WSIS, Media and the Right to Freedom of Expression

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Relations between media and governments and intergovernmental organizations have always been complex and strained. Tensions reached their paroxysm in the eighties, when the so-called "New World Information and Communication Order" (NWICO) became the universal panacea for the "unbalanced" flow of information between North and South, West and East. More prosaically said, NWICO was in fact a covert way used by totalitarian and authoritarian regimes to control information flows and contents not only between countries, but also and above all within countries. It became one of the hottest issues of the East/West confrontation, all the more so since communication was at the heart of the cold war. It cost UNESCO a heavy price in terms of universality and credibility. The United Sates and the United Kingdom left the Organization in mid-eighties for more than 15 years because, among other reasons, the Organization had failed to fulfill its constitutional duty to "promote the free flow of ideas by words and images".

NWICO has vanished de facto into the ruins of the Berlin Wall, but it does not mean that the remaining totalitarian and authoritarian regimes have softened their propensity for controlling the press and limiting the free opinion and expression of their peoples. On the contrary, they have drawn the lessons from the purportedly "disastrous" consequences of the Soviet Glasnost experience and have continued imposing – in some cases reinforcing – limitations on freedom of expression and press freedom. Therefore, one should not be surprised if media professional organizations have reacted with great suspicion to the International Telecommunications Union's initiative to organize a World Summit on the Information Society (WSIS). Their fear that WSIS would reopen old wounds and provide totalitarian and authoritarian regimes a fresh opportunity to legitimize limitations on freedom of expression and press freedom was not unfounded.

Both freedom of expression and media have been indeed among the most disputed issues during the preparatory phase of the Geneva Summit. For months, the government delegations were unable to agree on re-committing themselves to the universally accepted principles of freedom of expression (Article 19 of the Universal Declaration of Human Rights) and to the place of media as a major stakeholder in the Information Society. Media organizations and freedom of expression advocacy groups were also worried about attempts by several authoritarian governments to introduce into the WSIS Declaration a wording legitimizing restrictions and limitations of freedom of expression in both traditional and new media. A sentence inserted in the draft Declaration was particularly harmful: "The existence of free and independent media should be in accordance with the legal system of every country". For its part, UNESCO, which gained since the end of the cold war worldwide recognition for its unwavering commitment to freedom of expression and press freedom, expressed publicly its serious concern about the consequences of omitting an explicit reference by name or by quotation to the internationally accepted standard of freedom of expression in the draft Declaration, that is Article 19 of the Universal Declaration of Human Rights.

At the end of Prepcom 3, in September 2003, the Media Caucus[1] wrote an open letter to the United Nations Secretary-General Kofi Annan to express its concern that fundamental, agreed principles on independent, pluralistic media were at risk. The Media Caucus stated that "agreed principles already accepted by the international community must be preserved in the WSIS process" and drew attention to the text of Article 19 of the Universal Declaration of Human Rights, also supported by regional declarations on the media. "These texts, developed under the aegis of UNESCO and the United Nations, are seen by the Media Caucus as the basis to formulate the vision of the place of the media – in both traditional and new forms – in the Information Society. Written by journalists from the five regions, these declarations[2] were unanimously endorsed by the member states of UNESCO – virtually the same body of States that participate in WSIS... These documents seen as a whole are remarkable for their consistency in terms of the fundamental principles of freedom, independence and pluralism of the media and for their reflection of regional nuances and diversity". Finally, the Media Caucus called upon the Secretary-General, as the patron of the

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[1] The Media Caucus includes leading world and regional media freedom and other journalistic and media organisations representing all forms of media, also including their labour and management, who have taken part in the WSIS preparatory meetings.

[2] The Windhoek Declaration on the Promotion of Free and Pluralistic African Press, 1991
  - The Declaration of Alma Ata on Promoting Independent and Pluralistic Asian Media, 1992
  - The Declaration of Santiago de Chile on Media Development and Democracy in Latin America and the Caribbean, 1994
  - The Declaration of Sana'a on Promoting Independent and Pluralistic Arab Media, 1996
  - The Sofia Declaration on Promoting European Pluralistic and Independent Media, 1997

These declarations were adopted by the UNESCO General Conferences in 1995 and 1997.

WSIS, "firstly to remind the States of their existing commitments to fundamental values enshrined in Article 19 of the Universal Declaration of Human Rights and, secondly, to engage the broader spectrum of United Nations agencies in the debate on the role of the UN system in the Information Society".

The Media Caucus's appeal to the United Nations Secretary-General echoed a letter by UNESCO Director General Koichiro Matsuura to Yoshio Utsumi, Secretary General of the International Telecommunication Union which is organizer of WSIS. Matsuura called upon his compatriot to work against "regression" on freedom of expression and press freedom. He asked that the ITU Secretary General see to it that Article 19 of the Universal Declaration of Human Rights be cited in the final WSIS texts.

The dispute about the media and freedom of expression issues remained unsettled until the very last moment, a few days before the inauguration of the Geneva Summit. After weeks of futile discussions, the host country negotiators, in an ultimate mediation, succeeded in convincing the hard-liners to withdraw some of their proposals and to accept a Swiss version. The text finally adopted by the Heads of State reads as follows [Declaration of Principles, paragraph 55]: "We reaffirm our commitment to the principles of freedom of the press and freedom of information, as well as those of the independence, pluralism and diversity of media, which are essential to the Information Society. Freedom to seek, receive, impart and use information for the creation, accumulation and dissemination of knowledge are important to the Information Society. We call for the responsible use and treatment of information by the media in accordance with the highest ethical and professional standards. Traditional media in all their forms have an important role in the Information Society and ICTs should play a supportive role in this regard. Diversity of media ownership should be encouraged, in conformity with national law, and taking into account relevant international conventions. We reaffirm the necessity of reducing international imbalances affecting the media, particularly as regards infrastructure, technical resources and the development of human skills."

Professional media organizations applauded the document's wording, but said it should have gone further. As World Press Freedom Committee Chairman James H. Ottaway put it: "We are pleased that Article 19 of the Universal Declaration of Human Rights was affirmed in the final documents of the Summit. It would have been even better if the Summit had called for the implementation of Article 19 in all the countries of the world."

A very positive development relating to the broadcasting industry occurred at the World Electronic Media Forum (WEMF) organized in Geneva within the WSIS framework. On this occasion, the broadcasting unions for the various regions of the world, on the initiative

of the European Broadcasting Union (EBU), presented a "Broadcasters' Declaration" to the United Nations Secretary-General Kofi Annan, and, through him, to the heads of state and government attending the World Summit on the Information Society. In the "Broadcasters' Declaration", the World Broadcasting Unions (WBUs)[3], supported by the Association of Commercial Television (ACT), recalled the key role of public and private broadcasting, in particular digital broadcasting and advanced services to be launched in the next few years, in creating an information society which involves all citizens. They underlined the broadcasters' responsibility and contribution to promoting the fundamental values of freedom of expression, access to information, media pluralism, and cultural diversity, and considered that the Information Society should be founded on the principles enshrined in the Universal Declaration of Human Rights, and in particular Article 19, on the right to freedom of expression.

The WBUs' statement includes five principles and objectives:

1. Communications technology is not an end in itself; it is a vehicle for the provision of information and content.

2. Freedom of expression, freedom and pluralism of the media, and cultural diversity should be respected and promoted.

3. The electronic media have a vital role to play in the Information Society.

4. Television and radio are crucial for ensuring social cohesion and development in the digital world.

5. Information should remain accessible and affordable to everyone.

The "Broadcasters' Declaration" marked a historic milestone because, after several months of negotiations, the public service and private broadcasters throughout the world agreed jointly on this position presented under the banner of the World Broadcasting Unions.

The 2nd phase of the WSIS, new fears and suspicions

In spite of its reassuring outcome, the Geneva Summit did not reduce the media's suspicion that authoritarian governments would attempt to take advantage of the 2nd phase of the WSIS to reintroduce concepts and wording intended to weaken the internationally accepted

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[3] The WBUs comprise ABU (Asia-Pacific Broadcasting Union), IAB (International Association of Broadcasting), ASBU (Arab States Broadcasting Union), CBU (Caribbean Broadcasting Union), EBU (European Broadcasting union), NABA (North American Broadcasters Association), OTI (Organización de la Televisión Iberoamericana) and URTNA (Union of National Radio and Television Organizations of Africa).

standard of freedom of expression. Although governments have decided at Prepcom 1, in Hammamet, in June 2004, not to reopen the agreements reached in Geneva, media organisations and human rights advocacy groups suspect some governmental delegations of using the debate on Internet governance to position themselves with a view to legitimizing limitations on freedom of expression and press freedom. In this regard, the members of the Media Caucus participating in Prepcom 2 (Geneva, February 2005) expressed their concern that the term "governance" not be allowed "to become a code word for government regulation of Internet content. The system must not be reorganized to permit this internationally nor to encourage it nationally. Any changes to the Internet governance system should not involve controls over content, nor modifications of the Internet's technical 'architecture' that facilitate or permit censorship of news or opinion. Nor should 'self-regulation' be allowed to become a surrogate for governmental regulation of content on the Internet". In addition, the Media Caucus statement stressed that "Security concerns must not serve as pretexts to limit freedom of expression in cyberspace. Nor should considerations of "ethics" be allowed to become a veiled way to justify censorship. The creation of ethical norms is the sole responsibility of media workers themselves".

To back its position, the Media Caucus referred, to a great extent, to the conclusions and recommendations of the media conference on "The Role and Place of the Media in the Information Society in Africa and the Arab Region", which took place in Marrakech in November 2004, as a follow-up meeting to the Geneva WSIS. It was jointly organized by the Communication Ministry of the Kingdom of Morocco and ORBICOM, the International Network of UNESCO Chairs in Communication. Registered as a thematic meeting by the WSIS Executive Secretariat, the Conference brought together more than 300 people representing the major regional and international media organizations with consultative status with UNESCO and the United Nations. The Marrakech conference participants reached a certain number of conclusions outlined in the "Marrakech Declaration"[4]. They unanimously agreed that Article 19 of the Universal Declaration of Human Rights is an essential foundation of the Information Society adding that: "The time has come to move from the promise of Article 19 to its universal implementation". With regard to Internet and other new media forms, the participants reaffirmed that "they should be afforded the same freedom of expression protections as traditional media."

Referring to the debate on the Internet governance, the participants in the Marrakech Conference took the position that "Internet Governance should allow better cooperation on

[4] The full texts of the Marrakech Declaration and Action Plan are available on the following web sites:
www.itu.int/wsis/preparatory2/thematic.html
www.mincom.gov.ma/mediaconference/en/declaration.htm
www.orbicom.uqam.ca/index_en.html

Internet management. It should not be a pretext to regulate Internet content of news or opinion. In particular, security considerations and the demands of the battle against crime including terrorism should not imperil freedom of expression and press freedom. Internet Service Providers should not be held liable for the content of the messages they carry." Also, on Internet governance, they stressed that "Representatives of the media must be involved as full partners in any future Internet governance system." Finally, the conference made a number of recommendations on what is called "The Marrakech Action Plan".

The document incorporates six themes:

- Media freedom, independence and pluralism faced with the challenge of cybersecurity.

- The place of traditional and new media in the Information Society in Africa and in the Arab countries.

- Reducing the digital divide in the media.

- Women media professionals in Africa and in the Arab countries.

- Culture, multilingualism, and the media in the Information Society.

- Media and the Internet governance.

It is important to stress the exemplary partnership developed by the Kingdom of Morocco and the international non-governmental organisation ORBICOM for the Marrakech conference. The two partners not only cooperated closely in the material organisation of the meeting, but worked hand in hand to make certain that the conference would take place, from the beginning to the end, in full respect of democratic principles. All participants were able to express themselves freely, without restriction or discrimination. Although the Marrakech Declaration was initially drafted by a committee composed exclusively of media professionals, it was approved by all, including high-ranking African and Arab government officials who attended the conference. This meeting received extensive media coverage by the Moroccan press, which, in its diversity, offered true and pluralistic accounts of the conference's deliberations.

In Marrakech as well as in Hammamet and Geneva, at Prepcom 1 and 2, media representatives expressed their deep and continuing concerns about plans to hold the 2nd phase of the World Summit on the Information Society in Tunis, in November 2005. Several media organizations have adopted resolutions calling for plans to hold this Summit in

Tunisia to be abandoned unless that country demonstrates its respect for human rights, notably freedom of expression and press freedom. Some 30 media organizations and freedom of expression advocacy groups met in June 2004 in Baku (Azerbaijan) at the initiative of the International Freedom of Expression eXchange, better known as IFEX, a worldwide electronic alert network reporting on freedom of expression abuses.

The participants in the Baku meeting "urged the United Nations and Member States to change the venue of the WSIS unless the government of Tunisia makes substantial progress on respect for human rights and freedom of expression". They listed a few basic and essential benchmarks for progress before holding the Summit in Tunisia: "the recognition of and respect for the unfettered right of human rights and other civil society groups, including freedom of expression organisations, to operate freely in Tunisia; the dropping of charges against and the release of individuals jailed for exercising their right to freedom of expression, consistent with international human rights law; reform of the media and communications environment, including the right to establish independent media outlets and uncensored access to the Internet". In addition, they required clear guarantees concerning the Summit itself: "that all local and international human rights and other civil society organisations are free to distribute and to receive material at and from the conference site without threat or practice of any form of censorship; that local and international media will be able to report freely and without interference from the Summit, including directly from the conference site".

On the occasion of Prepcom 2, the International Freedom of Expression eXchange (IFEX) Tunisia Monitoring Group released a report entitled "Tunisia: Freedom of Expression under Siege". The report is based on a fact-finding mission to Tunisia undertaken in January 2005 by members of the Monitoring Group and additional background research and Internet testing. Describing the conditions for participation in the World Summit on the Information Society to be held in Tunis, the report expresses grave concern about the state of freedom of expression in Tunisia and recommends steps the Tunisian government should take to bring the country in line with international human rights standards. The IFEX report was presented to the participants in the Prepcom 2 in Geneva during a private session, outside the regular WSIS framework. Tunisian opponents and representatives of Tunisian civil society sympathetic to the Tunisian authorities exchanged contradictory views on the situation in Tunisia, but accepted the procedural rule imposed by the Chair that everybody should be free to express his/her views and should respect each other's opinion. For the first time since the beginning of the 2nd phase of the WSIS, Tunisian opponents and pro-government representatives could meet in the same room without clashing with each other. Some optimistic observers have interpreted this change as a very first sign that things may move in the right direction, a few months before the Tunis Summit opens.