

Last Minute Diplomacy: The WSIS in Geneva 2003

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In our search for a satisfactory conclusion to the Geneva phase of the World Summit on the Information Society, we were essentially faced with two major challenges whilst leading the negotiations for a Declaration of Principles and an Action Plan. The first challenge was the fact that the Information Society is such a diverse topic. It covers practically all aspects of political, social, cultural and economic life. We therefore had to downsize the vast range of potential WSIS issues to a negotiable volume. The other challenge was the negative attitude towards the whole summit process exhibited by many important partners. Some important representatives from civil society, business and also Governments and international organizations did not believe that the negotiations would lead to a successful conclusion. This was mainly due to the difficult preparatory process, where for a long time little progress had been made. But it was also due to the fact that people did not have much confidence in the political sensitivity of the ITU. There were widespread doubts as to whether the ITU was capable of contributing substantially to the political substance of the WSIS, as it was seen as an organization with a purely technical orientation, with little awareness of the political or social aspects of the Information Society.

The first challenge – that of the diversity of the WSIS issues – was something that we knew we would be able to cope with. The second problem was distinctly more difficult: we knew that we had to live with this negative attitude and that we needed to succeed, although many people were expecting the first phase of WSIS to be a failure. It was as if you were going to climb a tall and difficult mountain – as a mountaineer, you have to be sure that you will reach the top and disregard the fact that most people down in the valley don't rate your chances.

So how was the broad range of WSIS issues brought down to something more manageable – i.e. negotiable? This was achieved at the Paris *intersessional meeting* in July 2003 and at Prepcos

3 in September. It was a tremendous effort led by my South African colleague Lyndall Shope-Mafole and then by my Finnish colleague Asko Numminen. They achieved this by grouping a host of issues into a package that we would be able to negotiate later. This package was a paper with a clear structure but with a lot of bracketed text – meaning that we had a basis of agreed substance, but we also had a lot of disagreements as indicated by all the text in brackets. On a number of substantial issues such as human rights, Internet governance, intellectual property rights, the role of the media, network security and financing, a consensus on a common text had yet to be reached.

Exhausted, but the top of the summit in sight

At the end of *Prepcom 3 resumed* on November 14, the Prepcom decided on an additional two days of *Prepcom 3 resumed* to be held on December 5 and 6, and it also decided to entrust the host country Switzerland with the task of supervising informal consultations on all outstanding issues in order to facilitate agreement. As head of the Swiss delegation, I took the lead during this last phase of the negotiation process. Or to speak in mountainclimbing-terms: For the last difficult ascent to the summit, I had to take the lead. And like in mountaineering, the climbers were tired, hungry, probably scared sometimes, but they could see the top, which pushed them on.

From now on, the Swiss delegation was no longer defending the position of its country, but had turned into a facilitating team of the host country that was responsible for whether the WSIS would be able to agree on a Declaration of Principles and an Action Plan or not. Our idea was to take the package of issues where negotiations had become deadlocked and break them down into single issues, with the aim of preparing the ground for an agreement on the whole text by first dealing with each issue individually. I, therefore, created negotiation groups for all the issues mentioned above plus an additional group for all the “other brackets”, i.e. for all other paragraphs where it had not yet been possible to reach agreement on a common text. These included paragraphs on issues such as occupied territories, universal access and domestic legislation, volunteers, labor standards, abusive use of ICT and the concept of defamation of religions – a concept that was introduced at a very late stage of the proceedings. For each of these negotiation groups I nominated a leader who had to organize, chair and stimulate the negotiation of a single topic. Each of these leaders was essentially responsible for the outcome of the negotiations in one or two of these groups. The aim was to get rid of all the brackets or reduce them to an absolute minimum. All the negotiation groups reported to me constantly, so that I could lead the negotiation on the whole package by keeping well-informed and by intervening if necessary. As Switzerland is a small country and because we didn’t have that many experienced negotiators in our delegation, most of us led two of these negotiating groups: I led the groups on the role of

the media and on the issue of financing ICT4D. This combination proved to be helpful. Frédéric Riehl led the intellectual property rights and the security groups, Markus Kummer the human rights and Internet governance groups, and Daniel Stauffacher led the group dealing with the “other brackets” – some of which experienced United Nations representatives like Nitin Desai and Maurice Strong said could not be resolved before the very end of negotiations, but they would be resolved.

Behind the scenes, we had been preparing the ground for this facilitating work as early as October. We also engaged former Swiss president Adolf Ogi to informally discuss some key issues with some key countries. After the formal decision at the end of *Prepcom 3 resumed*, we had to negotiate in special sessions in order to progress each of the issues. This was a special challenge for the representatives of the diplomatic missions in Geneva, as the experts from the capitals had left after the Prepcom and the Geneva diplomats had to act independently on the basis of instructions from their capitals.

Progress in the negotiations on the most controversial issues

Of all the topics where agreement was still outstanding, I expected the subjects of human rights, the role of the media and Internet governance to be the most difficult ones on which to reach consensus. This was because of the rather harsh and uncompromising statements of some delegates concerning these subjects during *Prepcom 3 resumed* – some did not want the right to freedom of opinion and information to be prominently stated, or did not want to see a separate chapter about the role of the media in the Information Society, although the media are essential for spreading content throughout the Information Society. On the other hand, some Governments and civil society representatives placed the role of the media and of freedom of expression at the very heart of the Information Society and of the WSIS. These positions were clearly at loggerheads and the search for common ground for the text of a Declaration or Action Plan seemed to be a difficult one.

The situation regarding the issue of Internet governance was similar: some delegations insisted on dealing with all Internet-related aspects of the Information Society in the WSIS documents, others did not want to discuss or change anything at all, especially with regard to the actual management of the Internet and its main resources, particularly with regard to the actual ICANN system based on private contracts under US law. Not just some Governments, but also many representatives from the private sector argued that Governments should not interfere in the private sector-led management of these Internet resources.

So two months before the Summit, human rights, media and Internet governance seemed to me the most difficult issues to be resolved. But I was wrong: The most difficult issue for all

participating countries to agree upon was that of financing ICT for development (ICT4D). Finding a compromise in the political texts for this topic proved to be more difficult than I had expected. In fact, the issue of financing ICT4D would prove to be the last where a text could be found on which all delegations would agree.

During these informal consultations we negotiated each and every issue separately in the groups. But we knew that we would not be able to compose a final text on which everyone agreed before *Prepcom 3 resumed II* on December 5 and 6. Over those two days, the first issue for which we were able to find wording accepted by all delegations was network security. The compromise here was to state that it is necessary to prevent the use of information resources and technologies for criminal and terrorist purposes, but by stating also that all action in this regard must respect human rights and free access to information.

On a second issue, we were able to remove the brackets in the paragraphs about intellectual property rights. This was more difficult than expected. The solution here was to convince delegations that the WSIS was not the right forum for going into this question in depth, but to leave the subject to the organization that is competent in this subject and where experts of all nations are represented – i.e. the World Intellectual Property Organization (WIPO). Finally, all delegations agreed to a formulation that establishes a careful balance between intellectual property protection and the wide dissemination, diffusion and sharing of knowledge – both are important to encourage innovation and creativity in the Information Society.

During Saturday, December 6, we were able to find an agreement on the issues of human rights and the role of the media. With regard to human rights there had been some fear that these were not mentioned explicitly enough in the text and that the role of the media would be completely put to one side. Finally, all delegations agreed that the Declaration of Principles should confirm the fundamental democratic values and contain the necessary reference to the Universal Declaration of Human Rights, especially the freedom of opinion and expression as outlined in its Article 19. This freedom is fundamental also with regard to free access to the Internet.

The issue of the role of the media could be resolved by agreeing that the issues of the media and the freedom of information should be given a chapter of their own in the Declaration of Principles and in the Action Plan. We were able to reach agreement on this point by declaring the principles, though without blaming any individual countries for not obeying them. As it stands now, the media chapter of the declaration represents a new standard for press freedom at the highest political level. This is important as we now have a WSIS declaration that reaffirms our commitment to the principles of freedom of the press and of

information as well as those of the independence, pluralism and diversity of the media, which are essential to the Information Society. That was the best that we could achieve and it now allows us for example to criticize some governments for violating the freedom of the media, and we can now call on them to provide free access to information and the Internet. Of course, a political declaration of a summit can only set the principles – but if this is done well, the implementation can work according to these principles. And I hope that these principles in the policy documents of the WSIS will contribute to increased freedom of the media and to improved access to the Internet, which is sadly still one of the main problems in the Information Society.

At a late hour on the night of Saturday, December 6, after long discussions in the negotiation group led by Markus Kummer, we also reached agreement on the wording with regard to Internet governance. The perseverance of the Chairman, possibly combined with exhaustion on the part of the delegates, finally led to a result: We were realistic enough to know that during the Geneva phase of the WSIS – when this new and controversial subject was globally discussed for the first time – it would not be possible to find a solution on all outstanding issues concerning governance of the Internet, the exact role ICANN should play in future, etc. However, what we were able to agree upon – and this was far from easy – was the foundation of a process for dealing with this issue which for many countries was *the* key issue of the WSIS. The compromise that overcame the impasse was the idea to set up a working group under the auspices of the United Nations Secretary-General, including all relevant organizations of the business sector and civil society, which would analyze the relevant issues related to Internet governance and make recommendations to the Tunis phase of the WSIS. This result of the Geneva negotiations may not appear overly spectacular, but in fact it represents a breakthrough on this issue since it is the start of an international dialogue involving all stakeholders about something that some delegations had for a very long time declared as a topic not up for discussion at all.

In addition to these “big” issues, we had to reach agreement on the various “other brackets”. We negotiated these predominantly in bilateral talks. Most of these issues are not WSIS-specific – they crop up in many world summits and negotiation on them has almost become routine, if not even a ritual. But nevertheless, these points must be taken seriously. Because if only one country abstains from consenting on one single point, the whole text is worthless: Nothing is agreed until everything is agreed by everybody.

The last great obstacle: financing ICT for development

So at some time after midnight on that Saturday night, there was consent on all issues of the declaration and the Action Plan – except the one concerning financing ICT infrastructure

and services. So it was decided that there should be one last day of extension of *Prepcom 3 resumed II*: This was to be December 9, the very day before the official opening of the world summit itself on December 10.

During *Prepcom 3 resumed* in November and in the weeks thereafter, the discussions on financing ICT4D had become more and more difficult. There were two strongly opposing positions. Basically, all countries shared the view that the financing of the use of ICT for development purposes should be enhanced. But whereas many countries from Africa, with the support of Latin America, were urging the creation of a new compulsory Digital Solidarity Fund, which should provide additional financing for ICT4D projects (such as e-education, e-health, telecom infrastructure, etc.), many northern countries, especially the European Union and Japan, strongly opposed the idea of creating a new fund, arguing that instead of creating another inefficient and bureaucratic mechanism, the many financing mechanisms already in existence (such as funds, bilateral cooperation, public-private partnerships and so on) should be adapted, improved and used more efficiently. The African countries made their positions clear: For them, nice words were not enough. They wanted binding commitments and compulsory mechanisms that would guarantee the financing of ICT4D. Both positions were following a logic of their own, especially when the national situation and the freedom of movement of the many governments (which is limited due to the pressure of domestic affairs) of the North and of the South were considered, and it was difficult to reconcile these.

In the early December discussions of the negotiating group on financing, the differences between these two positions got larger rather than smaller. The announcement of the creation of a Geneva-based voluntary Digital Solidarity Fund made during this time at a WSIS preparatory conference of cities and local authorities in Lyon and the behind-the-scenes lobbying by some of its initiators for the support of this fund did not help to narrow the gap between the two positions; on the contrary, it made negotiations even more difficult.

Nevertheless, we continued to negotiate in smaller circles trying to identify and to eliminate the last brackets in the text. To that end, I led several negotiations with each side separately. I was looking for acceptable wording during closed meetings with the European and the African delegations separately. At the end, I was carrying proposals from the African meeting to the EU meeting and back. Only by playing this role as the “go-between”, could I identify the areas where the two positions overlapped and where there might be room for compromise. Finally, exactly 24 hours before the opening of the Geneva phase, we came up with a solution acceptable to both sides.

This had happened without the two disagreeing parties, the European and the African delegations, sitting together at one table. It had to work with me as the “medium” or as the “go-between”. The proposal that was accepted stated that all existing financial mechanisms should be fully exploited and that a thorough review of their adequacy in meeting the challenges of ICT4D should be conducted by a Task Force under the auspices of the United Nations Secretary-General which should be presented in a report by December 2004. Based on the conclusions of this review, improvements and innovations of financing mechanisms, including the effectiveness, the feasibility and the creation of a voluntary Digital Solidarity Fund, should be considered at the second phase of the WSIS. This compromise clearly highlighted the fact that all countries agreed that less-developed countries need more help in financing ICT infrastructure and services. However there was not yet agreement on how this should be done. This agreement on how to improve financing of ICT4D will be one of the main issues of the Tunis phase of the WSIS.

Hope, exhaustion, despair – success...

By agreeing on the financing issue exactly one day before the opening of the Geneva summit, we had overcome the last obstacle to a successful conclusion of negotiations. After many people had already declared the Geneva phase a failure, we were finally able to present an agreed Declaration of Principles and an Action Plan to the heads of States. The political basis of the WSIS process was thereby created!

This last minute success was only possible because finally, all parties showed their willingness to work hard in order to create a substantial result in Geneva. Some parties had to adapt their initial positions and move markedly to enable a consensus to be reached. For this constructive approach, I would like to sincerely thank all delegations. The Geneva phase demonstrated that if we do not give up too quickly, it is possible to find a way for globally agreed solutions – even when it is a case of delicate issues such as freedom of information or Internet governance.

One person has to take the lead and the responsibility for the negotiation process – but success is only possible if there is a good team working in the background to support and complement the negotiations. That is why I thank all my colleagues in the facilitating team, in my delegation and in the WSIS Executive Secretariat for their efforts.

What in addition to the good will of all partners and a good team is necessary to bring negotiations to a successful end? It is possibly a big amount of patience and a good timing. You have to take your time to listen and to respect every intervention but you also have to sense, when the right moment to intervene has come, so the discussion stays on track. It is an art to find out which “rhetorical detours” are necessary and which ones are just a waste of

time. My way of negotiation was characterized by the Italian Ambassador, who led the EU-group, as “a mixture of kindness and brutality”. Indeed I could listen to all proposals with due patience and understanding for hours. But in moments, when I realized that the negotiating partners lost their good will and the aim to achieve an agreement or when they lost the respect and tolerance to their opponents, I had to intervene sometimes in a fierce way. I did that usually in a bilateral talk, by taking, for example, heads of delegation aside to tell them: “Look if you continue like this we will not get anywhere – and you will have to take the responsibility...” It usually worked. It could happen at odd hours and in odd places. For example well after midnight in the corridor of the conference center by drinking liters of Cola-Light. Or it happened over lunch in one of the excellent restaurants in Geneva, or by smoking Havanna cigars and drinking the best rum late at night at an Ambassador’s residence.

Finally, everything is about human relations. By talking to an African Minister about my cousin who used to work as an engineer in a cooperation-project in the forests of his country for many years and who got married there, I could overcome his resentments and his skepticism against me. After this talk late at night on the car-park, we got on very well, and he sensed that my position was to build bridges between Africa and Europe – from then on he trusted me as a fair mediator.

It is the result of an agreed Declaration of Principles and a Plan of Action for the WSIS but also these human experiences and contacts that made all the efforts and all the moments of despair we sometimes had after late-night negotiations worthwhile.