civil society with regard to access to documentation. The brevity between the release of some documents for the broader public and the deadline to submit statements on those documents was criticised. One case in point is the non-paper that the president of the preparatory process, Adama Samassékou, produced informally prior to PrepCom3a. Sally Burch, who was responsible for the aggregation and drafting of civil society statements, described the problem as follows:

*"We appreciate Mr. Samassékou's concern to receive our input, but in the circumstances (we all have full-time jobs elsewhere) it is almost impossible to organise a reaction at such a short notice, much less to make a proper on-line consultation, which means that whole regions (such as Latin America) are left out of the opportunity to react."*<sup>18</sup>

Another point of critique was the lack of translation into languages other than English. Again, the above mentioned non-paper is a case in point. It was translated into French, but not into Spanish, which led, considering the tight time-frame, to the exclusion of Latin American civil society groups.

Nevertheless, despite these deficiencies, the WSIS was a well documented event. Everybody was able to receive policy documents in order to make informed choices

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<sup>18</sup> Burch, Sally, 30.10.2003, "Report-back to the bureau on Samassékou's non-paper", <WSIS-CT>, <http://mailman.greenet.org.uk/public/ct/2003-October/000802.html> (last access 15.02.2006).

about the policy proposals. Additionally, background documents were widely accessible for more information on the issues at stake.

### **Inclusion**

Another requirement for legitimate decision-making to take place is that all stakeholder groups that are affected by a policy decision should have a say in its formulation (Kaul 2003: 28; Nanz and Steffek 2005). As there are potentially marginalised groups that face barriers for participation, the decision-making institution should ideally take special measures to include these voices. Civil society organisations face barriers to participation due to the lack of personnel and financial resources. Within civil society, certain specific groups are very likely to be underrepresented; for example: indigenous peoples, women, disabled persons and citizens of developing countries (on the last group see: Panos 2002). And yet, precisely those groups have a prominent interest in the issues that were being discussed at the WSIS as they are most affected by the digital divide<sup>19</sup>. Hence, these stakeholders are less likely to take part in the Information Society as envisioned at the WSIS and, at the same time, they face multiple barriers when it comes to participating in policy making on information and communication technologies – a vicious circle.

As a matter of fact, civil society actors from developing countries were underrepresented at the WSIS summit in Geneva and the PrepComs; the majority of civil society actors came from Europe (Dany 2005). Moreover, women were underrepresented at the WSIS. Within civil society, females represented only a third of all CSO participants. Sreberny (2004: 197) consequentially criticises “the gap between the expressed intentions around gender equality and the actual embodied speakers or writers who are overwhelmingly male”. It can be inferred from this unbalanced representation that certain voices are likely to be excluded, although it is of course possible that male speakers or representatives from Northern CSOs raise issues pertaining to developing countries or women. Still, Eurocentrism and the slight gender inequality of civil society involved in the WSIS raises questions about the legitimacy of civil society itself which seems to exclude certain voices. An important contribution to the further evaluation of CSO participation at the WSIS would be an analysis of the composition of civil society actors in order to infer to the legitimacy of this political actor.

Therefore, it would have been a necessary requirement for a legitimate decision-making process that the organisers of the WSIS had taken measures to include margin-

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<sup>19</sup> The term digital divide describes the unequal distribution of ICT worldwide and the undesirable consequences for persons that are excluded from the benefits that information technologies provide. It is assumed that their connection, especially to the Internet, could be a valuable step towards economic, social and democratic development (Norris 2001). This challenge was the reason for conducting a World Summit on the Information Society.

alised civil society actors. The ITU, though, did not thoroughly abolish barriers to participation for marginalised groups. Most meetings of the preparatory phase and the summit were held in Europe, the only exceptions being the regional conferences, one of which was held on each continent. This led to high travel expenses, which as an example hindered delegations from developing country civil society groups to participate as they usually do not have large financial resources at their disposal. Effective participation of small delegations, mostly a feature of Civil society organisations from developing countries as well, was additionally inhibited by simultaneously scheduled events, which could not all be attended (Brazil 07.01.2003: 2). However, the ITU granted a restricted number of fellowships for participants at the PrepComs and the summit. This was one measure to include the marginalised, these especially being individuals from Least Developed Countries (LDC) as well as women.

In brief, fellowships were the only arrangement made to safeguard inclusion at the WSIS, particularly when it came to the two groups just mentioned. Barriers to participation for small and resource-poor delegations existed. These included the venue of the conferences and the amount of parallel events. Possibly and as a consequence, developing country and female civil society delegates were underrepresented. To sum up, the ITU did not provide sufficient measures beyond fellowships in order to include particularly marginalised groups of civil society.

## **RESPONSIVENESS TOWARDS CSO ARGUMENTS**

The multi-stakeholder approach, however, is not accomplished by merely providing preconditions for civil society participation, but also by granting a real opportunity to shape the policy output. Thus, in assessing the democratic quality of the WSIS, just as CSOs should be able to participate and provide input for the negotiations, it is just as crucial that they have an impact on the deliberations and the documents. Input in UN processes, though, does not automatically lead to impact and, indeed, it often doesn't: "many in civil society are becoming frustrated; they can speak in the United Nations but feel they are not heard and their participation has little impact on outcomes" (United Nations 2004: 7). Civil society impact can be measured by looking at the degree to which governmental negotiators responded to the claims and arguments of CSO and how their voice was reflected in the documents. Along with the three preconditions for civil society impact – access, transparency, and inclusion – responsiveness is important in order to assess the democratic quality of the WSIS.

In the WSIS context, responsiveness towards CSO demands developed to be one, if not the, major benchmark for the success of the summit. For the lack of progress in substance, the realisation of the multi-stakeholder-approach gained a legitimising function. Despite these high demands of the summit, many CSO representatives felt frustrated about their marginal influence. Finally, civil society actors backed out of the drafting

process after PrepCom3a in November 2003. They developed their own Declaration “Shaping Information Societies for Human Needs” (WSIS 08.12.2003) instead of endorsing the official WSIS Declaration and Action Plan. To see whether the objections voiced by civil society referring to their marginal influence prove true, the responsiveness of the WSIS process is analysed in the following with regard to the discussions about Internet governance, intellectual property rights and communication rights.

### **Content Analysis – Assessing the Responsiveness of the WSIS**

The responsiveness of the negotiations leading to the WSIS is assessed by using content analytical methods. The goal is to trace the argumentative input of CSOs in the evolution of the Declaration of Principles and the Plan of Action in order to assess the degree to which civil society actors were able to influence the policy outcome. The draft working documents in their variations over time as well as all written CSO input in the negotiations during the preparatory process leading to WSIS 2003 with regard to specific issues serve as the unit of analysis.

The study focuses on key issues in the negotiation process. Some of the most contested issues at WSIS were Internet governance, intellectual property rights (IPR) and communication rights. The issue-selection is based on their centrality in the course of the WSIS. The topics have been chosen as these were the ones heavily discussed and civil society actors gave considerable input into the debate.<sup>20</sup>

In the analysis, only documents at certain points in time are taken into consideration. The starting point of the negotiations about content – as opposed to procedure – was the second preparatory conference (PrepCom2). Here, CSOs gave a substantial argumentative input into the meeting. Only then can one speak of a deliberative process. Therefore the initial documents that were released at the beginning of PrepCom2 will be the point of origin of the analysis. The final Declaration of Principles and the Plan of Action, as they were presented at the WSIS summit in December 2003, are treated as the end point. In between, the discursive process is divided into six phases and only the most important fractures or milestones in the development of the working documents serve as points of reference in order to assess whether the CSO input – which is constantly and comprehensively observed – made any difference.

The content analysis is accomplished in three steps: First, the background of the above mentioned issue areas are presented and key questions or categories of the issue are identified in order to guide the content analysis. To illustrate this procedure, the discussion about the generic issue communication right focused on three key questions:

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<sup>20</sup> To find an agreement on financial mechanisms to bridge the digital divide was another crucial and contested issue which nearly led to the failure of the whole WSIS process. However, this issue is not analysed here as CSOs did not give a sufficient amount of identifiable input into the debate.

- (1) Promotion or neglect of communication rights or a right to communicate;
- (2) definition of communication rights or a right to communicate;
- (3) connection of those rights to the general human rights framework.

Only statements by the different actors related to these questions have been taken into consideration.

Second, the argumentative input of the CSOs is identified with regard to the core questions of the issue areas in the course of time. On the basis of all written statements by civil society organisations that have been accessible to the negotiators during the preparatory process, their main positions with the respective arguments and justifications are recognised. Altogether 111 civil society documents have been analysed in this way. Thus, one is able to develop the content of CSO demands and the corresponding justifications: how the issue is conceived, reasons for the positions, and the solutions proposed. Additionally, one can discover the salience of arguments and the degree of contention of the CSO positions with regard to the specific issues. The CSO input has been very diverse. It consisted of elaborated background papers, of short statements, pointed speeches or concrete drafting proposals for specific paragraphs. All of the input was taken into consideration and was treated equally in the content analysis.

Third, the CSO arguments are traced in the evolving working documents, the Declaration of Principles and the Action Plan in their respective provisional state of formulation. 15 different versions of those documents have been taken into consideration.<sup>21</sup> The drafting process is reconstructed in order to identify changes in the wordings, which may or may not relate to CSO input. As a result, one can assess whether the changes made in the working documents over time correspond to CSO demands or drafting proposals. CSO demands that never made their way into the documents or vanished from the wordings at some point of the preparatory process were also taken into account.

To round off the picture, positions of key governmental actors to the analysed issues were also considered in order to identify cases in which governmental actors internalised CSO arguments or when they took a differing stance towards CSO positions. Furthermore, background information derived from experiences of involved stakeholders was another means with which to guide the content analysis. Several detailed reports

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<sup>21</sup> The ‘Green Paper’, usually a written statement of the proposed policy on a particular issue which is put forward for discussion, served as the starting point for the analysis (t0), which is a compilation of the outcomes of the regional conferences of 24.02.2003, and the Non-paper of 19.02.2003. Additionally, the following documents were analysed: Draft Declaration, 25.02.2003 and Draft Action Plan, 27.02.2003 (t1); D 21.03.2003, AP 21.03.2003 (t2); D 18.07.2003, AP 22.08.2003 (t3); D 26.09.2003, AP 26.09.2003 (t4); Non-Paper 05.11.2003 (t5); D 14.11.2003, AP 14.11.2003 (t6); D 12.12.2003, AP 12.12.2003 (t7).

**Table 2:** Example of an adjustment to CSO demands: A section of the table “Internet governance”, period t5 – t6 (PrepCom3a – WSIS)

t5 initial	CSO input	t6 output
<p><b>Draft Declaration, 14.11.2003, 24 h</b></p> <p>45. The management of the Internet encompasses both technical and policy issues. The private sector has had and should continue to have an important role in the development of the Internet [at the technical level].</p> <p>Alternative 45. [The management of the Internet encompasses both technical and public policy issues. The private sector has had an important role in the development of the Internet. The private sector should continue to play an important role at the technical and commercial levels.]</p> <p>46. Policy authority for Internet-related public policy issues should be the sovereign right of countries.</p> <p>47. [Internet issues of an international nature related to public policies should be coordinated.</p> <p>Alternatives:</p> <p>a) between governments and other interested parties.</p> <p>b) Through/by appropriate intergovernmental organizations under the UN framework.</p> <p>c) as appropriate on an intergovernmental basis.</p> <p>d) through/by appropriate international organizations.</p> <p>e) through appropriate and mutually agreed international organizations.</p>	<p><b>Civil Society, Essential Benchmarks for WSIS, 14.11.2003</b></p> <p>No single body and no single stakeholder group is able to manage all of the issues alone. Many stakeholders, cooperating in strict accordance with widely supported rules and procedures, must define the global agenda. The non-government sector has played a historically critical role in Internet Governance, and it must be recognized. The strength of the Internet as an open non-government platform should be reinforced, with an explicit stronger role for civil society. The role of governments should be no greater than that of any other stakeholder group.</p> <p>Civil Society Comment on Non-Paper, 24.10.2003</p> <p>We consider it unacceptable that none of the options mentions the involvement of Civil Society. Of the five available options we would prefer a).</p>	<p><b>WSIS Declaration, 12.12.2003</b></p> <p>49. The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organizations. In this respect it is recognized that:</p> <p>a) Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues;</p> <p>b) The private sector has had and should continue to have an important role in the development of the Internet, both in the technical and economic fields;</p> <p><b>c) Civil Society has also played an important role on Internet matters, especially at community level, and should continue to play such a role;</b></p> <p>d) Intergovernmental organizations have had and should continue to have a facilitating role in the coordination of Internet-related public policy issues;</p> <p>e) International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.</p>

and edited volumes gave first-hand accounts from different angles on the negotiation process, its topics, and the role of civil society. These are mostly written by scholars and policy makers that participated at the WSIS, and were in parts released shortly after the first summit in 2003 (Calabrese and Padovani 2004; Kleinwächter 2004a; Kleinwächter 2004b; Lavoie and Leuprecht 2005; Raboy and Landry 2005; Stauffacher and Kleinwächter 2005; Servaes and Carpentier 2006). Press releases, websites and mailing-lists also give an account of what happened from the view of the participants. Additionally,

the author conducted interviews with civil society representatives that have been centrally involved in lobbying for the analysed issues and were consulted directly.<sup>22</sup> These diverse reports allowed an insight into the informal negotiation process that is not reflected in the documents, and to focus the analysis on the most important paragraphs, key categories of the issues and turning points.

As a result of the content analysis the adjustment of the working documents towards CSO demands can be assessed. CSO impact can easily be detected when central demands by CSOs are taken up into the working documents. It is at its highest level when the final documents adopted at the WSIS still feature these demands. No adjustment of policy documents vis-à-vis central demands of CSOs would be clear evidence for a lack of responsiveness of the WSIS negotiation process. To concretise the results of the content analysis, the salience and character of the CSO input that eventually was absorbed was taken into account. Assuming that CSOs were able to only shape the working documents with regard to less salient claims and negligible issues, this influence could not be counted as a real discursive success.

In the following, the background of each issue is presented before key categories or central questions are identified that guided the content analysis. For each topic the analysis is undertaken as to what the different actors (non-state vs. state actors) are demanding with regard to the respective key categories or questions. In doing so, the evolution of the CSO arguments and the development of the arguments in the working documents with regard to the respective issues can be systematically retraced.

## **Internet governance**

‘Internet governance’ is a contested term; at the WSIS it was mainly used to describe the global political governance of the technical core resources of the Internet: domain names, IP addresses, internet protocols and the root server system. This corresponds to a narrow definition of Internet governance, whereas others argue that the term encompasses much more. A broad definition of Internet governance would also include rules

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<sup>22</sup> Conversational partners were, for example, Prof. Dr. Wolfgang Kleinwächter, Professor for International Communication Policy at the University of Aarhus, Denmark, and William J. Drake, President of Computer Professionals for Social Responsibility, both members of the Board of the Working Group of Internet Governance (on Internet governance); Rikke Frank Joergensen, Danish Human Rights Institute, chair of the Human Rights Caucus at the WSIS and delegate of the national delegation of Denmark as civil society advisor (On Human Rights/Communication Rights); Dr. Francis Muguet, chair of the CS Working Group on Scientific Information at WSIS, Co-Chair of the CS Working Group on Patents, Copyrights and Trademarks (on intellectual property rights). The talks were conducted at the 7th UN ICT Task Force Meeting in Berlin, 18.-20.11.2004 and the Conference “Multistakeholder Approach in ICT Policy” which took place in Venice on 22.-23.11.2004.

and procedures dealing with – among other things – intellectual property, privacy, spam, cultural and linguistic diversity or consumer protection (Drake 2004: 6-7).

The core question dealt with at WSIS was: Who should govern the Internet? (Kleinwächter 2004a: 233) One can identify key advocates for different alternatives<sup>23</sup>: The USA and the EU favoured private regulation of the Internet, meaning the existing system with a reformed Internet Corporation for Assigned Names and Numbers (ICANN) as the leading regulatory body; China and other developing countries such as South Africa and Brazil would have liked to see the International Telecommunication Union (ITU) in charge, thus favouring multilateral governmental leadership; business actors opposed any governmental influence on the Internet and argued for self-regulation; whereas civil society promoted decentralisation of responsibility.

Up to now, ICANN has been responsible for the allocation of technical resources of the Internet, namely Internet identifiers and the root server system. It is a private non-profit organisation which was established in California in 1998 and has a limited technical mandate. Its proponents highlight its bottom-up governance mechanism and the advantage of a non-governmental organisation regulating the technical aspects of the Internet: whilst at the same time assuring that it can develop openly and in an unregulated manner. Therefore there are voices from within the Internet community that the established governance system should not be altered: “If it isn’t broken, don’t fix it” or “First, do no harm”, as one of the founding fathers of the Internet noted (Cerf 2004).

Its opponents criticise ICANN for being US-dominated. The US Department of Commerce did indeed facilitate the assignment of the responsibility for the management of Internet Names and Addresses to ICANN through a Memorandum of Understanding in 1998. Both parties agreed to collaborate on a common Domain Name System project to design, develop and test mechanisms, methods and procedures for Internet governance through ICANN.<sup>24</sup> The USA just extended the Memorandum of Understanding between its Department of Commerce and ICANN until 2006 while PrepCom2 was taking place in Geneva in 2003.

ICANN is also criticised for its focus on technical issues. Since the 1990s it has been increasingly recognised that the regulation of the Internet is also a political issue. With the Internet becoming a substantial economic factor and a mainstream medium, problems such as the distribution of the dotcom domains or cross-border jurisdictional ten-

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<sup>23</sup> See Greve, Georg, Debriefing on WSIS, Intersessional Meeting Paris, July 15-18, <http://www.germany.fsfeurope.org/projects/wsis/debriefing-paris.de.html> (last access 15.02.2006).

<sup>24</sup> Memorandum of Understanding between the US Department of Commerce and Internet Corporation for Assigned Names and Numbers (1998): <http://www.ntia.doc.gov/ntiahome/domainname/icann-memorandum.htm> (last access 15.02.2006).

sions evolved, e.g. disagreements on how to deal with hate speech and pornography. Developments like the burst of the “dotcom bubble” and the terrorist attacks of 11<sup>th</sup> September 2001 further challenged the private - and merely technical - governance of the Internet. It was recognised that “government participation in regulating the Internet is necessary” (Baird 2002: 16). The question remains, whether it is enough to reform ICANN and strengthen governmental participation in its framework, or if an intergovernmental approach is needed.

An intergovernmental approach to Internet governance promotes the ITU or another intergovernmental organisation under UN auspices as the governance body. It should not only deal with technical aspects but also with other Internet-related issues, such as spam and illegal content. Developing countries, which feel underrepresented in ICANN, expect a more balanced regulation of the Internet from the ITU (Drake 2004: 9). China was a key player in this respect, supported by members of the G20 like Brazil, South Africa and India. The government of Brazil not only demanded a multilateral organisation in charge of Internet governance, meaning the ITU, but also asked for a stronger representation of developing countries (Brazil 31.05.2003: 10).

These demands led to a sharp divergence between developing and developed countries, the private sector and civil society. Fears of a “UN takeover” of the Internet were voiced by some countries, the business community and civil society actors. There was the fear that authoritarian governments could seek control over the Internet, that the UN would dominate the Internet for its own ends, that UN decision-making would be anti-American and controlled by corrupt bureaucracies and that fundamental changes of the Internet could only be for the worse (Drake 2004: 10-11).

As a third alternative besides a leadership of either ICANN or the ITU, a decentralised approach was proposed mainly by civil society, as will be shown in the following.

### ***Civil Society Argumentative Input***

Civil society gave a considerable and relatively consistent input for the negotiations about Internet governance during the preparatory process. It focused on how the Internet should be governed – that is participative, transparent, inclusive and accountable – and who should be in charge. The priority issue has been that decentralised governance mechanisms should be employed and that all stakeholders should be included in the governance of the Internet. Consensually it was demanded that the civil society sector should play a stronger role in Internet governance. Policies and frameworks should be developed in a bottom-up rather than a top-down approach.

*“No single body and no single stakeholder group is able to manage all of the issues alone. Many stakeholders, cooperating in strict accordance with widely supported rules and procedures, must define the global agenda. The non-government sector has played a historically critical role in Internet Governance,*

*and it must be recognized. The strength of the Internet as an open non-government platform should be reinforced, with an explicit stronger role for Civil Society. The role of Governments should be no greater than that of any other stakeholder group” (Civil Society Content and Themes Group 14.11.2003).*

ICANN was backed as a suitable organisation to fulfil the task of governing the Internet, although reforms were demanded in order to make the private not-for-profit organisation more transparent and accountable to the public. At the same time a limitation of its mission was proposed (APC 31.05.2003). In a longer view, others demanded that the responsibility of Internet governance should be handed over to the Internet community (Internet Governance Caucus 16.07.2003; 18.07.2003). The Japanese Centre for Global Communications even argued that the Internet cannot be governed at all. They rejected the term Internet governance and demanded that the existing system should not be changed as long as it works (GLOCOM 30.05.2003). A case was also made for facilitating the participation of developing countries in global coordination meetings dealing with global Internet resources and policies (Internet Governance Caucus 18.07.2003).

These main strands of argumentation should not conceal that there have been different conceptions about Internet governance within civil society (Peake 2004: 4). The finally agreed upon Civil Society Declaration demands that

*“...when the conditions for system stability and sound management can be guaranteed, authority over inherently global resources like the root servers should be transferred to a global multistakeholder entity” (WSIS 08.12.2003).*

Besides this major discussion about who should govern the Internet, some minor points have been raised as well, concentrating more on what Internet governance should deal with. Here the implementation and deployment of multilingual top level domains was mentioned, in order to enable local communications and reflect linguistic diversity (Internet Governance Caucus 16.07.2003). It was also demanded that Internet governance should focus on developing and securing global information commons as well as a right of universal access. References to the public interest were made: “the management of the core resources of the Internet (...) must serve the public interest at the global, national and local level” (German Civil Society 28.08.2003).

In conclusion, civil society agreed that the governance of the Internet should be decentralised, including all relevant stakeholders. In particular, a stronger role for civil society was demanded as well as more participation of developing countries in Internet governance. Civil Society did not agree on who should be in charge of Internet governance. Mainly, though, ICANN was proposed as a suitable organisation for that task, provided that it undergoes significant reforms. Others stressed the need that the governance of the Internet should be handed over to the Internet community. Altogether, CSOs

declined strong governmental supervision over Internet governance. The final Civil Society Declaration rather vaguely promoted a global multi-stakeholder entity as regulatory mechanism.

### ***Tracing CSO Input in the Drafting Process on Internet Governance***

Internet governance was one of the most controversial issues at the WSIS and, in the end, governments could only agree to disagree. The issue was postponed and UN Secretary-General Kofi Annan was asked to set up a Working Group on Internet Governance (WGIG) “to investigate and make proposals for action, as appropriate, on the governance of the Internet by 2005” (WSIS 12.12.2003b: section 13b).<sup>25</sup>

#### *WSIS Plan of Action, 12.12.2003*

*13. b We ask the Secretary-General of the United Nations 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, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005. The group should, inter alia:*

- i) develop a working definition of Internet governance;*
- ii) identify the public policy issues that are relevant to Internet governance;*
- iii) develop a common understanding of the respective roles and responsibilities of governments, existing intergovernmental and international organizations and other forums as well as the private sector and civil society from both developing and developed countries.*
- iv) prepare a report on the results of this activity to be presented for consideration and appropriate action for the second phase of WSIS in Tunis in 2005.*

#### *WSIS Declaration of Principles, 12.12.2003*

*48. The Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.*

*49. The management of the Internet encompasses both technical and public policy issues and should involve all stakeholders and relevant intergovernmental and international organisations. In this respect it is recognized that:*

- a) Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues;*
- b) The private sector has had and should continue to have an important role in the development of the Internet, both in the technical and economic fields;*
- c) Civil society has also played an important role on Internet matters, especially at community level, and should continue to play such a role;*
- d) Intergovernmental organizations have had and should continue to have a facilitating role in the development of Internet-related public policy issues;*
- e) International organizations have also had and should continue to have an important role in the development of Internet-related technical standards and relevant policies.*

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<sup>25</sup> The WGIG has been established by the Secretary General of the UN, Kofi Annan, on 11 November 2004.

At the outset of the WSIS process, Internet governance was not at all a strongly debated issue. It only became one ever since PrepCom2 took place. In the end, it was the most contested issue of the WSIS, and it remained so all the way through the second phase leading to Tunis 2005. The reasons for this can be found in the salience of Internet governance; the discussions and negotiations were undertaken outside of the WSIS. The ITU held a Plenipotentiary Conference in Marrakech parallel to the regional WSIS meetings and at this occasion a heated debate about the future role of the ITU in Internet governance began and was transfused into the WSIS context (Kleinwächter 2004a: 241-242).

The term Internet governance was first mentioned in the Bavaro Declaration in January 2002, the outcome of the Latin American WSIS Regional Ministerial Conference. However, the concept remained vague, merely stating that Internet governance should be multilateral, transparent and democratic and take into account the needs of the public and private sectors as well as those of civil society (Kleinwächter 2004a: 240f). The first substantial reflection of the Internet governance debate in WSIS documents is noticeable in the Declaration of the Western Asia Conference in February 2003.

*“The responsibility for root directories and domain names should rest with a suitable **international** organization and should take multilingualism into consideration. Countries’ top-level-domain-names and Internet Protocol (IP) address assignment should be the sovereign right of countries. The sovereignty of each nation should be protected and respected. Internet Governance should be multi-lateral, democratic and transparent and should take into account the needs of the public and private sectors as well as those of civil society” [own accentuation] (WSIS 06.02.2003: section 4).*

This paragraph nearly remained unaltered at PrepCom2, although a small albeit important addition was made. The first sentence was supplemented as follows:

*“The responsibility for root directories and domain names should rest with a suitable **international [intergovernmental]** organization (...)” [own accentuation] (WSIS 25.02.2003: section 58).*

The notion of an intergovernmental organisation as an additional option for a regulatory body can be interpreted as an adjustment towards the demands of developing countries, in this case led by China. With this parenthesis, the ITU was introduced as an alternative to ICANN leadership. This, though, did not adhere to the intention of CSOs, since they were in general opposed to more governmental control over the Internet.

The Declaration (WSIS 18.07.2003: section 44) was then extended, offering three alternatives. It recognised that the management of the Internet encompasses both technical and policy issues, and certifies the private sector (that is ICANN) and governments (that is ITU) respectively important roles. Alternatively, one of the above mentioned para-

graphs also includes the importance of respecting multilingualism, whereas alternative two is more comprehensive: it makes references to the common good and a fair distribution of resources; it demands access for all as well as a stable and secure functioning of the Internet; and it emphasises the need to respect the geographical diversity through the representation of actors involved in the regulatory body. These alternative paragraphs reflect demands by CSOs. Although it can not be reconstructed whether those remarks originated within the demands by CSOs, this section nevertheless shows that governmental actors have been discussing issues that were raised by CSOs. The references to multilingualism and a fair distribution of resources remained within the documents and were incorporated into the final version of the Declaration.

After the Intersessional Meeting in Paris, the Action Plan (WSIS 22.08.2003: section 29) mentioned the need for an international dialogue about the appropriate management structure of the Internet among all interested parties whose outcome should be reviewed in Tunis 2005. The stalemate between the differing governmental positions was not resolved by the time of the summit.

During PrepCom3 in September 2003, an alternative paragraph listed different options about how Internet issues should be coordinated:

- “ a) between governments and other interested parties.*
- b) through/by appropriate intergovernmental organizations under the UN framework.*
- c) as appropriate on an intergovernmental basis.*
- d) through/by appropriate international organizations.*
- e) through appropriate and mutually agreed international organizations”*  
*(WSIS 26.09.2003b: section 40).*

These alternatives have been included in the following non-paper, which was drafted in October and November 2003, against fierce opposition by CSOs. The civil society comments on the draft non-paper take on the following points:

*“We consider it unacceptable that none of the options mentions the involvement of Civil Society. Of the five available options we would prefer a)” (Civil Society Working Group on Content and Themes 30.10.2003).*

Finally, the official WSIS Declaration seemed to adapt to this critique and the demands put forward by civil society. In December, the roles of different stakeholders were made even more explicit, and now the importance of civil society is also mentioned:

*“Civil Society has also played an important role on Internet matters, **especially at community level**, and should continue to play such a role” [own accentuation] (WSIS 12.12.2003a: section 49c).*

Since the strengthening of their own role was a priority for the CSOs involvement in the Internet governance debate, this was an important success of civil society participation

in the process and an adjustment towards CSO demands. Nevertheless, the CSO role was still restricted to playing a role “especially at the community level”.

The establishment of a Working Group on Internet governance (WGIG) also accords to CSO demands. This recognises positions of civil society as it is emphasised that the WGIG should be set up

*“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, involving relevant intergovernmental and international organizations and forums (...)” (WSIS 12.12.2003a: section 50).*

Now, as the WGIG mechanisms have been established, first assessments of involved civil society members give a positive account with regard to the representation of different stakeholders, and the openness and transparency of the new body. Civil society and representatives from developing countries are adequately represented in this mechanism, which was established to find a compromise with regard to Internet governance in the Tunis phase and beyond. Still, the WGIG was not established because of CSO demands; the main reason seems to have been the inability to agree on a satisfying solution and the stalemate between major countries on this issue.<sup>26</sup>

In conclusion, the documents were to some degree responsive towards CSOs with regard to the Internet governance debate. The final documents included a reference to the important role of civil society and proposed the establishment of a Working Group on Internet Governance (WGIG) in which different stakeholder groups should be equally represented. Although this outcome is in line with priority demands by CSOs, one has to be cautious with regard to the causal relationship between the CSO demand and its adoption into the WSIS Declaration. The negotiations on Internet governance have been mainly dominated by a stalemate between powerful states and none of the parties involved was willing to step back from its position during the process (Peake 2004: 4). Together with their followers, the USA and China dominated the discourse to such a large degree that civil society was not able, as wasn't any other stakeholder, to steer the discussions in their direction. It was the conflict between the powerful states that was responsible for the inability to agree on an institution to be in charge of Internet governance. This in turn led to the necessity of setting up the Working Group on Internet Governance. Additionally, no concrete proposals of CSOs with regard to Internet Governance were adopted in the documents.

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<sup>26</sup> Interview with Wolfgang Kleinwächter, member of the Working Group on Internet Governance, on 19.11.2004. See also “WSIS Working Group on Internet Governance set up. Civil Society well represented, US Government not a member”, 13.11.2004, <http://www.worldsummit2003.de/en/web/687.htm> (last access 15.02.2006).

## **Intellectual Property Rights**

Intellectual property rights serve as temporary monopolies on intellectual work. They are enforced by patents, copyrights and trademarks and are internationally governed by the World Trade Organisation (WTO) through the Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPS, 1994) and the Copyright Treaty of the World Intellectual Property Organisation (WIPO, 1996) (Sell 2002: 171). The political as well as academic debate about intellectual property rights deals with questions of ownership as well as the control of information and knowledge. Different conceptions about the adequacy of the existing regimes by the rights holders, the users of information and knowledge and indigenous peoples compete with each other.

Those who benefit from the existing IPR regime are mainly creators and disseminators of information and knowledge; they were therefore the main proponents of IPR at the WSIS. Representatives of content producing countries, notably the United States, of the private sector and unions of authors and journalists, were convinced that the IPR system coordinated by WIPO and GATS should be maintained.

*“Existing international intellectual property agreements provide a valuable mechanism through which to protect intellectual investment and encourage the creation and dissemination of works. These agreements encompass and reflect a balance between the interests of owners and users of intellectual property.”*  
(United States of America 30.05.2004)

Knowledge is turned into property which in turn is protected by IPR. These rights secure innovation and creativity to ultimately encourage trade and investment (Sell and Prakash 2004: 154). They serve as economic incentives for authors who would otherwise not bother to produce intellectual work (May 2004: 408). Consumers of knowledge may take advantage of the principle of ‘fair use’, which guarantees that everybody can freely utilise information and knowledge for private, non-commercial purposes. From this perspective the existing rights are adequate and fair because they treat users’ rights and the needs of rights holders in a balanced way. The Internet and other developments in Information and Communication Technologies (ICT) are recognised as a threat to intellectual property. They allow everyone to receive, impart and store indefinite amounts of data. Therefore the WSIS was called upon not only to reaffirm the existing rules but to adapt and extend them to the requirements of digital media and software applications (CCBI 17.07.2003).

Taking a different stance, opponents of intellectual property rights, for the most part developing countries and civil society organisations, question the intent and usefulness of existing IPR regimes (May 2004: 395). They are heavily criticised for being restrictive and discriminatory with regard to the users in general and developing countries in particular.

*“TRIPS institutionalized a conception of intellectual property based on protection and exclusion rather than competition and diffusion. (...) The long-term redistributive implications of TRIPS are not yet fully understood. The short-term impact of intellectual property protection will undoubtedly be a significant transfer of resources from developing country consumers and firms to industrialized country firms” (Sell 2002: 172-173).*

Most developing countries demand free access to information and knowledge to further their economic development (May 2004: 412). Knowledge and information are understood as global public goods (Kaul 1999; May 2004: 404), which should serve the public interest and not exclusively economic ends. Free access to intellectual work does not hamper, but rather stimulates innovation and creativity, as it favours the development of new ideas and works. Therefore, IPR should be critically reviewed and changed if necessary. Free and Open Source Software (FOSS) and Open Access were proposed as alternative solutions to loosen the existing IPR regime.

Indigenous peoples take a middle position in the debate on IPR as they have exceptional interests to protect their traditional knowledge and benefit from its use.

The debate at the WSIS therefore focused around three central issues: First, should the existing IPR regime be challenged in the WSIS context or should it be maintained and enforced? This implies the question of whether the WSIS should deal with issues of IPR at all or whether those questions can be answered more adequately in other international fora such as the WIPO or the WTO. Second, what is the ideal regime design for regulating IPR in the information society? Third, the need for Free and Open Source Software (FOSS) and Open Access solutions was discussed.

### ***Civil Society Argumentative Input***

No uniform position of civil society on intellectual property rights can be detected. Three factions and their agendas are identifiable. The majority of CSOs wanted to challenge the existing rights regimes. Unions of content creators, publishers and distributors took a supportive stance towards IPR. Indigenous peoples demanded special protection of their traditional knowledge via IPR.

To start with, the minority opinion within civil society - that of the unions of producers and publishers of information and knowledge - claimed that copyrights, patents and trademarks are necessary and adequate and should therefore be maintained. They argue that without IPR there would be no creativity or innovation. Content creators further demanded an expansion of intellectual property rights when considering the challenges of an increasingly digital environment. Essentially, their point of view resembled the demands of the private sector and leading industrialised countries.

Indigenous people's perception of IPR also deviates from the main civil society position. They feel discriminated by the existing IPR regime, but, in turn, object to the public domain concept that is supported by numerous civil society organisations. Since many indigenous peoples are unaware of the existence of intellectual property rights or of the procedures of how to make use of them for their own purposes, a lot of traditional knowledge is not protected and the right to use and sell it has been claimed by companies in other countries. Products that derive from that knowledge are then resold to them for high prices. The incorporation of their knowledge into the public domain is not accepted as an adequate solution because it turns their knowledge into a freely available resource for commercial utilisation, thus once again making it vulnerable to non-indigenous IPR regimes who would patent it (WSIS 2003: 4). Essentially, indigenous knowledge should be protected by special intellectual property rights.

*“Indigenous peoples, nations and tribes have the right to both fully explore existing legal regimes and to develop sui generis legal systems, in order to safeguard traditional knowledge and to ensure protection of sacred and/or secret content“ (Global Forum of Indigenous Peoples and the Information Society 11.12.2003: sections 23 and 24).*

This position is not shared by the majority of CSOs, which declare that copyrights, patents and trademarks are per se not adequate to secure a fair balance between the rights holders and the users. The existing IPR regime should be altered to restore the balance in favour of the users and to create a public domain of information as knowledge “is an unlimited resource that grows and is enriched as it is shared” (Civil Society Drafting Committee 25.02.2003). Extensive advantages are presented in order to justify this position:

*“Securing and extending Global commons is a major way of bridging the digital divide and of ensuring the minimal equitable conditions for the overall development of intellectual creativity, technological innovation, effective technology use and successful participation in the information and communication society. These are the necessary pre-conditions for realizing the values and principles of Freedom, Equality, Solidarity and Shared responsibility adopted in the United Nations Millennium Declaration” (Civil Society Coordination Group 12.09.2002: 3-4).*

Especially people in developing countries would benefit from the unrestricted access to information and knowledge, which until now have been disadvantaged by IPR.

*“Copyright laws have been technology-driven and have tended to follow the development of technologies pioneered by the developed world (...) This disadvantages most African countries and developing countries by hindering the transfer and access to information and content development. Such laws should be re-*

*viewed to address this concern as a priority” (Africa Civil Society Caucus 31.05.2003).*

As alternatives to IPR, CSOs encourage the promotion of Free and Open Source Software as well as Open Access. Free and Open Source Software is unanimously promoted by civil society as an alternative to proprietary software; for example software produced by Microsoft and Apple. FOSS is described as being cheaper, better and more secure than traditional software and it is furthermore adaptable to specific needs (Citizens' Union Paremvassi 26.05.2003). Hence it can be meaningfully deployed by those who are marginalised in the Information Society; for example developing countries. The development and use of FOSS can lead to innovation and therefore may be able to stimulate economic growth (Asian NGOs 07.12.2002). In addition, the sustainability of FOSS is accentuated:

*“It provides a truly sustainable model for all areas of society, bringing back competition and furthering innovation for a prosperous and inclusive information and knowledge society for all” (PCT Working Group 23.09.2003).*

To implement these ideas, governmental institutions, universities and schools should be early adopters of FOSS and this should be enforced by law (Consumers International 31.05.2003; Korean Civil Society Network 31.05.2003), as governments' use of proprietary software is economically unsustainable, intransparent and insecure (Civil Society Content and Themes Group 15.07.2003). Educational institutions could help to build capacity for using this software and teach the spirit of cooperation that is inherent in its application (PCT Working Group 16.07.2003).

CSOs also call for Open Access to scientific information and knowledge. In general, Open Access is promoted for the same principle that was stated above: knowledge and information are public goods and should be free. In principle, all knowledge which has been publicly funded, such as scientific knowledge, belongs to the public sphere (PCT Working Group 30.10.2003). Additionally, scientific information is particularly valuable knowledge, which therefore should be deployed for development purposes (Third World Academy of Sciences 23.01.2003). The underlying problem is that many researchers in developing countries, when compared to their colleagues in the industrialised world, do not have the same possibilities when it comes to accessing journals and papers. This is mainly due to high costs and technological impediments. Scientific publications are the most expensive there where academic institutions have the fewest resources to pay for them. And they are also the least accessible due to a lack of bandwidth for downloading scientific papers, this occurring where they are most in need. CSOs therefore argue that scientific work should be distributed for free, for example via

Open Access Journals or Peer-to-peer technology<sup>27</sup> (WSIS 21.03.2003a: Working Group on Scientific Information Contribution). This practice would be neither time- nor money-consuming as researchers in developed countries can simply use their computer equipment as a distributor (Working Group on Scientific Information 16.07.2003).

In short, although there were different factions within civil society, each having its own interest in the IPR debate, the majority was demanding that the existing regimes be challenged. The public domain concept of information and knowledge was put forward as a way to alter the predominantly economic character of the existing IPR regimes. The promotion of Free and Open Source Software and Open Access to scientific information was a priority demand.

### ***Tracing CSO Input in the Drafting Process on Intellectual Property Rights***

The final working documents contain several references to intellectual property rights, Free and Open Source Software and Open Access. In the course of the negotiation process the balance between the emphasis on the rights of IPR-holders and on the needs of the users changed in favour of the latter; hence, to some degree, it followed the demands made by CSOs.

Only one month before the summit took place, the WSIS documents still described the importance and viability of the existing rights regime.

*“Intellectual property protection is essential to encourage the innovation and creativity in the Information Society. However, striking a fair balance between protection of intellectual property on the one hand, and its use, and knowledge sharing, on the other, is essential to the Information Society. This balance is reflected by protection and flexibilities included in existing Intellectual Property agreements, and should be maintained. Facilitating meaningful participation by all in intellectual property issues through awareness, capacity building and development of legal framework is a fundamental part of an inclusive Information Society” (WSIS 05.11.2003: section 38).*

CSOs recommended that the whole text be deleted, using the justification that it “represents solely the interests of the rights-holding industry, not that of authors, recipients, indigenous people or society as a whole” (PCT Working Group 30.10.2003). The aforementioned text ignores the public domain concept (Civil Society Working Group

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<sup>27</sup> An example would be the eJDS programme, which disseminates individual scientific articles via e-mail to scientists in institutions in those Third World Countries that do not have access to sufficient bandwidth to download material from the Internet in a timely manner or cannot afford the connection. [www.ejds.org/](http://www.ejds.org/) (Third World Academy, 23.01.2003)

on Content and Themes 30.10.2003). It seems as if the negotiators responded to this critique.

In the Declaration that was released two weeks later, the criticised paragraph was parenthesised and provided with a footnote saying that “some delegations have indicated that further consultations on the text are still needed” (WSIS 14.11.2003: section 38). The WSIS Declaration finally changed the contested section into its present, final form.

*WSIS Declaration, 12.12.2003, section 42*

*Intellectual Property protection is important to encourage innovation and creativity in the Information Society; similarly, the wide dissemination, diffusion, and sharing of knowledge is important to encourage innovation and creativity. Facilitating meaningful participation by all in intellectual property issues and knowledge sharing through full awareness and capacity building is a fundamental part of an inclusive Information Society.*

Two adjustments towards the mainstream CSO position can be found. First, the Declaration acknowledges that not only IPR but similarly the sharing of information constitutes a precondition for innovation and creativity. Second, the need to maintain the existing intellectual property rights regime is no longer mentioned.

Indigenous people’s demands with respect to intellectual property rights are not reflected in the final versions of the Declaration and the Action Plan. Earlier in the negotiation process they were under consideration, as can be seen in the Action Plan of 21 March 2003, which mentions that a “protection against unfair use of indigenous knowledge should be developed” (WSIS 21.03.2003a: section 34). This formulation was kept until the version of 22 August 2003 (WSIS 22.08.2003: section 30b). These ideas reflect the drafting proposals of indigenous people’s organisations and other CSOs supporting them, for example the International Federation of Library Associations and Institutions which stated earlier that “we also fully endorse the need to achieve protection against the unfair use of indigenous knowledge” (IFLA 23.05.2003). Despite a more concrete input by the indigenous communities, no other reference to their concerns was made in the WSIS documents.

The promotion of Free and Open Source Software was another priority issue of CSOs in the debate about an adequate IPR regime. During the whole drafting process this concern was reflected in the WSIS documents. A change of terminology and a differing emphasis on concrete proposals of how to implement FOSS could now be detected. Some of these changes reflected demands made by CSOs, others didn’t. Overall, the negotiators were more responsive towards CSOs at an earlier stage in the negotiation process than just before the summit.

WSIS Declaration, 12.12.2003, section 27

*Access to information and knowledge can be promoted by increasing awareness among all stakeholders of the possibilities offered by different software models, including proprietary, open-source and free software, in order to increase competition, access by users, diversity of choice, and to enable all users to develop solutions which best meet their requirements. Affordable access to software should be considered as an important component of a truly inclusive Information Society.*

The Action Plan provided explicit proposals when it comes to achieving this goal:

Action Plan, 12.12.2003, section 10

*e) Encourage research and promote awareness among all stakeholders of the possibilities offered by different software models, and the means of their creation, including proprietary, open-source and free software, in order to increase competition, freedom of choice and affordability, and to enable all stakeholders to evaluate which solution best meets their requirements.*

*j) Support research and development of the design of useful instruments for all stakeholders to foster increased awareness, assessment, and evaluation of different software models and licenses, so as to ensure an optimal choice of appropriate software that will best contribute to achieving development goals within local conditions*

CSOs were able to influence the terminology of the documents - as in the case of the use of “Free and Open Source Software” instead of “Open Source Software” (Civil Society Content and Themes Subcommittee 18.07.2003). In other cases, however, they lost the ‘war’ of the words as the final Declaration contains the term “freedom of choice”, which was explicitly rejected by CSOs. The term “software models” can be seen as a compromise between the CSOs demand for “software paradigm” and the term “software application”. The Working Group on Patents, Copyright and Trademarks interpreted the latter as an improper limitation to specific software programs (software application) instead of focusing on the overall political structure (software model or software paradigm) (PCT Working Group 30.10.2003). In the end, the compromising word ‘model’ was retained.

If one follows the drafting process chronologically, the documents have been more adaptive to CSO demands with regard to FOSS at an earlier stage. Then, the documents described more concretely and in much more detail what kind of software should be promoted:

*“Open-source software, including UNESCO software CDS/ISIS, multiplatform and open platform as well as interoperability standards, should be used more broadly to provide freedom of choice and to facilitate access to ICTs by all citizens, at an affordable cost.” (WSIS 21.03.2003a: section 14).*

In August the documents describe in detail how free and open source software can be spread, for example through awareness-raising, a “Programmers without Frontiers Initiative” or the creation of a collaborative network of open-source/free software technology tools for civil society (WSIS 22.08.2003: section 17). And around PrepCom3, in September, open source strategies were expressively encouraged in the first sentence of the paragraph.

*“The growth of an information society should be encouraged through the adoption of open source strategies for software applications as they contribute to increase access and enhance diversity for software users. Multiple software models exist which promotes the principle of technology neutrality, these include open source, free and proprietary software, and are valuable models that support more affordable access to ICTs” (WSIS 26.09.2003b: section 22).*

However, the non-paper issued in November 2003 was a step back from the perspective of CSO claims.

*“Access to information and knowledge can be promoted by increasing awareness among all stakeholders of the possibilities offered by different software applications, including proprietary, open source and free software, in order to increase competition, freedom of choice and affordability, and to enable all users to evaluate which solution meets their requirements” (WSIS 05.11.2003: section 24).*

FOSS is once again reduced to a mere “software application” and the concrete proposals of the Action Plan on how to promote free and open source software somehow vanished. Later versions of the Action Plan were even more moderate and vaguer with regard to FOSS.

In conclusion, Free and Open Source software was an important issue in the negotiations on IPR, which corresponds to the demands made by CSOs. Minor adjustments towards CSO demands concerning FOSS took place in relation to terminology. However, in the WSIS documents, FOSS was not explicitly promoted as an alternative to proprietary software but as one choice among many. Furthermore, the concrete proposals in the final Action Plan on how to promote FOSS are quite weak when compared to former versions of this document.

The responsiveness of the WSIS documents with regard to CSO proposals on Open Access follows the same pattern. At an earlier stage of the negotiations, CSOs were able to place some important drafting proposals in the documents. Later on they vanished again, but the final versions were still influenced to some degree by CSO arguments. Open Access is encouraged and the Action Plan proposes concrete ways in order to implement it.

Action Plan, 12.12.2003, sections 10 and 22

10i) *Encourage initiatives to facilitate access, including free and affordable access to open access journals and books, and open archives for scientific information.*

22b) *Promote electronic publishing, differential pricing and open access initiatives to make scientific information affordable and accessible in all countries on an equitable basis.*

22c) *Promote the use of peer-to-peer technology to share scientific knowledge and pre-prints and reprints written by scientific authors who have waived their right to payment.*

WSIS Declaration, 12.12.2003, section 28

*We strive to promote universal access with equal opportunities for all to scientific knowledge and the creation and dissemination of scientific and technical information, including open access initiatives for scientific publishing.*

During the Intersessional Meeting in July 2003, the concept of Open Access was included in the documents. The Declaration (WSIS 18.07.2003: sections 21-22) stated that the promotion of Open Access can, among other things, help to remove barriers so that equitable access to information for education, scientific, economic, social, political and cultural activities is ensured. This can be seen as an adjustment towards CSO concerns as the Civil Society Working Group on Scientific Information lobbied for this very purpose and was supported by Australia and the Fiji Islands.<sup>28</sup>

In the period between PrepCom2 and PrepCom3, the negotiators even verbally took over proposals of the Working Group on Scientific Information. An example would be the following paragraph on the use of peer-to-peer technology:

*“Promote the use of peer-to-peer technology to share personal scientific knowledge and pre-prints and reprints written by scientific authors who have waived their right to payment” (WSIS 22.08.2003: section 39).*

In the same document another formulation was directly taken from the input given by the same Working Group:

*“Establish a programme, funded by the UN (or its agencies), to create a worldwide portal to open access journals and books, and an open archive for scientific information” (WSIS 22.08.2003: section 15e).*

However, civil society representatives evaluated this as being only “an incomplete summary of our recommendations”<sup>29</sup>. The Scientific Information Working Group further demanded financial support for Open Access Journals and Open Access archives, a worldwide scientific Open Archive, as well as the distribution of free CDS containing Open Access contents to transition countries (WSIS 21.03.2003a: Working Group on Scientific Information Contribution). These demands have not been adopted in the documents.

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<sup>28</sup> Muguet, Francis, Informal Report on the Intersessional Meeting, Paris, France, [www.wsis-pct.org](http://www.wsis-pct.org).

<sup>29</sup> Ibid.

Thus, the working documents that were released between PrepCom2 and PrepCom3 reflected general demands that were brought forward by CSOs and adopted concrete drafting proposals with regard to Open Access. However, during PrepCom3 some of the respective sections were changed considerably. The paragraphs 21-22 have been deleted<sup>30</sup> and were replaced by a text promoting “equitable access”, an entirely different concept than Open Access. The Working Group on Scientific Information criticises this term as being inappropriate:

*“This word is fitted for commercial transactions related to commercial information. It should not be used to replace “Open Access” because it would imply that scientific information, public domain information and any other information that is created for free, should be subjected to trade rules” (Civil Society Working Group on Content and Themes 30.10.2003).*

The non-paper released in November represented another step-back from the earlier Declaration. Open Access is not mentioned to any further extent, it is fully replaced by “universal” or “equitable” access. Just before the summit, the concept of Open Access was again included in the documents, as the section on the promotion of peer-to-peer technology which originates from the civil society Working Group on Scientific Information.

Overall, the mainstream CSO concerns on IPR have been referred to in the official WSIS documents. The existing IPR regime was challenged insofar as the importance of a wide dissemination of knowledge was acknowledged. Free and open source software as well as open access to scientific literature was promoted. Yet those concerns were only addressed cautiously and more advanced concessions to the CSO claims have been taken back during the drafting process. The minority position of content creators and publishers that lobbied for the maintenance of the existing IPR regime is represented in the documents. This, however, can not be traced back to their input but is more indebted to the fact that important states such as the USA as well as business actors shared their position. The concerns raised by indigenous peoples have not been considered, although a paragraph was devoted to them in earlier versions of the Action Plan.

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<sup>30</sup> Francis Muguet, chair of the Working Group on Scientific Information, recounts in a report on PrepCom3 that a mistake by one diplomat was responsible for the disappearance of the term Open Access from the working documents: “A delegation demanded that article 21-22 be deleted in the Declaration of Principles. According to several sources, this request was simply the consequence of a material mistake. This paragraph has been circled in red during internal discussions, and one diplomat mistakenly interpreted the “red circling” as an instruction to request deletion during the plenary. Therefore the list quoting “Open Access” has been deleted” ([www.wsis-pct.org](http://www.wsis-pct.org)).

Most importantly, the adjustments towards CSO claims varied over time. At an earlier period in the negotiation process the documents contained a variety of suggestions by CSOs on IPR because the governments' positions were still changeable. Later, many CSO claims again vanished from the documents. In the last weeks and months of the process, when the date of the summit approached, states fixed their positions and needed to find compromises on many issues. Finally, therefore, many CSO ideas vanished again from the documents, probably because they were too far-reaching and contrary to the least common denominator that was agreed upon.

### **Communication rights**

In 1948 the UN laid the foundation for a generally accepted human rights framework with the Universal Declaration of Human Rights. It touches upon information and communication issues with the right to freedom of opinion and expression (Article 19), the right to privacy (Article 12) and the right to freely participate in cultural life and to protect scientific, literary and artistic work of authors (Article 27). Despite this framework, the implementation is advanced to highly different degrees in the UN member countries. Therefore, at WSIS, the centrality of human rights related to information and communication in the official documents was a hotly debated issue. Most controversial was the demand for a new human right, called the 'right to communicate' or 'communication rights'.

Indeed, the debate about a right to communicate is not new. The term was introduced by Jean D'Arcy in 1969 who stated that

*“the time will come when the Universal Declaration of Human Rights will have to encompass a more extensive right than man's right to information (...) This is the right of men to communicate” (cited in Hamelink 2003: 156).*

Communication rights were also central to the debate about a 'New World Information and Communication Order' (NWICO) in the United Nations Educational, Scientific and Cultural Organisation (UNESCO) in the 1970s and 80s. Here a balanced flow of information was demanded by non-aligned developing countries, supported by the Soviet Union, which led to a Cold-War-style *éclat* with the withdrawal of the United States and the United Kingdom in 1984 and 1985 respectively from UNESCO (Ó Siochrú 2004). Recently, the debate gained prominent support from Secretary-General Kofi Annan, who said that “millions of people in the poorest countries are still excluded from the 'right to communicate', increasingly seen as a fundamental human right” (Annan 17.05.2003).

Proponents of a right to communicate argue that communication is and needs to be at the heart of the Information Society<sup>31</sup>. They can be roughly divided into two fractions: Some conceptualise the right to communicate as an additional human right, as a necessary amendment of the human rights framework in the light of new information and communication technologies. Especially at the WSIS, the civil society campaign Communication Rights in the Information Society (CRIS) lobbied for a right to communicate as an additional human right, but mostly informally. CRIS organised the World Forum on Communication Rights alongside the WSIS.

Others oppose the introduction of a new human right but promote a more coherent implementation of existing human rights. They argue that communication rights are an umbrella term for already existing human rights related to communication and information, for example the human rights organisations Article 19 and the World Press Freedom Committee (WPFC).

Especially countries with strong democratic traditions were reluctant to accept the idea of a new human right to communicate. They feared that the WSIS documents reflected a backdrop behind the status of the human rights regime from 1948 as it had developed so far, which would be of much greater concern than the invention of a new human right. In addition, countries which are often criticised for the lack of implementation of already existing human rights related to information and communication, e.g. China, oppose a right to communicate. Kuhlen (2003) summarises the reasons of those who oppose this right:

*“It is not only the memory of the old NWICO debate, it is the concern that existing power structures and property rights are likely to be put into question by direct democratic, participative, and knowledge-sharing behaviours within the communicative paradigm” (Kuhlen 2003: 57).*

Key issues that guide this analysis are the promotion or neglect of communication rights or a right to communicate; the definition of communication rights or a right to communicate; and the connection of those rights to the general human rights framework.

### ***Civil Society Argumentative Input***

Most of the CSOs that made statements on communication rights or a right to communicate promoted this concept; only a minority group explicitly opposed it. However, those who favour it have differing views on how such a right should be defined and how it is connected to existing human rights.

Some pushed for the creation of an additional human right to communicate:

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<sup>31</sup> Many of those would prefer the term Information and Communication Society to underline the importance of communication.

*“Communication rights should be fully recognised as a fundamental and universal human right to be protected and promoted in the information society” (WSIS Civil Society 15.01.2003).*

Traditional human rights activists argue differently. They describe communication rights as an umbrella concept which includes all human rights related to communication and information:

*“The right to communicate should not be conceived as a new and independent right but rather as an umbrella term, encompassing within it a group of related, existing rights” (Article 19 14.02.2003).*

In the course of the negotiation process, CSOs incorporated this latter strand of argumentation more and more. In the final Civil Society Declaration many universal human rights relevant to information and communication processes, together with access to the means of communication, are described as being the essence of communication rights.

*“(…) every person must have access to the means of communication and must be able to exercise their right to freedom of opinion and expression, which includes the right to hold opinions and to seek, receive and impart information and ideas through any media and regardless of frontiers. Similarly the right to privacy, the right to access public information and the public domain of knowledge, and many other universal human rights of specific relevance to information and communication processes, must also be upheld. Together with access, **all these communication rights** and freedoms must be actively guaranteed for all in clearly written national laws and enforced with adequate technical requirements” [own accentuation] (WSIS 08.12.2003: 3).*

Contrarily, an earlier version of the Civil Society Declaration focused on the distinctiveness of a right to communication in comparison to other human rights.

*“Freedom of expression can be seen as addressing the formulation and content of communication, whereas the right to communicate focuses on the means and processes required to make and convey expression. (...) The right to communicate thus addresses both the critical day-to-day communications needs of people, and a requirement necessary for the protection of other rights. Communication is considered by many in the world community as **a distinct human right** because the probability is sufficiently high that its absence could impede the lives and livelihoods of individuals, communities and whole societies” [own accentuation] (WSIS 26.09.2003a).*

These differing perspectives of those who favour a right to communicate derive from diverse definitions. Those who depict communication rights as a generic term either characterise this right as being the total sum of all human rights related to information and communication or, rather vaguely, as “the right of every individual or community to

have its stories and views heard” (Article 19 14.02.2003). Those who promote the need for an additional human right define communication rights more precisely and focus on the access to the means of communication. The African NGO Coopération-Solidarité-Développement for example describes it as “l’inaliénable liberté de tous les hommes et femmes dans le choix de leur mode de communication ainsi que son contenu” (CSDPTT 06.01.2003). Fair and equitable access is the essence of a right to communicate (Human Rights in the Information Society HRIS Caucus 16.07.2003).

The proponents of a right to communicate justify their perspective with the importance of communication as “the foundation of all societal organization” (CPSR 31.05.2003). The introduction of a right to communicate would lead to “the strengthening of the political, economic, social and cultural lives of our people” (Asian NGOs 07.12.2002). Communication rights are seen as a possibility to challenge media concentration, to enable access to information for those excluded, to contribute to a censorship-free society and to be the basis for innovation, development, new ideas and economic growth (Civil Society Contribution 17.07.2003).

There are some CSOs, again mostly journalistic associations and unions, which take a critical stance on communication rights.

*“There are serious doubts about the scope, intention and impact of this right and the IFJ believes the objective of this right can be obtained through application of existing rights. Therefore the IFJ would only support the inclusion of this right in the context of the existing Article 19 of the Universal Declaration of Human Rights, always provided this does not create any obstacle to freedom of expression and press freedom.” (IFJ 30.05.2003)*

Others reject the concept entirely:

*“Without a clear need being demonstrated, no ‘right of communication’ should be introduced or recommended. In fact, such a right, if not well defined, may conflict with Article 19. This cannot be tolerated” (IPA 29.05.2003).*

To conclude, most CSOs promote communication rights or a right to communicate because of the key role of communication for societies and the importance of access to the means of communication. The definition of communication rights varies depending on how it is connected to the general human rights framework. Most people conceived it as a generic term comprising existing human rights related to communication and information. Other CSOs argue that communication rights should be understood as an additional human right, distinguished from other human rights such as the freedom of expression and opinion. A minority of CSOs rejects a right to communicate.

### ***Tracing CSO Input in the Drafting Process on Communication Rights***

Communication rights did not loom large in the official WSIS working documents. In the Action Plan the concept was not mentioned at all, in the Declarations its salience diminished over time. In the end a right to communicate was not referred to in the Declaration, but the salience of communications for society has been mentioned in a manner which could be understood to be a remnant of the communication rights debate:

*WSIS Declaration, 12.12.2003, section 4*

*(...) Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.*

Communication rights have been brought onto the agenda at the Western Asia Regional Conference that took place in Beirut (Lebanon) on 4-6 February 2003.

*“The right to communicate and the right to access information for citizens and nations, as well as the recognition and application of intellectual property rights and the principle of free flow of information, should be part and parcel of human rights fundamentals” (WSIS 06.02.2003).*

Instantly, the concept was taken over in the Declaration, but with the status of a basic human need, not a human right: “The right to communicate and the right to access information for citizens should be considered a basic human need” (WSIS 25.02.2003: section 18). A similar paragraph appeared later, although communication rights were then watered down so that in the end they were just “fundamental to the Information Society” (WSIS 21.03.2003b: section 21).

At the Intersessional Meeting in Paris the discussion on communication rights was stimulated by a Brazilian proposal. As a new option for the first paragraph dealing with human rights, Brazil suggested that one should recognise communication rights as a human right and justified its position in detail:

*“We recognize the right to communicate and the right to access information and knowledge as fundamental human rights. Everyone, everywhere should have the opportunity to participate in the information society and no one should be excluded from the benefits it offers. In a world based on knowledge and information, the right to communicate and the right to access information and knowledge are essential requirements to the attainment of other internationally recognized human rights, including the right to freedom of expression, universal access to the information and communications infrastructure and to the Internet is essential to the Information Society” (WSIS 18.07.2003: section 1A).*

Brazil took up the demands voiced by CSOs using this suggestion. The right to communicate was not only mentioned, but it was also defined as a distinct human right. Its salience was justified with its effect of putting forward other human rights. Despite posi-

tive reception of this suggestion by civil society (German Civil Society 28.08.2003), the section vanished again and in the following versions of the Declaration communication rights were not mentioned again to any further extent.

It seems that at least section 4 of the final Declaration, which mentions the key role of communication for the society, was inspired by CSOs. The idea that “communication is a fundamental social process, a basic human need and the foundation of all social organization” first emerged at the beginning of PrepCom3 (WSIS 19.09.2003: section 4), at the same time as the notions on communication rights disappeared. This proposal can be ascribed to civil society, which justified their demand for communication rights with the key role of communication for the society. The Civil Society Coordination Group, for example, stated that “communication is a basic human need” (Civil Society Coordination Group 05.02.2003) and that “communication is a fundamental human need, indispensable for the organization of societies” (Civil Society Coordination Group 12.09.2002). The final Civil Society Declaration also refers to that definition of communication:

*“We reaffirm that communication is a fundamental social process, a basic human need and a foundation of all social organisation. Everyone, everywhere, at any time should have the opportunity to participate in communication processes and no one should be excluded from their benefits” (WSIS 08.12.2003).*

In conclusion, the section that substitutes the idea of communication rights in the final official WSIS Declaration seems to have been inspired by civil society input. Additionally, although the outcome was not in line with CSO demands for communication rights, the drafting process showed that CSO concerns were discussed and taken into consideration. At the Intersessional Meeting communication rights were referred to as human rights in the working documents because of the request and drafting proposal of Brazil. Later this concept vanished again, so that the final documents show no adjustments to CSO concerns with regard to communication rights or a right to communicate. This demonstrates, just as in the case of IPR, that the responsiveness of WSIS towards CSO demands depended on the point in time of the negotiation process and was higher at an earlier period in time and lower nearer the starting date of the Summit.

## **CONCLUSION**

Based on the ideal of deliberative democracy and the claim that CSOs should be included in the decision-making procedures in order to generate legitimate outcomes, the World Summit on the Information Society was presented as a likely case for a deliberative policy-process. Indeed, the preconditions for CSO participation – access, transparency and inclusion – were unprecedented at the start of this world summit. The WSIS provided favourable conditions for CSO participation. They had access to the negotia-

tions of the preparatory phase as well as the summit. In addition, CSOs could easily access all policy and background documents; this indicates that the policy process was transparent. Yet, the WSIS process did not take sufficient measures to include marginalised voices within civil society. The participation of CSOs did not lead to a substantial impact on the policy output.

Despite the high aspirations of WSIS and the quite favourable formal conditions of civil society participation, the impact of civil society on the policy outcome remained relatively low. A content analysis of policy documents and civil society statements with regard to three selected issue areas – Internet governance, intellectual property rights and communication rights – revealed that CSOs were in many cases not able to influence the outcome. Their argumentative input only led to minor changes in the policy documents, mostly restricted to an early stage of the negotiation process.

This is contradictory to the initial expectations that were derived from the normative deliberative approach to democracy. Factors other than the exchange of reasonable arguments between state and non-state actors seem to have been decisive for the output of the WSIS. The imperative task for future research on the subject that derives from these results is to find reasons for this low impact. The results of the study suggest that the responsiveness of the WSIS process depended less on the influence of CSO arguments, but rather on the interests of governments, the structure of the problems discussed, and on the stage in the preparatory process at the time that the CSO arguments were discussed.

The CSO influence was contingent on the willingness of states to support their arguments. In some instances an adjustment took place because the CSO position was supported by a certain state, as the case of communication rights revealed in which Brazil achieved the adoption of a specific clause on a right to communicate in the intersessional period. The responsiveness of the WSIS process towards CSO arguments was to a large degree dependent on the power relationships between states and their willingness to listen to CSO expertise. For example, the discussion on Internet Governance was dominated by the opposing positions of two fractions of states, led by the USA on the one hand and China on the other. Therefore, CSOs were not able to give an input on the substance discussed; however, they were able to help with expertise and therefore were allowed a stronger role in the further discussions on Internet governance. Although the outcome of the Internet governance debate was in line with CSO demands, it was ultimately dependent on powerful states and their interests. A causal relationship between the arguments of CSOs and an adjustment of the documents could not be detected. These results suggest that the negotiations were not following a rational discourse in which non-state as well as state actors were able to equally voice their arguments and in

which the better argument carries the day. Rather, the state actors' interests and power were decisive for the policy outcome.

Issues contested within civil society were less likely to lead to an adjustment towards their demands. The CSO position on Internet Governance was relatively coherent and their priority claims were reflected in the documents. The demand for a multi-stakeholder approach to Internet governance was undisputed and it was reflected in the final documents of the WSIS. Additionally, the priority of CSOs in that debate was to strengthen the role of civil society in Internet governance. This priority was responded to in the Declaration and the Action Plan. Nevertheless, as was said before, the outcome can not only be traced back to CSO demands, but much more to state interests.

The CSO positions on IPR and communication rights were more ambiguous. In the IPR debate different fractions within civil society had differing positions on the issue. Priority issues were also going in different directions, some organisations were primarily lobbying for the Open Access cause, others for Free and Open Source Software. In the end, CSO arguments on IPR were only superficially reflected in the final documents. Though concrete proposals of CSOs with regard to FOSS and Open Access had been considered at some point in time of the preparatory process, they mostly vanished from the documents towards the end.

Most civil society organisations lobbied for a right to communicate, but they disagreed on how it should be defined and how it should relate to the existing human rights framework. A minority of CSOs strictly rejected a right to communicate. In the end the right to communicate was neither promoted nor mentioned in the WSIS documents. As CSOs did not have a common position on the promotion of a right to communicate, they were not able to influence the policy outcome in this respect.

Responsiveness was highest at an earlier stage of the negotiation process when the positions of state actors were still to be determined and unresolved. Towards the end of the negotiations, the responsiveness to CSO arguments decreased. The debates on IPR and Communication Rights showed the same pattern in this respect. When these issues were first discussed in a substantial manner, which was mostly during the Intersessional Meeting in July, states seemed to be more open and responsive towards the ideas and propositions of CSOs. Their positions were not fixed at that stage and the expertise of CSOs was welcome. The documents included many proposals of CSOs between Prep-Com2 and 3 and the ITU published additional reading and reference guides to stimulate the exchange of ideas. Towards the end of the negotiation process, when the states were impelled to find a consensus or at least a compromise based on the least common denominator, states increasingly began to reject the arguments of CSOs. Many propositions of CSOs were deleted after PrepCom3 and the documents became shorter and vaguer. An exception to this pattern was the debate on Internet governance. Here, states

were in a stalemate from the outset of the discussions and civil society gained more and more influence over time.

Therefore, on the basis of the empirical analysis, three hypotheses can be formulated as tentative results and starting points for future research:

- (1) The power and interests of states in the preparatory process are more decisive for the policy outcome than arguing and rational discourse, even in cases where an adjustment towards CSO positions can be detected.
- (2) The less contested an issue is within civil society, the more adjustments towards CSO demands take place.
- (3) The responsiveness and justification vis-à-vis CSO arguments decrease towards the end of the negotiations. They are higher at an earlier stage of the negotiations when the positions of state actors are still to be determined and are, as such, unresolved.

Overall, the case of the World Summit on the Information Society indicates that favourable conditions for CSO participation alone do not necessarily provide a cure for the democratic deficit in international governance. The WSIS lacks democratic quality according to the criteria that have been developed here when it comes to deliberative democracy, although CSOs were broadly enabled so that they could participate and contribute to the negotiations. However, there was no rational discourse between civil society, state actors and other observers at the WSIS. Even at such a showcase that the WSIS is, state power, the time set aside for the negotiation process and the character of the issues discussed seem to outweigh a deliberative policy process.

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