



Towards an Open ITU

by Robert Horvitz

<bob@openspectrum.info>

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SUMMARY

The purpose of this text is to give anyone interested in the liberalization¹ of public access to the radio spectrum a map of the International Telecommunication Union's policymaking processes which is detailed enough to indicate opportunities and obstacles, while suggesting linkages between issues, events and people that might be exploited to accelerate reform.

Created in 1934, the ITU provides a variety of services to the 191 countries that are its members: they administer the "settlements process" by which telephone network operators share the income and cost of handling transborder phonecalls; they supervise the assignment of orbital slots and frequencies for satellites; they help resolve conflicts in radio frequency use caused by different countries making incompatible authorizations; they develop and approve standards to ensure transnational compatibility in communication systems; etc.

Such activities, while important, did not directly involve the public, so for the first 50 years of its existence, the ITU operated in the background, almost as a private club for regulators and national telecom agencies.

But starting about 20 years ago, two developments began undermining its authority: the demonopolization and privatization of telephone networks around the world, followed by the rapid and largely unregulated growth of the Internet. The ITU responded by trying to reposition itself as the "focal point for all matters relating to telecommunications in the global information society of the twenty first century."² It broadened its agenda from the development of technology to technology for social development. And the ITU Constitution was amended to allow "entities and organizations" other than "states" to join – albeit with fewer rights than states.

While the member states continue to assert sovereignty in some areas of its work, the ITU is now the primary global venue for analyzing, negotiating and deciding basic issues in telecom

¹ During the last 25 years, the term "liberalization" has acquired a narrow, *economistic* meaning in spectrum policy: it has become synonymous with letting market forces distribute – and redistribute – radio licenses. Here we use "liberalization" in a wider political sense, meaning to reduce bureaucratic restrictions on access to and use of radio resources. The narrower economistic meaning is biased in favor of licensing, auctions and commoditization; the broader political meaning is biased in favor of license-free band-sharing, with the ultimate stage of liberalization being "open spectrum."

² "Strategic Plan 1995-1999," ITU Plenipotentiary Resolution COM4/1 (Kyoto, 1994), - http://www.itu.int/osg/spu/stratpol/plan/sp95_99e.doc

regulation. With networks becoming all-purpose and ubiquitous, our channels of perception and expression, and even the structure of society itself, are all affected by decisions made in the ITU.

Yet despite the fact that it pledged in 1994 to “determine under what conditions non-profit organisations... might take part in ITU activities,” hardly any of the ITU’s non-government members are civil society organizations. Nearly all of the 568 “Sector Members” and 153 “Associates” are large firms operating transnational networks or producing electronic communications equipment.

Noting that, in 2006 Switzerland and Argentina proposed that the ITU should look for “ways in which a wider range of players can take part in the work of the ITU.”³ A public consultation on that topic was held in the first half of 2008 and a report on the consultation is expected to be released in October 2009. That may encourage the ITU Plenipotentiary Conference in October 2010 to consider rule changes allowing for more observers to attend ITU events and/or granting more rights or lower membership fees for nongovernmental organizations..

This report identifies three policymaking processes as priorities for civil society engagement with the ITU in order to accelerate spectrum reform. These processes enhance each other so they should be regarded as complementary. ITU-R Study Group 1 is responsible for radio spectrum management issues. It has several questions assigned to it which bear directly on “open spectrum.” It is not an exaggeration to say that the work of SG1 in the next 2 years will decide if “open spectrum” has a chance to spread worldwide or if it will be blocked. “Associate” membership enables nongovernmental organizations to participate in the work of one ITU Study Group, so that option is considered in detail below.

Some of the questions now before SG1 will result in proposals likely to be transformed into treaty obligations at the World Radiocommunication Conference in 2012. So WRC-12 is a second high priority process. And related to that, US preparation for WRC-12 is a third priority process. The Obama administration has already shown its receptivity to “open spectrum” thinking, so if civil society groups contribute to the development of US positions on various WRC-12 agenda items, they may not only influence the results of the Conference but earn places in the US Delegation.

What is the ITU?

The International Telecommunication Union was created in 1934 to facilitate global cooperation in the development of all forms of telecommunication. It inherited, combined and enlarged the functions of the International Telegraphic Union (formed in 1865) and the International Radiotelegraphic Union (formed in 1908). In 1947 the ITU became a specialized agency of the United Nations. Its legal “charter” is the International Telecommunications Convention, a treaty ratified by 191 countries who thereby joined the ITU. The ITU’s Constitution is part of the Convention.

Because the member states claim sovereignty in many spheres of ITU activity, the Union is a “meta-regulator” more than a regulator, and many of its pronouncements are in the form of Recommendations rather than directives. So while the 10,000-plus pages of the International Radio Regulations have treaty status, and are therefore binding, any ITU member can file a “reservation” stating that they will not be bound by a particular Regulation, or add a “footnote” to the International Table of Frequency Allocations indicating that they have a different use for a particular band of frequencies. That is enough to exempt themselves from those allocations and

³ “Results of the ITU Plenipotentiary Conference,” by Frédéric Riehl, Swiss Federal Office of Communications, 27 November 2006 – <http://www.uvek.admin.ch/dokumentation/00474/00492/index.html?lang=en&msg-id=8517>

rules. Such flexibility lets the ITU act without having a perfect consensus, even as it lets countries innovate and accommodate local needs. It enabled the United States to introduce license-free communications in bands allocated to “industrial, scientific and medical” applications, for example – an innovation which spread to many other countries.⁴

The extent to which nations are autonomous in their use of spectrum is a key issue for this report: if countries can selectively ignore ITU rules, why bother trying to change those rules?

Departing from ITU rules is actually possible only within limits. The “bottom line” is that a country can do what it likes with spectrum *so long as no harmful interference is caused to other countries’ radio systems which are following ITU rules*. In practice, that means short-range applications can be treated more independently (short-range signals being less likely to reach across a border). That is why short-range devices like Wi-Fi and RFID are so important to spectrum reformers.⁵

On the other hand, ignoring ITU rules is getting more difficult now, for other reasons. First, the market for electronic communications equipment (particularly for wireless devices) is global and highly competitive. Most of the equipment sold and used everywhere comes from a small number of firms based in an even smaller number of countries. Market concentration implies sensitivity to economies of scale: products which can be used in only one country are not as profitable to make as products that can be used everywhere. So a country with unique allocations may find that no one wants to produce equipment fitting their requirements. Conversely, because of globalized trade and the portability of modern radios, it is difficult to limit the availability of devices to jurisdictions where they are legal to use. After the fall of communism, for example, Russia found that it could not maintain its idiosyncratic pattern of frequency use, which had been designed to make it hard for their citizens to tune in foreign broadcasts while endowing their security services with far more spectrum than other countries grant theirs. Because Russia did not make good two-way radios that civilian businesses could use to coordinate their delivery fleets, taxis, etc., Russian businessmen started buying such radios abroad. But when used in Russia, without permission, as they have been since the 1990s, these nomadic radios interfered with military systems all over the country. Confiscating the fleet radios would jeopardize the economy’s recovery, so rather than risk that, the government decided it simply had to accept reality. Even though their “reservations” are written into the ITU treaty, many are now obsolete as Russia has begun harmonizing their frequency allocations with the rest of the world.⁶

Second, new radio technologies emerged in the past decade which are still unfamiliar to most national regulators – ultra-wideband (UWB) and “software-defined” radios (SDR) to cite the clearest examples. Both promise massive increases in spectrum efficiency while also facilitating liberalization.⁷ So both technologies are extremely beneficial to society, yet neither fits the assumptions of traditional spectrum management. In such cases, national regulators have hardly any choice but to let ITU experts figure out rules for safely introducing these technologies. By

⁴ An important collection of papers about the origins of license-free wireless communication was generated by the George Mason University Law School’s conference on “The Genesis of Unlicensed Wireless Policy” (April 2008) – see <http://www.iep.gmu.edu/UnlicensedWireless.php>

⁵ Another reason Wi-Fi and RFID are of interest, of course, is that they have great social impact.

⁶ The information about Russia in this paragraph comes from a Russian-language article published in 2005: <http://it-daily.ru/?ID=47883>

⁷ Martin Sims argues that globalization and technology evolution are now driving spectrum liberalization more effectively than the rhetoric of reform advocates. See “WRC-07: The Technological and Market Pressures for Flexible Spectrum Access,” *Communications & Strategies*, No. 67 (3rd quarter 2007), pages 1-15 – http://mpra.ub.uni-muenchen.de/6910/1/MPRA_paper_6910.pdf. A corollary of that argument is that reform advocates must learn to take advantage of market forces and technology evolution to achieve the policy changes they desire. That is precisely what this report proposes.

the same token, without global standards, the cost and complexity of developing new UWB and SDR products would be greater, reducing the odds of success in the marketplace. So national regulators and manufacturers both value ITU leadership when new technologies are introduced.

A third reason why individual nations are finding it harder to depart from ITU rules is regionalization. Regional associations of regulators have sprung up in all parts of the world. They provide convenient peer-to-peer fora for resolving national differences in frequency use, and are an important new factor within the ITU. As Liching Sung pointed out, the 2003 World Radiocommunication Conference was

“notable for a maturation of the trend that began in 1992, of countries working through regional telecommunications organizations in preparing positions and in negotiating agreements. Six regional groups now encompass nearly all ITU member states. Regional bloc-voting, as a strategy in making international spectrum policy, is strongly encouraged by the ITU. At this conference, committee chairmen actively looked for opportunities to make progress toward consensus by encouraging action or compromise at the regional level, rather than country-by-country.”⁸

The regional organizations thus connect countries to the ITU more firmly than in the past, while incidentally reducing national autonomy. “National sovereignty” was a core principle of radio regulation a century ago, and it is still a fact in licensing, auctions and allocations. But in terms of policy and strategy, it has become almost a powdered wig.

The ITU is now the primary global venue for analyzing, negotiating and deciding the fundamental issues in telecom regulation. Its decisions carry great – although not infinite – weight, so *working with the ITU is an effective way to encourage change in the domestic regulations of many countries simultaneously, particularly in countries where domestic political pressures for change are politically suppressed or ineffective.*

In addition to hosting discussions and offering regulatory guidance, the ITU provides a variety of services to its members – and to equipment manufacturers, system operators and the general public. Some of these services are:

- Administering the “settlements process” by which telephone network operators share the income and cost of handling transborder phonecalls;
- Supervising the assignment of orbital slots and frequencies for satellites;
- Helping to resolve conflicts in frequency use caused by different countries making incompatible authorizations;
- Publishing reports on emerging issues and market/technology trends;
- Developing and approving standards to ensure transnational compatibility in communication systems;
- Seminars and workshops for regulators, and other forms of institutional support, aimed at stimulating economic growth by encouraging more rapid deployment of communications technologies (particularly in underdeveloped countries).

In sum, “the ITU is at the forefront in giving substance to the right to communicate, especially in relation to universal service and access...”⁹

⁸ “Observations from WRC-03,” by Liching Sung, *International Journal of Communications Law and Policy* (winter 2003/2004), page 3 – http://www.ijclp.net/ijclp_web-doc_10a-8-2004.html

⁹ “Enhancing the Capacity of NGOs to Achieve Development Aims Through the Use of Telecommunication – Final Report on Study Group 2 Question 10g/2,” by Seán Ó Siochrú, (Platform for Cooperation on Communication and Democratisation), 18 August 1999, page 31.

However, the ITU Constitution limits full membership in the Union to states.¹⁰ Even though private businesses have provided telecom services since the days of Morse, Bell and Marconi, commercial firms were never accepted as equal partners in the organization. So the ITU's claim that it has been a "public-private partnership organization since its inception"¹¹ is an exaggeration. Nevertheless, their recent creation of "Associate" and "Sector Memberships" shows that they know the ITU must broaden its base of support if it wants to remain relevant in an era of user-empowerment and financially overburdened governments.

The ITU's structure

The ITU is a complex institution, the result of many layers of history and compromise, and equally the product of a need for caution and care in prescribing the details of systems on which huge investments with long replacement cycles – and often safety of life and national security – will depend. To simplify the task of describing of how the ITU works, we can separate the organization of the staff from the large array of gatherings which draft treaties, appoint people to management positions, etc. The gatherings and the staff structures are in fact complementary.

About 820 people work at ITU headquarters in Geneva, Switzerland, and in the 11 field offices.¹² They are organized into 4 main groups:

- the General Secretariat¹³
- the Radiocommunication Bureau
- the Telecommunications Development Bureau, and
- the Telecommunications Standardization Bureau.

Each Bureau is the executive agency of its "sector." The Radio Bureau, for instance, is the executive agency of **ITU-R**, which also includes Study Groups, the Radio Regulations Board and periodic gatherings with decision-making authority, like the Radiocommunication Assembly (see the organigram on page 6). Similarly, the Telecom Development Bureau is the executive agency of **ITU-D**, which has Study Groups and gatherings, too, and the Standardization Bureau is the executive agency of **ITU-T**, with its Study Groups and gatherings. ITU-T does not concern us and ITU-D will be only briefly mentioned.

The **Coordination Committee** is the core of the ITU's management team. It consists of the Secretary-General, the Deputy Secretary-General and the Directors of the three Bureaux.

¹⁰ See Article 2 of the Constitution – <http://www.itu.int/net/about/basic-texts/constitution/chapter1.aspx>

¹¹ This claim is made in the web page entitled "ITU's role in global communications" – <http://www.itu.int/net/about/global-communications.aspx>. In fact, it was "the tradition of the [ITU] to allow private operating agencies to assist at the Administrative Conferences... [but] no proposal could be submitted by a private operating agency... unless it was countersigned or supported by the head of the delegation of the country concerned." When the UN was created, the ITU began allowing NGOs with "consultative status" with the Economic and Social Council to attend Administrative Conferences as observers. See *The International Telecommunication Union: An Experiment in International Cooperation* by George A. Codding Jr. (New York: Arno Press, 1972), pages 284-5.

¹² The ITU's regional offices are in Addis Abba (for Africa), Brasilia (for the Americas), Cairo (for the Arab States), Bangkok (for Asia and the Pacific) and Moscow (for Europe and the CIS countries). There are also 4 sub-regional offices in Africa, 4 sub-regional offices in Latin America, 1 sub-regional office in Asia and 2 sub-regional offices in Europe and the CIS (not counting the Geneva Headquarters).

¹³ This is also called the Office of the Secretary General, even though it does not serve only him.



The ITU's top official is the Secretary-General. Since the start of 2007 that has been **Hamadoun Touré** from Mali (picture at left).¹⁴ Dr. Touré's background is primarily in satellite communications. He worked at INTELSAT for about 10 years, as regional director for Africa and, before that, as telecom officer in their Assistance and Development Programme. Before being elected Secretary-General, he was director of the ITU's Telecom Development Bureau (in ITU-D). Significantly, he was also the main point of contact for a group of NGOs seeking to expand civil society access to the ITU in the 1990s.¹⁵

After two terms as director of ITU-T, China's **Houlin Zhao** was elected Deputy Secretary-General (at the same time as Touré). For the past two decades, he has worked under various titles as an ITU liaison to other standards bodies.



The Secretary-General and Deputy Secretary-General oversee the General Secretariat, which is responsible for the administrative and financial aspects of Union activities, including corporate functions like communicating with the public, procurement, publications, personnel and legal departments, relations with other international organizations, and support for the work of ITU-R, ITU-D and ITU-T. The Secretariat also manages the ITU's innumerable conferences and gatherings, coordinating their schedules, arranging for facilities, handling logistical support, preparing and translating documents, etc. The work of the Corporate Strategy Division (CSD) is particularly interesting to people outside the ITU because it performs market research and monitors regulatory trends and new developments in information and communications technology which might require adjustments in the ITU's work plan or strategy.

The director of ITU-R is **Valery Timofeev** (pictured at right). Before coming to the ITU in 2002, he was Russia's Deputy Minister for Communications and Informatization, as well as Deputy Chairman of Russia's Radio-Frequency Commission. He led many Russian delegations to ITU events and chaired the 1993 World Radio-communications Conference (WRC). Because Timofeev is now serving his second 4-year term as ITU-R Director – the maximum allowed by the Constitution – in 2010 his will be the only top management position where the incumbent cannot be a candidate. So would-be successors to Timofeev will discreetly begin campaigning this year. Because the current Secretary-General is African, the Deputy Secretary-General is Asian, the head of ITU-D is from the Arab group and the head of ITU-T comes from Europe, the goal of maintaining geographical balance favors the election of someone from the Americas.



Periodic Management Events¹⁶

Plenipotentiary Conferences are held every 4 years.¹⁷ They define the ITU's general policies, set budget limits and adopt strategic plans for the next 4 years, amend the Constitution and Convention, if necessary, and elect the ITU's senior management, including the members of the

¹⁴ His official biography can be found at <http://www.itu.int/net/ITU-SG/biography.aspx>

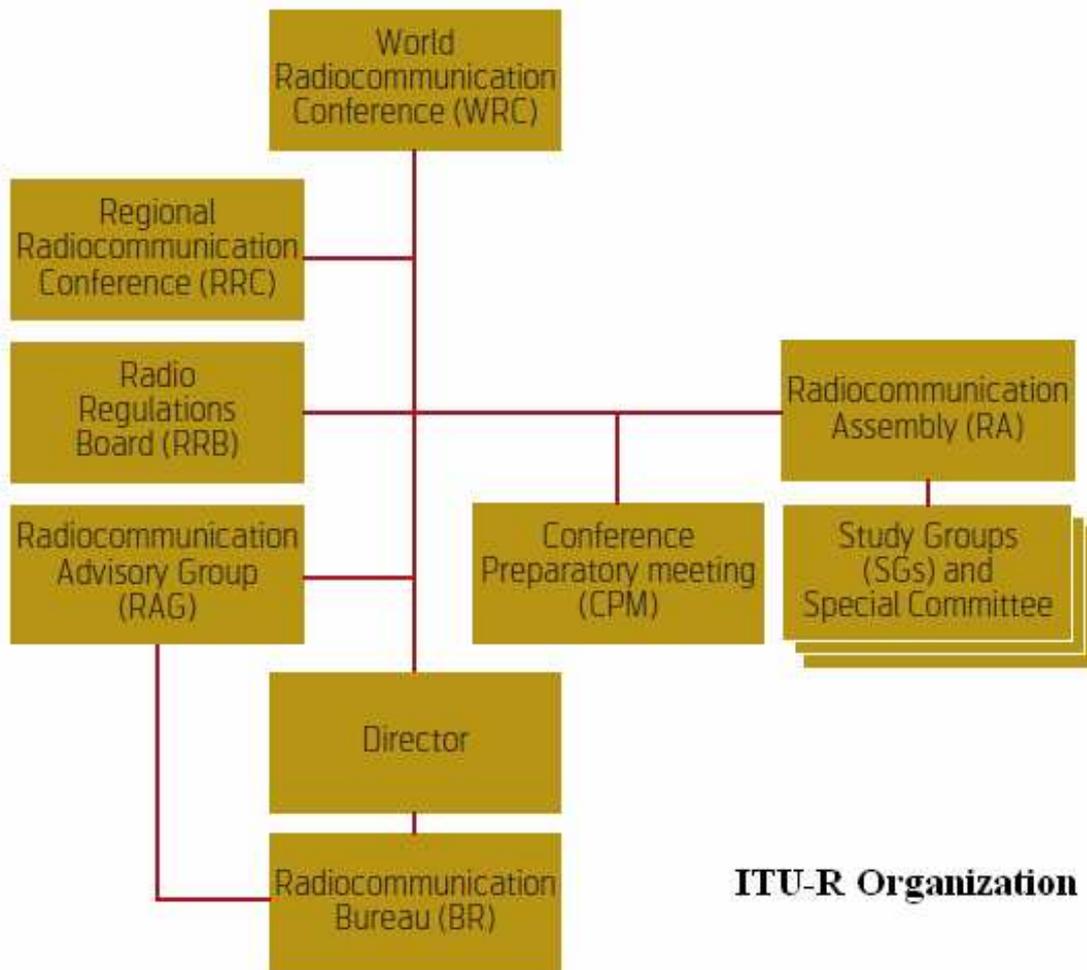
¹⁵ See below.

¹⁶ Except for personal comments about WARC-87 and information about the WRC-12 agenda, the descriptions in this section are largely based on Articles 1-22 of the ITU Convention – <http://www.itu.int/net/about/basic-texts/convention/chapteri.aspx>

¹⁷ The next Plenipotentiary will be in Veracruz, Mexico, in October 2010.

Radio Regulations Board. Plenipotentiaries also choose the countries whose representatives serve on the ITU Council (see next paragraph). “Sector members” can attend the Plenipotentiaries as observers, but only representatives of the ITU member states can address the conference and vote.

Meetings of the 46-member **ITU Council** are scheduled for the years between Plenipotentiaries.¹⁸ The Council’s task is to monitor expenditures and the implementation of the ITU’s work program, check that the Union is running smoothly, approve the annual budget and report to ITU members on the continuing appropriateness of policies approved by the most recent Plenipotentiary.



The **Radio Regulations Board**’s 12 members are elected at the Plenipotentiaries. They perform their duties on a part-time basis, meeting in Geneva up to four times per year. The RRB approves the procedures used by ITU-R in applying the International Radio Regulations and registering frequency assignments made by member states; considers appeals against ITU-R decisions concerning frequency assignments; reviews reports of unresolved interference investigations carried out by ITU-R and formulates Recommendations; provides advice to Radiocommunication Conferences and the Radiocommunication Assemblies; etc. The Director of ITU-R is head of the Radio Regulations Board.

¹⁸ The last ITU Council meeting was in November 2008 and the next will be in October 2009.

Radiocommunication Assemblies (RA) usually meet every 4 years, sometimes in conjunction with a WRC. They are responsible for establishing and disbanding ITU-R Study Groups, approving and assigning Questions to each Study Group, approving the results of the Groups' studies and issuing ITU-R Recommendations. In addition, RAs respond to requests from ITU conferences and suggest topics for the agendas of future WRCs.¹⁹ The last RA approved a work program for 2007-2011 that encompasses 300 Study Questions.

Between RAs, the **Radiocommunication Advisory Group (RAG)** acts on similar matters too urgent to wait for the next RA.²⁰ The RAG reviews the RA's "priorities, programmes, operations, financial matters and strategies" and monitors preparations for Regional and World Radiocommunication Conferences. Membership in the RAG is open to the chairmen of the ITU-R Study Groups and representatives of the ITU members and Sector Members. 117 people attended the RAG meeting in January 2007.

World Radiocommunication Conferences (WRC) are large, treaty-making events held every 3 or 4 years to review and revise the International Radio Regulations and the International Table of Frequency Allocations. Since some issues require study before new regulations can be drafted, new Study Questions are another WRC output. The Radiocommunication Assembly assigns these to the Study Groups so the results can inform the deliberations of a future WRC.

WRC agendas begin to take shape 4-6 years before the actual conference. With such a long lead time, the ITU must recognize emerging issues early and indeed it does, despite its stodgy reputation and painstakingly slow deliberations. Two years before the conference, the ITU Council issues a final agenda that a majority of member states must approve for it to become official. The agenda is strongly influenced by the decisions and recommendations of earlier WRCs, so it is not quite accurate to speak of these as periodic events: they form a continuous chain, with preparations for the next WRC (and the one after that) beginning at the previous WRC (and the one before that). This continuity encourages member states to send some of the same people to successive WRCs, as only repeat attendees fully understand the history and context of the discussions. That of course makes "outside" interventions difficult.

Until 1992, WRCs were called World Administrative Radio Conferences, and the author was fortunate in attending WARC-1987 as an NGO observer representing the Association of North American Radio Clubs. Like WARC, WRCs are attended by 2000-2500 delegates, a large majority of whom are government employees with engineering and/or regulatory backgrounds, or diplomats with a special interest in communications technology. National delegations differ greatly in size and composition (the ITU lets member states choose just about anyone they want, so long as they can be considered a legal, regulatory or technical expert²¹). Rich countries might

¹⁹ For additional information see "Working methods for the Radiocommunication Assembly, the Radiocommunication Study Groups, and the Radiocommunication Advisory Group," ITU-R Resolution 1-5 (2007) – <http://www.itu.int/publ/R-RES-R.1-5-2007/en>

²⁰ Much like the Radiocommunication Assembly, the World Telecommunication Standardisation Assembly and the World Telecommunication Development Conference meet every four years to elect Advisory Group and Study Group chairmen, to plan the work programs for ITU-T and ITU-D, respectively, etc.

²¹ There is no rule requiring every delegate to be a citizen of the state forming the delegation, but a strong sense of "national interests" being at stake in a game of "hardball diplomacy" makes the inclusion of foreigners in WRC delegations extremely rare. The range of delegates that a government considers politically acceptable also tends to be narrow, limiting chances for CSO inclusion. Even the US has shown that those who hold views different from their government cannot expect to be welcomed onto the national ITU team: the Bush White House was widely criticized for deciding "to bar from US [ITU] delegations global spectrum experts who have given campaign donations to Democrats." (See "Bush report outlines WRC preparation, sidesteps delegate controversy," by Jeffrey Silva, *RCR News*, 23 May 2005 - <http://rcrnews.com/news.cms?newsId=22745>) We have even heard from reliable sources (although we

send a hundred people²² while the poorest send just one or two. Large delegations often include private sector representatives – employees of electronic equipment or communication firms, occasionally an academic, very rarely a civil society person. For NGOs, the benefits of being part of a national delegation (in terms of access to documents and having the right to speak and make proposals at the Conference) are so great that it is always worth trying to achieve.²³ Unfortunately, it is not always possible.

WRC delegates spend 4 intense weeks in Geneva negotiating texts associated with 25-40 agenda items, mostly concerning frequency allocations. The aim is to formulate statements that no one finds objectionable while making sure that the meaning of the final draft is perfectly clear and technically sound. Most of this work goes on in small groups devoted to a single agenda item, with rapporteurs informing the afternoon plenaries (which all delegates attend) of their group's progress and the remaining problems. Dozens of color-coded documents are released every morning in multiple languages – the colors indicating what type of document it is and how close it is to finality. Meanwhile, the hallways outside the meeting rooms are constantly filled with groups of people trading news and gossip and talking through their differences.²⁴

So much needs to be done at these conferences that the delegates rely heavily on the **Conference Preparatory Meeting (CPM) Report**, a collection of texts compiled by the Secretary-General's office, the Study Groups and member states. The CPM process tries to identify areas of agreement and disagreement on agenda items so the WRC discussions can focus on unresolved issues. In some instances the CPM Report suggests compromises and specific verbal formulations, making it quite influential.

cannot confirm it) that the Bush Administration required ITU Sector Members from the US to get State Department approval for any proposals or submissions they made.

²² Because a large number of “open spectrum” advocates are US citizens, including the author; because the US has a long history of pushing for spectrum liberalization at the ITU; and because the Obama administration may be more interested in promoting “open spectrum” than previous administrations, this report pays extra attention to US channels for ITU involvement. (See the previous footnote for a note of caution, however.) That is not to say that opportunities to work through other countries do not exist: Switzerland was particularly effective in promoting the role of civil society at WSIS and now leads the effort to ensure that “a wider range of players can take part in the work of the ITU” (see below). Switzerland also is where the ITU headquarters are located, so they have special access to the Union's top management. Be that as it may, the US delegation to WRC-07 had over 140 people, including 72 “private sector advisors,” so it is not farfetched to think there might be room for one or two civil society representatives in the WRC-12 delegation. Moreover, long before WRC-07 actually took place, dozens of people attended FCC-organized meetings and working groups to help develop US positions on the various agenda items. The Federal Communications Commission is the agency which gathers WRC input from nongovernmental sources, while the State Department's International Telecommunication Advisory Committee (ITAC, composed of experts from the private sector) produces technical studies related to individual agenda items. With about half the places in the US delegation reserved for the representatives of various US government agencies, the process of choosing nongovernmental delegates begins with an announcement in the *Federal Register* about a year in advance inviting anyone interested in being a delegate to apply. About 6 months before WRC, the President chooses the head of the US delegation, who will have temporary Ambassador status. The head then works with the State Department to pick the rest of the delegation. Comparable in-country processes exist elsewhere. They must provide opportunities for NGO involvement if the government allows public input. That said, it is a shame that *none* of those who attended the 11 public meetings of the US WRC-07 Advisory Committee could be considered civil society representatives.

²³ Every country makes its own rules about the inclusion and role of nongovernmental delegates. For the US rules see <http://www.usitua.org/pol-role.htm>.

²⁴ Every WRC delegation submits a written report to their government explaining the results of the conference, with a few carefully chosen comments on the process. Such reports reveal little about the “hard-ball politicking” that occurs in late-night meetings and they tend to gloss over the details of how policy differences were actually expressed and/or resolved.

On the surface, WRCs seem dominated by technical issues, but economic competition, differences between social systems and geopolitical strategies are driving forces just below the surface. At WRC-03, for example, the delegates had to decide whether to allow outdoor license-free broadband access to the Internet in the 5 GHz band, or to maintain interference protection for the military radar systems currently using those frequencies. In the end, the Conference decided to do both by requiring new broadband systems to employ “smart” interference-reduction techniques. It was an impressive victory – the first worldwide allocation for license-exempt communication. Nevertheless, 65 member states – an unusually large number – submitted “reservations.”

WRC-12

A preliminary agenda for the 2012 World Radiocommunication Conference has already been released²⁵ and it includes several topics of great importance to “open spectrum”:

Agenda Item 1.2: Enhancing the international regulatory framework – ITU-R Working Party 1B (see next page) has been assigned the task of exploring whether the traditional approach to spectrum management²⁶ – allocating different bands to different services – needs reconsideration, in light of the fact that hybrid services are becoming common, one channel can now carry a many different services (thanks to TCP/IP and packetization) while “frequency-agile” equipment allows for dynamic/flexible band sharing. This work may also include revising Recommendation ITU-R SM.1538-2: “Technical and operating parameters and spectrum requirements for short range radiocommunication devices.”²⁷

Agenda Item 1.6: Reviewing allocations for passive services between 275-3000 GHz and considering procedures for regulating frequencies over 3000GHz. At the end of 2007, the UK Office of Communications (Ofcom) issued a landmark decision that will exempt from licensing most radio frequencies over 102 GHz, but not including the bands allocated to “passive services” like radio-astronomy and space research. ITU-R Working Party 1A has been assigned the task reviewing those allocations, while also suggesting strategies for regulating frequencies over 3000 GHz. The latter is an alarming development as those frequencies are outside the existing definition of “radio.” They are infrared and *optical* frequencies. The thought that one might someday need government permission to use a heat lamp, light bulb or laser should be worrying as it implies a loss of rights that we now take for granted.²⁸

²⁵ For the list of topics, see <http://www.itu.int/ITU-R/index.asp?category=study-groups&rlink=rcpm-WRC-12-studies&lang=en#{E02B4547-9E97-46EA-94D0-36878B32F0E2}>. For the assignment of Questions related to the WRC-12 agenda to ITU-R Study Groups, see <http://www.itu.int/ITU-R/index.asp?category=study-groups&rlink=rcpm-WRC-12-studies&lang=en>

²⁶ Agenda items are often assigned to more than one Study Group, in which case one SG is designated as the “lead” group and others are designated as “interested.” Here we identify only the lead Groups.

²⁷ This document is absolutely crucial for the promotion of license-exempt short-range radio applications. But its drafting has proven controversial since some countries do not want it to recommend the license-free model. The current version simply cites different regulatory approaches and says, in essence, “pick the one you like.”

²⁸ A warning about this was sounded in “Marconi’s Legacy: National Sovereignty Claims in Radio” - <http://ssrn.com/abstract=1107832>. However, a rationale for starting to regulate light-emitting devices could come from news reports like “Greek rioters use lasers against police as violence over boy’s death continues into second week,” *The Daily Mail*, 15 December 2008 - <http://www.dailymail.co.uk/news/worldnews/article-1094892/Greek-rioters-use-lasers-police-violence-boys-death-continues-second-week.html>

Agenda Item 1.19: Regulations enabling the introduction of software-defined radio and cognitive radio systems. This may be the best example of a technical issue with major implications for social freedoms and human rights: when radios can regulate themselves and automatically avoid interference while becoming more spectrally efficient, governments will be able to relax strict controls over radio users and their equipment. Therefore, *ITU support for the introduction of “cognitive” and “software-defined” radios represents our best hope for progress toward the implementation of “open spectrum” throughout the world.* On the other hand, these technologies also pose such a direct challenge to traditional spectrum management that the regulators in some countries may try to stop or delay their coming to market. The ITU’s choice of whether to fight or embrace these technologies – or more likely, how to satisfy supporters and opponents at the same time – will be made in ITU-R Working Party 1B between now and 2012.²⁹

Agenda 1.22: The impact of short-range devices on radiocommunication services. In many countries, short-range devices (SRDs) are license-exempt. Fears have been expressed that SRDs are increasing in quantity and diversity so fast that existing interference protection rules for licensed radiocommunication services may not be adequate. This agenda item, which is assigned to ITU-R Working Party 1A, could lead to tighter restrictions on license-free devices.

So, between now and WRC-12, Working Parties 1A and 1B will be studying Questions with great importance for “open spectrum.” See below for more about the ITU-R Study Groups.

Other Recurring Meetings

Global Symposium for Regulators – This popular annual event³⁰ originated in 2000 as the “Development Symposium for Regulators,” where experienced regulators offered new regulators advice and guidance on how to do their jobs. Now organized by the Regulatory Reform Unit of ITU-D, the GSR describes itself as a “free and frank dialogue” on urgent and emerging issues in telecom regulation. Each Symposium drafts and adopts a consensus statement on best practices in a particular policy domain – as in 2004 when the GSR unanimously endorsed “innovative approaches to managing the spectrum resource such as the ability to share spectrum or allocating on a license-exempt non-interference basis.”³¹ Two “side events” are now linked to the GSR. Starting last year, a “Global Industry Leaders Forum” met just before the GSR to give corporate CEOs and other business representatives an opportunity to formulate and submit comments and proposals to the GSR. The other side event is an annual gathering of the managers of *regional*

²⁹ The Radiocommunication Assembly in October 2007 approved Resolution ITU-R 54 (“Studies to achieve harmonization for short-range radiocommunication devices [SRDs]”). Recognizing the “increasing demand for, and use of short-range radiocommunication devices... throughout the world,” this Resolution ordered the ITU-R Study Groups “to collect information on SRDs which use advanced spectrum access and frequency tuning range [i.e., software-defined and cognitive] techniques” and “to advise on a mechanism... that may ease the use of relevant frequency bands... preferably on a global or regional basis, suitable for SRDs.” Translated into normal English, the Study Groups were told to identify spectrum which can be used by high-tech low-power radios on a global or regional basis, and to set conditions for “smart” use of those frequencies. Working Party 1A will lead this work with support from other WPs.

³⁰ No GSR was held in 2006.

³¹ See “Best Practice Guidelines for the Promotion of Low Cost Broadband and Internet Connectivity” – <http://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR04/consultation.html>. For most of its history, the ITU saw unlicensed radio only as a threat to licensed services and as an affront to the authority of national regulators. That makes their belated recognition of license exemption as a best practice so much more significant.

associations of regulators.³² As noted above, globalization of the market for electronic equipment, the need to resolve as many policy differences as possible ahead of WRCs, and the trend toward regional bloc voting in the ITU has made regional associations increasingly influential, even if they don't issue licenses or regulations – yet.

The ITU's 4th **World Telecommunication Policy Forum** took place on 22-24 April 2009 in Lisbon, Portugal.³³ Its purpose was “to provide a venue for exchanging views and information and thereby creating a shared vision among policy makers worldwide on the issues arising from the emergence of new telecommunications services and technologies, and to consider any other policy issues in telecommunications which would benefit from a global exchange of views.” Unlike the GSRs, the general public can attend WTPF plenaries, and “individuals [with] a proven interest in matters related to the WTPF... along with expertise and experience in Information Society issues” can attend the Forum and “Strategic Dialogue.” One of the main topics of this year's Forum was Internet governance.³⁴

Throughout the year, the ITU also organizes and hosts a large number of **training and educational workshops for regulators**. Most are regional in character and involve a mix of ITU staffers and specialists/experts from around the world. During March 2009 the workshops included:

- Next Generation Network planning and migration (in Busan, South Korea)
- World ICT Indicators meeting (in Cairo, Egypt)
- Regional seminar on telecom costs and tariffs (in Hanoi, Vietnam)
- Training workshop on integrating emergency telecommunications plans into national disaster management plans for the West African region (in Dakar, Senegal)
- Informal workshop for policymakers on proposed UN tools for assessing eGovernment readiness (in Geneva, Switzerland)

Additionally, since 2002, the ITU has offered **online courses** in English, Russian, Spanish and French.³⁵ Here are some of the year-long, instructor-led courses underway now:

- “Low-cost wireless broadband internet access in rural and remote areas” (in English)
- “Case studies on rural connectivity” (in English)
- “Modern trends of spectrum management automation” (in Russian)
- “The problem of market liberalization in the telecommunication field” (in Russian)

³² Thirteen of these regional associations now exist, although the 6 largest include virtually all ITU member states. For a complete list, see http://www.itu.int/ITU-D/treg/Documentation/Table_region_reg_assoc.pdf

³³ See <http://www.itu.int/osg/csd/wtpf/wtpf2009/>

³⁴ The World Summit on the Information Society (WSIS) refused to endorse a significant role for the ITU in Internet governance – much to the ITU's chagrin. “Netizens” tend to be wary of the ITU because “in many ways, the ITU is the antithesis of the culture [which] created the Net... There are very strong historic reasons why people do not wish the ITU to be involved with the internet in anything but an advisory role. If it were up to the ITU, the internet as we know it - a vast, cheap, interconnected network - simply would not exist.” For more on the intensity of this culture clash, see “ITU refuses to accept net governance agreement,” by Kieren McCarthy, *The Register*, 21 November 2005 - http://www.theregister.co.uk/2005/11/21/utsumi_rejection/. Nevertheless, the 2006 Plenipotentiary adopted several Resolutions concerning ITU and the Internet. These are collected at <http://www.itu.int/osg/spu/resolutions/2006/final-acts-internet-extracts.pdf> Resolution 102, for example, instructs the Secretary-General “to take the steps necessary for the ITU to continue to play a facilitating role in the coordination of international public policy issues pertaining to the internet.”

³⁵ Access to the online courses is via <http://www.itu.int/ITU-D/hrd/elearning/>

Like the training workshops, the ITU's online courses might be an opportunity for NGOs to project policy influence, especially if they could design and teach the course themselves.³⁶

ITU-R Study Groups

The ITU-R Study Groups are tasked with answering technical questions which are likely to lead to the drafting of either a new International Radio Regulation or a new Recommendation to national regulators, or to changes in an existing Regulation or Recommendation.

The Radiocommunication Assembly creates and disbands the ITU-R Study Groups and picks their leaders. Volunteer technical experts from the ITU member states staff the Groups. Associate and Sector Members are also allowed to participate, and can even fill leadership positions. Over 1500 people work in the Study Groups, which are further subdivided into Working Parties (WPs):

SG 1 - Spectrum management

Working Party 1A - Spectrum engineering techniques³⁷

Working Party 1B - Spectrum management methodologies & economic strategies³⁸

Working Party 1C - Spectrum monitoring

SG 3 - Radiowave propagation

Working Party 3J - Propagation fundamentals

Working Party 3K - Point-to-area propagation

Working Party 3L - Ionospheric propagation and radio noise

Working Party 3M - Point-to-point and Earth-space propagation

SG 4 - Satellite services

Working Party 4A - Efficient orbit/spectrum utilization for FSS and BSS

Working Party 4B - Systems, air interfaces, performance & availability objectives, including IP-based applications and satellite news gathering

Working Party 4C - Efficient orbit/spectrum utilization for MSS and RDSS

SG 5 - Terrestrial services

Working Party 5A - Land mobile service excluding IMT; amateur & amateur-satellite service

Working Party 5B - Maritime mobile service including Global Maritime Distress & Safety System (GMDSS); aeronautical mobile service & radio-determination service

Working Party 5C - Fixed services; HF systems in the Fixed & Land Mobile Services

³⁶ The ITU-D Partners Programme invites "financial or in-kind contributions to development projects, such as expertise, equipment or services." They specifically call for sponsors of ICT training in developing countries, and they would almost certainly accept free materials for the Academy's online archive of "Policy and Regulation Instructor Resources." Aside from the Academy, the Partners Programme – which seems not to require Associate or Sector Membership – looks like a good channel for cooperation. For example, it distributes a free manual produced by the Grameen Foundation called *Village Phone Direct*, which describes low-cost ways to bring phone and data services to the rural poor. Similarly, ITU-R published a "discussion paper" on *Spectrum Sharing* from McLean Foster & Company which was distributed at the Global Symposium for Regulators in 2008.

³⁷ WP 1A has been tasked with answering the questions related to WRC-12 Agenda Items 1.6 and 1.22, which are important to the implementation of "open spectrum" policies.

³⁸ WP 1B has been tasked with answering the questions related to WRC-12 Agenda Items 1.2 and 1.19, which are perhaps even more important to the implementation of "open spectrum" policies.

Working Party 5D - IMT System

SG 6 - Broadcasting service

Working Party 6A - Terrestrial broadcasting delivery

Working Party 6B - Broadcast service assembly and access

Working Party 6C - Program production and quality assessment

SG 7 - Science services

Working Party 7A - Time signals and frequency standard emissions

Working Party 7B - Space Radiocommunication Applications

Working Party 7C - Remote Sensing Systems

Working Party 7D - Radio astronomy

Coordination Committee for Vocabulary (CCV)

Conference Preparatory Meeting (CPM) – this is a special group tasked with assembling the documents that will facilitate the work of the next WRC.

Since SG 1 deals with questions that are especially relevant to “open spectrum” here is a current leadership directory:

Mr. Robin H. HAINES
Chairman, Study Group 1
NTIA - Department of Commerce
Washington, DC USA

Mr. Xingguo ZHOU
Vice-Chairman, Study Group 1
Chairman, Working Party 1A
Radio Regulatory Department
Beijing, People’s Republic of China

Mr. Raphael GARCIA De SOUZA
Vice-Chairman, Study Group 1
Vice-Chairman, Working Party 1A
Agencia Nacional de Telecomunicações
Brasilia, Brazil

Mr. Sergy PASTUKH
Vice-Chairman, Study Group 1
Chairman, Working Party 1B
Radio Research & Development Institute
Moscow, Russian Federation

Mr. Jan VERDUIJN
Vice-Chairman, Study Group 1
Chairman, Working Party 1C
Spectrum Research Consultancy
Huizen, Netherlands

Mr. Haim MAZAR
Vice-Chairman, Study Group 1
Ministry of Communications
Tel Aviv, Israel

Mr. Sayed I. GHARBAWI
Vice-Chairman, Study Group 1
National Telecom Regulatory Authority
Cairo, Egypt

Mr. Stanley K. KIBE
Vice-Chairman, Study Group 1
Communications Commission of Kenya
Frequency Spectrum Management - Westlands
Nairobi, Kenya

Mr. Chung-Sang RYU
Vice-Chairman, Study Group 1
Korea Communications Commission
Radio Research Laboratory
Seoul 140-848, Republic of Korea

Mr. Vinod Vihari SINGH
Vice-Chairman, Study Group 1
Ministry of Communications & IT
New Delhi 110001, India

Earlier we noted Study Questions associated with the WRC-12 agenda which are relevant to “open spectrum” and assigned to SG 1. However, these are not the only Study Questions relevant to “open spectrum.” There are more that are not linked to WRC-12. That includes investigations which are open-ended or which may not be finished by 2012, as well as those likely to result in new Recommendations rather than new Regulations.

Assigned to WP 1A

Resolution ITU-R 54: Studies to achieve harmonization for short-range radiocommunication devices (SRDs)³⁹

Assigned to WP 1B:

Question 205-1/1: Long-term strategies for spectrum utilization

Question 206/1: Strategies for economic approaches to national spectrum management

Question 208/1: Alternative methods of national spectrum management

Question 216/1: Spectrum redeployment as a method of national spectrum management

Assigned to WP 1C

Question 231/1: Technique for measuring the noise floor in radio applications

Question 233/1: Measurement of spectrum occupancy

Additional Questions relevant to “open spectrum” assigned to other Study Groups:

Assigned to SG 5, WP 5A:

Question 212-3/5: Nomadic wireless access systems including radio local area networks for mobile applications

Question 230-2/5: Software defined radios

Question 241-1/5: Cognitive radio systems in the mobile service

Assigned to SG 6, WP 6E:

Question 32/6: Protection requirements of broadcasting systems against interference from radiation caused by wired telecommunication systems, from emissions of industrial, scientific and medical equipment, and from emissions of short-range devices

If that last item needs translation into plain English, it is the Broadcast Study Group’s investigation into standards for protecting broadcasters from unlicensed SRDs – “white space devices.” It was an exciting breakthrough when the FCC and OFCOM tentatively decided to let these devices use the TV band on a non-interference basis. But if the ITU recommends overly strict interference protection standards for TV broadcasters globally, the US/UK decisions won’t have much impact. The most recent update of SG 6’s Recommendation on protecting TV broadcasts from interference⁴⁰ is in fact much stricter than the FCC’s new rules for “white space devices,” and SG 6 is dominated by broadcasters. So WP 6E’s answer to Question 32/6 could become an obstacle to the spread of “white space devices.”⁴¹

³⁹ See footnote 26 above, on page 10.

⁴⁰ Recommendations ITU-R BT.1786 and ITU-R BS.1768: “Criterion to assess the impact of interference to the terrestrial broadcasting service.”

⁴¹ On the other hand, Motorola is a member of the White Spaces Coalition and a Motorola representative is now one of the vice-chairmen of SG 6.

The Hierarchy of ITU Texts

Regulations have treaty status and are binding on all ITU members (except for those states which issue a Reservation advising that they will not be bound by a particular Regulation). The International Table of Frequency Allocations is the biggest part of the Regulations.

Resolutions are decisions or statements of policy approved by a conference or assembly which include instructions to organs of the ITU to behave in certain ways or to carry out particular tasks. Plenipotentiary Resolutions might be directed toward the ITU Council or the Secretary General, while ITU-R Resolutions are directed toward the Radiocommunication Assembly or the Study Groups. A few Resolutions now in effect are:

- PP-06 Resolution 140 - ITU's role in implementing the outcomes of the World Summit on the Information Society
- PP-06 Resolution 141 - Study on the participation of all relevant stakeholders in the activities of the Union related to the World Summit on the Information Society⁴²
- ITU-R Resolution 5 - Work program & Questions of Radiocommunication Study Groups
- ITU-R Resolution 43 - Rights of associates

Recommendations are norms or standards approved by the Radiocommunication Assembly based on studies performed by the ITU-R Study Groups.⁴³ The implementation of Recommendations is not mandatory. But as they are developed by experts from all over the world and have been carefully vetted, they have a high reputation and are usually followed. Here are some Recommendations now "in force" for spectrum management:

- SM.1047 - National spectrum management
- SM.1055 - The use of spread spectrum techniques
- SM.1056 - Limitation of radiation from industrial, scientific & medical (ISM) equipment
- SM.1538 - Technical & operating parameters & spectrum requirements for short range radiocommunication devices
- SM.1756 - Framework for the introduction of devices using ultra-wideband technology

Handbooks are fairly comprehensive statements of current knowledge or good operating practice prepared by a Study Group and addressed to radio engineers, system planners or operators. An especially influential ITU-R Handbook is entitled *National Spectrum Management*.

Reports are informative statements prepared by a Study Group on a subject related to a current Study Question. Some of the Reports now "in force" are:

- SM.2012 - Economic aspects of spectrum management
- SM.2015 - Methods for determining national long-term strategies for spectrum utilization
- SM.2057 - Studies related to the impact of devices using ultra-wideband technology on radiocommunication services
- SM.2093 - Guidance on the regulatory framework for national spectrum management

There are also a large variety of temporary "internal" documents – opinions, position papers, proposals and drafts – produced for Study Group meetings, Assemblies and Conferences. These are extremely important for the development of new regulations and guidances, and are essential

⁴² These first two Resolutions are particularly relevant to the subject of this report. They are discussed in more detail below.

⁴³ A complete list of all the ITU-R Recommendations in force as of February 2009 is available online at http://www.itu.int/dms_pub/itu-r/opb/rec/R-REC-LS-2007-E02-PDF-E.pdf

for understanding the dynamics of policy debates. Unfortunately, most are only accessible to people with TIES accounts.⁴⁴

The UN-NGO Context

“I want you to consider this your home. Until recently, these words might have caused astonishment. The United Nations was considered to be a forum for sovereign states alone. Within the space of a few short years, this attitude has changed. Non-governmental organizations are now considered full participants in international life.”

---UN Secretary-General Boutros Boutros Ghali
addressing NGO representatives, September 1994⁴⁵

Some parts of the UN system have extensive histories of engagement with civil society and private businesses (which, for momentary convenience, we can lump together as nongovernmental organizations, even though their interests are different).⁴⁶ NGOs are implementation partners with the World Food Program, UNDP, UNICEF, the High Commission on Refugees and other agencies. They conduct research for UNESCO and attend UN conferences (over 80 percent of those attending the Beijing Conference on Women in 1995 came for the NGO Forum).⁴⁷ Civil society “consultants and observers” were involved in creating the UN,⁴⁸ so it is not too surprising that the original United Nations Charter, approved in 1945, authorized the Economic and Social Council (ECOSOC) to “make suitable arrangements for consultation with non-governmental organizations...”⁴⁹

In the late 1970s, ECOSOC’s NGO vetting and registration services were extended to other parts of the UN system as the Non-Governmental Liaison Service (NGLS). But many NGOs complained about excessive bureaucracy, burdensome requirements, and meager opportunities for input and participation. Most UN specialized agencies developed their own ways of dealing with NGOs, although none could match the ITU’s aloofness.

⁴⁴ TIES = the Telecommunication Information Exchange Service = the ITU’s online document storage and distribution system. See <http://www.itu.int/TIES/registration/DM1013.pdf> for an explanation of how to access TIES. A TIES account is one of the main benefits of “joining” the ITU.

⁴⁵ Quoted in “Relationships between international non-governmental organizations and the United Nations: a research and policy paper,” by Andrew E. Rice and Cyril Ritchie, *Transnational Associations*, Volume 47, Number 5 (1995), pages 254-265 – <http://www.uia.org/uiadocs/unngos.htm>

⁴⁶ The ITU Secretariat’s recent survey of how other specialized UN agencies deal with NGOs and business partners is especially informative. See “Secretariat Background Paper on Analysis of Existing Mechanisms and Practices for Stakeholder Participation in the United Nations, Other UN Specialized Agencies and Intergovernmental Organizations,” WG-Study/4/02 (Rev.2), 18 January 2008 – <http://www.itu.int/council/groups/stakeholders/Meeting-Documents/January/WG-Study-04-02-rev.2secretariat-UN-report-final.doc>. Another survey which looks carefully at the UN’s relations with civil society organizations is “UN System and Civil Society - An Inventory and Analysis of Practices” – a background paper prepared by John Clark and Zehdra Aydin for the Secretary-General’s Panel of Eminent Persons on United Nations Relations with Civil Society, May 2003 – <http://www.un.org/reform/civilsociety/practices.shtml>. For historical background see *The Conscience of the World: The Influence of Non-Governmental Organisations in the U.N. System*, edited by Peter Willetts (London: Hurst, 1996).

⁴⁷ “Reference document on the participation of civil society in United Nations conferences and special sessions of the General Assembly during the 1990s (Version 1),” prepared by the Office of the President of the Millennium Assembly, UN General Assembly, August 2001 – <http://www.un.org/ga/president/55/speech/civilsociety1.htm>

⁴⁸ Their role is colorfully described in Clark Mell Eichelberger’s *Organizing for Peace: A Personal History of the Founding of the United Nations* (New York: Harper and Row, 1977), ISBN 9780060111144.

⁴⁹ Quoted from Chapter 10, Article 71, of the Charter – <http://www.un.org/aboutun/charter/chapter10.shtml>

Sector Memberships

The situation changed in the mid-1990s. As the UN prepared to commemorate the 50th anniversary of its Charter, it reviewed UN-NGO relations and made efforts to become more receptive to civil society input. That was the point of the speech by Secretary General Boutros Ghali, quoted above.

Even the ITU tried to become a bit more hospitable. Recognizing that the de-monopolization and privatization of telephony and the rapid but virtually unregulated growth of the Internet were marginalizing it, the ITU tried to reposition itself as the “focal point for all matters relating to telecommunications in the global information society of the twenty first century.”⁵⁰ It proposed a “World Summit for the Information Society,” involving the whole UN system as well as governments, regulators, businesses and NGOs. In addition, the ITU Constitution was amended to add a new purpose to Article 1 (“Purposes of the Union”):

“to promote and enhance participation of entities and organizations in the activities of the Union and foster fruitful cooperation and partnership between them and Member States for the fulfilment of the overall objectives as embodied in the purposes of the Union...”

That provided a legal basis for “entities and organizations” other than “states” to join the ITU as “Sector Members” or “Associates.”

As the name implies, “Sector Members” are entitled to participate in the work of any *one* of the ITU’s three sectors: ITU-R (radio), ITU-D (development) or ITU-D (standards).⁵¹ International or regional telecom associations, financial institutions, development assistance agencies, commercial network operators, organizations engaging in broadcasting, telecom technology research, equipment production, economic development, etc., are the kinds of “entity” eligible for ITU Sector Membership. *Except for transnational organizations, each applicant for a Sector Membership must be approved by the regulatory agency or government of the country in which it is based, and the approving country can cancel the Sector Membership at any time.*

The ITU now has 568 Sector Members, 273 of them in ITU-R. Few could be considered civil society organizations. The exceptions are: the Internet Society,⁵² the African Diaspora for the Information Society (DAPSI), the International Foundation for the Children of the World (IFCW), the World Association of Community Radio Broadcasters (AMARC) and perhaps the International Amateur Radio Union (IARU).⁵³ Only the IARU participates in ITU-R; most of the others participate in ITU-D.

Sector Membership in ITU-R or ITU-T currently costs 31,800 Swiss francs (CHF) per year – about \$28,255. For membership in ITU-D, the normal fee is 15,900 CHF (\$14,127.15), but there is a special price of 7,950 CHF (\$7,063.57) for entities based in developing countries. However, Steve Buckley of AMARC notes that the membership fee is only the “downpayment” on a very expensive relationship. Travel and lodging costs to attend ITU meetings and hiring specialized

⁵⁰ “Strategic Plan 1995-1999,” ITU Plenipotentiary Resolution COM4/1 (Kyoto, 1994), - http://www.itu.int/osg/spu/stratpol/plan/sp95_99e.doc

⁵¹ To participate in more than one sector, one must apply to each sector separately and, if approved, pay a participation fee for each sector.

⁵² The Internet Society has been a Sector Member since 1995, mainly to ensure that the ITU did not duplicate or pre-empt the work of the Internet Engineering Task Force (IETF). More recently, the issue of Internet governance has become their main concern. ISOC now has Sector memberships in ITU-D and ITU-T. See “Strategic Global Engagement: 2009 Strategic Actions & Impacts,” by Bill Graham, ISOC (28 March 2009) – <http://www.isoc.org/isoc/general/trustees/docs/mar2009/sge.pdf>

⁵³ For a complete list see http://www.itu.int/cgi-bin/htsh/mm/scripts/mm.list?_search=SEC&_languageid=1

technical experts to analyze and prepare proposals could easily add \$50,000 to the annual cost of Sector Membership. That puts it beyond the reach of virtually all nonprofit CSOs. Indeed, while AMARC is a Sector Member of ITU-D, they have been “inactive,” according to Buckley, because of the add-on costs and lack of “staff capacity.” On the other hand, it should be noted that some Sector Members have been exempted from membership fees – AMARC, the Internet Society and the Red Cross, for example.⁵⁴ Such waivers are made by the ITU Council on a case-by-case basis.

So what are the benefits? Sector Member representatives

- can join – and even chair – their sector’s Study Groups, Working Parties, Expert Groups, Rapporteur Groups, etc.
- are invited to participate in their sector’s Conferences and Assemblies, seminars, round tables, colloquia and workshops.
- can present their views, either orally or in writing, during the preparatory stages of decisions and throughout the process of producing Recommendations, Resolutions and other policy guidelines.
- have access to TIES, the ITU’s online document archive and email system – and thus can read and contribute to the documentation related to meetings, studies in progress and preparations for decisions. They also get a small discount on documents purchased through the ITU’s online “bookstore.”

Sector Members can also attend Plenipotentiary Conferences, but only as observers. They are not allowed to make written contributions to Conferences where treaty modifications are agreed (WRCs, for example). But they can participate in the preparations for WRCs and propose agenda items for WRCs and Plenipotentiaries.

The most important differences between Sector Membership and full membership is that only full members can vote, and only “states” can be full members.

Associates

The concept of “Associate” membership was introduced in 1998 as a way for “small entities or organizations” to join in the work of *one* ITU Study Group (and all of its Working Parties). “National” entities apply for Associate status through their country’s telecom regulator, while transnational entities apply directly to the Secretary General.

Associate membership in ITU-R or ITU-T costs 10,600 CHF per year (\$9,418.33); in ITU-D it is 3,975 CHF per year (\$3,531.87) with a special price of 1,987.50 CHF (\$1,765.93) for Associates from developing countries. There are now 153 Associates – 23 of them in ITU-R. Those are:

Study Group 1: Mitsubishi Research Institute (Japan)

Study Group 4: Gayacom (Israel), MCC Corporation (Japan)

Study Group 5: Ericsson Canada Inc. (Canada), Research in Motion Inc. (Canada), Rogers Wireless Inc. (Canada), Telus Mobility Inc. (Canada), Alvarion Ltd. (Israel),

⁵⁴ AMARC’s fee exemption was revealed in conversation by Steve Buckley. The other fee exemptions are noted in “Civil Society and the ITU,” by Max Cadet and Tim Kelly, a powerpoint presented at the ITU-CONGO informal consultation on the participation of WSIS-relevant stakeholders, Geneva, 18 May 2007 - http://www.itu.int/ws/implementation/2007/civilsocietyconsultation/Documents/Civil_Society_and_ITU.ppt

International Telecommunication Union

Application Form for Associates

National entities and organizations are invited to send this Form through the National Telecommunication Administration of the Member State in which the company has its headquarters, or directly to ITU if the Member State has assigned authority to the Secretary-General to approve the Application. Regional and international organizations may send it directly to the ITU Secretary-General.

In accordance with Article 19 of the ITU Convention, the following company/organization:

Name:
Contact person: Title:
Mailing address:
Tel.: Fax:
E-mail:

wishes to become an Associate of: (Please tick the appropriate box)

- ITU-R*) Study Group
ITU-T*) Study Group
ITU-D*) Study Group

* For the period 2008-2009, the annual financial contribution for an Associate in ITU-R or ITU-T is CHF 10,600.-; in ITU-D it is CHF 3,975.- and CHF 1,987.50 for Associates from developing countries.
Please note that denunciation will take effect at the end of six months from the date when notification is received by the Secretary-General. The contribution is due up to the last day of the month in which the denunciation takes effect.

in the category of: (Please tick the appropriate box)

- recognized operating agency financial or development institution
scientific or industrial organization other entity dealing with telecommunication matters
regional and other international telecommunication, standardization, financial or development organization

Kindly indicate your sphere of activities: (Please tick the appropriate box)

- Network Operator Service Provider Internet Services
Voice Networks Manufacturers Research Agency
Investment Bank Telecommunication Consultancy Regulator
University International Organization Other

I, the undersigned, have the power and authority to submit this application on behalf of my company/organization:

Name: Title:
Date: Signature:

Please make sure that you have given all the information requested.

ITU • Corporate Governance and Membership Division • Place des Nations • CH-1211 Geneva • Switzerland
Tel.: +41 22 730 5214/6018 • Fax: +41 22 730 6675 • E-mail: membership@itu.int • www.itu.int

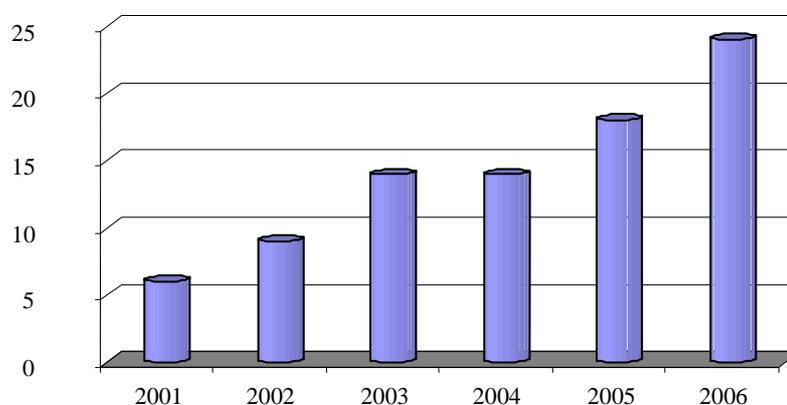
Telenor Ltd. Belgrade (Serbia), Institute for Infocomm Research (Singapore), CRFS Ltd. (UK), ICO Global Communications Ltd. (UK), Clearwire Inc. (USA), Mitsubishi Electric Research Laboratories (USA)

Study Group 6: CBC/Radio Canada (Canada), Genum Corp. (Canada), Montenegro Broadcasting Agency (Montenegro), Apple Inc. (USA)

Checking the lists posted on the ITU website, one can see that there is hardly any difference in the kinds of “entity” that become Sector Members or Associates – not even a difference in size, as was planned. *The one striking difference is that no Associates are civil society organizations.*

It might also be significant that the number of Associates hasn’t increased in 3 years. Together these suggest that Associate status – as presently defined – does not satisfy the needs either of “small entities” or the CSOs which flocked in such large numbers to the World Summit on the Information Society. Even a casual observer can see that Associate membership offers an unfavorable combination of high cost and a contributory role limited to the most technically demanding ITU venues.

The number of ITU-R Associates, 2001-2006



Graph from “Statistics on Sector Members and Associates,” compiled by the Director of the Radiocommunication Bureau, Document RAG07-1/23-E (25 January 2007)

So is Associate membership the ITU’s “solution” for civil society involvement? The absence of a “civil society” category among the self-descriptive “check boxes” on the Associates’ application form (see previous page) suggests that the ITU knows this option will not appeal to most CSOs. Of course, the lack of a good definition for “civil society” is a problem in general for the ITU, leaving them uncertain about whether they are including or excluding CSOs. (Organizations like the International Council on Large Electric Systems and the Society of Motion Picture and Television Engineers are currently listed as CSOs on the ITU website!⁵⁵)

In 2006, the Conference of NGOs in Consultative Relationship with the United Nations (CONGO) put their finger on the real problem:

“within the realm of the UN system, the ITU is the only agency in which participation of non state actors is granted provided that they pay a financial contribution for their membership... Therefore, the ITU is seen by many NGOs and non-for-profit agencies as functioning as a corporate-like institution as regards its arrangements for non State actor

⁵⁵ See <http://www.itu.int/council/groups/stakeholders/resources.html>

participation, as opposed to traditional ways of participatory arrangements and... consultations for NGOs in all other international organisations.”⁵⁶

Why is that? And can the situation be changed? To understand, it helps to know some history.

CSOs and the ITU

In the mid-1990s, while the UN was reviewing its relations with NGOs and organizing showcase events like “We the Peoples: The Role of Civil Society in the History and Future of the United Nations,”⁵⁷ the MacBride Round Table on Communication⁵⁸ began trying to “prize open the doors of the ITU for all NGOs, which up to now have remained, with regard to policy input and formal relations, firmly closed.”⁵⁹

In January 1994, Pekka Tarjanne, then Secretary General of the ITU, attended a meeting of the MacBride Round Table in Honolulu.⁶⁰ Later that year, the ITU Plenipotentiary approved a strategic plan for 1995-1999 which declared – under the heading “Strengthening the foundation of the union” – that “a study programme should also be undertaken to determine under what conditions non-profit organisations... might take part in ITU activities.”⁶¹ Encouraged by these signs of interest, Seán Ó Siochrú

“agreed to explore the possibility of establishing relations between the [MacBride] Round Table and various international organisations, including the ITU.... Secretary General Tarjanne agreed to meet with Seán Ó Siochrú in May 1995 in Geneva. Don MacLean, ITU Head of Strategy, also attended the meeting and it was decided that it was worth pursuing further. A more detailed report was prepared based on extensive consultation with a large number of key NGOs. The report, *The International Telecommunication Union and Non-Governmental Organisations: The Case for Mutual Cooperation*,⁶² was presented to the Secretary General at Telecom '95... In 1996, discussions continued with Mr. Ahmed Laouyane, then Director of BDT [the ITU’s Telecom Development Bureau, who sent a letter confirming that]

ITU/BDT is interested in developing working cooperation with NGOs on matters of common interest, although no formal mechanisms or procedures have been

⁵⁶ “NGO participation arrangements at the UN and in other agencies of the UN System,” Organisation of NGOs in Consultative Relationship with the United Nations, March 2006 - <http://www.itu.int/council/groups/stakeholders/Resources/Non-Paper%20on%20NGO%20Participation%20in%20the%20UN%20System3%20CONGO.pdf>.

⁵⁷ A conference in San Francisco, 21-24 June 1995.

⁵⁸ The Round Table described itself as “a communications rights advocacy group... created in 1989 to stimulate discussion of issues embodied in the 1980 UNESCO MacBride Report.” The MacBride Report is available online at <http://unesdoc.unesco.org/images/0004/000400/040066eb.pdf>

⁵⁹ “The MacBride Round Table on Communication,” by Colleen Roach, *Media Development*, 1996/3 – http://archive.waccglobal.org/wacc/publications/media_development/archive/1996_3/the_macbride_round_table_on_communication. According to Roach, “In 1994, the Round Table constituted itself as an NGO, with statutes and a founding seat in Dublin...” Documents related to the Round Table’s efforts to open the ITU to CSO input are essential reading for anyone pursuing a similar goal now (see “Establishing Relations between NGOs and the International Telecommunication Union (ITU)” – http://comunica.org/itu_ngo/).

⁶⁰ The minutes of this meeting are at <http://www.cios.org/mailboxes/comdev%5C06174232.402>

⁶¹ “Strategic Plan 1995-1999,” ITU Plenipotentiary Resolution COM4/1 (Kyoto, 1994), page 11 - http://www.itu.int/osg/spu/stratpol/plan/sp95_99e.doc

⁶² “International Telecommunication Union and Non-Governmental Organisations: The Case for Mutual Cooperation,” by Seán Ó Siochrú, 1995 - http://comunica.org/itu_ngo/mutual.doc

established as yet. Although these contacts are at present at an exploratory stage, it can be seen that a fruitful collaboration could evolve.”⁶³

Seán Ó Siochrú continues the story in a 2007 note to “Information Society Watch.” He recalled that a Focus Group

“was set up at [the] ITU’s World Telecoms Development Conference in 1998 under ITU-D Study Group 2, with myself as Rapporteur. (They were happy to turn a blind eye to the fact that I did not represent an ITU member.) Working with about a dozen NGOs, including APC, AMARC, RITS... and Panos, we produced a very creditable report and presented it to the Study Group meeting in Geneva in August 1999.

“Our report came up with a number of recommendations, one of which was to set up a Task Force to move relations with NGOs forward. This idea was to be taken up by the then Director of BDT (ITU-D)... The Director specifically assured the Study Group meeting that he would forward the relevant part of the report to TDAG [the Telecommunication Development Advisory Group] for consideration. After the meeting, he told me personally that he would follow this through, and that he was ‘not afraid of rocking boats’.

“That was the last we heard of it. I met him soon afterwards – and again during the WSIS many times. Who was the Director of the ITU Development Sector at that time? None other than Hamadoun Touré, now the ITU’s Secretary General.

Please give him my best regards and remind him he still has a task to do...”⁶⁴

Ó Siochrú’s candid but cautionary remarks were made in response to a report about a new ITU consultation with CSOs. According to Frédéric Riehl,

“On Switzerland’s initiative, [the 2006 Plenipotentiary] Conference decided, after full debate, to study the ways in which a wider range of players can take part in the work of the ITU. Opening up the ITU to increased civil society involvement is, in fact, considered essential to the success of the WSIS initiatives...”⁶⁵

Riehl is referring to **PP-06 Resolution 141**, which calls for creation of an ITU Council “Working Group on the Study on the Participation of all relevant stakeholders in ITU Activities related to the World Summit on the Information Society (WSIS).” Facundo Begni of Argentina and Thomas Schneider of Switzerland co-chair this Group. Their terms of reference include:

- establishing “criteria for defining which stakeholders are relevant to participate in ITU activities related to WSIS.”
- suggesting amendments to the ITU Constitution and Convention to facilitate the participation of “relevant” WSIS stakeholders beyond those which are already ITU Associates and Sector Members, and reviewing the rules for Associate and Sector Membership to see if they need improvement.

⁶³ “Study Group 2 Question 10g/2: Enhancing the Capacity of NGOs to achieve Development Aims, through the use of Telecommunication - Final Report,” Seán Ó Siochrú, rapporteur, 18 August 1999 – The letter from Mr. Laouyane bears the document code

⁶⁴ <http://www.is-watch.net/comment/reply/700/547>

⁶⁵ “Results of the ITU Plenipotentiary Conference,” by Frédéric Riehl, Swiss Federal Office of Communications, 27 November 2006 – <http://www.uvek.admin.ch/dokumentation/00474/00492/index.html?lang=en&msg-id=8517>

- identifying the “spheres of competence that the Member States reserve for themselves,” and from which WSIS stakeholders would be excluded;
- identifying “specific efforts” (including financial assistance) needed to “mobilize and ensure the meaningful and effective participation of all relevant stakeholders from developing countries and stakeholders in the development field.”

A consultation on these issues was held in the first half of 2008. The ITU described this as an “open” consultation but the questions were narrowly framed and seem to have been addressed only to WSIS-accredited organizations, ITU Sector Members and Associates and ITU Member States.⁶⁶ Furthermore, only those with TIES accounts can access the draft report on the results of the consultation. The Working Group’s final report will be presented at the ITU Council’s next session (20-30 October 2009), “for the use of Member States in preparing their proposals for the next Plenipotentiary Conference” (4-22 October 2010).

“Reforming ITU” – a background text prepared for journalists covering the 2006 Plenipotentiary – described the unfolding debate:

“During the WSIS process, ITU pioneered the participation of all stakeholders, including civil society, as a means of building a truly inclusive Information Society. Civil society was included for the first time [sic] in an intergovernmental negotiation process and it is now widely recognized that implementation of the action lines⁶⁷ will require the commitment and energies of all stakeholders. Following the success of WSIS, there are proposals from States to widen the Union’s membership by including the participation of new actors such as civil society.

“As a treaty-based organization, ITU needed to be able to rely on State-based members to implement international agreements such as the Constitution and Convention or the Radio Regulations. But the Union has also relied earlier on the contribution of its private sector members, who make a vital contribution to the Union’s standards-making process and in undertaking technical studies – crucial work which remains one of ITU’s prime responsibilities. With privatization, liberalization and deregulation, the balance of power gradually shifted with more clout being wielded by the private sector. Now, the baton is also being taken by the end-user – and civil society sees itself as a watchdog for the larger public interest.

“A number of countries agree on the ‘desirability of engaging civil society in ITU’s work’ and a specific category of observer status at ITU should be created for civil society organizations.⁶⁸ On the other hand, others consider that these organizations can already be accommodated within the existing framework of Associates and Sector Members.

⁶⁶ Documents from the consultation are online at <http://www.itu.int/wsis/implementation/2007/civilsocietyconsultation/index.html>

⁶⁷ The “action lines” can be found at <http://www.itu.int/wsis/docs/geneva/official/poa.html>

⁶⁸ This proposal is found in PP-6 Resolution 145: “Participation of observers in conferences, assemblies and meetings of the Union” – see “Final Acts of the Plenipotentiary Conference (Antalya, 2006),” ITU, page 212, but especially Annex 2 on page 215 – <http://www.itu.int/council/groups/stakeholders/Background-Documents/final-acts.doc>. Observer status is better than exclusion, of course, and would increase the transparency of ITU decision-making while helping to educate CSOs in the intricacies of those processes. But Panos and the Commonwealth Telecommunications Organisation have already explained the difference between observing and participating. Participation, they wrote, “is not mere membership or simple attendance at meetings. It is active engagement in the whole decision-making process – which includes identifying issues, setting agendas, conducting policy research and analysis, formulating positions, building coalitions, negotiating with other stakeholders, implementing results and applying them...” See *Louder Voices: Strengthening Developing Country Participation in International ICT Decision-Making* (2002) - <http://www.panos.org.uk/download.php?id=59>

However, most civil society organizations generally operate on fairly limited budgets and the cost of membership, except in the development sector, would act as an insurmountable obstacle for them. Civil society expects to participate in ITU as they do in most other UN agencies.”⁶⁹

An “informal consultation” meeting at ITU headquarters, which preceded the launch of the formal consultation on civil society participation, was attended by some 80 people on 18 May 2007.⁷⁰ Here is the ITU rapporteur’s summary of William Drake’s presentation:

“Many UN agencies have adopted systems that are similar to those used by ECOSOC, which has a system of accreditation of NGOs. For instance, UNESCO, UNCTAD and WIPO each have accreditation processes for civil society and WIPO, in particular, has a dual system of permanent and ad hoc observer status. UNCTAD and WTO also have civil society outreach units. A good example of an international organisation that is very open to civil society participation is ICANN. ITU is different because of the ‘club’ model on which it is based, which, *inter alia*, leads to very restrictive treatment of observers. There is minimal civil society participation and there has been no action on prior recommendations for change in this regard (e.g., from the Gender Task Force). As with the ‘Internet community’, the perception of civil society, therefore, is that the ITU is a closed organisation. As a result, ITU does not benefit from the sort of energy, enthusiasm and expertise that thousands of civil society actors worldwide now direct into other ICT institutions and collaborations. Moreover, there was a view reflected in WSIS that ITU should not, for instance, be given a greater role in Internet Governance. At a minimum, ITU should match the practices in other UN organisations (like WIPO) and beyond that, it should learn from the practices of Internet organisations like ICANN. He made a number of recommendations on steps that could be taken to make the ITU more receptive to civil society. In the near-term, he suggested that observers be invited to participate in the work of the Council Working Group on Resolution 141.”⁷¹

Some of these points were picked up and amplified by Willie Currie, the Association for Progressive Communications’ Program Manager, who, according to the rapporteur, also recommended

- Establishing a civil society liaison office;
- Making more ITU documents available free of charge;
- Civil Society could nominate two representatives to be observers at Resolution 141 Group meetings.⁷²

Tim Kelly, head of the ITU’s Strategy and Policy Unit, ended his presentation with these suggestions for “additional steps that could be taken”:

- Formal review of which meetings are open to “observers”
- Promoting civil society participation, e.g., through a CS portal on website
- Streamlining membership procedures and fee waiver
- Greater ITU participation in civil society events
- Greater openness for documents and webcasts

⁶⁹ <http://www.itu.int/newsarchive/pp06/background/reform/index.html>

⁷⁰ Documentation from that meeting is online at <http://www.itu.int/wsis/implementation/2007/civilsocietyconsultation/index.html>

⁷¹ <http://www.itu.int/wsis/implementation/2007/civilsocietyconsultation/Documents/CS-Report-vf.doc>

⁷² *ibid.*

If the statements by Drake, Currie and Kelly are representative of the views of stakeholders other than the member states, there seems to have been considerable agreement on ways to expand civil society involvement in ITU processes even before the consultation began. One can only hope that the consultation itself will help the authors of the report to the ITU Council come up with suggestions which satisfy the needs of civil society without provoking the ITU members opposed to their presence.

But why?

Why does civil society involvement in the ITU matter? Much of what goes on there seems relevant only to engineers. More to the point, much of it can only be debated meaningfully by engineers, even when the policy outputs have great social, political and economic consequences. How many CSOs have the “staff capacity” – as Steve Buckley put it – to be effective in this context?

That is an unfair question, actually, since without access to the ITU – a unique organization – no CSO needs such “staff capacity.” On the other hand, no CSO is likely to develop such capacity without regular access to the ITU.

In countries where there is no chance for a CSO to submit draft legislation to parliament, one would not expect to find CSOs with the “staff capacity” for drafting laws. The only way they would develop that capacity is by having real opportunities to propose laws of their own creation.

Looking at the larger question of why civil society involvement in the ITU matters, the obvious answer is that telecommunications technology is – or can be – socially empowering. But end users may not enjoy the full benefit of that fact if their views are not taken into account by policymakers. When properly used, telecommunications promote economic development and social inclusion. Decisions made in the ITU can influence whether communicative power is concentrated in a few hands or widely dispersed – freely available, awarded by executive whim or priced by the market. These are not matters that only engineers can or should decide.

Second, the content of the ITU’s work is changing. Fifty years ago their meetings were filled with specifications of system designs in extraordinary detail. Now they understand that that inhibits innovation and slows progress. A consensus is emerging in favor of letting markets decide the details of system design while regulators stick to general requirements. This is easier for nonengineers to understand, and more important to link to social values.

As described earlier, the ITU began repositioning itself in the 1990s, opening its “club house” to non-government members and convening the World Summit on the Information Society. WSIS focussed on *social* and *social development* issues, and brought large numbers of CSOs into the ITU’s orbit for the first time. It also signalled a new commitment to promoting telecom development in poorer countries while closing the “digital divide” in all countries. The focus of the ITU’s agenda has thus shifted from the development of technology to technology for social development. There has been a lag in the “cultural shift” which must accompany this change, as well as a lag in public perceptions of the ITU. But these only increase the importance of CSO engagement.

The radio spectrum can also be dismissed as something only engineers care about but that is clearly not true. Not only is it socially empowering, on a grand scale, but it is linked to important questions about governments’ right to regulate the communications of their citizens. That right has been asserted in radio so forcefully for so long that we accept it as a necessary part of the medium. We seem unphased by the fact that it contradicts the right “to seek, receive and impart information and ideas through any media and regardless of frontiers” as enshrined in Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political

Rights. The right to communicate is not absolute, as the Covenant goes on to explain, but there is a test to determine when the right is being violated:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”⁷³

The London-based NGO which is also named Article 19 wrote a helpful analysis of this test as it applies to radio regulation:

“This test includes three parts: first, the interference [with individuals’ right to communicate] must be in accordance with a law or regulation; second, the legally sanctioned restriction must protect or promote an aim deemed legitimate in international law; and third, the restriction must be *necessary* for the protection or promotion of the legitimate aim...

“Where wireless communications devices are used as a means to exchange ideas or information – which is almost always the case – this constitutes an exercise of the right to freedom of expression, and any restriction on such use must meet the three-part test outlined above....

“There is a risk that force of habit might lead some telecommunications regulators to over-regulate modern, low-interference devices, imposing licencing regimes or other restrictions which do not meet the necessity test. Most States are exploring alternative ways of accomplishing the goal of preventing interference with regulatory tools that are less restrictive of freedom of expression. One of these tools is the opening up of ranges of the spectrum for shared use, and the adoption of a certification system for devices which transmit data within these ranges. Once the telecommunications regulator has certified that a particular type of device indeed operates in the shared area of the spectrum and poses a low risk of interference, it can be marketed freely and used by any consumer without the need for a licence. The availability of regulatory tools like this to guarantee ‘public order in the airwaves’ means that the imposition of a licence requirement for modern types of devices will often no longer prove justifiable when evaluated under the ‘necessity’ test.”⁷⁴

To the extent that a “smart” radio can sense its environment and regulate its power output and frequency selection to avoid interfering with other communications, it is not *necessary* for its moment-to-moment behavior also to be controlled by a national government. It is a violation of human rights for a state to intervene in private communications unnecessarily – so say the human rights treaties signed by a majority of countries, and so say “open spectrum” advocates. “Cognitive radio” promises to expand freedom of communication and this is reason enough to support it. We should work with the ITU to ensure that this technology can develop, that it isn’t blocked by “legacy” restrictions now on the books – and if the ITU’s ambitions in Internet governance are of concern, do you think not dealing with them will keep them in check?

⁷³ “International Covenant on Civil and Political Rights” (entered into force 23 March 1976), Office of the UN High Commissioner for Human Rights - <http://www2.ohchr.org/english/law/ccpr.htm>

⁷⁴ “The legitimacy of licence requirements for the use of wireless communications devices,” by Daniel Simons, Article 19 (May 2005) – <http://www.openspectrum.info/article19.doc>

APPENDIX: Summary of the 2006 ITU Plenipotentiary debate on civil society participation

Excerpted from *ITU News*, “Daily Highlights N° 6” (13 November 2006)
<http://www.itu.int/newsarchive/pp06/highlights/13.html>

A draft resolution sponsored by Argentina and Switzerland led to debate today in the Working Group of the Plenary on how to enhance the participation of civil society in the work of ITU. While several delegations underlined the positive contribution made by civil society in the WSIS process and argued that the WSIS outcomes could not be implemented without the support, experience and involvement of civil society, others considered that existing mechanisms to take part in ITU activities already enable civil society to be engaged in ITU work. Many also stressed that the impact and benefits of opening up to civil society had to be carefully assessed before a decision is made, particularly with respect to the relationship with existing categories in the membership that pay a contribution to the Union.

Several delegates endorsed the idea of enabling the active participation of new stakeholders from civil society but observed that the current basic texts of ITU did not offer any definition of civil society. The Philippines supported by Saudi Arabia, Singapore, South Africa, Malaysia and several others suggested that it was essential to first arrive at a commonly agreed definition of what was meant by civil society, define the criteria and modalities for their participation, look into the different ways in which members of the civil society could participate in the work of ITU and how this could affect other categories of members. Canada agreed, adding that civil society should also be left to indicate how they want to be involved and in what areas. At the same time, Canada stated that the private sector, which currently participate as Sector Members in the work of ITU, should be consulted on the benefits they derive from their participation and the costs they bear so that the inclusion of civil society is made on a non-discriminatory basis. In response to delegates who considered that existing mechanisms were sufficient to allow civil society to be engaged in ITU work, Switzerland said that there was room for improvement, particularly when comparing with other UN agencies and that it might be more appropriate to establish a list of specific criteria of what is needed from civil society rather than attempting to define it. There was no need to "reinvent the wheel" – existing mechanisms used in UNESCO, UNDP and others that included both the rights and obligations of civil society should serve as a reference. “It is also important to send a strong signal to civil society indicating that ITU does not want to forego decisions made at WSIS on building an inclusive Information Society nor the multi-stakeholder approach”, he said.

The Russian Federation reminded delegates that this debate had already taken place in the Working Group of the Council on WSIS and that agreement had been reached on a draft resolution calling for the setting up of a Working Group of the Council to examine all the pertinent issues.

“Civil society is needed to give credibility to the efforts deployed by ITU to close the digital divide”, said the delegate from Morocco. Tunisia supported this view, adding that ITU was handicapped by the fact that its statutes do not visibly include civil society in its work. Tunisia went on to underline that: “Not only should the ITU instruments be amended, but also that the proposed working group to be set up to evaluate how to enhance the participation of civil society in ITU's activities should be open to both Member States and Sector Members”. France and Senegal agreed but Syria, China and Iran (Islamic Rep. of) felt that the working group should consist only of Member States...