

BRAVE NEW DIGITAL WORLD? REFLECTIONS ON THE WORLD SUMMIT ON THE INFORMATION SOCIETY

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Article abstract

The World Summit on the Information Society (WSIS) is organized in two parts: the first part in Geneva in December 2003, the second part in Tunis in November 2005. The WSIS is an initiative of the International Telecommunications Union (ITU), a technical organization in which corporate interests carry considerable weight. This inevitably has an influence on the orientation of the Summit. The texts adopted by the first phase of the WSIS project a naïve belief in technology and in a brave new digital world in which Information and Communication Technologies (ICTs) will solve all problems. In reality, they cover up fundamental disagreements and diametrically opposed world views. The digital divide is no more than a symptom of the unequal distribution of wealth among and within countries. Any serious policy of ICT development must be part and parcel of a global policy of human and sustainable development. The main contentious issues of the first part of the WSIS were human rights, Internet governance, free software, intellectual property rights and the financial means of bridging the digital divide. This first phase of the WSIS gives rise to a number of critical reflections on the present state of the international community. The first part of the World Summit on the Information Society (WSIS) took place in Geneva, Switzerland, from 10 to 12 December 2003. Its second part is to be held in Tunis, Tunisia, from 16 to 18 November 2005. The purposes of this article are (I) to give a brief account of the preparation and organization of the Summit, (II) to present the main results of its first phase, (III) to deliver a critical analysis of these results, and (IV) to show that the WSIS gives rise to some critical reflections on the present state of the international community.

BRAVE NEW DIGITAL WORLD? REFLECTIONS ON THE WORLD SUMMIT ON THE INFORMATION SOCIETY

*By Peter Leuprecht**

The World Summit on the Information Society (WSIS) is organized in two parts: the first part in Geneva in December 2003, the second part in Tunis in November 2005. The WSIS is an initiative of the International Telecommunications Union (ITU), a technical organization in which corporate interests carry considerable weight. This inevitably has an influence on the orientation of the Summit. The texts adopted by the first phase of the WSIS project a naïve belief in technology and in a brave new digital world in which Information and Communication Technologies (ICTs) will solve all problems. In reality, they cover up fundamental disagreements and diametrically opposed world views. The digital divide is no more than a symptom of the unequal distribution of wealth among and within countries. Any serious policy of ICT development must be part and parcel of a global policy of human and sustainable development. The main contentious issues of the first part of the WSIS were human rights, Internet governance, free software, intellectual property rights and the financial means of bridging the digital divide. This first phase of the WSIS gives rise to a number of critical reflections on the present state of the international community. The first part of the World Summit on the Information Society (WSIS) took place in Geneva, Switzerland, from 10 to 12 December 2003. Its second part is to be held in Tunis, Tunisia, from 16 to 18 November 2005. The purposes of this article are (I) to give a brief account of the preparation and organization of the Summit, (II) to present the main results of its first phase, (III) to deliver a critical analysis of these results, and (IV) to show that the WSIS gives rise to some critical reflections on the present state of the international community.

Le Sommet mondial sur la société d'information (SMSI) est organisé en deux parties : la première à Genève en décembre 2003, la deuxième à Tunis en novembre 2005. Le SMSI est dû à une initiative de l'Union internationale des télécommunications (UIT), une organisation technique dans laquelle les milieux d'affaires ont un poids considérable, ce qui ne manque pas d'avoir un impact sur l'orientation du Sommet. Les textes adoptés par la première phase du SMSI projettent une foi naïve en la technologie et en un nouveau monde radieux dans lequel les technologies d'information et de communication (TIC) résoudront tous les problèmes. En fait, ils cachent des désaccords fondamentaux et des visions du monde diamétralement opposées. La fracture numérique n'est qu'un symptôme de la distribution inégale des richesses entre les pays et à l'intérieur des pays. Toute politique sérieuse de développement des TIC doit être partie intégrante d'une politique globale de développement humain et durable. Les principaux sujets de controverse de la première partie du SMSI étaient les droits humains, la gouvernance d'Internet, les logiciels libres, les droits de propriété intellectuelle et les moyens financiers de combler le fossé numérique. La première phase du SMSI donne lieu à des réflexions critiques sur l'état actuel de la communauté internationale.

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I. Preparation and Organization of the Summit

A. An Initiative of the International Telecommunication Union (ITU)

The WSIS stems from an initiative of the International Telecommunication Union (ITU). In its Resolution 56/183, the UN General Assembly endorsed the framework for the Summit adopted by the ITU Council. The Resolution also endorsed the leading role of the ITU in the Summit and its preparation, in cooperation with other interested organizations and partners.¹

According to its website, the ITU is “an international organization within the United Nations (UN) system where governments and the private sector coordinate global telecom networks and services.”² It is composed of 189 Member States and 626 “ITU Sector Members” comprised mainly of corporations active in the field of telecommunications, such as Alcatel, Microsoft, Nokia, Canon, and Hitachi.³ In accordance with Article 3 of the ITU Constitution, the Additional Plenipotentiary Conference in Geneva in 1992 determined that “Sector Members shall be entitled to participate in the activities of the Sector of which they are members.”⁴ There are three such Sectors: the Telecommunication Standardization Sector, the Radiocommunication Sector, and the Telecommunication Development Sector. ITU’s Plenipotentiary Conference held in Minneapolis in 1998, “focused on strengthening the participation of the private sector in the work of the Union, and adopted a number of resolutions which enhance the rights of Sector Members.”⁵

The preparation of the WSIS was thus mainly entrusted to a technical organization in which corporate interests carried considerable weight. This inevitably affected the fundamental orientation of the Summit.

Although it was clear from the outset that the questions to be discussed at the Summit would have far-reaching human rights implications, there was considerable resistance against taking human rights concerns on board. Some, not least in the ITU leadership and the Executive Secretariat of the Summit, regarded the introduction of human rights issues into the negotiations process as a nuisance that would detract from what in their view should be a “technical” discussion.

B. The PrepCom

UN General Assembly Resolution 56/183 recommended that preparations for the Summit take place through an open-ended intergovernmental Preparatory

¹ *World Summit on the Information Society*, GA Res. 56/183, UN GAOR, 56th Sess., Supp. No. 3, UN Doc. A/Res/56/183 (2001) [WSIS].

² International Telecommunication Union (ITU), “Welcome to the International Telecommunication Union”, online: ITU <www.itu.int>.

³ *Ibid.*

⁴ *Constitution of the International Telecommunication Union*, 22 December 1992, 1727 U.N.T.S. 1078 (entered into force 25 March 1993).

⁵ ITU, *An Overview*, (August 2002) at 9, online: ITU <www.itu.int/itudoc/gs/promo/g81150.pdf>.

Committee (PrepCom) that would define the agenda of the Summit, decide on the modalities of the participation of other stakeholders in the Summit, and finalize the draft declaration and the draft plan of action. It also invited the ITU to assume the leading managerial role in the Executive Secretariat of the Summit.⁶

It was mainly in the PrepCom, which was very ably chaired by Mr. Adama Samassekou (Mali), that the political discussion and indeed confrontation took place. It was not until the eve of the Geneva Summit that agreement was reached on the draft declaration and the draft plan of action. It was largely thanks to Mr. Samassekou that civil society was associated with the Summit process and it was mainly because of civil society representatives that human rights language was introduced into the negotiations process.

C. Switzerland and Tunisia as Host Countries

As host of the first part of the WSIS, the Swiss Government did a remarkable job in creating a free and open environment for the Summit and in fostering active participation by civil society. The Swiss Agency for Development and Cooperation (SDC), headed by Ambassador Walter Fust, actively and financially supported numerous contributive and side events before and during the WSIS such as the International Symposium on the Information Society, Human Dignity and Human Rights (International Symposium). The SDC also initiated the ICT for Development Platform, a large exhibition with some 250 participants of great diversity from 75 countries.

Independent experts and NGOs have expressed doubt as to whether the Tunisian authorities will live up to the high standards set by the Swiss authorities. In paragraph 3 of the *Statement* adopted by the International Symposium it is stated:

Host countries and institutions contributing to and participating in the post-Geneva WSIS process should be expected to fully respect the principles enunciated in the Declaration adopted by the Geneva Summit including those relating to human rights that are fundamental to the information and communications society, in particular, freedom of expression, association and information for civil society as well as with regard to visiting NGOs.⁷

The strong presence of secret police in the Tunisian delegation to the PrepCom as well as some of their actions, at the first part of the Summit, do not augur well for the atmosphere surrounding the second part of the WSIS.

⁶ *WSIS*, *supra* note 1 at 2.

⁷ *Statement on Human Rights, Human Dignity and the Information Society*, International Symposium on Information Society, Human Dignity and Human Rights, 3-4 November 2003, at para. 3, online: The People's Movement for Human Rights Education <<http://www.pdhre.org/wsis/statement.doc>> [PMHRE, *Statement on Human Rights*].

D. The International Symposium on the Information Society, Human Dignity and Human Rights

The International Symposium held in Geneva on 3 and 4 November 2003 was convened by the People's Movement for Human Rights Education (PDHRE), an NGO, with the support of the SDC, the European Commission, the Office of the High Commissioner for Human Rights, and the Government of Mali, Chair of the Human Security Network. It brought together independent experts from all regions of the world, representing a variety of backgrounds, expertise and perspectives. The Symposium elaborated on and adopted by consensus a *Statement*⁸ which had considerable impact on the final negotiations in the PrepCom with regard to the inclusion of human rights language in the final documents of the first part of the Summit.

II. Main Results of the First Phase of the Summit

A. Level of Participation

Over sixty Heads of State or Government were present in Geneva, mostly from developing countries. With a few exceptions - Finland was represented by its President and France by its Prime Minister - the rich Western countries were represented at a lower level, a fact that suggests that the subject of the Summit was not taken sufficiently seriously by their top political leaders. This is lamentable because overcoming the digital divide, one of the main objectives of the Summit, requires a strong commitment of the wealthy countries at the highest political level.

B. The Final Documents

The first phase of the Summit adopted by consensus a *Declaration of Principles*⁹ and a *Plan of Action*¹⁰ which, as mentioned above, were cleared by the PrepCom on the eve of the conference. Both are rather lengthy and wordy documents.

1. THE DECLARATION OF PRINCIPLES

The *Declaration of Principles*, entitled "Building the Information Society: a Global challenge in the new Millennium," first attempts to define the participants' "Common vision of the Information Society." In paragraph 1, it is stated:

We, the representatives of the peoples of the world, assembled in Geneva from 10-12 December 2003 for the first phase of the World Summit on the

⁸ *Ibid.*

⁹ UN, World Summit on the Information Society, 1st phase, 12 December 2003, *Declaration of Principles*, WSIS-03/GENEVA/DOC/4 [WSIS, *Declaration of Principles*].

¹⁰ UN, World Summit on the Information Society, 1st phase, 12 December 2003, *Plan of Action*, WSIS-03/GENEVA/DOC/5 [WSIS, *Plan of Action*].

Information Society, declare our common desire and commitment to build a people-centred, inclusive and development-oriented Information Society, where everyone can create, access, utilize and share information and knowledge, enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life, premised on the purposes and principles of the *Charter of the United Nations* and respecting fully and upholding the *Universal Declaration of Human Rights*.

According to paragraph 2, their “challenge is to harness the potential of information and communication technology to promote the development goals of the *Millennium Declaration*, namely the eradication of extreme poverty and hunger [...]”

Paragraph 3 contains important language concerning human rights, democracy and the rule of law:

We reaffirm the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms, including the right to development, as enshrined in the Vienna Declaration. We also reaffirm that democracy, sustainable development, and respect for human rights and fundamental freedoms as well as good governance at all levels are interdependent and mutually reinforcing. We further resolve to strengthen respect for the rule of law in international as in national affairs.

Paragraph 4 recalls the fundamental importance of freedom of opinion and expression:

We reaffirm, as an essential foundation of the Information Society, and as outlined in Article 19 of the Universal Declaration of Human Rights, that everyone has the right to freedom of opinion and expression; that this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. Communication is a fundamental social process, a basic human need and the foundation of all social organization. It is central to the Information Society. Everyone, everywhere should have the opportunity to participate and no one should be excluded from the benefits the Information Society offers.

In paragraph 5 the Summit participants further reaffirm their commitment to the provisions of Article 29 of the Universal Declaration of Human Rights.¹¹ In paragraph 8 they:

recognize that education, knowledge, information and communication are at the core of human progress, endeavour and well-being. Further, Information and Communication Technologies (ICTs) have an immense

¹¹ *Universal Declaration of Human Rights*, GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948) [*UDHR*].

impact on virtually all aspects of our lives. The rapid progress of these technologies opens completely new opportunities to attain higher levels of development. The capacity of these technologies to reduce many traditional obstacles, especially those of time and distance, for the first time in history makes it possible to use the potential of these technologies for the benefit of millions of people in all corners of the world.

According to paragraph 9,

ICTs should be regarded as tools and not as an end in themselves. Under favourable conditions, these technologies can be a powerful instrument, increasing productivity, generating economic growth, job creation and employability and improving the quality of life of all. They can also promote dialogue among people, nations and civilizations.

After these highly optimistic assertions that present ICTs as a kind of panacea, the Summit participants note in paragraph 10 that

the benefits of the information technology revolution are today unevenly distributed between the developed and developing countries and within societies. We are fully committed to turning this digital divide into a digital opportunity for all, particularly for those who risk being left behind and being further marginalized.

Neither the *Declaration of Principles* nor the *Plan of Action* indicates convincing solutions to overcome this digital divide.

The *Declaration of Principles* then addresses the particular needs of specific groups or sectors of society, e.g. young people, (paragraph 11), women, (paragraph 12), marginalized and vulnerable groups of society, (paragraph 13), the poor, (paragraph 14), indigenous peoples (paragraph 15), etc...

In paragraph 17 it is stated:

We recognize that building an inclusive Information Society requires new forms of solidarity, partnership and cooperation among governments and other stakeholders, i.e. the private sector, civil society, and international organizations. Realizing that the ambitious goal of this Declaration – bridging the digital divide and ensuring harmonious, fair and equitable development for all – will require strong commitment by all stakeholders, we call for digital solidarity, both at national and international levels.

Under the heading “An information society for all: key principles”, the Declaration goes on to deal with “the role of governments and all stakeholders in the promotion of ICTs for development” (paragraph 20), “information and communication infrastructure” (paragraphs 21-23), “access to information and

knowledge” (paragraphs 24-28), “capacity building” (paragraphs 29-34), “building confidence and security in the use of ICTs” (paragraphs 35-37), “enabling environment” (paragraphs 38-50), “ICT applications: benefits in all aspects of life” (paragraph 51), “cultural diversity and identity, linguistic diversity and local content” (paragraphs 52-54), “media” (paragraph 55), “ethical dimensions of the Information Society” (paragraphs 56-59) and “international and regional cooperation” (paragraphs 60-64).

The *Declaration* refers to the accessibility and affordability of information and communication network infrastructure (paragraph 22) and of software (paragraph 27). In paragraph 27 it is stated that “access to information and knowledge can be promoted by increasing awareness among all stakeholders of the possibilities offered by different software models, including proprietary, open-source and free software [...]”

According to paragraph 26, “a rich public domain is an essential element for the growth of the Information Society [...]” The public service principle, however, is not affirmed in the *Declaration*.

The issue of privacy is mentioned in the context of cyber-security (paragraph 35). However, nothing is said about the fact that modern technology provides unprecedented possibilities for massive violations of the human right to privacy. The formulation of paragraph 42 dealing with intellectual property protection is particularly vague: “Intellectual Property protection is important to encourage innovation and creativity in the information society; similarly, the wide dissemination, diffusion, and sharing of knowledge is important to encourage innovation and creativity.”

Paragraphs 48-50 deal specifically with the Internet. Internet governance was one of the most controversial issues of the Summit. In paragraph 50 it is stated:

International Internet governance issues should be addressed in a coordinated manner. We ask the Secretary-General of the United Nations to set up a working group on Internet governance, in an open and inclusive process that ensures a mechanism for the full and active participation of governments, the private sector and civil society from both developing and developed countries, involving relevant intergovernmental and international organizations and forums, to investigate and make proposals for action, as appropriate, on the governance of Internet by 2005.

In paragraph 55 dealing with the media, Summit participants reaffirm their 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 [...] Diversity of media ownership should be encouraged, in conformity with national law, and taking into account relevant international conventions [...].

There was a strong North/South divergence with regard to the practical steps that should be taken to move from the digital divide to the “digital solidarity” to which everybody paid lip service. Countries from the South, particularly Africa, proposed the creation of an international “Digital Solidarity Fund”; however, countries from the North were far from enthusiastic about the idea. The compromise formulation in the *Declaration* reads as follows:

We recognize the will expressed on the one hand by some to create an international voluntary ‘Digital Solidarity Fund’, and by others to undertake studies concerning existing mechanisms and the efficiency and feasibility of such a Fund.¹²

The *Declaration of Principles* concludes with the following, rather sweeping and euphoric statement at paragraph 67:

We are firmly convinced that we are collectively entering a new era of enormous potential, that of the Information Society and expanded human communication. In this emerging society, information and knowledge can be produced, exchanged, shared and communicated through all the networks of the world. All individuals can soon, if we take the necessary actions, together build a new Information Society based on shared knowledge and founded on global solidarity and a better mutual understanding between peoples and nations. We trust that these measures will open the way to the future development of a true knowledge society.¹³

2. THE PLAN OF ACTION

The *Plan of Action* is supposed to translate “the common vision and guiding principles of the Declaration” into “concrete action lines to advance the achievement of the internationally-agreed development goals [...] by promoting the use of ICT-based products, networks, services and applications, and to help countries overcome the digital divide.”¹⁴ Paragraph 3 emphasizes the importance of “partnerships” of governments with the private sector, civil society, and international and regional institutions, including international financial institutions. According to paragraph 4, “opportunity shall be taken in phase two of the WSIS to evaluate and assess progress made towards bridging the digital divide.”

Paragraph 6 refers, in an extremely prudent formulation, to “indicative targets” that “may serve as global references for improving connectivity and access in the use of ICTs in promoting the objectives of the Plan of Action, to be achieved by 2015. These targets may be taken into account in the establishment of the national targets, considering the different national circumstances.” They include: “to connect villages with ICTs and establish community access points,” “to ensure that all of the

¹² WSIS, *Declaration of Principles*, *supra* note 9 at para. 61.

¹³ *Ibid.* at para. 67.

¹⁴ WSIS, *Plan of Action*, *supra* note 10 at para. 1.

world's population have access to television and radio services,” “to encourage the development of content and to put in place technical conditions in order to facilitate the presence and use of all world languages on the Internet,” and “to ensure that more than half of the world's inhabitants have access to ICTs within their reach.”¹⁵

Paragraph 12 asserts that “confidence and security are among the main pillars of the Information Society” and also refers to “existing and potential threats to ICTs.” However, there is no reference to the threats stemming from the improper use of ICTs, for example in the case of invasion of privacy.

According to paragraph 13(a), “governments should foster a supportive, transparent, pro-competitive and predictable policy, legal and regulatory framework, which provides the appropriate incentives to investment and community development in the Information Society.” In a similar vein, paragraph 27 advocates “developing countries to increase their efforts to attract major private national and foreign investments for ICTs through the creation of a transparent, stable and predictable enabling investment environment.”

There are numerous references in the text to “public/private partnerships.”

Paragraph 27 of the Plan of Action deals with possible financial mechanisms, including a Digital Solidarity Fund, which are also addressed in paragraph 61 of the *Declaration of Principles*, in the following terms:

While all existing financial mechanisms should be fully exploited, a thorough review of their adequacy in meeting the challenges of ICT for development should be completed by the end of December 2004. This review shall be conducted by a Task Force under the auspices of the Secretary-General of the United Nations and submitted for consideration to the second phase of this summit. Based on the conclusion of the review, improvements and innovations of financing mechanisms will be considered including the effectiveness, the feasibility and the creation of a voluntary Digital Solidarity Fund [...].

Finally, paragraph 29 looks forward to the second phase of the WSIS which should consider, *inter alia*:

- a) Elaboration of final appropriate documents based on the outcome of the Geneva phase of the WSIS with a view to consolidating the process of building a global Information Society, and reducing the Digital Divide and transforming it into digital opportunities;
- b) Follow-up and implementation of the Geneva *Plan of Action* at national, regional and international levels, including the United Nations system, as part of an integrated and coordinated approach, calling upon the participation of all relevant

¹⁵ *Ibid.* at para. 6(a), 6(h), 6(i), 6(j), respectively.

stakeholders. This should take place, *inter alia*, through partnerships among stakeholders.

The NGOs produced a challenging Civil Society Declaration to the WSIS entitled “Shaping Information Societies for Human Needs,” which was handed over to the President of the Swiss Confederation on December 12, 2003.¹⁶

It remains to be seen whether substantial progress can be made between the two phases of the WSIS and whether the Tunis phase will produce more concrete results, particularly on the contentious issues referred to below.

III. Critical Analysis of the Results of the First Phase Of WSIS

The texts adopted by the Geneva Summit might well have been entitled: “Welcome to the digital wonderland!” They are wordy, full of sweeping statements, commonplaces, clichés, stereotypes and high-minded wishes. They project an idyllic banality, a naïve belief in technology and in a brave new digital world in which ICTs will solve all problems. However, one should not be deceived by the rosy language of the texts adopted. They cover up fundamental disagreements and gloss over diametrically opposed world visions that were expressed at the Summit and, probably even more so, in its margins. Some of these will be referred to below.

A. Highly Political Summit

For some, particularly the ITU, the Summit was supposed to be technical. Corporate interests, strongly involved in the preparation of and represented at the Summit, saw it as a great opportunity to promote their products. It is mainly owing to them that the texts adopted contain a number of articles of faith from the credo of pan-economic ideology. On the other side of the spectrum, NGOs presented powerful alternative visions and managed to have some of their thinking included, e.g. with regard to human rights. If one looks behind the consensual language patched together *in extremis* on a number of fundamental points, one realizes that this was in Geneva, and will be in Tunis, a highly political and societal Summit.

B. A Blurred Frontier

There was some, probably deliberate, confusion and blurring of lines between businesses and NGOs. Some of the corporate interests also tried to wear an NGO hat. On many issues of substance, e.g. free software or intellectual property rights, there were obvious and profound differences of opinion between the two.

¹⁶ UN, WSIS Civil Society Plenary, 8 December 2003, *Civil Society Declaration to the World Summit on the Information Society*, online: ITU <<http://www.itu.int/wsis/docs/geneva/civil-society-declaration.pdf>> [WSIS Civil Society Plenary, *Civil Society Declaration*].

Catchphrases used in the *Declaration of Principles* and the *Plan of Action* included “public/private partnerships” and “partnerships between governments, the private sector, civil society and international and regional institutions.”

C. The “Information Society”

The concept of an Information Society promoted by the Summit is itself questionable. One could argue whether information even creates a society. Communication and dialogue are more likely to do so. Should information be treated as a commodity or as a public good? Should human beings endowed with dignity and human rights or commercial interests be at the centre of the networked Information Society? Should human beings be seen as passive consumers or buyers of information, or rather as active producers of communication? The Geneva texts fail to address these fundamental questions.

D. The Inclusion of Human Rights Language

The hard-fought inclusion of human rights language into the Geneva texts is to be welcomed. It is not really surprising that, being the result of a political compromise, they deal far less substantially and critically with the human rights implications of the Summit than the *Statement* adopted by the November International Symposium. The latter refers to “the commoditisation of information and knowledge, and the growing concentration of ownership and control of the means of producing and disseminating information and knowledge” as well as to the “limitations, surveillance and censorship by the state or private parties, especially in the post September 11, 2001 environment.”¹⁷ It is also more specific in emphasizing that “[t]here must be no censorship and no arbitrary controls or constraints on participants in the information process, on the content of information or its transmission and dissemination.”¹⁸

As previously mentioned, the *Declaration of Principles* refers to “a rich public domain” as “an essential element for the growth of the information society,”¹⁹ but fails to assert the public service principle. The *Statement* of the International Symposium does so; it also affirms that “public service broadcasting is an essential means of counter-balancing the commercial motivation of the media and ensuring the enjoyment of the right of everyone to participate in cultural life and the right of political participation.”²⁰

The language of the Geneva Summit texts is weak with regard to access to information produced or maintained by public authorities. Paragraph 10 (b) of the Plan of Action states:

¹⁷ PMHRE, “Statement on Human Rights”, *supra* note 7 at para 6.

¹⁸ *Ibid.* at para. 12.

¹⁹ WSIS, *Declaration of Principles*, *supra* note 9 at para. 26.

²⁰ PMHRE, “Statement on Human Rights”, *supra* note 7 at para. 24.

Governments are encouraged to provide adequate access through various communication resources, notably the Internet, to public official information. Establishing legislation on access to information and the preservation of public data, notably in the area of new technologies, is encouraged.²¹

This is a far cry from a human right to access the information held by public authorities.

One of the most striking lacunae in the Geneva Summit texts concerns the right to freely participate in cultural life. Article 27(1) of the *Universal Declaration of Human Rights*²² affirms this right but is not mentioned in the Geneva texts. However, the Geneva texts do address intellectual property protection in paragraph 42 of the *Declaration of Principles*, referred to in Article 27(2) of the *Universal Declaration*.

E. The Digital Divide – A Symptom

Nobody can deny the reality and depth of the digital divide. The figures are eloquent. According to 2003 statistics, in Iceland 67% of the population are Internet users, while in the Democratic Republic of Congo 1 out of 233 inhabitants uses the Internet. In the United States of America 66% of the population have a personal computer, while in Niger 1 out of 1,666 inhabitants has one.²³ The digital divide is no more than a symptom of a far more serious and deep-seated evil, i.e. the unequal distribution of wealth among and within countries, the growing gap between the rich and the poor. Any serious effort to heal, remedy or alleviate this state of affairs must obviously address the disease and not simply the symptom. ICTs are not the panacea. It is certainly naïve to believe that giving people in poor countries mobile phones or Internet connections will in itself eradicate or reduce poverty. Is it necessary to recall that for the Internet one needs electricity and that the use of the Internet is difficult for people who are illiterate? It is true that there is a boom in cellular phones in many countries of the South; however it is essentially concentrated in the cities. This certainly serves the interests of the producers of cellular phones, but does it serve the interests of the poor in the South and will it reduce poverty? Are costly cellular phones or Internet connections priorities for people who lack nutrition, water and health? ICTs should not be seen as ends in themselves. Any serious policy of ICT development must be part and parcel of a global policy of human and sustainable development and poverty reduction.

F. Threats and Challenges

The texts adopted by the Geneva Summit refer in euphoric terms to the potential benefits of ICTs and the new opportunities they open up, but fail to address

²¹ WSIS, *Plan of Action*, *supra* note 10.

²² UDHR, *supra* note 11.

²³ ITU, *Internet indicators: Hosts, Users and Number of PCs*, (2003), online: ITU <http://www.itu.int/ITU-D/ict/statistics/at_glance/Internet03.pdf>.

the threats and challenges they can bring with them. These are particularly apparent with regard to the right to privacy. It is true that ICTs can and should be used to protect the right to privacy, but they also provide unprecedented possibilities for massive violations of this right. Contrary to the Summit, the International Symposium considered the following issues:

The use of increasingly invasive means of surveillance and of interception of communications, of intrusive profiling and identification, and of biometric identification technology, the development of communication technologies with built-in surveillance capacities, the collection and misuse of genetic data, genetic testing, the growing invasion of privacy at the workplace, and the weakening of data protection regimes give rise to serious concerns from the point of view of respect for human rights.²⁴

The *Statement* adopted by the International Symposium emphasized that “[n]ew means must be developed to protect the human right to privacy, such as the right to know about one’s personal data held by public and private institutions and to have them deleted where not strictly necessary for a legitimate purpose in a democratic society.”²⁵ The Symposium also stated that “[t]he development, transfer and use of technology permitting illegitimate invasion of privacy must be controlled and curbed.”²⁶

G. Contentious Issues

In addition to the inclusion of human rights language in the Summit texts, a number of other contentious issues divided delegations before and during the Summit.

One of these was Internet governance. The issuance of Internet domain names is presently administered by a private organization, ICANN (Internet Corporation for Assigned Names and Numbers), based in San Francisco. Many developing countries argued that the administration of domain names and other aspects of global Internet management should be entrusted to an intergovernmental body. However, this demand was strongly resisted by some developed countries. In the end, the Summit did not take a stand on the issue, but, as stated above, asked the Secretary-General of the UN to set up a working group on Internet governance.

Another hot issue was that of free software. It is obvious that free software can be an important instrument of digital inclusion, one of the declared objectives of the Summit. However, there are powerful interests trying to stop the spread of free software. The Summit texts refer to “different software models” and lump free

²⁴ PMHRE, “Statement on Human Rights”, *supra* note 7 at para. 16.

²⁵ *Ibid.*

²⁶ *Ibid.*

software together with proprietary software without expressing any preference for one or the other.²⁷

The shape of the present and future intellectual property rights regimes gave rise to heated discussions before and during the Geneva Summit and will undoubtedly continue to do so in the years to come, not only in the WSIS context, but in a number of international fora. On this issue, like on many others, the main dividing lines ran between countries of the South and most NGOs on the one hand and countries of the North on the other. The former consider that the existing intellectual property rights regime, including the Agreement on Trade-Related Intellectual Property Rights (TRIPS) and instruments of the World Intellectual Property Organization (WIPO), is unbalanced and should be re-evaluated; the latter basically favour maintenance of the *status quo*. The United States strongly opposed discussion of these issues within the WSIS context, arguing that the proper fora for dealing with them were the World Trade Organization (WTO) and the WIPO.

In fact, the emergence of the intellectual property rights regime, through the WTO and the WIPO, seems to contradict proclaimed goals of the WSIS, such as the sharing of knowledge and empowering the poor. It does not seem to foster the common good and is not in the interest of the poor, clashing with internationally-recognized human rights. In paragraph 2.3.3.2 of the Civil Society Declaration it is rightly stated:

Today, the vast majority of humankind has no access to the public domain of global knowledge, a situation that is contributing to the growth of inequality and exploitation of the poorest peoples and communities. Yet instead of extending and strengthening the global domain, recent developments are restricting information more and more to private hands. Patents are being extended to software (and even to ideas), with the consequent effect of limiting innovation and reinforcing monopolies.²⁸

In paragraph 2.3.3.3 of the Civil Society Declaration it is recommended that

the UN should carry out a fundamental review of the impact on poverty and human rights of current arrangements for recognition and governance of monopolized knowledge and information, including the work of WIPO and the functioning of the TRIPS agreement.²⁹

Paragraph 42 of the *Geneva Declaration of Principles*, unfortunately, skirts these fundamental issues, which will have to be addressed seriously by the second phase of the WSIS. The primary goal of the regime of knowledge, ownership, and management must be to strike a balance that will maximize both access to and use of

²⁷ WSIS, *Declaration of Principles*, *supra* note 9 at para. 27; WSIS, *Plan of Action*, *supra* note 10 at para. 9(e).

²⁸ WSIS Civil Society Plenary, *Civil Society Declaration*, *supra* note 16.

²⁹ *Ibid.*

knowledge, and at the same time encourage creativity. That balance is at the heart of Article 27 of the *Universal Declaration of Human Rights*. It is, sadly, significant that, as stated above, in the *Geneva Declaration of Principles* there is no reference to the right to freely participate in the cultural life of the community, enshrined in Article 27(1). One of the biggest challenges in the years to come will be to elaborate a just intellectual property rights regime that contributes to human and sustainable development.

Finally, there has been strong disagreement on the financial means of bridging the digital divide, that is, of moving from the digital divide to the frequently evoked digital solidarity. The President of Senegal, strongly supported by other Third World leaders, proposed the creation of a Digital Solidarity Fund to finance the digital solidarity agenda. This proposal was opposed by developed countries, some of which claimed that existing amounts and channels of aid were enough and that the developing countries should commit their own funds. Apparently, the developed countries were not willing to pay anything but lip service to the goal of digital solidarity. This issue was nearly the stumbling block of the Geneva phase of the Summit. At the last minute, the parties agreed to the above-mentioned compromise in paragraph 27 of the *Plan of Action*. However, the negative attitude of the countries from the North caused profound disappointment and frustration among delegates from the South.

The main merit of the Geneva Summit was probably the enhancement in awareness of the serious issues at stake in connection with the so-called Information Society. Many of these issues have been laid down on the negotiating table. Progress towards their solution before and during the Tunis phase will require a strong political resolve and a genuine willingness, especially of the wealthy countries, to share knowledge and to overcome the digital divide, particularly the deep-seated inequalities that are its causes.

IV. Critical Reflections on the Present State of the International Community

The first phase of the WSIS gives rise to a number of critical reflections on the present state of the international community. Three points will be addressed below: the role of civil society, the growing penetration of corporate interests in the international arena and the lack of solidarity within the international community.

Civil society, represented by numerous NGOs (including numerous community based organizations), had a considerable and highly positive impact on the first phase of the WSIS and its results. NGOs have shown that, in spite of their great diversity, they are capable of getting their act together to behave responsibly and to present and defend serious and credible positions. It is by no means a coincidence that on most issues of substance they sided with the countries of the South.

The strong presence and influence of corporate interests at the WSIS is a striking illustration of their growing penetration into the international arena. There

seems to be a tendency towards “privatization” of the international community. Powerful multinational corporations exert a growing influence in international fora without undertaking corresponding responsibilities, particularly with regard to human rights. Against this background, the work carried out in various international organizations to hold multinational corporations accountable for human rights abuses takes particular importance.³⁰

Finally, discussions before and during the first phase of the WSIS, particularly on the financial means of bridging the digital divide, have shown that professions of faith in international solidarity remain essentially verbal. This is highly deplorable. Indeed, there cannot be an international community worthy of this name without a more than verbal recognition of a community interest and a common good towards humanity that must prevail over both national and corporate interests. An international community worthy of this name cannot exist if it does not act in a spirit of solidarity. As far as the subject of the WSIS is concerned, it is obvious that public authorities, the private sector and civil society in developed countries have a special responsibility to share the benefits of the Information Society with the peoples in developing countries.

To be solid, the international community needs to be based on shared values, in particular, respect for the human being, for human dignity and for all human rights - civil, political, economic, social and cultural. The Information and Communication Society must be based on these values and contribute to the twofold liberation promised by the Preamble to the Universal Declaration of Human Rights, namely, liberation from fear and want.

³⁰ See in particular “Draft Norms on Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights” in *Report of the sessional working group in the working methods and activities of transnational corporations on its fourth session*, UN ESCOR, 2002, UN Doc. E/CN.4/Sub.2/2002/13 at 15.