Promoting stakeholder engagement at the Open-Ended Working Group on ICTs

Operationalising para.4 of the UNGA Resolution (A/RES/75/240)

Paragraph 4

The General Assembly, […]

*"Decides to convene, starting from 2021…a new open-ended working
group on security of and in the use of information and communications technologies 2021–2025"*

*"Decides that the open-ended working group on security of and in the use
of information and communications technologies 2021–2025 may decide to establish thematic subgroups, as the Member States deem necessary, with a view to fulfilling its mandate and facilitating the exchange of views among States on specific issues related to its mandate, and may decide to interact, as appropriate with other interested parties, including businesses, non-governmental organizations and academia";*

About

The aim of this brief is to support the implementation of the agreed language in the United Nations Open-Ended Working Group (OEWG) resolution (A/RES/75/240) pertaining to stakeholder engagement. This brief begins by providing interpretations of the text referring to stakeholder engagement in the resolution which set up the new OEWG, namely the terms "interaction" and "appropriate". The brief then outlines how the first OEWG consultations with non-governmental stakeholders positively impacted the first OEWG discussions, before providing good practices and lessons learned from CSO engagement in a wide range of forums, including non-UNGA forums.

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Some of us have also been involved in contributing to, or reviewing, the work of Paris Call Working Group 3 (WG3) on "Supporting the Continuation of UN Negotiations with a Strong Multistakeholder Approach", and we encourage readers of this brief to consult, and take into consideration, the recommendations included in the WG3 study, expected to be presented at the Paris Peace Forum which will take place on 11-13 November, 2021.

Introduction

What does "interaction" refer to?
"Interaction" is a procedural issue: it refers to informal or formal consultations, access, speaking and/or negotiating rights in intergovernmental meetings, formation of stakeholder groups, procedures for presenting non-state actors input and duties of state actors to report back what they did with the input etc.

What does "appropriate" refer to?
Appropriate requires consideration of the range and diversity of expertise that civil society and other non-governmental stakeholders can bring to the table. As noted in the OEWG report, cyber threats may "have a different impact on different groups and entities, including on youth, the elderly, women and men, people who are vulnerable, particular professions, small and medium- sized enterprises, and others". It is therefore important to recognise that a wide range of people and communities have a stake in these discussions and are able to meaningfully participate if they are interested.

OEWG I informal consultations

As the final report of the first OEWG states *"The three-day informal consultative meeting of the OEWG held in December 2019 produced a rich discussion between States and a wide variety of other stakeholders. In addition, these stakeholders have provided concrete proposals and examples of good practice through written contributions and informal exchanges with the OEWG. Some delegations have also conducted multi-stakeholder consultations at their own initiative to inform their contributions to the OEWG"*[1]. Below we include examples of how civil society engagement in these informal consultations supported the discussions and our analysis of how this was reflected in the final report.

Human-centric approach
Repeated reference to the importance of a human centric approach in the OEWG informal consultations was reflected to some extent in the OEWG's final report ("Negative trends in the digital domain could undermine international security and stability, place strains on economic growth and sustainable development, and hinder the full enjoyment of human rights and fundamental freedoms", para 3; "At the same time, the COVID-19 pandemic has demonstrated the risks and consequences of malicious activities that seek to exploit vulnerabilities in times when societies are under enormous strain. It has also highlighted the necessity of bridging digital divides, building resilience in every society and sector, and maintaining a human-centric approach", para 4).

The differential impact on vulnerable populations
Repeated reference by civil society to the differential impact on vulnerable populations was reflected in the OEWG's final report ("States concluded that threats may be experienced differently by States according to their levels of digitalization, capacity, ICT security and resilience, infrastructure and development. Threats may also have a different impact on different groups and entities, including on youth, the elderly, women and men, people who are vulnerable, particular professions, small and medium-sized enterprises, and others").

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[1] https://front.un-arm.org/wp-content/uploads/2021/03/Final-report-A-AC.290-2021-CRP.2.pdf

Joint norms guidance provided by civil society was reflected in norms guidance included in Chair's Summary (see the civil society input[2], Canada's input[3] and the final version of Canada's input as included in the OEWG report's Chair's Summary[4]).

Gender

The OEWG underscores the importance of narrowing the "gender digital divide" and of promoting the effective and meaningful participation and leadership of women in decision-making processes related to the use of ICTs in the context of international security", which corresponds to the recommendation in the report authored by civil society stakeholders, Women's International League for Peace and Freedom (WILPF) and the Association for Progressive Communications (APC): "States should commit to gender diversity in delegations to meetings and inclusive approaches to developing positions, statements, or other contributions"[5]. While recommendations that gender should be mainstreamed across the report were not taken into consideration, APC and WILPF helped to illuminate dimensions of this issue that hadn't been discussed and build an evidence base for the importance of integrating gender into these cyber discussions.

Good practices and lessons learned

In this section, we showcase good practices and lessons learned from civil society engagement in a range of forums, including those outside UN bodies/non-UNGA mandated bodies. The aim is to provide as wide a range of examples as possible to learn and build from, with the aim of encouraging the development of meaningful opportunities for civil society engagement in the OEWG and other First Committee processes related to international peace and security in cyberspace.

Arms Trade Treaty

Context
- The negotiations of the Arms Trade Treaty held in 2012 and 2013 were underpinned by rules of procedure[6] established by UN member states during earlier preparatory committees. The mandate to negotiate the Treaty came from a resolution adopted at the UN General Assembly's First Committee. They included provisions for participation of non-governmental organizations (NGOs) that are in keeping with how most UNGA-based processes address this issue.

Opportunities for civil society engagement
- Non-governmental organisations (NGOs) with and without ECOSOC status[7] could apply for accreditation, with those who did not have ECOSOC status were required to provide additional information on relevant activities and organisational purpose. Those accredited were then invited, in turn, to register participants to attend open meetings of the negotiation conference. There was a provision for a dedicated session in which civil society could address the meeting, and a note that additional time for this could be allocated. Accredited organisations were

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[2] https://front.un-arm.org/wp-content/uploads/2020/10/joint-civil-society-groups-feedback-on-oewg-norms-proposals.pdf

[3] https://front.un-arm.org/wp-content/uploads/2021/02/new-updated-norms-guidance-text-feb-11-clean.pdf

[4] https://front.un-arm.org/wp-content/uploads/2021/03/Chairs-Summary-A-AC.290-2021-CRP.3-technical-reissue.pdf

[5] https://www.reachingcriticalwill.org/resources/publications-and-research/publications/14677-why-gender-matters-in-international-cyber-security

[6] https://reachingcriticalwill.org/images/documents/Disarmament-fora/att/prepcom4/documents/ROP.pdf

[7] https://www.un.org/ecosoc/en/ngo/consultative-status

provided with official conference documents, and allowed to provide materials to delegations at their own expense, outside the conference room "in the area of the Conference".

Lessons learned
- The wide accreditation of NGOs meant that civil society participation was robust throughout the two negotiating conferences with high numbers of civil society representatives in attendance, and able to meet regularly with states bilaterally or in small groups, for advocacy and information-sharing purposes. The accreditation also meant that civil society organized many media and advocacy actions both inside and outside of the UN premises, convened side events, held regular briefings with the UN press corps, distributed materials and delivered statements.
- However, as negotiations wore on sessions were held in closed format which civil society was not permitted to attend. The Chair also convened sessions late at night which posed access issues for civil society and language/interpretation challenges for many delegations. Some states invited civil society representatives onto their delegations as technical experts and thereby ensured their participation during closed meetings, where their advice and input was useful for drafting the Treaty.

WSIS+10 Review

Context

- The WSIS+10 Review was tasked with "tak[ing] stock of progress" towards the WSIS vision over the 10-year period since the Summit and deciding on next steps. The final aim was to have "an inter-governmentally agreed outcome document" for adoption by the UNGA. The process began in June 2015, when the President of the UNGA appointed two UN governments to co-facilitate the process. These co-facilitators were tasked with consulting with, and collecting inputs from, all stakeholders (member state representatives and non-government stakeholders), and using these to draft the outcome document over the six month period.
- According to the resolution 68/302 which set out the modalities for the review, the President of the General Assembly was instructed to "organise informal interactive consultations with all relevant stakeholders of the [WSIS] in order to collect their input for the intergovernmental negotiation process." Any NGOs with relevant experience engaging in internet policy discussions were invited to apply for accreditation via an online form to attend the informal interactive consultations. NGOs accredited to the informal interactive consultations could apply to attend the High-Level Meeting of the General Assembly on the WSIS+10 Review.

Opportunities for civil society engagement

- There were two official opportunities to input into the draft outcome text of the process; the first draft, or 'non-paper' (July 2015) and the second draft or 'zero-draft' (October 2015). A third round of comments on the draft was opened by the co-facilitators following the IGF, following pressure from groups, who wanted an additional chance to comment on the draft. More than 100 civil society groups in total either submitted text into one or both of these documents, or signed onto joint submissions.
- Non-government stakeholders also participated in the two in-person Informal Interactive Consultation Meetings held in July and October 2015, and were able to engage with the co-

facilitators at the 2015 Internet Governance Forum (IGF) at a dedicated main session and side meetings. Notably, civil society were also able to participate in the High-Level meeting where the outcome text was adopted as panelists/speakers.

Lessons learned

- A lack of regional consultations on the review process (the two official ones were both held in New York) meant engagement was out of reach for many civil society actors, for both financial and practical reasons. Additionally, unlike the WSIS summits, there was no civil society bureau at the UN or division to facilitate input. Therefore, civil society had to take advantage of more informal opportunities, including an open consultation at regional IGFs and at the global IGF which was attended by the co-facilitators.
- The specific modalities for the six-month intergovernmental process were not clear until the co-facilitators were appointed in June 2015, giving little time to coordinate engagement. Therefore, creating ample opportunities for civil society to engage through national, regional and global IGFs, dedicated roundtables at the national level with policymakers and ability to participate in and directly engage (including through representation on panels) at the High Level Meeting itself were important.

The Universal Periodic Review of the Human Rights Council

Context

- The Universal Periodic Review is a unique State-driven peer review mechanism of the Human Rights Council whereby the human rights record of all UN member states is reviewed every four to five years.
- The UPR, created by the UN General Assembly in 2006[8], addresses human rights violations, receives complaints, and makes recommendations on how to improve the fulfillment of human rights. UPR covers a broad range of human rights, including their online dimensions.
- UPR allows every State human rights record to be reviewed, according to the same parameters and procedures by other governments and by civil society organisations and other stakeholders. The outcome of the review is non-binding.

Opportunities for civil society engagement

- The UPR is a state-led process and civil society must rely on governments to raise their issues and recommendations. However, civil society can play an important role in making sure that relevant information on human rights violations is included in the review. Any civil society organization can prepare a report that can be submitted as an individual organisation and/or a coalition.
- Civil society can advocate for the protection, promotion, and respect of human rights at the national level by submitting a report with human rights online recommendations.

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[8] http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/RES/60/251&Lang=E

- CSO can conduct direct advocacy with member states -delegations of recommending states in Geneva and the capital.
- Civil society organizations can participate in the UPR working group session.

Lessons learned

- It might be difficult, expensive, or intimidating for civil society organizations to participate in initiatives at the UN in Geneva. While the barriers to entry for civil society to engage in the UPR are relatively low compared to other UN processes, effectively engaging requires coalition building, developing evidence-based reports; monitoring and following up on recommendations, organizing consultations nationally, among others.
- In 2011, for example, civil society in Brazil secured a specific UPR recommendation related to cybercrime legislation and human rights when, at the 13th session of the UPR in May 2012, Brazil accepted a recommendation from Estonia to consider freedom of expression issues when developing national cybercrime legislation. In 2012, the International Partnership Group for Azerbaijan, made a coalition submission to the UPR of that country addressing restrictions on freedom of expression online. The report was considered at the 16th session of the UPR in April 2013. At the review, Azerbaijan accepted recommendations to expand media freedoms across print, online to take effective measures to ensure the full realization of the right to freedom of expression, including on the internet.[9]

International Telecommunication Union (ITU)

Context

- The ITU is the UN Specialized Agency responsible for all matters related to information and communication technologies. ITU has 193 Member States and it is organized in three sectors: Standardization (ITU-T), Radio-Communication (ITU-R) and Development (ITU-D).[10]
- In the follow up of the UN World Summit of the Information Society (WSIS), ITU is the lead organisation for Action Line 5: Building Confidence and Security in the Use of ICTs[11]. ITU has developed an extensive program for cybersecurity, inter alia by publishing a "Cybersecurity Index"[12] and guidelines to develop National cybersecurity strategies[13].
- The ITU is an intergovernmental organization that has a technical component and a regulatory function. Decisions made at the ITU often carry more weight than those made in other forums. So

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[9] https://www.apc.org/en/project/universal-periodic-review

[10] https://www.itu.int/en/about/Pages/default.aspx

[11] https://www.itu.int/net4/wsis/forum/2016/Agenda/Session/120

[12] https://www.itu.int/en/ITU-D/Cybersecurity/Pages/global-cybersecurity-index.aspx#:~:text=The%20Global%20Cybersecurity%20Index%20(GCI,different%20dimensions%20of%20the%20issue.

[13] https://www.itu.int/myitu/-/media/Publications/2018-Publications/BDT-2018/Guide-to-developing-a-national-cybersecurity-strategy---Strategic-engagement-in-cybersecurity.pdf

while its decisions may be technically non-binding, they are influential, and can therefore have significant impacts on human rights.

- In 1994, the ITU changed its constitutions and allowed non-state actors from the private sector to join the ITU as so-called "sector members". Sector members are active in the subsidiary bodies of the ITU, but do not have voting rights in the ITU Plenipotentiary Conferences. ITU sector members are coming mainly from the private sector, the technical community and academia.

Opportunities for Civil Society Engagement

- ITU organizes an annual "WSIS-Forum" which covers all WSIS Action Lines. This event, very similar to the Internet Governance Forum (IGF), offers numerous opportunities for civil society representatives to organize workshops and to participate in plenary discussions, where they can raise their voice on equal footing.
- Within ITU, there are different working groups, such as the ITU-T Study Groups (SGs) and ITU-Council Working Groups (CWGs), that provide input in different matters.
- ITU-D Study Groups provide an opportunity for all Member States and Sector Members to share experiences, present ideas, exchange views, and achieve consensus on appropriate strategies to address ICT priorities.
- Some of the CWGs, as the Council Working Group on International Internet-related Public Policy Issues (CWG-Internet), organise public consultations where all non-state actors, including civil society representatives that are not Sector Members, can participate on equal footing. CWG-Internet is tasked to identify, study and develop matters related to international Internet-related public policy issues and to disseminate its outputs throughout ITU's membership, as well as to report annually to the Council on activities undertaken on these subjects.

Lessons Learned

- Participating in CWG-Internet open consultation is a way to influence ITU official documents' language; CWG-Internet open consultation to all stakeholders, poses an opportunity for civil society organizations that are not Sector Members to present their views to the ITU Council.
- ITU engagement is an example of how different sectors can work together through alliance building, collaboration and coordination. Civil society is mainly engaged in ITU discussions via sector members from academia and the technical community. Civil society organizations that are ITU Sector Members, can include in their delegations other groups allowing them to participate in ITU mechanisms.

Organisation for Economic Co-operation and Development (OECD)

Context

- The OECD is an intergovernmental organisation of 38 member states. Its main aim is to promote economic cooperation and sustainable development.[14]
- For more than 20 years the OECD has been very active in areas like the digital economy and cybersecurity. It has produced numerous reports and studies and adopted recommendations to member states.

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[14] https://www.oecd.org/

- The OECD work on the digital economy is coordinated by the Directorate for Science, Technology and Innovation (STI), and developed by the Committee for the Digital Economy (CDEP).
- Non-State actors can participate in policy discussions via so-called advisory committees. There are four such advisory committees for business, trade unions, the technical community and civil society.[15]

Opportunities for Civil Society Engagement

- The Civil Society Information Society Advisory Council (CSISAC)[16] facilitates the exchange of information between civil society organisations and the OECD Committee on Digital Economy Policy (CDEP) with the aim to contribute pro-actively to better informed policy decisions on digital issues;
- CSISAC has more than 100 institutional members and over 300 individual members. It is led by a Steering Committee. The Steering Committee nominates a liaison who serves as a point of contact between civil society and the intergovernmental CDEP. The CSISAC liaison and CSISAC Steering Committee can participate in the meetings of the CDEP together with country delegations.

Lessons learned

- CSISAC is formally recognised as an additional body by the OECD. The recognition of CSISAC was the result of an effort initiated to promote participation parity in global policy-making and achieved by a coalition of NGOs, the Public Voice coalition,[17] at the OECD 2008 Seoul Ministerial;
- CSISAC strengthens the relationship between civil society and the OECD, leading to better-informed and more widely accepted digital policies;
- Since its formal recognition, CSISAC has been successful in enlarging the number of experts and non-governmental organizations involved in the OECD process and persuading the OECD to improve its outcomes by fostering a civil society perspective

OSCE Office for Democratic Institutions and Human Rights (ODIHR)
Context

- The Organization for Security and Co-operation in Europe (OSCE)[18] has a comprehensive approach to security that encompasses politico-military, economic and environmental, and human aspects. It therefore addresses a wide range of security-related concerns, including arms control, confidence- and security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities. All 57 participating States enjoy equal status, and decisions are taken by consensus on a politically, but not legally binding basis.

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[15] https://www.oecd.org/about/civil-society/

[16] https://csisac.org/

[17] https://thepublicvoice.org/issues_and_resources/privacy-organizations/

[18] https://www.osce.org/

- The Office for Democratic Institutions and Human Rights (ODIHR)[19] is the principal institution of the Organization for Security and Cooperation in Europe dealing with the human dimension of security. The Office, originally named Office for Free Elections, was created in 1990 by the Charter of Paris and established in 1991. ODIHR provides support, assistance and expertise to participating States and civil society to promote democracy, rule of law, human rights and tolerance and non-discrimination. ODIHR observes elections, reviews legislation and advises governments on how to develop and sustain democratic institutions. The Office conducts training programmes for government and law-enforcement officials and non-governmental organizations on how to uphold, promote and monitor human rights.
- The Helsinki Document of 1992 (Chapter IV)[20] called for increased openness in OSCE activities and for expanding the role of NGOs. In particular, in paragraph (15) of Chapter IV, the participating States agreed to facilitate during OSCE meetings "informal discussion meetings between representatives of participating States and NGOs".
- In line with these provisions, since 1993, ODIHR organizes Europe's largest annual human rights conferences —the Human Dimension Implementation Meetings (HDIMs). HDIM provides a platform for 57 OSCE participating States, Partners for Co-operation, OSCE structures, civil society, international organizations and other relevant actors to take stock of the implementation of the OSCE human dimension commitments, discuss associated challenges, share good practices and make recommendations for further improvement.
- According to the decision of the Permanent Council (PC.DEC/476, 23 May 2002), each year, the Chairmanship-in-Office organizes three informal Supplementary Human Dimension Meetings (SHDMs), in the framework of the OSCE Permanent Council, in order to discuss key substantive concerns raised at previous Human Dimension Meetings or Review Conferences. The OSCE/ODIHR and, when required, other OSCE structures and institutions assist the Chairmanship-in-Office in preparing the SHDMs.

Opportunities for civil society engagement

- In line with these provisions, the OSCE encourages participation by civil society organizations at the Human Dimension Meetings (HDMs), including one HDIM and three SHDMs annually. Participants wishing to attend the meeting are requested to register online through the OSCE/ODIHR Conference and Event Registration System. Participation in the meeting is free of charge.
- Civil society organizations are also encouraged to organize side events. Booking of side events is done on a 'first come, first served' basis so participants are advised to enter the booking system immediately after the opening.
- During the meeting, recommendations for the OSCE participating States, OSCE institutions, including the OSCE/ODIHR, OSCE executive structures, other intergovernmental organisations as well as civil society actors are identified and addressed.

Lessons Learned

- The two-week meeting is not mandated to produce any negotiated texts, but summary reports prepared by the Rapporteurs are presented in the final plenary meeting.

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[19] https://www.osce.org/odihr

[20] https://www.osce.org/files/f/documents/7/c/39530.pdf

- The participation of civil society at HDMs strengthens the relationship between civil society and the OSCE/ODIHR, leading to better-informed discussions.

Conclusions and Recommendations

We encourage the OEWG to engage and allow meaningful participation in OEWG discussions of civil society, academia, the private sector, and the technical community. As noted in the good practices and lessons learned, meaningful participation requires a combination of both formal and informal opportunities to engage, easy and transparent access to information and clear channels for communication with decision-makers.

The OEWG should interact with other interested parties, including businesses, NGOs and academia because the discussion of the OEWG agenda and the implementation of its outcomes cannot be done by governments alone. Therefore, additional and complementary expertise is needed. For example, the nature of already identified threats (including "potentially devastating security, economic, social and humanitarian consequences of malicious ICT activities on critical infrastructure") and nature of digital technologies (including their development, supply, and maintenance) linked to those threats means that the expertise required will go beyond what nation states are able to provide. Furthermore, those impacted by state actions are also non-governmental actors. As the consensus report of the OEWG states "the OEWG has benefited from the expertise, knowledge and experience shared by representatives from intergovernmental organizations, regional organizations, civil society, the private sector, academia and the technical community". It also states that "The value of further strengthening collaboration, when appropriate, with civil society, the private sector, academia and the technical community, was also emphasised in this regard".

Building on the previous sections, we present here further recommendations to support the implementation of the agreed language in the OEWG resolution on stakeholder engagement.

- Both ECOSOC and non-ECOSOC accredited NGOs should be able to participate in all open meetings of the OEWG, and any accreditation and registration process should be made clear/available in good time (e.g three months in advance) of meetings, to allow civil society adequate time to prepare.
- If for any reason, non-ECOSOC accredited NGOs are not provided with accreditation, the reasons should be made clear and transparent to both OEWG member states and the NGO that applied.
- Once accredited, NGOs should not be required to reapply for subsequent sessions within a single process.
- Accreditation should allow access to both in-person and virtual/hybrid format meetings.
- Meetings of the OEWG should include dedicated sessions in which accredited organisations can address the meeting, whether virtually or in-person.
- Accredited organisations should be provided official conference documents, and allowed to provide materials to delegations at their own expense.
- Accredited organisations should be allowed to provide written input to discussions through a dedicated online portal that is publicly accessible.
- States should invite civil society as experts on their delegations, particularly during negotiations/closed meetings.
- NGOs should be invited to participate as panellists/speakers during open consultations.
- In addition to providing opportunities for civil society to participate in open meetings of the OEWG, the OEWG Chair's support team and member states should organise high-level consultations outside the OEWG, e.g at the Internet Governance Forum (IGF), RightsCon, etc. to gather stakeholder input.
- The OEWG should consider setting up an open, inclusive and transparent multistakeholder group to provide expert advice to OEWG discussions.