

**UNITED NATIONS COMMISSION ON SCIENCE AND TECHNOLOGY
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**Contribution to the CSTD ten-year review of the implementation of WSIS
outcomes**

Submitted by

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Questionnaire for CSTD's 10-year review of WSIS implementation

Statement of the Wiener Zentrum für Rechtsinformatik (WZRI) /Vienna Centre for Legal Informatics, Austria

Written by Prof. Dr. Dr. Erich Schweighofer in co-operation with Mr. Walter Hötendorfer

Please share your experience, views and priorities in response to the following questions, addressing the issues that you consider most important for the CSTD's ten-year WSIS review. Issues that you might consider could include any or more of the following, but need not be confined to these:

- infrastructure, access and inclusiveness;
- content, applications and capacity-building;
- technical, financial and related issues;
- governance and wider public policy aspects of the Information Society;
- social, economic and other development activities and impacts;
- the implications of new trends in technology and services;
- measurement and monitoring of the Information Society; and
- the relationship between the Information Society, sustainable development and the Post-2015 Development Agenda.

1. To what extent, in your experience, has the "people-centred, inclusive and development-oriented Information Society", envisaged in the opening paragraph of the WSIS Geneva Declaration of Principles, developed in the ten years since WSIS?

Legally speaking, the idealistic principle of a "people-centred, inclusive and development-oriented Information Society" remains an unrealized goal.

At the WSIS, a balance of very different interests existed on questions of internet governance. The status quo with the policy options of the various stakeholders has been maintained. The WSIS Geneva Declaration of Principles contains contradicting principles and these contradictions remained unresolved up to now. The sovereignty of States is strengthened. Digital rights securing human rights on the internet but are subject to respect of sovereign states. Only some regional human rights systems offer a redress for citizens.

No international treaty exists that secures the principle of the open internet society. Luckily, the main stakeholder of the internet, the United States Government strongly supports self-regulation and has established a non-profit association for the (technical) governance of the Internet, the Internet Corporation for Assigned Names and Numbers (ICANN). It is also a great luck for the Internet that the US-Government is gradually reducing the stewardship function and letting the multi-stakeholder process grow and – hopefully next year – become independent from US interference. Then, there would be a people-centred and inclusive Information Society, but not sufficiently guaranteed by international law. WSIS has established the Internet Governance Forum (IGF) as a discussion framework with no real powers and insufficient resources. If one considers competences and resources, IGF is weak and ICANN is gaining strength every year. Even if the multi-stakeholder process in ICANN works that well, one is worrying what would happen if ICANN moves in another direction. There are simply no sufficient legal guarantees, in particular on the international level.

The open internet society has survived due to a balancing of the various stakeholders that WSIS did endorse. Considering this, WSIS was a success.

The factor of development has been strong but not due to the principles. It was simple the technology that offers now much cheaper access devices, cheaper mobiles, and a mobile and efficient solution for internet access, also in developing countries.

Principles should be put into hard law and the WSIS process has failed doing so. Thus, WSIS-10 should consider establishing a strong legal framework for multi-stakeholder processes in international law.

People do not sufficiently fight for the open internet society. The participation in ICANN and ICG meetings is impressive but still much too low for a significant gathering of the internet community worldwide. It must be noted that the core groups are there and efforts for establishing local groups are becoming more and more fruitful.

2. How far do you consider the implementation of specific WSIS outcomes to have been achieved?

See above.

Participation and accountability: The ICANN has established an extensive and well-working process of participation and accountability that has gained high recognition in international circles.

3. How has the implementation of WSIS outcomes contributed towards the development of a "people-centred, inclusive and development-oriented Information Society"?

See above.

Yes and no. WSIS has helped to maintain the existing compromise due allowing technologies and policies to implement and – indirectly – support the WSIS goals.

4. What are the challenges to the implementation of WSIS outcomes? What are the challenges that have inhibited the emergence of a "people-centred, inclusive and development-oriented Information Society"?

See above.

So far, states seem not to be willing to accept formally this principle and its underlying prerequisites: digital human rights with compliance mechanisms, recognition of the multi-

stakeholder process as an alternative way of international co-operation (e.g. not only internet governance or sports but also in other areas as human rights or environment), also establishing proper principles for sufficient information, participation and accountability.

5. How are these challenges being addressed? What approaches have proved to be effective in your experience?

See above.

The four main meetings worldwide – IGF and three-times ICANN – have greatly supported the awareness for a multi-stakeholder process. Some experience exists in handling more and more participants from the civil society world-wide that should be further extended, also by appropriate research projects.

Human rights institutions have done a great job in further developing the digital rights. In particular, the Council of Europe should be mentioned.

6. What do you consider the most important emerging trends in technology and other aspects of ICTs which have affected implementation of WSIS outcomes since the Summit? What has been their impact?

New technologies have emerged and get significant importance worldwide. Big data, mobile computing, Internet of Things, Cloud Computing: all these businesses are based on an open and free internet with little or no interference by the territorial state.

However, there are only rudimentary economic rules in internet governance. WSIS was quite clear: economic governance remains the sovereign right of states. In practice, WSIS principles were not observed, more the contrary.

It should also be mentioned that the competence of other international institutions is also restricted in this area (only rudimentary WTO rules for on-line services, only standardization in ITU but even this part is partly left to the IETF, most developed rules in IP due to WIPO, no institution exists in competition).

Thus, the regulation of economic questions is strongly dominated by the big economies that may follow different regulatory principles (e.g. strong competition law in US and EU). It is only indicative that the EU does not a priori accept the regulatory decisions of ICANN on generic top level domains.

Thus, no rules exist on businesses for the internet besides national rules. This offers firms with clever circumvention practices huge options.

The dilemma is demonstrated by the questions of net neutrality and pricing of services.

The principle of net neutrality is well recognized in ICANN and the international civil society but businesses are not always happy, in particular telecoms seeing their revenues diminished by new services. States can regulate it and the basic principle of the open internet may not be applied any more in some countries. A basic principle is questioned only because regulation does not work properly.

Pricing of services on the internet is an important but opaque topic. Due to the new trend of free services with some – often hidden – revenues for the providers, it is even worse. The exchange of a service for personal data and/or advertising is now very common. Money is made by the application or advertising but not in providing the basic transmission service, i.e. the access to the internet. Google or Facebook have found the best way in this environment of free or low-cost services; financing it by advertising.

No regulatory institution exists worldwide that could deal efficiently with the problem. Businesses know their advantage and move their activities to the most favourable states. Google and Facebook operate from the US. Here, virtually no respect for data protection is given in case of free private sector services. Both companies can collect data as much as they want and improve their services, in particular personalized advertising. The behavior is at least a violation of ethical standards, if not digital rights. Unilateral rule of some states does not work anymore but co-operation is still weak.

7. What should be the priorities for Stakeholders seeking to achieve WSIS outcomes and progress towards the Information Society, taking into account emerging trends?

Priorities should be: a legal framework for multi-stakeholderism and ICANN; a conformation of digital human rights, guiding principles for economic governance of the internet.

8. What role should information and communications play in the implementation of the post-2015 development agenda?

It should play a central role.

9. Please add any other comments that you wish to make on the subject of the review that you believe would be helpful.

See above.