



**HUMAN RIGHTS IN THE WSIS PROCESS: THE NOTION OF  
INTERDEPENDENCE AND INDIVISIBILITY AS A WAY  
FORWARD**

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## **Introduction**

The High Level Meeting UN General Assembly from 15-16<sup>th</sup> December, 2015 marked the end of the Overall Review of the Implementation of the Outcomes of the World Summit on the Information Society (WSIS). The Outcome Document<sup>1</sup> that was adopted as a General Assembly Resolution was notable for including a separate section on human rights. This is in continuation of the mandate from the Tunis Agenda which highlighted the importance of human rights to the Information Society. Having a separate section on human rights was an important step. But, the document does not reflect the progress the human rights movement has made in the last decade on human rights and the internet. There is a need for a distinct framework on human rights on the internet and its recognition at the international level is an important first step.

This paper argues that giving effect to the notion of interdependence and indivisibility of human rights is a means of realising the goal of an “internet bill of rights”. As the WSIS process moves into the smaller policy making bodies, the realisation of a distinct online framework of human rights can be achieved by embedding human rights into all levels of functioning of the WSIS process.

## **The WSIS Process and the 10 Year Review**

The idea for a Summit on the information society first emerged as a response from the UN system to the digital divide. However, there was a need to resolve many other issues that related to the global governance of the internet. In 2001, the UN General Assembly,<sup>2</sup> on the recommendation of the International Telecommunications Union (ITU) passed a resolution to hold the Summit over two phases in Geneva (2003) and Tunis (2005).

The first phase in Geneva produced the *Declaration of Principles and Plan of Action* which set out a roadmap for further discussion and identified action lines for to respond to many of the challenges faced by the information society. The second phase in Tunis in 2005 was meant to put these plans into motion by achieving consensus on many contentious issues. The *Tunis Agenda for the Information Society* is a consensus statement that was an outcome of the second

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<sup>1</sup> General Assembly Resolution, A/70/L.33.

<sup>2</sup> General Assembly Resolution, A/RES/56/183.

phase. The Tunis Agenda established guiding principles for internet governance processes.<sup>3</sup> On human rights, the Tunis Agenda was notable for making a reference to the *Universal Declaration of Human Rights* (UDHR). But the reference was limited to the rights to privacy and free expression. The *Declaration of Principles* from the Geneva phase on the other hand was far more comprehensive, referring to a range of human rights issues and international human rights instruments.<sup>4</sup>

The ten-year review, negotiations for which began in July 2015 offered an opportunity to expand on the human rights language from the first two phases of the WSIS. The six-month long process was meant to take stock of the developments and challenges that have emerged in the Information Society over the last decade. The Outcome Document was seen as a success by many,<sup>5</sup> but as a product of a political negotiation process can perhaps be described as a qualified success. The inclusion of a separate section on human rights- which was a contentious issue between countries and stakeholders- is illustrative of the negotiation process.

The document does acknowledge the growing challenges posed to human rights by the information society. It is also an improvement on the Tunis Agenda which only mentioned human rights twice. But, the outcome document also paid scant attention to a new generation of human rights whose implementation is crucial to the future of the information society. More importantly, it fails to acknowledge the evolution of the discussions around human rights over the last decade with respect to online rights.

## **Human Rights in a Digital Age**

The expansion of the Information Society over the last decade has raised new challenges to the realisation of human rights. Some rights like privacy and free speech which predated the internet, have acquired new significance in the context of internet and ICTs. Other issues like the access and development, which were the focus of rights related discussions, are increasingly

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<sup>3</sup> William J. Drake. "Encouraging Implementation of the WSIS Principles on Internet Governance Procedures." In, Wolfgang Kleinwächter, ed. *The Power of Ideas: Internet Governance in a Global Multistakeholder Environment*. Berlin: Marketing fur Deutschland GmbH, 2007, pp. 271-280, at p. 271.

<sup>4</sup> Cees J Hamelink, "Human Rights Implications of WSIS", (2005) 18.1 *Revue québécoise de droit international*, pp. 28-39, at p. 29.

<sup>5</sup> See for instance, Constance Bommelaer, "Wrapping Up a Successful WSIS+10 Review", Internet Society Blog, 18<sup>th</sup> December 2015, available at <<https://www.internetsociety.org/blog/public-policy/2015/12/wrapping-successful-wsis10-review>>; Byron Holland, "WSIS+10: In Internet Governance, Actions Speak Louder Than Words", Council on Foreign Relations Blog, 14<sup>th</sup> December 2015, available at <<http://blogs.cfr.org/cyber/2015/12/14/wsis10-in-internet-governance-actions-speak-louder-than-words/>>.

dealt with as stand-alone rights. Discussions on these rights have been supported by legal instruments at both the national and international level. The right to access [to the internet] for instance, has been recognised as a right in one form or the other in a number of countries including France, Spain and Greece.<sup>6</sup> But the recognition of a new set of rights is only one facet of the problem.

Enforcement of human rights has been traditionally understood as the prerogative of the State. However, in the information society, corporations like Google, Facebook and Twitter (to name a few) are beginning to take on many of the functions of the states. In processing requests to take down content, they become arbiters of speech. In collecting user data of millions of users, they have become a resource for governments across the world to tap into for law enforcement purposes. However, as private actors, there is no recourse under human rights laws against businesses for the abuse of such powers. With the exception of voluntary codes that companies can sign up for, there are few, if any formal mechanisms to hold businesses accountable for human rights violations.

The challenges described in the preceding paragraphs are not new. As far back as the first two phases of the WSIS, issues like privacy and free expression were debated and brought to the table by civil society actors.<sup>7</sup> This has also resulted in many soft law instruments and coordinated civil society efforts aimed at creating a framework of online rights.

Notable among these efforts is the multistakeholder, Dynamic Coalition for an Internet Bill of Rights, which was launched after the first Internet Governance Forum in 2006. It was one of the earliest efforts at mapping human rights obligations as it related to the internet. The initiative also received the support of the Brazilian and Italian governments who signed a Joint Declaration for the elaboration of an internet Bill of Rights<sup>8</sup>. A similar effort by the Association for Progressive Communications in 2006 produced the Internet Rights Charter.<sup>9</sup> The Charter

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<sup>6</sup> David Rothkopf, “Is Unrestricted Internet a Modern Human Right?”, *Foreign Policy*, 2<sup>nd</sup> February 2015, available at <<http://foreignpolicy.com/2015/02/02/unrestricted-internet-access-human-rights-technology-constitution/>>.

<sup>7</sup> Roy Balleste, ‘Rising Toward Apotheosis: The Deconstruction of the WSIS Tunis Agenda for the Information Society’, *Pittsburgh Journal of Technology Law and Policy* 12(1) Spring 2012 1-36, at p. 19. For a discussion on communication rights in the context of the first two phases of the WSIS, see Id Hamelink, pp. 32-34.

<sup>8</sup> Wolfgang Benedek, ‘Internet Governance and Human Rights’ in Wolfgang Benedek et al (eds), “Internet Governance and the Information Society: Global Perspectives and European Dimensions” (2008), at p. 38.

<sup>9</sup> Association for Progressive Communications, ‘APC Internet Rights Charter’, available at <<http://www.apc.org/en/node/5677>>.

builds on existing international human rights instruments to identify internet related human rights obligations across 7 themes.

Such human rights campaigns led by civil society/multistakeholder groups have led to recognition of internet related rights by many UN bodies. The UN Special Rapporteur on Freedom of Expression devoted his 2011 report to access to the internet and highlighted the restriction of access to the internet as being violative of Article 19 of the UDHR.<sup>10</sup> In 2014, the Human Rights Council adopted a resolution<sup>11</sup> on the protection of human rights online which was also adopted by the General Assembly.<sup>12</sup> The resolution primarily called for the protection online of the same rights available offline. On privacy, the High Commissioner of Human Rights on the recommendation of the UN General Assembly produced a report on the ‘Right to Privacy in the Digital Age’ in 2014.<sup>13</sup> The Human Rights Council has since appointed a special Rapporteur on the Right to Privacy.

Even on the question of holding businesses responsible for human rights, there has been traction at the international level. The Guiding Principles on Business and Human Rights or the ‘Ruggie Principles’ were approved by the Human Rights Council in 2011. The question of its extension to human rights over the internet, however, is still being contested at various fora.

The human rights efforts in the last decade of the WSIS were successful in bringing attention to internet related human rights issues. Though there isn’t a framework for online rights, it seems like the system is headed in that direction. The High Level Meeting in December was an opportunity to recognise this progress and signal a move to a framework of rights. The Outcome document did recognise the recent HRC and General Assembly resolution on online rights. It did not however highlight the need for a framework of internet rights.

### **Interdependence and Indivisibility of Rights in the WSIS Process**

One of the criticisms of the Outcome Document has been its focus on Civil and Political Rights without due recognition to Economic, Social and Cultural Rights. The right to expression and its attendant concerns of protection against arbitrary and unlawful detention were recognised. But the right to access, development and education which were highlighted at various stages of the review process found no place in the document.

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<sup>10</sup> Human Rights Council, A/HRC/17/27, pp. 16-18 ¶ 60-66.

<sup>11</sup> Human Rights Council, A/HRC/Res/26/13.

<sup>12</sup> General Assembly Resolution, A/Res/68/167.

<sup>13</sup> Human Rights Council, A/HRC/27/37.

However, this claim presumes a dichotomy between the two categories of rights which does not exist. While it is true Economic, Social and Cultural rights were not mentioned in the Outcome Document, their absence does not preclude its application as the WSIS discussions move to other fora. The interdependence and indivisibility of rights refers to the idea that commitment to one category of rights (Civil, political or economic, social and cultural) must mean the other category of rights must also be safeguarded.<sup>14</sup> This was first mentioned in the 1968 Proclamation of Teheran<sup>15</sup> and affirmed in the Vienna Declaration of 1993<sup>16</sup>.

The notion of independence and indivisibility easily translates to the information society. For instance, as mentioned in the 2011 Report of the Special Rapporteur on Freedom of Expression, the right to free expression cannot be enforced without a right to access. Similarly, the right to access is meaningless without the right or privacy. However, it must be cautioned that not all rights are interdependent and not all interdependencies need to be recognised or enforced. While some interdependencies are strong (like speech and access), others can be weak.<sup>17</sup> When the interdependence between rights is very strong, the relationship becomes indivisible.<sup>18</sup>

The absence of a recognition of economic, social and cultural rights does not mean they cannot be embedded into the information society. In fact, the Geneva Declaration of Principles makes an explicit reference to the interdependence and indivisibility of human rights and the Vienna Declaration.<sup>19</sup> Thus, the notion of interdependence has already been recognised in the WSIS process. As the process moves into smaller bodies, there is also space for more nuanced human rights discussions, allowing for the implementation of both categories of rights, notwithstanding the bare bones structure that the Outcome document has presented.

## **Conclusion**

As human rights discussions become more prominent in internet governance fora, the push for a framework of internet related rights is likely to become stronger. At the IGF and the Working Group on Enhanced Cooperation, which have renewed mandates, informed discussions on human rights can lead to a framework of internet related rights. Even a purely multistakeholder

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<sup>14</sup> James W. Nickel, "Rethinking Indivisibility: Towards a Theory of Supporting Relations between Human Rights", 30 HUM. RTS. Q. (2008) 984, at p. 985.

<sup>15</sup> Proclamation of Teheran, International Conference on Human Rights (1968).

<sup>16</sup> The Vienna Declaration and Programme of Action (1993).

<sup>17</sup> Supra, Nickel n. 14, at p. 988-991.

<sup>18</sup> An example of this is when a substantive right like freedom of expression is supported by a procedural right like the right to constitutional/legal remedies. In such a case, giving effect to one right in the absence of the other diminishes both rights.

<sup>19</sup> Geneva Declaration of Principles, WSIS-03/GENEVA/DOC/4-E, at para 3.

body like ICANN has accepted its human rights mandate. In these discussions, the notion of interdependence is essential to promote such a framework.