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Separated Together: The International Telecommunications Union and Civil Society

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SEPARATED TOGETHER:
THE INTERNATIONAL TELECOMMUNICATIONS UNION AND CIVIL SOCIETY

Kristina Irion

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SEPARATED TOGETHER:
THE INTERNATIONAL TELECOMMUNICATIONS UNION AND CIVIL SOCIETY

Kristina Irion[*]

The International Telecommunications Union (ITU) is embarking on a cautious discovery mission to civil society. Presently, the organisation's interface with civil society is governed by different regimes depending on whether ITU is acting within its incumbent competences or as organiser and stakeholder of the WSIS. This paper concentrates on ITU's incumbent competences in international spectrum management and standards-setting with its inherent public policy formulations. The central question to be addressed is how the organization will reconcile its membership and corporate culture with the effective participation of stakeholders from civil society. The paper analyses a study process, which ITU initiated with Resolution 141 of the Plenipotentiary Conference in Antalya, on the participation of all relevant stakeholders in the activities of the ITU emanating from the WSIS. This contribution will refocus global governance research on the valid claim for full recognition of civil society actors in ITU's core activities. It will be shown, that the process in fulfilment of Resolution 141 is falling behind this goal because of the limited mandate of the study and the procedural rules applied. The outlook will present several scenarios on how ITU could resolve the process and places them in the context with the WSIS procedural principles of transparency and participatory inclusiveness.

I. INTRODUCTION

The International Telecommunications Union (ITU) is embarking on a cautious discovery mission to civil society. As a precedent, the World Summit of the Information Society (WSIS) endorsed multi-stakeholder participation opening the procedural door to multiple civil society organizations. However, as institutional organizer of the summit, ITU does not exactly have the reputation of favouring an open door policy. Rather its membership and corporate culture are frequently attributed to a "club model"[1] effectively preventing civil society from finding its way inside.

There are two hearts beating in ITU's chest. First, its legacy as an intergovernmental organization that a decade ago responded to the global trend of liberalization and privatization of telecommunications markets by admitting private sector members to almost all activities. Preparatory work is, to a significant degree, accomplished by the private sector members, with Member States retracting to their privileged high-level competence to adopt international regulations.[2] The resulting division of labour and the additional contributions to the budget of

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[1] Drake, William. *Opening the Door to Civil Society Participation in the ITU*. Presentation delivered at the informal consultation between ITU and civil society on the participation of all relevant stakeholders. ITU Headquarters in Geneva, 18 May 2007.

[2] McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". Info Vol. 9 No. 4, 2007, 70-80, 74.

ITU were mutually perceived as an equilibrium in which public interests are represented by the Member States. Second, ITU is seeking to position itself as the legitimate agency to govern the Internet[3] and to take leadership in international public policy pertaining to the Information Society. The organization emphasizes its role in the WSIS, which is instrumental to this strategic endeavour. In this context multi-stakeholder participation is used as a prominent argument to contrast with existing practices of Internet domain name and address space management.[4]

This paper concentrates on ITU's conventional competences in standards-setting with its inherent public policy formulations *vis-a-vis* WSIS related activities. International public policy is integral to many activities of the Radiocommunication Sector (ITU-R) and the Telecommunication Standardization (ITU-T) with civil society and users' interests now indirectly and incompletely represented through Member States. The central question to be addressed is how the organization will reconcile both self-conceptions leading to variable options for admitting civil society. The ongoing exploration of the participation of all relevant stakeholders presently points towards a split interface for civil society along the lines of conventional and WSIS related activities. The paper argues that Internet governance issues and WSIS-related activities should not obstruct the view on ITU's need for institutional change in order to implement permeable structures for civil society. It is imperative that civil society organizations actively seek access to more issues in ITU core activities and continue to accompany the half-hearted exploration of their participatory rights.

The paper summarizes a process which was initiated in 2006 by Resolution 141of ITU's Plenipotentiary Conference in Antalya[5] and which since paradoxically relies on ITU's procedural rules in order to study participatory aspects related to WSIS activities. In practice, this means that the Council Working Group in charge is only open to Member States, document access is restricted and interaction with the relevant stakeholders takes the form of informal consultations[6]. Apparently, the scope of the mandate included in Resolution 141 had been much disputed between the members of the Council resulting in a rather paradigmatic process for exclusionary practices. The paper will contribute to existing literature by refocusing global governance research on the valid claim for full recognition of civil society actors in ITU.

II. ABOUT ITU

ITU is a venerable intergovernmental organisation based in Geneva, which is responsible for channeling international cooperation in the field of telecommunications and information technology[7]. The organization succeeded the International Telegraph Union founded in 1865 in Paris, and in 1947, became a specialised agency of the United Nations (UN). The remit and structure follow from the Constitution of the ITU and are complemented by the Convention. ITU's basic instruments represent a binding framework for international telecommunications

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[3] *ITU Resolution 102 (Rev. Antalya, 2006) ITU's role with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses*, ITU PP-06.

[4] Namely, the technical coordination and management through the Internet Corporation for Assigned Names and Numbers (INCANN). *Resolution 102 (Rev. Antalya, 2006) ITU's role with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses*, ITU PP-06. See in this context Antonova, Slavka. "Deconstructing an Experiment in Global Internet Governance: The ICANN Case", IJICLP 12 (2007-08).

[5] *ITU Resolution 141 (Rev. Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06.

[6] An informal consultation between ITU and civil society on the participation of all relevant stakeholders took place at ITU Headquarters in Geneva, 18 May 2007.

[7] Now commonly referred to as ICT, i.e. Information and Communication Technology.

that confer a set of competences on the organisation and subjects members to its obligations. The Administrative Regulations (the Radio Regulations and International Telecommunications Regulations) formalise the material provisions for the use of telecommunications and are binding the Member States as international treaties.[8]

To sum up, the purpose of ITU is the promotion of international cooperation among its members for the improvement and rational use of telecommunications[9]. The organisation promotes the development of technical facilities and their most efficient operation, provides technical assistance to developing countries and advances harmonised actions of its members in attainment of those ends.[10] It endeavours to make telecommunication services generally available to the public and to promote the extension of the benefits of the new telecommunication technologies to the world's inhabitants.[11] ITU emphasises its pivotal role in global telecommunications by referring to its indispensable contribution to the creation of "the largest man-made artefact"[12], i.e. the international telecommunications network.

ITU reforms leading to tripartite structure and private membership

After an organisational overhaul in the early 1990s ITU now maintains a tripartite structure corresponding to its major activities: Radiocommunication (ITU-R), Telecommunication Standardization (ITU-T) and Development (ITU-D) coordinated by the Secretary-General. ITU's supreme organ is the Plenipotentiary Conference, which is held on a regular basis every four years.[13] The Constitution of the ITU confers on it the competences to determine general policies, to amend its basic instruments, to adopt strategic and financial plans as well as elect senior management, members of the Council and other bodies.[14] In the intervals between Plenipotentiary Conferences the ITU Council manages the day-to-day operations of the organisation in line with the powers directed to it and facilitates implementation of decisions.[15] It is also capacitated to consider broad telecommunication policy issues in order to align ITU policies and strategies with the dynamically evolving telecommunications environment.

Besides the dynamic technological progress in ICT to stay abreast with, ITU also saw itself confronted with a radical shift in the organisational model of the telecommunications sector favoured by national governments. Starting in the mid 1980s, a wave of liberalisation and privatisation swept over national telecommunications industries with states retracting from the operation of telecommunication. It brought with it a change of corporate culture from state-owned monopolies to the introduction of market mechanisms for the provision of telecommunication services. For ITU, as a standards-setting organisation, the pronounced interface with industry stakeholders made it particularly susceptible to institutional reform that would expand participatory rights to private sector entities.[16] A further condition that almost certainly advanced the private sector's quest for admittance was the prospect of financial contributions to the organisation's budget.[17]

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[8] Critical Ryan, Patrick S. (2005). *The Future of the ITU and its Standard-Setting Functions in Spectrum Management*, *in* STANDARDS EDGE: FUTURE GENERATION, 341-364 (Sherrie Bolin, ed., Sheridan Books, 2005), 347f.

[9] THE CONSTITUTION OF THE ITU Art. 1 para. 1: "with the objective of facilitating peaceful relations."

[10] Ibidem.

[11] Id.

[12] *ITU: an overview – Helping the world communicate: A vision*. ITU, Geneva, August 2007, p. 4.

[13] THE CONSTITUTION OF THE ITU Art. 7 and 8.

[14] Id..

[15] *Ibidem*, Article 10.

[16] Geri, Laurance R. "New Public Management and the Reform of International Organizations". INT. REV. OF ADMINISTRATIVE SCIENCES, Vol. 67, No. 3, 2001, 445-460, 454.

[17] *ITU Resolution 90 (Minneapolis 1998) on the review of the contribution of Sector Members towards defraying the expenses of the Union*, ITU PP-98. McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". INFO Vol. 9 No. 4, 2007, 70-80, 74f.

In 1998, the Plenipotentiary Conference in Minneapolis endorsed two new membership categories, which allow private organisations to join ITU as sector members or associates, and defined their participatory rights as distinct from Member States.[18] In particular, governments retain their exclusive competences in high-level international policy making, in particular the adoption of international regulations. Since then, ITU combines elements of an intergovernmental organisation with those of a "public-private partnership"[19] organisation. In doing so ITU is the only UN agency whose constitution provides that it is not only composed of Member States but also of non-state membership.[20] The opening-up of ITU membership to non-state stakeholders, especially from industry, revitalised ITU's leading position in the field of telecommunications and information technology. Presently, the organisation includes 191 Member States, 569 sector members and 155 associates.[21]

III. ITU's CONVENTIONAL COMPETENCES AND INTERNATIONAL PUBLIC POLICY IMPRINT

Standards-setting is at the core of ITU's activities. The use and operation of radiocommunication is standardised in the realm of ITU-R, whereas all other standardisation efforts in telecommunications lie in the responsibility of ITU-T. The WSIS Declaration of Principles recognises that "standardization is one of the essential building blocks of the Information Society."[22] Building and formalising consensus is a prerequisite for the global take-up of new technologies and equipment.[23] In a networking sector standards penetrate every segment of the utility and ultimately users' communication and online experiences.[24] It is important to recognise, that public policy is already inserted in all these standards-setting processes on high-level radio-spectrum management and - perhaps to a lesser extent - on the ubiquity of technical standardisation.

A. Radiocommunication Sector (ITU-R)

The exclusive mandate to manage the international radio-frequency spectrum and satellite orbit resources[25] is central to ITU's self-conception as the leading agency in the field. Spectrum management involves the coordination of radio-frequencies for wireless applications in order to avoid harmful interference. The ITU-R effects the allocation of radio-frequency spectrum and the allotment of designated radio-frequencies to Member States' administrations for a terrestrial or space radio communication services.[26] The World Radiocommunication Conference (WRC) and the regional counterparts provide the platform for the complex intergovernmental negotiations to this end and the subsequent fixation of the agreements in the (up-dated) Radio Regulations. ITU-R also maintains the Master

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[18] THE CONSTITUTION OF THE ITU Art. 3 para. 1 and 3.

[19] *ITU: an overview – Helping the world communicate: A vision,* ITU, Geneva, August 2007, p. 4.

[20] *Secretariat Background Paper on existing practices within ITU for the participation of relevant stakeholders in the activities of the Union*, ITU Council Working Group on the Resolution 141, WG-Study/2/08, 16 January 2008. (2008b), para. 2.2.1.

[21] As of 5 August 2008, ITU membership statistics *available at* http://www.itu.int/members/index.html.

[22] *Declaration of Principles Building the Information Society: a global challenge in the new Millennium*. Document WSIS-03/GENEVA/DOC/4-E. Geneva, 12 December 2003, para. 44.

[23] *ITU: an overview – Helping the world communicate: A vision*, ITU, Geneva, August 2007, p. 9.

[24] Acc. to Lessig notion of code as a social norm. Lessig, Lawrence. CODE, AND OTHER LAWS OF CYBERSPACE, Basic Books, 1999, p. 95.

[25] *ITU: an overview – Helping the world communicate: A vision*, ITU, Geneva, August 2007, p. 6.

[26] THE CONSTITUTION OF THE ITU Art. 1 para. 2 a). Detailed Ryan, Patrick S. (2005). *The Future of the ITU and its Standard-Setting Functions in Spectrum Management*, *in* STANDARDS EDGE: FUTURE GENERATION, 341-364 (Sherrie Bolin, ed., Sheridan Books, 2005).

International Frequency Register that records all reported assignments to wireless services and arbitrates in disputes about interferences.

The radio frequency spectrum is part of the world's common heritage and a limited natural resource that "should be managed in the public interest."[27] An expanding range of wireless applications that need to be accommodated increases the demand for radio-frequency spectrum and puts pressure on the availability of the technically and economically most valuable parts of the spectrum. ITU-R is responsible for "ensur[ing] the rational, equitable, efficient and economical use of the radio-frequency spectrum by all radiocommunication services."[28] Its decision-making bodies, the World and Regional Radiocommunication Conferences, determine at a high-level the international public policy for the present and future uses of radio spectrum. While the universal harmonisation of radio-spectrum certainly lies in the public interest,[29] the pursuit of more pronounced public interest goals requires the cooperation of a critical mass of supporting Member States. When an issue becomes a matter for private interests, sector members can bring together their lobbying force, participate in the preparatory study groups, which draft the basis for the conferences, and can get admitted as observers to the conferences.

A salient policy area very much influenced by the ITU-R is the process of digital switch-over in terrestrial broadcasting services for radio and television. A major landmark in this regard was set by the Regional Radio Conference 2006 in Geneva (RRC-06), which finalised an agreement on the full digitalisation of all terrestrial broadcasting services in Europe, Africa and the Middle East by 2015.[30] Member States from this region are required to keep the schedule for the final analogue switch-off with some already ahead and others struggling to keep the date. One significant impetus for the Member States at the RRC-06 had been the prospect of unlocking the radio-spectrum presently occupied to transmit analogue television. The so-called "digital dividend" describes the bandwidth that is set free once all existing services have migrated to the digital environment. It can then be used for additional terrestrial broadcasting services and/or other wireless applications depending on the regulatory and policy approach.

In many countries concerned, the redistribution of the "digital dividend" was highly controversial between incumbent broadcasters and channels on the one hand, and, on the other hand, all residual operators of wireless services seeking access to the "sweet spot" of the radio-spectrum. Undergoing heavy lobbying from industry, in 2007, Member States at the WRC-07 in Geneva approved the update of the Radio Regulations that *inter alia* re-allocated portions of the radio-spectrum to mobile broadband services.[31] Apart from the option to allocate dedicated bandwidth to services and the decision regarding the appropriate range of the radio-spectrum to be reserved, several other strategies could have been followed, including the adoption of a technology-neutral approach. Thus, standardisation of spectrum uses undertaken at the level of the ITU-R pre-empts the use of radio-spectrum to an extent that can exceed the sheer need for coordination in this sphere. This makes due representation of all interests before and during the decision making conferences so compelling.

ITU-R's other major task is carrying out studies and adopting recommendations concerning the development and the operations of radiocommunication systems.[32] Numerous study groups process these studies which assist the adoption of standardised wireless

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[27] *Ibidem*, § 49.

[28] THE CONSTITUTION OF THE ITU Art. 12 §1 1).

[29] Ryan, Patrick S. (2005). *The Future of the ITU and its Standard-Setting Functions in Spectrum Management, in* STANDARDS EDGE: FUTURE GENERATION, 341-364 (Sherrie Bolin, ed., Sheridan Books, 2005), 349.

[30] McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". INFO Vol. 9 No. 4, 2007, 70-80, 74.

[31] WRC-07 in Geneva: Benefiting IMT standards family was shortly before expanded to cover rival WiMax technology.

[32] THE CONSTITUTION OF THE ITU Art. 12 para. 1 1).

applications. Much reference has been made to the achievement of ITU-R to develop and establish the IMT 2000 as a global standard for third generation cellular communications.[33] It can also boost the visibility of an important objective and mobilise resources for this purpose. For instance, in the aftermath of the tsunami catastrophe in 2004, ITU-R promoted the importance of radiocommunications in emergency and disaster relief, which triggered a series of studies and publications.[34] Such initiatives can positively contribute to ITU's mission "to promote the extension of the benefits of the new telecommunication technologies to all the world's inhabitants".[35] However, non-ITU members have no forum to articulate a given needs to study certain radiocommunication services and applications and to ensure they are taken-up in the work programme.

B.   Telecommunication Standardisation Sector (ITU-T)

Standards developed within the ITU-T largely contribute to the trinity of a workable ICT environment - interconnection, interoperability and compatibility. They signify a collaborative effort between ITU-R members to stir the (technical) description of a work item into an agreed set of specifications. It is also maintained to reach-out and collaborate with other international standardisation bodies.[36] For complex applications with priority in ITU-T's work programme, the Global Standards Initiative (GSI) can accelerate results through the coordination of work packages of several study groups. The Sector pioneered electronic working methods and approval procedures that expedite the adoption of standards in order to keep pace with the time-to-market requirements of the industry. In terms of participation, private sector members arrived on an equal footing with Member States since they hold the right to determine the work programme and adopt standards.[37] However, affecting the future direction of the telecommunications and information technology cannot be left to an exclusive forum through which government and industry can work towards consensus on a wide range of issues, as ITU is promulgating.[38]

Present samples of work-packages driven by GSI's efforts comprise the standardization of Identity Management, Next Generation Networks and Internet Protocol Television. Incidentally, the work foci show that digitalisation and technical convergence are leading to ITU-T taking responsibility in the formulation of future Internet architecture including media applications. This raises important questions on the holistic approach in standards-setting, recognising public interest objectives and further social values. More precisely, whether the technical work-package on Identity Management is guided by a "privacy by design" approach, in order to ensure that data protection principles are already build in the standard. In the context of future global communications architecture it is imperative that the Next Generation Networks GSI is alert to the policy dimensions its work presumably has on network neutrality, privacy and freedom of information. Finally, will the specifications of Internet Protocol Television cater for commercial interests and emancipate the users to the highest degree possible?

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[33] *ITU-R: Radiocommunication The Future is Wireless,* ITU Geneva, April 2008, 7.

[34] *Id.*

[35] THE CONSTITUTION OF THE ITU Art. 1 para. 1.

[36] *Secretariat Background Paper on existing practices within ITU for the participation of relevant stakeholders in the activities of the Union*, ITU Council Working Group on the Resolution 141, WG-Study/2/08, 16 January 2008, para. 4.2.8.

[37] McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". INFO Vol. 9 No. 4, 2007, 70-80, 75f.

[38] *ITU-R: Radiocommunication The Future is Wireless,* ITU Geneva, April 2008, 14. "It is vitally important that public interest advocates continue and increase their level of participation in Internet technical standards-setting bodies." Morris, John, & Davidson, Alan. "Policy Impact Assessments: Considering the Public Interest in Internet Standards Development", Submitted to TPRC 2003 – The 31st Research Conference on Communication, Information and Internet Policy, 8.

Good standardization is often associated with the attributes of open, interoperable and non-discriminatory.[39] Nevertheless, this notion on the desirable outcome of standardization should not obstruct the view on the influential standard making process – a melting pot for technical, economic, organisational and social variables.[40] The actual solution is almost certainly an interest and situation specific expression of an idea that embodies the presence of certain advanced values or their ignorance.[41] Once resulting technical standards are widely adopted they become "obdurate policy."[42] Acknowledging that standards, like regulation, are capable of impeding social and individual utilities to a varying degree,[43] ITU is already embarking on Internet governance issues and its policy formulations. Hence, the organisation inevitably captures an important public policy imprint in the areas of its exclusive competences in spectrum management and – where applicable –radio- and telecommunications standardisation. Under this paradigm due representation of the public interest and recognition of social values and public policy at the stage of the standards-setting processes is paramount.

C. Further ITU international policy initiatives

In an attempt to strengthen its relevance and extend its mission into governance of the Internet, ITU has been pursuing a number of initiatives to show leadership in global regulatory strategy and international communication policy. Aware of its unique position to provide a forum to governments, policy makers and private sector stakeholders for the coordination, discussion and potential harmonization of telecommunication strategies and policies, ITU established the World Telecommunication Policy Forum (WTPF). The WTPF is usually devoted to a topic of high current interest from the field of communications policy and regulation chosen by the Plenipotentiary Conference. It does not produce binding outcomes *per se* but strives to create a shared vision between policy makers, reflected in documents and opinions for consideration in future policy making. The upcoming fourth WTPF in Geneva, in the first quarter of 2009, will explore convergence, including Internet-related public policy matters.[44] As prescribed in the relevant regulations governing the WTPF, the discussions will be based on a report from the Secretary-General that was discussed with Member States and sector members.

Based on ITU's initiative to address the issues of the emerging Information Society in a global summit, in 2001, the United Nations' General Assembly endorsed ITU's proposal to prepare and organise the World Summit on the Information Society (WSIS). The Summit was held in two phases with the first phase taking place in Geneva in December 2003 and the

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[39] Compare *Declaration of Principles Building the Information Society: a global challenge in the new Millennium.* Document WSIS-03/GENEVA/DOC/4-E. Geneva, 12 December 2003, para. 44.

[40] Vincent, Charles & Camp, Jean. "Setting Standards: Looking to the Internet for Models of Governance". ETHICS AND INFORMATION TECHNOLOGY Volume 6, Issue 3, 2004, 161 – 173, 164.

[41] Kesan, Jay P. & Shah, Rajiv C. "Deconstructing Code", 6 YALE J. L. & TECH. 2003, 277-389, 282.

[42] Vincent, Charles & Camp, Jean. "Setting Standards: Looking to the Internet for Models of Governance". ETHICS AND INFORMATION TECHNOLOGY Volume 6, Issue 3, 2004, 161 – 173, 164; Morris, John, & Davidson, Alan. "Policy Impact Assessments: Considering the Public Interest in Internet Standards Development", Submitted to TPRC 2003 –The 31st Research Conference on Communication, Information and Internet Policy, 16.

[43] In reference to Lessig, L. (1999). *Code, and Other Laws of Cyberspace.* Basic Books, 1999, p. 95. Camp and Vincent coined "If code is law then standards bodies are governments". Vincent, Charles & Camp, Jean. "Setting Standards: Looking to the Internet for Models of Governance". ETHICS AND INFORMATION TECHNOLOGY Volume 6, Issue 3, 2004, 161 – 173, 163. Morris, John, & Davidson, Alan. "Policy Impact Assessments: Considering the Public Interest in Internet Standards Development", Submitted to TPRC 2003 –The 31st Research Conference on Communication, Information and Internet Policy, 1.

[44] *Fourth World Telecommunication Policy Forum,* ITU PP-06. Decision GT-PLAN/A, Geneva, November 2006.

second phase in Tunis in November 2005. The Geneva Declaration of Principles and Plan of Action are two major outcome documents of the WSIS summarizing the common vision and guiding principles to build an Information Society for all and a roadmap for implementation.[45] After concluding the second phase of the Summit in Tunis WSIS implementation and stock-stacking activities continue. Whether there was calculation or not, ITU's role as a main facilitator of the WSIS did not succeed in making the organisation the pre-eminent intergovernmental organisation for global Internet affairs.

In 2006, the Plenipotentiary Conference in Antalya passed several Internet related resolutions, which have as an underlying theme the reaffirmation and demarcation of the "range of Internet-related issues that fall within the responsibilities incumbent on the Union under its basic texts"[46] and identify WSIS follow-up activities in which ITU has a role. With the dawn of Internet-Protocol-based communications networks and the evolutionary step to deploy Next Generation Network technology, ITU stipulates its competence to deal with the corresponding technical and policy issues.[47] As a new strategic activity of high priority within ITU it was resolved to strengthen ITU'role in building confidence and security in the use of ICT.[48] Resolution 102 on the role of ITU with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses, recognises the need for enhanced cooperation involving all stakeholders.[49] The latter should be read within the context of the inherited system in the administration of Internet domain names partially through the Internet Cooperation for Assigned Names and Numbers (ICANN) and other regional organisations in which ITU does not occupy any significant role. Concerning ITU's own inclusiveness in terms of stakeholder participation, the Plenipotentiary Conference initiated a process,[50] which should respond to the criticism from civil society about ITU's corporate culture.

IV. CRITICISMS OF ITU'S CORPORATE CULTURE

Despite the institutional reforms which ITU went through, civil society's mounting criticism contends that the organisation does not interact and cooperate effectively with all stakeholders. In its established mode of operation these stakeholders are in most instances marginalised to passive beneficiaries of ITU's work. Unlike the UN and other UN specialised agencies it is said to have no participation mechanisms in place that are sufficiently tailored to the needs of civil society. The Conference of NGOs in Consultative Relationship with the United Nations (CONGO) maintains that "ITU is seen by many NGOs and not-for-profit agencies as functioning as a corporate-like institution as regards its arrangements for non-state actor participation."[51] The final report of the Working Group on Internet Governance confirms that bequeathed practices of international organisations active in Internet governance often constitute significant barriers to multi-stakeholder participation.[52] The inopportune lack

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[45] *WSIS Declaration of Principles Building the Information Society: a global challenge in the new Millennium*. Document WSIS-03/GENEVA/DOC/4-E. Geneva, 12 December 2003. *WSIS Plan of Action*, Document WSIS-03/GENEVA/DOC/5-E. Geneva, 12 December 2003.

[46] *ITU Resolution 101 (Antalya, 2006) Internet Protocol-based networks*, ITU PP-06.

[47] *ITU Resolution 102 (Antalya, 2006) ITU's role with regard to international public policy issues pertaining to the Internet and the management of Internet resources, including domain names and addresses*, ITU PP-06.

[48] *ITU Resolution 130 (Antalya, 2006) Strengthening the role of ITU in building confidence and security in the use of information and communication technologies*, ITU PP-06.

[49] *Id.*

[50] *ITU Resolution 141 (Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06.

[51] *Id.*

[52] *WSIS Report of the Working Group on Internet Governance,* Document WSIS-II/PC-3/DOC/05., Château de Bossey, 3 August 2005, para. 19.

of transparency, openness and participatory processes[53] hampers meaningful cooperation of stakeholders from civil society. Likewise, these qualitative attributes describe the procedural requirements associated with good governance practises international organisations should be interested to comply with.[54]

A. WSIS and Civil Society's Role in Internet Governance

The quest is supported by the WSIS Declaration of Principles, which emphasises civil society's role in the development of the Information Society in line with those of governments, as well as private sector and international organisations.[55] The Declaration maintains that "[b]uilding a people-centred Information Society is a joint effort which requires cooperation and partnership among all stakeholders."[56] Again, the final report of the Working Group on Internet Governance (WGIG) concludes that civil society contributes to Internet governance in particular through the promotion of various public interest objectives and their engagement in policy processes.[57] Civil society actors devote valuable expertise, skills, experience and knowledge in a range of ICT policy areas.[58] They raise awareness of unresolved policy issues, relay perspectives of marginalized groups and advocate social projects, all of which helps "to ensure that political and market forces are accountable to the needs of all members of society".[59] In sum, the empowerment of civil society can positively influence Internet governance on all levels, thus helping to produce equitable outcomes in the international effort to shape the Information Society. Consequently, the WSIS Tunis Agenda is calling for the adoption of a multi-stakeholder approach at all levels of Internet governance in the context of improving the coordination of the activities of international and intergovernmental organisations.[60]

B. Balancing Public and Private Interest within ITU

Due to proliferation of interests in ITU's decision making processes, the representation of the public interest through Member States is imperfect at best,[61] overridden by national interest goals, watered down in negotiations or simply left to the markets to decide. Empowering civil society would open an additional avenue for public interest objectives to enter the policy making processes.[62] At least in the areas where the public-private partnership model is flourishing, ITU membership cannot legitimately refer stakeholders from civil society to the Member States as the representatives of the public interest. Especially when significant work and preparations are handled in subject-matter specific study-groups, the division of labour and responsibilities in the ITU-R and ITU-T Sectors is tipping to the

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[53] *Id.*

[54] Drake, William J., *Encouraging Implementation of the WSIS Principles on Internet Governance Procedures, in* THE POWER OF IDEAS: INTERNET GOVERNANCE IN A GLOBAL MULTISTAKEHOLDER ENVIRONMENT, 271-280, 273 (Wolfgang Kleinwächter, ed., Marketing für Deutschland GmbH 2007).

[55] *WSIS Declaration of Principles Building the Information Society: a global challenge in the new Millennium*, Document WSIS-03/GENEVA/DOC/4-E. Geneva, 12 December 2003, para. 20.

[56] *Id.*

[57] *WSIS Report of the Working Group on Internet Governance,* Document WSIS-II/PC-3/DOC/05, Château de Bossey, 3 August 2005, para. 32.

[58] *Id.*

[59] *Id.*

[60] *Tunis Agenda for the Information Society*, WSIS, Document WSIS-05/TUNIS/DOC/6(Rev. 1)-E., adopted 18 November 2005, para. 37, 71. *WSIS Report of the Working Group on Internet Governance,* Document WSIS-II/PC-3/DOC/05, Château de Bossey, 3 August 2005.

[61] Vincent, Charles & Camp, Jean. "Setting Standards: Looking to the Internet for Models of Governance". ETHICS AND INFORMATION TECHNOLOGY Volume 6, Issue 3, 2004, 161 – 173, 164.

[62] Collingwood, Vivien. "Non-governmental organisations, power and legitimacy in international society". 32 REVIEW OF INTERNATIONAL STUDIES (2006), 439–454, 442.

private sector.[63] At present, ITU-R reports 275 sector members, and ITU-T 304 sector members.[64] Recognised operating agencies account for 131 sector members respectively and are the largest sub-category, followed by scientific and industrial organisations. With a few exceptions, civil society organisations are not significantly represented in ITU's membership of ITU-R and ITU-T, which - assuming sufficient interest on the part of civil society organisations[65] - points to the persisting impermeabilities in the membership regime.

C. Persisting Impermeabilities in the ITU Membership Regime

The new membership categories seem in most instances out of reach for non-for-profit advocates of public interest objectives because the financial obligations attached exceed the capacity of non-for-profit organisations.[66] For example, during budgetary period 2008-2009 the minimum contribution for sector members would amount to CHF 31,800[67] annually for participation in either ITU-R or ITU-T Sector.[68] The financial contribution for associates is 1/3 of the minimum contributions for sector members in order to participate in the work of one study group. Solely for the ITU-D Sector contributions had been substantially reduced in order to stimulate participation in particular from the target regions.[69] ITU allows for narrowly-tailored exemptions from the payments for not-for-profit organisations of international character dealing with telecommunications on a reciprocal basis, if its members' participation in ITU activities would be beneficial to the aims of the Union.[70] Other derogations from the ITU membership regime, which allow for expanded cooperation with third organisations, take the form of partnerships or are based on Memoranda of Understanding (MoU). This practise however is applied very discretionary and cannot make up for regular admission processes.

In addition to membership the participation of observers in ITU meetings is regulated in Resolution 145.[71] The participatory rights are conferred to organisations or entities and vary according to the category of observers concerned. Not-ITU-members can be admitted as observers either in advisory capacity or without. Observers, once they are admitted to participate in advisory capacity, can attend the high level meetings and most sector level meetings.[72] More frequently, there will be demand for becoming observer not in advisory function. In these cases, observers can attend ITU's high-level conferences but are not admitted to any activities on the level of study or preparatory groups.[73] The obvious

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[63] McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". INFO Vol. 9 No. 4, 2007, 70-80, 74.

[64] As of 18 August 2008.

[65] In particular from the Conference of NGOs in Consultative Relationship with the United Nations (CONGO).

[66] Congo. "NGO participation arrangements at the UN and in other agencies of the UN system", March 2006, 10. WSIS (2005). Document WSIS-II/PC-3/DOC/05. *WSIS Report of the Working Group on Internet Governance,* Document WSIS-II/PC-3/DOC/05, Château de Bossey, 3 August 2005, para. 19.

[67] Circa USD 29,000; EUR 19,700 (Calculated on the basis of the currency exchange rate of 15 August 2008).

[68] Based on one contributory unit for sector members of CHF 63,600. ITU (2008). For participation in the Radiocommunication Sector (ITU-R) and Telecommunication Standardisation Sector (ITU-T) the minimum contribution required is 1/2 unit. Since ITU's operating budget is readjusted every two years by the ITU Council the contributions for the sector or associate membership vary. *ITU Membership – ITU committed to Connecting the World*. ITU, Geneva, 2008, 26.

[69] The minimum of 1/16 a unit, applying to sector members from developing countries, amounts to a contribution of CHF 3,975 for 2008/09. *Id.*

[70] Compare ITU webpage at http://www.itu.int/members/sectmem/fees.html.

[71] *ITU Resolution 145 (Antalya, 2006) Participation of Observers in Conferences, Assemblies and Meetings of the Union ITU*, ITU PP-06.

[72] *Id.*, Annex 2.

[73] *Id.*, Annex 3.

deficiencies of ITU guidelines for observers are threefold. First, only organisations and entities can apply to send observers. Second, the observer in advisory capacity requires receiving a call or another endorsement of his capacity. Last but not least, commonplace observer cannot attend the majority of meetings and activities inside ITU. In its present state ITU's regulation for observers do not present a regular opportunity for civil society to be involved. More flexible instruments are needed, for instance ad-hoc accreditations that would apply across all ITU activities and sectors.

D. *Exclusivity and Access Restriction versus Transparency*

Beyond participation through membership and as observers, much criticism about ITU's inclusiveness relates to procedural aspects, notably the lack of transparency. In principal, ITU's corporate culture is based on exclusivity and access restricted to membership combined with the sale of ITU's many significant publications. Most of the basic ITU instruments[74], regulations and outcome documents can be ordered or downloaded for a charge. Noteworthy in this context is the recent introduction of regular free access to the ITU-T Recommendations after a preceding trial, which revealed considerable demand for the standards documentation.[75] What remains unchanged is that access to working documents of standards under development is reserved to membership of ITU and the equally significant outcome documents of standardisation conducted within the ITU-R Sector remain a commodity, thus leaving the important move towards transparency fragmentary. The organisation is urged to replace its habitual restriction of document access with guidelines on freedom of information.[76] The extensive use of online facilities had been suggested as a means to avoid additional costs in making documentation available and share it with the interested public.[77]

V. ITU'S DISCOVERY MISSION TO CIVIL SOCIETY

The events surrounding the WSIS presented ITU with the institutional challenge whether to respond to all stakeholders and how to improve procedural aspects. After ITU was nominated to organise the WSIS, the organisation and its membership was exposed to a different approach to participation rights.[78] Initially, it should be remembered that concerning the participation of civil society the ITU as an institution and the WSIS stand for oppositional conceptions. Hence, the organisation's interface with civil society is governed by different regimes depending on whether ITU is acting within its incumbent competences or as organiser and stakeholder of the WSIS.

A. *ITU and WSIS Multi-Stakeholder Participation*

The UN mandate, which initiated the WSIS, called for the active participation of *inter alia* "non-governmental organizations, civil society and the private sector to contribute to, and

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[74] ITU, COLLECTION OF THE BASIC TEXTS OF THE INTERNATIONAL TELECOMMUNICATION UNION ADOPTED BY THE PLENIPOTENTIARY CONFERENCE, Geneva, 2007.

[75] During the trial phase of ten months two million ITU-T Recommendations were downloaded. ITU News-Log, "Free Access For All ITU-T Standards", 7 September 2007.

[76] McCormick, Patricia. "Private Sector Influence in the International Telecommunication Union". INFO Vol. 9 No. 4, 2007, 70-80, 73; Drake, William. *Opening the Door to Civil Society Participation in the ITU*. Presentation delivered at the informal consultation between ITU and civil society on the participation of all relevant stakeholders, 18 May 2007, 15.

[77] Congo. "NGO participation arrangements at the UN and in other agencies of the UN system", March 2006, p. 10; Drake, William. *Opening the Door to Civil Society Participation in the ITU*. Presentation delivered at the informal consultation between ITU and civil society on the participation of all relevant stakeholders, 18 May 2007, 15.

[78] *Secretariat Background Paper on existing practices within ITU for the participation of relevant stakeholders in the activities of the Union*, ITU Council Working Group on the Resolution 141, WG-Study/2/08, 16 January 2008, para. 2.1.3.

actively participate in, the intergovernmental preparatory process of the Summit and the Summit itself".[79] Resuming its role as the institutional facilitator of the independent UN Summit, ITU responded to the multi-stakeholder approach, which had been endorsed by the Preparatory Committee, because WSIS remained unaffected by the Constitution of the ITU. Outside of ITU incumbent activities, the WSIS rules of procedure foresaw multi-stakeholder participation under which accredited civil society organisations were admitted as observers. Despite criticism on part of civil society actors about the actual inclusiveness of the WSIS and meaningful participatory rights, the precedent had been set.

As a result, ITU finds itself in a chimerical situation in that it applies two participatory regimes simultaneously. Furthermore, its leadership ambitions for Internet governance have been dismissed. Upon request in the final acts of the WSIS[80] the UN Secretary-General convened the Internet Governance Forum (IGF) with the remit to discuss and facilitate discourse of public policy issues pertaining to the Internet. Commenting on this particular outcome the then Secretary-General of the ITU, Mr. Yoshio Utsumi, admitted that the organisation was considered "not sufficiently open to the new players that were brought together at the summit, and not flexible enough in its working methods to accommodate new issues."[81] The Working Group on Internet Governance also found that the organisation does not conform to the procedural WSIS principles, most prominently "it is not sufficiently multi-stakeholder"[82], in order to receive more responsibilities in the administration of Internet resources.

B.   The Limited Mandate of ITU Resolution 141

Against this background the Plenipotentiary Conference 2006 in Antalya addressed ITU's aptitude and future strategy to accommodate enhanced participation of civil society in ITU core activities. There are a number of indicators that point to a controversy about the appropriate way forward. Member States were divided over the question whether or not there is a need to create a specific status for civil society organisations in the existing membership structure.[83] The Plenipotentiary Conference resorted to an initiative, which is in all respects very moderate and does not anticipate any reform, when it passed Resolution 141. Herein, the Member States reiterate para. 20 of the Geneva Declaration of Principles of the WSIS[84] confirming that "building a people-centred Information Society is a joint effort which requires cooperation and partnership among all stakeholders"[85]. The recitals recognise "the need to promote and enhance the participation of entities and organizations in the activities of the Union and to foster fruitful cooperation and partnership between them and Member States for the fulfilment of the overall objectives embodied in the purposes of the Union […]"[86]. Resolution 141 initiates a study process "on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society"[87].

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[79] *UN Resolution A/RES/56/183, World Summit of the Information Society*, UN General Assembly, adopted on 21 December 2001, para. 5.

[80] *WSIS Tunis Agenda for the Information Society*, WSIS, Document WSIS-05/TUNIS/DOC/6(Rev. 1)-E., 18 November 2005, para. 72.

[81] *Opening remarks of the Secretary General*, ITU PP-06, 6 November 2006.

[82] Drake, William J., *Encouraging Implementation of the WSIS Principles on Internet Governance Procedures, in* THE POWER OF IDEAS: INTERNET GOVERNANCE IN A GLOBAL MULTISTAKEHOLDER ENVIRONMENT, 271-280, 275 (Wolfgang Kleinwächter, ed., Marketing für Deutschland GmbH 2007).

[83] *ITU Background information: Reforming ITU,* ITU PP-06.

[84] *WSIS Declaration of Principles Building the Information Society: a global challenge in the new Millennium.* Document WSIS-03/GENEVA/DOC/4-E. Geneva, 12 December 2003.

[85] *Id. ITU Resolution 141 (Rev. Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06.

[86] *Id.*

[87] *ITU Resolution 141 (Rev. Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06.

From the outset, the scope of this study process is limited to those ITU activities that are related to WSIS, including additional tasks ITU performs as a result of the WSIS outputs. The effect of this limitation is twofold. First, by virtue of referring to ITU's activities related to the WSIS, the mandate of the study only covers a fraction of the work, and does not include ITU's incumbent competences in international spectrum management and standards-setting. Second, in a timely fashion the two phases of the WSIS had been completed between 2003 and 2005. ITU's involvement today concentrates on implementation, stock-taking, and follow-up activities emanating from the WSIS outputs, some of which are phasing out. In concrete terms, ITU has taken over the main responsibility for two of the WSIS implementation action lines that coincide with existing and strategic work of ITU:

- Information and Communication Infrastructure (Action Line C2), and
- Building Confidence and Security in the Use of ICTs (Action Line C5).

In addition, the organisation jointly coordinates with the UNESCO further WSIS implementation action lines and is also in charge of the stock-tacking and mapping exercises, which have no eminent public policy implication.

On the basis of Resolution 141, a corresponding Council Working Group was set up to conduct the study with the aim of presenting a final report to the ITU Council in 2009.[88] Paragraph 3 of the Annex specifies that the Working Group shall take into account:

a) the intergovernmental character and the purposes of the Union;
b) the important contribution of Sector Members and Associates in the work of ITU;
c) relevant existing practices, if any, within ITU or other specialized agencies of the United Nations and other intergovernmental organizations;
d) the strong development orientation of all WSIS follow-up activities.[89]

Under the terms of reference set forth in Paragraph 4 of the Annex to Resolution 141 the Working Group shall:

a) define "relevant stakeholders" that are relevant to participate in ITU activities related to WSIS;
b) analyse the existing membership categories Sector Member and Associate in the light of enhancing the membership of ITU;
c) review other cooperation mechanism that allow for the participation of non-ITU members;
d) identify specific efforts that may be needed to mobilize and ensure the meaningful and effective participation of relevant stakeholders of developing countries;
e) propose any possible amendments to the ITU basic texts necessary in order to facilitate the participation of all relevant stakeholders in the activities of ITU related to WSIS;
f) identify exclusive spheres of competence that are reserved to Member States with regard to WSIS stakeholders and the possible denunciation of their participation in ITU;
g) consider the financial obligations and consequences of the participation with the associated proposals.[90]

The Working Group is at liberty to perform tasks beyond this non-exhaustive enumeration of measures in pursuit of the study's aim. In June 2007, it held its first official meeting.

Judging from the narrow substance of Resolution 141, ITU is embarking on a very cautious discovery mission to civil society. The commissioning of a study as such on the issue of inclusiveness towards civil society could be seen as a way forward. But civil society

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[88] The website of the Working Group is available at http://www.itu.int/council/groups/stakeholders/.

[89] *ITU Resolution 141 (Rev. Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06, para. 3 of the Annex.

[90] *Ibid.*, para 4.

actually claims enhanced participation in the ITU, which is not appropriately reflected by the mandate to study the participatory aspects of "additional tasks to be performed by ITU as a result of the WSIS outputs"[91]. What is more problematic about Resolution 141 is that the Plenipotentiary Conference of the ITU did not ask the principal question: Are there specific barriers to entry for (relevant) civil society organisations inherent to the membership regime regardless the ITU activity or sector? Nevertheless, subsequent reflection inside the organisations' bodies on the appropriateness of the present membership regime will be spurred by the resulting reports and could prove to be the spark that will eventually lead to more cardinal changes.

C. Studying the Participation of All Relevant Stakeholders

The study process turned out rather symptomatic for exclusionary practices prevailing in ITU. Resolution 141 prescribes that participation to the Working Group is open to Member States only.[92] Given the subject of the survey, this composition triggers a paradox connotation in the WSIS environment where multi-stakeholderism is still practised. By the same token, it follows that document access is restricted and interaction with the relevant stakeholders takes the form of informal consultations.[93] Hence, in a comprehensible motion, civil society representatives called on ITU to "continue sharing of information on the proceedings of the Working Group"[94] and to invite observers to its meetings.[95]

The ITU Secretariat produced two background papers for the study group. The first document analyses existing practises for stakeholder participation in the United Nations and its UN affiliated intergovernmental organisations.[96] In doing so ITU complements an earlier report on the same topic of the Conference of NGOs in Consultative Relationship with the United Nations (CONGO).[97] It was submitted in 2006 well before the Plenipotentiary Conference in Antalya with the intention "to feed the reflection within the ITU to explore means to widen and make more meaningful the access of NGOs to the organization and its structure […]"[98]. The information will assist to measure ITU's practises with participatory schemes of other UN agencies, thus becoming a benchmark for the need of reform. The second paper provides background on existing practices within ITU for the participation of relevant stakeholders in the activities of the Union.[99] It gives a detailed description of the different membership categories and the corresponding ITU regulation plus an account on the rules that are applied in the context of WSIS related activities. In doing so it does not assume the perspective of the civil society and does not exhaustively explain obstacles to participation,

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[91] *ITU Resolution 141 (Rev. Antalya 2006) Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society,* ITU PP-06, para. 2 of the Annex.

[92] *Id.*, para. 1.

[93] An informal consultation between ITU and civil society on the participation of all relevant stakeholders took place at ITU Headquarters in Geneva, 18 May 2007.

[94] *Welcoming remarks by Renate Bloem, President of CONGO.* Informal consultation between ITU and civil society on the participation of all relevant stakeholders. 18 May 2007, p. 3.

[95] See in particular *Draft Summery of Discussions and Outcome.* Informal consultation between ITU and civil society on the participation of all relevant stakeholders. 18 May 2007, p. 3.

[96] *ITU Secretariat Background Paper on the analysis of existing mechanisms and practices for stakeholder participation in the United Nations, other specialized agencies and intergovernmental organizations,* Council Working Group on the Resolution 141. WG-Study/4/02, Rev.2. 18 January 2008.

[97] Congo. "NGO participation arrangements at the UN and in other agencies of the UN system", March 2006.

[98] *Id.*, p. 2.

[99] *Secretariat Background Paper on existing practices within ITU for the participation of relevant stakeholders in the activities of the Union,* ITU Council Working Group on the Resolution 141, WG-Study/2/08, 16 January 2008.

for instance the actual scope of the observer status. Both Secretarial Background Papers will be annexed to the final report of the Working Group to the ITU Council.

Resolution 141 set forth that in the course of the survey open consultations on the inclusion of relevant stakeholders in the activities of ITU related to WSIS should be conducted.[100] The Working Group defined the modalities of the consultation, which was open for submissions until 15 June 2008. Its interpretation of what constitutes an open consultation on this issue is quite particular. The consultation design incorporated three different questionnaires addressing Member States, sector members and all entities that were accredited to the WSIS.[101] The latter entities are certainly stakeholders in this process, in which their participatory rights are studied. However, their previous WSIS accreditation is now prerequisite in order to be invited to reply to the questionnaire.[102] This assumes, even within the narrow mandate of Resolution 141 that new stakeholders to ITU's activities emanating from the WSIS cannot exist. The consultation was not open to the voices of other organisations and individuals, which are interested to contribute to the survey on the participation of all relevant stakeholders in activities of the ITU related to the WSIS. The notion of openness is further challenged by the restriction of document access to the questionnaires intended for ITU membership and that the replies to the consultation can only be consulted by Member States. In sum, the approach to the consultation the Working Group has taken does not encourage high expectations with a view to the objectives of this survey.

Meanwhile the Draft secretariat report on results of the open consultations on the participation of all relevant stakeholders in the activities of ITU related to WSIS has been presented to the Working Group, which will enter its report to the Council 2009. *Comme d'habitude*, access to this document is restricted to ITU membership. Whether under these procedural restrictions the turnout and the input can be considered representative is highly questionable.

VI.   ITU's Corporate Strategy And Outlook

At this stage of the process it would be too early even to speculate about ITU's aptitude and future strategy on the inclusiveness of its membership and operations. There are a number of compelling arguments that would support the need for a change of corporate culture from inside the organisation. First, ITU is already open to non-state members, which should make any internal and external discussion about participatory inclusiveness less fundamental in the light of ITU's Constitution and composition. Second, the venerable organisation has to live up to its self-conception as the leading international agency for telecommunication and information technology. With the establishment of the Internet Governance Forum (IGF), ITU perceived already that its corporate culture can be disqualifying in the field of international communication policy. For any authentic endeavours in the field of Internet governance it remains essential that ITU adheres to good governance practices, including the procedural ingredients transparency and openness. This also involves making innovative use of the very medium that is shaped by ITU's standards instead of access restrictions. Third, against the background of achievements made in terms of inclusiveness in other international organisations ITU is falling behind. The UN and its peer UN agencies do maintain special participatory mechanisms for civil society and it would not have a bad connotation if ITU would enter the "beauty contest" in this regard. Lastly, the balance of public and commercial interest is key for the *raison d'être* of an intergovernmental organisation in the field of ICT standards-setting. ITU's competences in international radio-spectrum management and

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[100] Resolution 145 (Antalya, 2006) Participation of Observers in Conferences, Assemblies and Meetings of the Union ITU, ITU PP-06, Annex para. 2.

[101] Compare the Working Group's webpage http://www.itu.int/council/groups/stakeholders/.

[102] *Id.*

standards-setting leave an international public policy imprint on the information and communications environment. If transnational corporations are entitled to push their agendas civil society cannot legitimately be referred to the Member States as the representatives of the public interest.

In the following the three major scenarios are introduced and placed in the context with the WSIS procedural principles of transparency and participatory inclusiveness.

The minimum scenario assumes that the quest for civil society participation is framed to coincide with WSIS activities.[103] Consequently, ITU is bound to accept the representation of civil society in all WSIS related activities. However, with the follow-up work of WSIS implementation phasing slowly out and stocktaking not lasting forever, this might turn out a short-lived notion of multi-stakeholderism. Turning to ITU the minimal outcome would affirm the purposefulness of existing barriers to entry for civil society, thus off-setting the chance to adjust and respond to this group of stakeholders. As a consequence, ITU will adhere to its incumbent competences and continue to try averting the loss of influence in particular in Internet standards-setting where many alternative bodies besides ITU exist. The legitimacy of ITU's policy formulations will be principally questioned.

In contrast, under the best case scenario, the study process initiated by Resolution 141 gains momentum and becomes a serious initiative that is asking whether there are specific barriers to entry for (relevant) civil society organisations, which are inherent to the present ITU membership regime regardless the ITU activity or sector? This could potentially lead to improvements making civil society representation in any activities of ITU equal to that of sector members' participation. In this case, civil society integration would be stimulated to no lesser degree than in other international UN organization, which implies creating favourable conditions to non-for-profit members. The outcome would ensure ITU's integrity and relieve it from changing perspectives between incumbent and WSIS related activities.

The third scenario lies somewhere in the middle and would be characterized by certain enhancements, for instance by providing more open and discounted access to ITU documents, allowing civil society observers to meetings and/or establishing a civil society liaison office.[104] For the time being these recommendations could be promoted to the Member States as a modernization beneficial to overall transparency and accountability. From the perspective of civil society it would means a step back from the participatory rights of the WSIS when meetings and working groups were accessible to them.

At this moment, also with regards to the last meeting of the Internet Governance Forum (IGF) in December 2008 in Hyderabad, it is imperative to refocus global governance research on the valid claim for full recognition of civil society actors in ITU. The process in fulfilment of Resolution 141 is falling behind this goal, but provides a platform for reiterating the interest to collaborate. The significant work of organizations which adhere to multi-stakeholder participation, such as the IGF, is done outside ITU's institutional framework. There is a risk that this division might work in favour of the *status quo*, where international policy extremely relevant to Information Society is formulated by governments and private sector interest only. Ongoing activities in the fields of Internet governance should emphasize the need for a third ITU reform, reassert the claim for participation of Civil Society and seek coalition with Member States.

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[103] *WSIS Report of the Working Group on Internet Governance,* Document WSIS-II/PC-3/DOC/05., Château de Bossey, 3 August 2005.

[104] *Draft Summery of Discussions and Outcome.* Informal consultation between ITU and civil society on the participation of all relevant stakeholders. 18 May 2007.

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