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(Trans-)Formations of Civil Society in Global Governance Contexts – Two case studies on the problem of self-organization¹

As with other organizing concepts, global civil society is a mental construct that is held to give insight into the workings of the political order.

Richard Falk

1 Introduction

The role of civil society in global governance attracts growing attention both from an empirical and a normative perspective. From an empirical point of view, it is the growth and political impact that has been at the center of many studies. Do social movements and NGO coalitions matter in the sense that they can effectively change policy preferences? The normative interest refers to issues of legitimacy. A core question is whether civil society activities can contribute to the democratization of transnational policy making. Is civil society a means for enabling self-determination of the people beyond the nation state? The relevance recently attributed to civil society as political actor reflects the observation that the composition and the spatial reach of political authority is thoroughly changing. Due to processes of deregulation, privatization and globalization, non-state actors assume an important role in many policy areas. Simultaneously, more and more political decisions are made outside of the nation state and, therefore, beyond the reach of democratic procedures. The research in civil society is motivated, at least partly, by the concerns for the fairness and democratic legitimacy of global governance arrangements (Falk 2005). The emergence of a global civil society is considered by many observers as a potential force for civilizing the process of globalization (Anheier, Glasius & Kaldor 2001).

Despite its popularity, however, there is as yet no common understanding of the basic characteristics, the roles or political relevance of global civil society. As Dekker (2004) observes, we are confronted with a "clash of definitions". While some authors subsume all non-state actors including the private

¹ I would like to thank my colleague, Holger Straßheim, who helped me to understand what I wanted to say in this article.

sector under this term (Keane 2001), others restrict it to the non-commercial sphere (Kaldor 2005; Curbach 2003; Alexander 1998). Civil society is defined alternatively as a sphere distinguished from other spheres (Heins 2002), a mode of action (Gosewinkel & Rucht 2004) or by sets of principles which structure civil society interaction. Whereas some doubt the existence (Clark, Friedman & Hochstetler 1998; Keck & Sikkink 1998) or possibility (Heins 2002) of a global civil society, others portray it as a universal concept without boundaries: "Der utopische Fluchtpunkt von Zivilgesellschaft ist die globale Zivilgesellschaft, ungeachtet aller kulturellen Verschiedenheiten. (...) die Grenze von Zivilgesellschaft [ist] weder territorial noch rechtlich fixierbar, sondern wird durch die Differenz von zivil und unzivil markiert (die selbstredend historischen Wandlungen unterliegt)." (Gosewinkel & Rucht 2004: 51)² Likewise, there are different findings on the actual influence or power of civil society.³

Hence, civil society seems to be simultaneously a specific sphere, a mode of action, an observable reality, a regulative idea or a utopian concept. As a result, civil society has assumed a rather dazzling image, often suspected of either overrating or underrating the existence of a global civil society. Yet, it is not least its fuzziness, which explains the overall popularity of the concept, for civil society "can be all things to all people" (Anheier, Glasius & Kaldor 2001: 15).

To some extent, the broad variety of interpretations may reflect semantic changes throughout centuries of civil society history. However, the inherent ambiguity of our understanding is also due to specific attributes of present civil society formations. The underlying assumption of this article is that civil society has to, as it were, invent itself anew each time it sets out to conquer a policy field. Civil society per se is a mere reservoir of concepts, ascriptions and experiences. In order to become an identifiable actor, elements of this reservoir have to be adapted to the actual political context. As Anheier and Themudo (2002: 193) observe, many NGOs "find themselves in more or less 'constant reorganisation'", which they liken to a "modern 'institutional laboratory' that, along with transnational corporations and governments, is creating the organizational infrastructure of a globalizing world."

The metamorphosis from a mere possibility to a real social movement or network is an ongoing process, which occurs through negotiation with other actors. As Gosewinkel and Rucht (2004: 51) note, civil society should be defined as a "relational" phenomenon. It emerges through simultaneous acts of self-assertion, demarcation and exclusion of other modes of action, interests or political goals. Civil society's identity is based on clear differences between them and "others" (Alexander 1998). From an actors' point of view, the substance of these differences and consequently the identity of civil society depends to a large degree on the concrete context. The NGOs attending a UN World Summit form an independent civil society network that has only a few overlaps with the groups that gathered

² Roughly translated: "Despite all cultural diversity, the utopian perspective of civil society is a global civil society. (...) the boundaries of civil society cannot be defined on a territorial or juridical basis, they mirror the (historically changing) difference between the civil and the uncivil."

³ For differing results compare for example Arts (2003); O'Brian et al. (2000).

for example at the WTO meeting in Seattle.⁴ It is the broad concept of a global civil society that subsumes all these groups and activities under one label. From a practical perspective, civil society networks have to be built, sometimes from scratch, around single policy issues, events, functions or organizations. The variety of definitions, findings and assessments on the part of academic observers reflects the practical diversity of civil society activities.

As I will illustrate in this article, the process of (trans-)forming civil society into a coherent actor is a challenging task that can, however, go wrong. Civil society needs to bring to the fore specific qualities, values and organizational principles that distinguish it from its counterparts, governments and the private sector. Openness, transparency, bottom-up consensus building and a credible commitment to universal principles such as human rights form the core of these qualities. At the same time, the interaction with governments and the private sector requires qualities of a coherent stakeholder with a high degree of self-organization and some form of representation. In a way, civil society structures have to oscillate between different states of institutional cohesiveness, between the quality of an open space and that of a well-organized actor among other actors. The capability to integrate various forms and rationalities of action is an important precondition for legitimacy and political impact as well (see Klein, Walk & Brunnengräber 2005: 59f.).

With these assumptions in mind, this article presents two instances of transnational civil society activities.⁵ The first case study concerns the participation of individual Internet users in the Internet Corporation for Assigned Names and Numbers (ICANN), the organization that coordinates parts of the Internet infrastructure, namely the Domain Name System (DNS), and the allocation of Internet addresses. The second case study discusses the involvement of civil society in the World Summit on Information Society (WSIS). In the multi-stakeholder context of Internet Governance and UN World Summits, civil society constitutes one group of actors in a "tripartite" configuration together with governments and the private sector.

In terms of actual outcomes, both civil society formations failed to achieve substantial policy changes. Yet, while one of them practically ceased to exist, the other managed to develop a more durable working structure. Civil society's self-organizing capacity in the latter case became acknowledged as an achievement in its own right.

2 The political context of the two case studies

The two cases, civil society participation in ICANN and WSIS, have a common background in the area of information and communication policies. The digital information technology has brought about new questions of ownership, access and use of digital resources. The idea of a World Summit on

⁴ By contrast, the following immensely popular statement among civil society activists at the World Summit on Information Society assumes a coherent, global civil society subject, "Geneva is not Seattle. Civil Society does not throw stones, it produces papers. Civil Society has moved from turmoil to trust."

⁵ The author has been actively involved in both.

Information Society emerged around the time of ICANN's founding. Not surprisingly, there is some overlap with regard to the actors involved. Some of the organizations or individuals, who participate in ICANN have become involved in the World Summit as well. Finally, both cases share some openness to experiment with new participatory forms of decision making. All of these aspects will be briefly outlined before I present the case studies in more detail.

2.1. Thematic Common Ground

ICANN is responsible for the administration of the Internet's Domain Name System and the allocation of Internet addresses. Unlike traditional communication infrastructures, the Internet is governed by a private body. ICANN is a not-for-profit corporation under Californian law and to date subject to the supervision of the US government. By contrast, the number space of the telephone system is administrated by a UN organization, the International Telecommunication Union (ITU). While the UN regime assembles all governments who are members of the UN, ICANN privileges one government. Officially, the US government's unilateral control constitutes an interim solution to be replaced by a private body independent of any government authority. However, a complete privatization of the Internet infrastructure management seems doubtful. The founding of ICANN in 1998 coincides with the first call for a UN Summit on Information Society issued by the International Telecommunication Union (ITU 1998). In 2001, the UN General Assembly endorsed the holding of a World Summit on Information Society. The first part of WSIS took place in late 2003.

The scope and institutional structure of Internet governance were among the most controversial topics throughout the World Summit on Information Society. Developing countries in particular expressed their dissatisfaction with the current private regime. From their point of view, governments should control the infrastructure of the Internet. The majority of developing countries would prefer an intergovernmental regime under the UN instead of ICANN. However, many OECD countries, among them the US and the European Union, oppose the idea of assigning regulatory functions concerning the Internet to the ITU. As a consequence of the wave of deregulation in the telecommunication sector, private forms of regulation enjoy a lot of political support in the OECD world. Tenacious negotiations during the preparatory conferences of the first phase of the World Summit made it clear that a common position on the general political outline of Internet regulation was out of reach. The only compromise possible was a call to the UN's Secretary-General, Kofi Annan, to set up a multi-stakeholder working group on Internet Governance.

2.2 Actors involved

At first glance, the composition of actors involved in ICANN and the World Summit couldn't be more different. The fundamental idea underlying ICANN's structure was that governments should be kept out of Internet Governance. Instead, the management of domain names and Internet addresses were to be left to private self-regulation. Due to the advocacy of (mostly) American NGOs and a sympathetic Clinton administration in Washington, however, ICANN had also to include individual users. According to the original bylaws, Internet users would select half of ICANN's board members. The

other half would be composed of representatives of the Internet industry and technical standard setting bodies. Most of the electoral positions in ICANN are divided among five world regions to ensure international representation.⁶ However, the majority of active participants come from the developed world.

Governments were not granted any voting rights. In the view of the US administration, governments lacked the flexibility and speed to provide adequate regulatory responses to the development of the Internet. (DOC 1998) After some backroom negotiation, a Governmental Advisory Committee (GAC) was created as institutional affiliation for representatives of countries and international organizations.

In contrast to ICANN's industry-user focused arrangement, World Summits constitute designated UN territory. National sovereignty is the governing principle. Rights and modes of participation are specified by "rules of procedure", which are devised solely by governments. Worth noting is that developing countries are very well represented at World Summits. While ICANN's Governmental Advisory Committee is dominated by OECD countries, developing countries voice their opinions markedly at World Summits. In the governmental drafting group on Internet Governance developing countries play a powerful role. Despite these differences, both ICANN and the World Summit attract attendees from governments and international organizations, from the private sector and civil society. A considerable number of individuals who attend ICANN meetings also attend the meetings surrounding the World Summit. Moreover, the balance of power between the different actors is a subject of constant tension in both ICANN and the World Summit.

2.3 Participatory provisions

ICANN's original approach to self governance was very experimental. Even though under unilateral government control, ICANN nonetheless managed to set a precedent in the context of transnational multi-stakeholder arrangements. This is particularly true for its concept of legitimacy: "The Internet community is already global and diverse and likely to become even more so over time. The organization and its board should derive legitimacy from the participation of key stakeholders. Since the organization will be concerned mainly with numbers, names and protocols, its board should represent membership organizations in each of these areas, as well as the direct interests of Internet users." (DOC 1998) Never before had individual users been regarded as "key stakeholders" in the regulation of a public infrastructure; and never before were they acknowledged as a source of legitimacy.

UN World Summits, although to a lesser extent, also form experimental frameworks. Over the past decades, the World Summits' rules of procedure have gradually opened doors for non-state actors to participate. As Fernando Cardoso points out, "UN Summits have been the occasions where participation rules have been most stretched. Rio encouraged the involvement of large numbers of non-state actors and ensured this continued through the follow up. (...) Johannesburg was the most

⁶ ICANN's five world regions are Africa, Asia Pacific, Europe, Latin America and North America. They form the basis of ICANN's interpretation of "international representation".

participatory Summit with non-state actors in the same venue and interacting directly, rather than in parallel forums. (...) The upcoming World Summit on Information Society has created a Civil Society Bureau, a first in the UN, to facilitate the contribution and participation of civil society in the process." (Cardoso 2003) In addition to the shifting boundaries between governmental territory and multi-stakeholder arrangements, some governments accept non-state actors as members of their delegation. Both ICANN and the World Summit thus constitute venues where new tripartite policy arrangements are taken into consideration and put to test.

3 Two Case Studies on Civil Society Formation in Transnational Policy Arrangements

3.1 Civil Society as Individual Users in Internet Governance

The founding years of the Internet were characterized by a period of self regulation. The engineers who developed the Internet also set the rules for the allocation of domain names and Internet addresses. In the early 1990s, when the Internet became privatized and expanded beyond the academic community, this "self" became problematic. It was no longer clear who the so called "Internet community" was and on whose behalf it acted. Conflicts surrounding rights to domain names and their administration showed that a more formal regulatory framework was needed for the management of the Net's infrastructure. However, it took years before the details of its institutional structure could be settled. No consensus seemed possible regarding the configuration and relative power of actors. New stakeholders such as the emerging internet industry, trademark owners, but also NGOs focusing on "cyber liberties", entered the field of Internet policies. At the same time, the technical community defended its traditional control over the infrastructure. Thus, the open question was how a legitimate decision-making authority for the Internet should be composed.

It was the US government who claimed the right to settle the issue of Internet regulation. In 1998, the US government issued a white paper which devised the outline for a new private governing body. The US government expected the new body to derive its legitimacy from a very inclusive approach to representation. All regions and functions present on the Internet were to be integrated, including individual users. Member organizations instead of governments were to represent the various stakeholders.

3.1.1 Framing civil society in a self governance context: The At-Large membership as counter-balance to the private sector

In the months following the release of the US government's White Paper, a series of international workshops was organized to discuss the structure of the future administrative body. During the so called "Forum of the White Paper" in the summer 1998 a network of initially primarily US based NGOs and academics emerged. The recently founded Harvard Law School's Berkman Center for Internet and Society became a point of reference for expertise and organizational support. The emerging advocacy network gathered around issues related to freedom of speech and privacy in the

allocation of domain names. Another important issue was the legitimacy of the future governance body. From the advocacy network's perspective it was of paramount importance that the new self-regulatory structure would be truly international, democratic, transparent, accountable and bottom-up. An open membership organization was seen as the key to meeting those criteria.

During the negotiations of ICANN's bylaws in autumn 1998, the advocacy network managed to establish individual users as a relevant stakeholder in the regulation of the Internet's infrastructure. The Clinton Administration supported the NGO position that some form of public interest representation was necessary beyond that of the Internet industry and the technical standard setting community. On the basis of a strictly private governance approach, Internet users were accepted as a counter-balance to the interests of the business world. However, in the camp of the technical and the business communities there was little sympathy for this idea. The standard setting organizations found it difficult enough to share with commercial stakeholders what they regarded as "their" authority over the Net's infrastructure. Yet, the plan for a membership organization was seen as even more problematic: "ICANN's mission is extremely limited: to maintain the stability of the DNS. (...) This objective requires (...) consideration of technical issues that are generally not accessible to the population as a whole, or even the user community as a whole." (Sims 1999)

Against firm opposition from the technical community, ICANN had to commit itself to create a so-called At-Large membership.⁷ ICANN's bylaws determined that the future membership structure would elect nine of ICANN's overall 19 directors. The Memorandum of Understanding signed by the US government and ICANN in autumn 1998, provided that ICANN would "collaborate on the design, development, and testing of appropriate membership mechanisms that foster accountability to and representation of the global and functional diversity of the Internet and its users, within the structure of private-sector DNS management organization". (MoU 1998) No further specifications were given as to how such a membership organization would look. Instead, the US government left it to ICANN itself to develop a practical solution to the problem that as yet, Internet users were not organized as an international stakeholder. The NGO coalition had secured half of ICANN's board seats on behalf of the public interest even though there was no international organization or network that could claim to represent such an interest. No doubt, civil society had gained a major victory but as yet the Internet's global civil society seemed to consist of a handful of NGOs, academics and well-meaning American foundations only.

3.1.2 Negotiating the realization of a concept: The Global At-Large Elections

According to the Memorandum of Understanding with the US Government, it was ICANN's responsibility to set up a global membership structure. The big question though was how to do this. ICANN approached the problem in the form of a committee. A "membership advisory committee" was tasked with examining various options of membership organizations and election procedures. The advisory committee was the first of several subsequent bodies that discussed in a systematic way the

⁷ It was indeed the US government who "urged" ICANN's founders to take into consideration and "to consult with these groups and others who commented critically on your proposal to try to broaden the consensus." (Burr 1998).

potential roles and ramifications of an At-Large membership in ICANN. Even though most of its members had a civil society or academic background, the committee's recommendations reflected a top-down approach without much participation of the actual target group. The advisory council's blueprint for civil society participation in ICANN suggested that the At-Large membership would function as a watchdog over ICANN, provide for accountability and transparency, and contribute a genuine public voice or users' perspective to ICANN's policy processes. It should be open to all individual users.

Throughout the year 1999, ICANN staff was tasked to work out the details of the membership organization. ICANN's administration suggested a system of indirect elections and a two-tier membership organization. Internet users would elect members of a council, which in turn would choose board members. ICANN's temporary board adopted those proposals. Towards the end of 1999, one year after ICANN's incorporation, ICANN initiated the founding of an At-Large membership and an online election of board members. As it turned out later, the election was indeed the only mission intended for the membership organization.

While indirect elections provided a comfortable means for ICANN to exercise some control over the process, from the NGO's perspective, they bore significant risks of manipulation. At the ICANN meeting in spring 2000, two American NGOs presented a study funded by the US Markle foundation that evaluated the details of civil society participation as foreseen by ICANN. The study criticized the lack of influence of At-Large members, the vulnerability of the election system to capture and fraud, and the lack of safeguards to ensure a diversity of viewpoints. It predicted that Internet users would feel discouraged by an indirect election system and that the election procedures would not produce high quality board members. (Common Cause & CDT 2000)

The challenge of ICANN's plans for the At-Large membership and indirect elections was so fierce that the board decided to change the election rules. Although the membership recruitment process had already started, the board abandoned its decision to hold indirect elections. According to the new plan, five instead of nine At-Large directors were to be elected on the basis of direct elections. Five world regions would each elect one director. A nomination committee to be founded by ICANN was to propose candidates. At-Large members would be able to nominate additional candidates on the basis of a petition process. Even though the NGO network had fought successfully for direct elections, the compromise reached created an even more precarious status for the At-Large membership. The perhaps most significant part of the new election procedure was the new conceptualization of civil society participation in ICANN as a (one time) voting act. Indeed, the structure of the At-Large membership became defined as part of the election process. After the election, ICANN would commission a study on the concept of the At-Large membership, and any future decisions regarding civil society participation would depend on the outcome of that study.⁸

⁸ ICANN's amended bylaws didn't specify any role for At-Large members beyond the 2000 election. What is more, any new elections would require a change of the bylaws and thus a two-thirds majority of the board. The study on the At-Large membership was intended to be a "clean sheet study", meaning that previous decisions regarding the role of users would be "informative but not determinative" (see Hofmann 2002 for details).

In spring 2000, when the preparations for the elections started, ICANN was a fairly unknown organization. Only a small minority of users worldwide had taken notice of the regulatory body and the opportunity to vote for At-Large directors. In the weeks following the start of the membership program, just a few hundred users signed up as At-Large members with ICANN. The preset threshold of 5000 members seemed to be out of reach until national competition, especially in Asia, but also in parts of Latin America and Europe, turned the elections into a popular event. In order to make the elections better known ICANN had taken steps for regional outreach. Simultaneously, ICANN began to publish national break-downs of registration figures. The combination of local outreach activities and the release of registration figures had great effects, at least in some countries. In Germany, the online media initiated a press campaign for the elections. In Japan, an industry association lobbied users to register. Campaigns were launched as well in Brazil, in China and Korea. The release of the registration figures had made it plain to all observers that the more Internet users of a given country signed up, the better the chances for that country to determine the future ICANN director.

An explosion of membership registrations and numerous breakdowns of the registration servers towards the registration deadline indicated that ICANN had, by accident and against its intentions, created an expansive membership organization. ICANN was clearly not happy about the sudden interest in its business. As one of the organizers put it: "Well-meaning people all over the world are mistakenly calling this a 'global election' not noticing that we're a small company with a limited mission." (Roberts 2000) All in all, 176,000 users registered before the deadline at the end of July 2000. About half of all registrations occurred in the last week before the deadline. Most of them (about 94,000) came from Asia. In Europe, 36,000 users signed up, 20,000 of them German (Hofmann 2002).

The perhaps most striking feature of ICANN's new membership was that its members didn't know each other and lacked any means to network. ICANN maintained the membership data base and didn't provide any support for horizontal communication. Yet, in some of ICANN's world regions, attempts at self-organization were made. In the course of the petition process allowing Internet users to nominate themselves, mailing lists and websites were set up; workshops and panels were organized, and some online journals and newspapers published interviews with candidates. Thus, during the summer 2000, regional networks evolved across national borders and sectors encompassing a broad variety of organizations and individuals with political, academic and civil society backgrounds. The implicit goal of all these networking activities was to form regional constituencies. The actual reach of these networking endeavors remained limited though. Only a small number of At-Large members responded to the outreach activities. Many other members lost interest or simply missed the various deadlines structuring the nine months election process. Roughly half of the registered members worldwide activated their membership, and again half or 34,000 of the users eligible to vote actually did so. In the US and Europe, the electorates voted for independent candidates with a clear political agenda. In the other three regions, candidates nominated by ICANN's nomination committee succeeded. Two of them had a commercial background; none of them had noticeable links to the civil society world.

3.1.3 Civil Society Organization in Retrospect: A Flash in the Pan

The first global online elections had been an experiment carried out under significant time pressure and without an adequate budget. Due also to the late change of the election system, most of the election procedures had to be crafted during the election process. Despite severe doubts regarding the fairness of the process, most civil society participants held the view that, while there was ample room for improvement, elections of At-Large directors as such were a positive step because they encouraged civil society participation in ICANN. (NAIS 2001)

From ICANN's point of view, however, the elections had to be entirely condemned. According to the organizers, the elections had been a disaster, a disaster that should by no means ever be repeated. The reasons given referred to the number of voters and the costs of global elections: "The adoption of an open, worldwide At-Large election process with an electorate of all Internet users is not an affordable goal for ICANN, even if it were tangibly related to the corporation's mission, which it is not." (Roberts 2001) ICANN staff suggested to interpret the unexpectedly high number of membership registrations as proof for the illegitimacy of the election: "The number of At-Large registrants who actually activated their voter registration in the 2000 election, 76,183, is approximately 2/100ths of a percent of the potential electorate if the lowest projection - 350 million - is used. The number of actual votes, 34,035, is equal to 1/100ths of a percent. These are not numbers which meet any test related to democratic legislative elections." (Roberts 2001) Even though ICANN had never aimed at representative global elections, the lack of representativeness became a predominant characteristic associated with them (compare Leggewie 2001; Hunter 2003). The common sense of ICANN participants has since been that the elections in 2000 did not solve problems of legitimacy but created them. (Hofmann 2004) These views have persisted despite the fact that two studies – one of them commissioned by ICANN – came to opposite conclusions (ALSC 2001; NAIS 2001). The At-Large membership was strong in numbers but obviously weak in agenda setting. Despite many supporters also outside the group of active members, it was ICANN which shaped the prevailing opinion.

After the election, ICANN silently disbanded the At-Large membership. A year later, in early 2002, ICANN asserted with more emphasis its objection to the idea of a civil society membership organization. As part of a comprehensive reform proposal, ICANN's former president denounced the concept of an At-Large membership as "the single largest distraction from what should have been the central ICANN focus (...) governments or bodies appointed with government involvement can, it seems to me, certainly stake a better claim to truly reflect the public interest than a few thousands of self-selected voters scattered around the world." (Lynn 2002)

The abandoning of the At-Large membership clearly constituted a "breach of faith with the founding principles and basic structure of ICANN" (Costello 2002). However, the objecting voices weren't very loud. Although several initiatives were started for self-organization outside of ICANN, the various membership projects never gained the strength to exert effective political pressure. Hence, the At-Large membership withered down to a few dozen experts and activists, and the public space that had emerged around the idea of civil society participation in Internet governance dissolved.

There are several reasons why the At-Large membership was unable to hold up the momentum generated in the course of the Internet elections. A crucial problem was that the At-Large membership didn't form autonomously but was initiated and more or less controlled from the top. Civil society lacked the means to develop an identity and independent structures with clear boundaries against other stakeholders. Instead, the existence of the At-Large membership was due to a temporary victory against a reluctant ICANN; a victory achieved by a few NGOs, foundations and academics, thanks to the equally short-term support from the US administration. The At-Large membership failed to transform itself from an abstract idea of civil society as a counter-balance and watch dog to a concrete actor with committed participants, working structures, clear positions and individuals representing them. Despite good contacts to a sympathizing press, the At-Large members who attended ICANN meetings were noticeably marginalized by other stakeholders. Without an independent constituency, the At-Large membership could not even prevent its liquidation.

The first At-Large membership thus ended as a flash in the pan. What has followed as part of ICANN's reform process is ALAC, the Interim At-Large Advisory Committee founded by ICANN in 2003. It is difficult to say if the new membership structure still qualifies as a civil society entity since its activities are funded, administratively supported and to some degree controlled by ICANN.⁹ In any case, ALAC seems not to meet any of the definitions of civil society mentioned above. Perhaps not surprisingly, the new framework has not been able to attract many members.

3.2. Civil Society as a Stakeholder in the UN World Summit on Information Society

The World Summit on Information Society continues the series of UN World Summits started in the early 1990s. All World Summits share the goal to address problems of global reach, to develop a common understanding of those problems and broad consensus on practical solutions. World Summits have a tradition to include in various ways non-state actors in the consultation process (Office of the President of the Millennium Assembly 2001). However, the UN General Assembly's resolution on the World Summit on Information Society for the first time officially invited and acknowledged the participation of non-state actors in the Summit: "The General Assembly,(...) encourages effective contributions from and the active participation of all relevant United Nations bodies, in particular the Information and Communication Technologies Task Force, and encourages other intergovernmental organizations, including international and regional institutions, non-governmental organizations, civil society and the private sector, to contribute to, and actively participate in, the intergovernmental preparatory process of the Summit and the Summit itself." (UNGA 2002)

⁹ The new framework for the participation of individual users envisages regional hierarchies consisting of "At-Large structures" and "Regional At Large Organizations" (RALO). Regional organizations focusing on individual user participation can apply to become At-Large structures. They have to be certified by ALAC. The certification process is subject to review by the ICANN board. Certified At-Large structures can then form a RALO. The requirements can be found on the ALAC's website: [<http://alac.icann.org/framework.htm#Proposedminimumcriteria>].

The UN Secretary-General had asked the General Assembly to adopt what is now called in UN language a "multi-stakeholder approach". However, "multi-stakeholderism" is far from being a codified concept. There is as yet no clear definition, or at least a common understanding, of what the term exactly means in the context of the UN. Does it, for example imply that all stakeholders should have the same political weight and thus interact on an equal footing? The implementation of the new buzzword became subject of ongoing negotiations between government delegations, industry and civil society groups. (see Padovani & Tuzzi 2004)

3.2.1 Conceptualizing Civil Society in an Intergovernmental Context: Bringing in People-Centered Visions

On the part of civil society, the UN Resolution had evoked high expectations. Some 200 people from NGOs, academia and the media attended the first preparatory conference in summer 2002 at a time when only few experts knew about the upcoming World Summit. In the year before the Summit's preparatory process commenced, a civil society network launched a campaign in London called "Communications Rights in the Information Society" (CRIS). CRIS originally consisted of several NGOs specialized on media and communication issues (see Raboy 2004 for details) who regarded WSIS as "an opportunity to put communication rights on the global agenda." (WACC 2002) After first attempts to get involved with the WSIS preparations at the ITU turned out to be unsuccessful, CRIS together with the German Friedrich Ebert Stiftung in Geneva organized a seminar on "Communication as a Human Right in the Information Society". This seminar facilitated communication between NGOs and representatives of several UN agencies including the WSIS Secretariat, and it established CRIS as a first civil society reference point for UN bodies involved in the Summit. During the following months, the Civil Society Division of the WSIS Executive Secretariat¹⁰ collaborated with CRIS on the issue of civil society participation (Ó Siochrú 2004). A first interface between the Summit and civil society was thus already created before the official process had started.

Thanks to the expertise assembled in CRIS, a political framework emerged that was broad enough to allow other NGOs to adopt and build upon it. CRIS succeeded to put WSIS into a political perspective. It enabled the emerging civil society network to point out basic differences between the governments' and its own visions. Part of this perspective was a historical context. WSIS was portrayed as "the third attempt by the UN system to deal globally with information and communication issues." (Raboy 2004; Hamelink 2003)¹¹ With this historical reference, civil society groups set themselves apart from the official ITU view on information society that, "as though someone at ITU headquarters had awakened one fine morning and seen the information society peeking over the horizon of the mountains surrounding Geneva" (Raboy 2004), stressed the novelty and the technical dimension of the debate.

¹⁰ The Summit Secretariat has three divisions, one for the support of governments and intergovernmental organizations, one for the private sector and one for civil society.

¹¹ The first event is the 1948 Universal Declaration of Human Rights, the second one the debate on a "new world information and communication order" which started in the 1970s.

Referring to these prior debates on information and communication, the NGO network pushed an alternative vision for the WSIS. A distinction was suggested between the official Summit's notion of "information society" and a contrasting civil society notion of a "communication society", or, as it was later relabelled, "information and communication societies". The governments' notion of information society was said to be technocratic. First, because it is "concerned almost exclusively with the spread of information and communication technologies" (Ó Siochrú 2004: 207); second, because this notion focuses on market forces and lacks a sense of social and political choice in the implementation of information societies: "Thus the civil society approach to the World Summit on the Information Society must begin by examining what is the nature of this thing, the 'Information Society', and what ought it to be. Indeed, the first point is to assert that *there is no single model of the information society*, but many possible information societies. The next step is to decide what kinds of information societies will enhance social development and human rights, and how we can design and implement processes to achieve these." (Ó Siochrú & Girard 20)

The plural version, "information societies", became a symbol for civil society to spread the message that social and cultural values, not technical progress, should shape information societies. The notion of information societies implied an image of people not as "users of the info society" but as citizens "with the rights and obligations that citizenship permits and imposes". (WACC 2002) Civil society groups described their own model as the "people centred vision". It focused on communication as a social activity and based its values and principles on a political framework of human rights and social justice: "Can one actually talk about an 'information society' without anchoring it in at least some fundamental notion of communication? Amazingly, this is precisely what the WSIS attempted to do, until civil society became involved..." (Raboy 2004)

The civil society alliance managed to attach almost antagonistic meanings to the seemingly similar terms "information society" and "information and communication societies". One of them is obviously positive because "people-centered", the other one clearly negative because predominantly technology and market driven. The broad vision of "communication and information societies" provided not only a conceptual framework for very different groups to identify with, it also generated a sense of the "other" (Alexander 1998) referring to specific actors, aims, interests and beliefs outside of civil society's boundaries. The vision of communication and information societies offered a political approach to the World Summit with its potentially boundless array of issues. And, the message implied in this political approach substantiated civil society's claim to participation as partners in the Summit preparation. The demand of speaking rights both at plenary and working group levels were thus not only a matter of principle but also seemed a necessary means to modify the Summit's agenda and vision.

3.2.2 Developing Civil Society working structures through Assimilation and Emulation

The first "PrepCom"¹² typically deals with rules of procedure. In the context of UN Summits rules of procedure are a highly political matter. Such rules determine the organizational boundaries of the Summit but also its internal structure. They define various types of committees working groups and the rights for access to and speaking privileges at those entities. For civil society, the first PrepCom is relevant because its outcome structures the interaction with governments and, indirectly, their opportunities to influence the negotiation process. The civil society organizations who attended the first PrepCom took the UN Secretary-General by his word. Their ambitious goal was to become accepted as equal partners in the definition of the Summit's agenda and subsequent negotiation processes. As Cees Hamelink (2002), one of the observers, put it: "The Summit and its preparatory process have to be a genuine tripartite arrangement! (...) For the WSIS to be effective, citizens need to feel that they are co-proprietors of the eventual outcome: the final declaration and the Action Plan."

Not surprisingly, government delegations were divided with regard to the status of civil society. While some of them welcomed the concept of a multi-stakeholder approach, the group of 77, particularly China, Pakistan and Brazil, remained vigorously opposed to any form of non-state actor participation. Even among governments sympathizing with the multi-stakeholder idea there was no consensus on the concrete meaning of the term. The delegations spent several days behind closed doors without coming to an agreement. As Ó Siochrú (2002) writes in his account of PrepCom 1, there was at times "general concern that the entire process could break down." Considering civil society's expectations, the final result looked very frustrating. Non-state actors were granted an observer status and limited speaking rights at plenary meetings.¹³ Access to the Summit's actual working and drafting level, however, remained uncertain and, as it turned out later, more or less blocked.¹⁴

At the first two PrepComs, the civil society groups focused on setting up their own working structures. The challenge was to create an open platform for the growing number of attending organizations and individuals (both face-to-face in Geneva and online), the majority of which didn't know each other and

¹² "The term Preparatory Committee invokes images of a small group taking care of the practicalities of organizing a meeting. A PrepCom, as it is referred to, is not at all like that. Held in Geneva's international conference centre PrepCom 1 was a massive and highly formal affair. For days at a time official delegates, many of them professional diplomats, read from prepared texts in a room so big you often cannot see who is speaking." (Highlights 2002)

¹³ After some criticism about the WSIS' "spatial policy" (Padovani & Tuzzi 2004; Ó Siochrú 2002), meeting rooms and a computer pool on the premises of the PrepCom were also granted. Government delegates and non-state actors thus met in the same buildings and had plenty of opportunities to communicate. This has not always been the case at World Summits (see Clark, Friedman & Hochstetler 1998: 20).

¹⁴ Non-state actors had to leave the room upon request of delegations. Almost all working group meetings therefore took place without non-state actor participation. Anticipating such problems, the ITU Secretary-General had asked all governments in his invitation letter to the first PrepCom earlier that year to "strongly consider including representatives from the private sector and civil society in your preparatory team" (quoted after 'Highlights' 2002). As official delegation members, civil society individuals could attend working group meetings. A few governments, most of them from Europe, followed this advice for a practical solution to the problem.

may not even speak a common language. As Ó Siochrú (2004: 214) remarked, governments could rely on ritualized procedures whereas civil society had to reinvent the wheel: "While governments could readily debate through tried and tested procedures of a UN Summit, civil society had a tougher task in bringing the wider issues and the huge range of diverse actors together in a coherent manner during the Preparatory Committee meetings (PrepComs) and the Summit. These particular segments of civil society had never before come together en masse, and its components knew little of each other." The task was to develop rules and routines for functions such as debating and formulating civil society positions, drafting statements reflecting those positions, lending general support to such statements and, not least, speaking on behalf of and representing civil society.

The bodies evolving first were a plenary and working groups or caucuses. The plenary was open to everyone and regarded as the ultimate source of authority. It met every morning and served to sanctify decisions. The emerging working groups and caucuses formed the actual reservoir of expertise. Some of them run mailing lists with many experts subscribed from all over the world. They monitored the official negotiation process, developed positions and lobbied delegates (Highlight 2002) All in all, 20 working groups were formed. Most of which reflected the thematic areas of the Summit's draft Declaration and Action Plan.

Above the working group level a coordinating layer was created, the "content and themes group" (C&T), which met every evening during PrepComs. The task of the C&T group was to adopt common position papers and to fill civil society "speaking slots" for the Summit plenary. Finally there was the "Civil Society Bureau" (CSB), an invention of the Secretariat's Civil Society Division agreed upon in early 2003. The CSB was supposed to form civil society's administrative interface to the intergovernmental bureau. Among its responsibilities was the organization of schedules, meeting rooms, funding procedures and practical arrangements pertaining to the communication between governments and civil society.¹⁵

This organizational structure enabled the heterogeneous fabric of NGOs and individuals to present itself as a coherent actor to the outside world of governments and the private sector. Simultaneously, the structure fostered well accepted routines for debate, decision making and drafting. Based on the Summit's official draft documents, the working groups would each review the parts they were concerned with. They would then search for a consensual position of the working group, draft a new text accordingly and propose this text to the Content and Themes group. The time pressure due to short intervals of new government drafts facilitated consensus building among civil society groups and led to a fairly high level of productivity.

Despite all procedural restrictions, governments and non-state actors communicated continuously on a formal as well as an informal basis throughout the preparatory process. There was a constant flow of information between delegates and civil society groups to keep each other updated on the state of

¹⁵ The CSB is composed of so-called "families", another invention suggested by the Civil Society Division. Families were thought of as administrative clusters for thematic working groups. However, the concept of families never really took off, not least perhaps, because it was introduced in a top-down way.

negotiations. Some delegations, particularly those from Scandinavia, established close working relationships with civil society experts from their countries. Such connections provided effective channels into the governmental negotiation process. The civil society alliance was thus able to closely monitor the closed drafting progress, develop a detailed understanding of the various positions and, above all, assess the actual impact of their lobbying work. While their interventions were successful in some areas, hardly any impact could be achieved in many others. Civil society participation made a difference when a powerful group of governments, typically the EU, adopted their position. This was most notably the case with regard to the status of human rights. In many other areas¹⁶ though, civil society positions were more or less ignored.

Growing frustration with the political course of the official negotiations finally led the civil society network decide to withdraw from the process. In a statement directed at the governments it announced its position: "We do not want to endorse documents that represent the lowest common denominator among governments." (Civil Society Statement 2003) A month before the official Summit, the civil society network set out to write its own declaration titled "Shaping Information Societies for Human Needs" (Civil Society Declaration 2003). The alternative declaration followed the structure of the official Summit documents but offered a different wording reflecting civil society positions for each of its sections. The alternative declaration was formally adopted by the Civil Society Plenary at the World Summit in December 2003.

3.2.3 Reflections on Civil Society participation at WSIS

Civil society's experiences in participating in the WSIS are summarized in a series of articles and reports. For many attending activists, the first phase of the World Summit had been an intense learning process in want of reflection and evaluation.¹⁷ There are two conclusions that most of these accounts seem to share. The first concerns the official results of the Summit. There are many complaints about the lack of a powerful vision in the Summit Declaration and the lack of feasible, consistent strategy in the Action Plan; and there is the suspicion that governments might not care enough about the social shaping of information society, or clearly less in any case than civil society. As Ó Siochrú (2004: 216) states: "Many believe, and are not surprised, that the WSIS achieved little in formal terms. (...) after months and years of debate, most of it bogged down in sterile procedural issues (...) Even where many held reasonable hopes for movement within the 'information society' debate – for instance, on free/libre and open source software – progress was blocked by powerful interests." Sally Burch (2003), another participant; echoes: "The tepid commitments contained in the official documents indicate feeble political will of the world's leaders (...) Civil society, formally the third actor invited to the table, has in practice had to fight at every stage to make itself heard. It succeeded, nonetheless, in

¹⁶ Among them intellectual property rights, ownership of media or the creation of a digital solidarity fund for the global south.

¹⁷ Interesting enough, there are only a few attempts to analyze civil society participation across several World Summits. One obvious reason for the lack of cross Summit learning processes has to do with the fact that civil society constitutes itself anew with each Summit. Depending on the topic, there is no or only a minor overlap between the attendees.

making an impact on the vision and principles section of the declaration, as well as in introducing a number of proposals relating to social issues."

Hence, the first conclusion is that civil society failed to convince the General Assembly of its own people-centered vision of information society. The intense lobbying left noticeable traces in the Declaration, to be sure, but the changes achieved and the overall quality of the final documents are by no means satisfying. Likewise, despite earlier announcements by the UN, civil society has not been treated as a partner in the negotiation process. The doors to meetings that really mattered remained firmly closed. In the face of such results civil society participation in the WSIS could be interpreted as a failure. Yet, this is not the case. While every civil society report stresses the fact that the process was "fraught with frustration", most participants seem to agree that the World Summit indeed marked, as Esterhuysen (2004) put it, a "watershed in public participation": "At the informal level the outcomes are more significant. [WSIS] has facilitated a shift from the world of obscure ICT policy jargon, engaged by a select group of NGOs, consultants, donor agencies, and governments, to a new context, in which ICT policy has become firmly located in broader debates on development and society." For the first time, Esterhuysen observes, ICT policies have been addressed in a "holistic way" bringing together different areas of regulation and policy interests. For instance, NGOs concerned with development issues met and drafted statements together with NGOs concerned with freedom of information and privacy.

Special attention is given in this context to civil society's networking capability: "A huge diversity of views and approaches were thrown together. It was the first time that such an assortment had gathered together under one roof." (Ó Siochrú 2004) Padovani and Tuzzi (2004) make similar observations regarding the heterogeneous "assortment" of groups and individuals that not only assembled but converged to some degree at the WSIS: "The kind of convergence that took place at WSIS cannot be defined as an 'advocacy coalition' as coalitions normally concentrate on single issues. The WSIS process has in fact witnessed the dialogue between activists, hacktivists, grassroots groups, exponents of epistemic communities, individuals and NGOs, the former being more creative and agenda-setting-oriented and the latter extremely helpful in mediating forms of 'institutionalization' of civil society presence."

In their accounts of the first part of the World Summit, the participants indeed seem to celebrate themselves. Comparisons between the two Declarations are made to prove the point that it is civil society, which has a vision while governments merely mask issues they cannot agree upon (Raboy 2004). Changes of the Summit's agenda and rhetoric "from 'information' to 'society'" are recalled to demonstrate how important civil society has been for its outcome: "We are proud to say that we were crucial in bringing home the idea that in the end, the information society is about people, the communication society is about social processes, and the knowledge society is about society's values. In the end, it is not digital – it is dignity that counts." (Civil Society Statement 2003)

Civil society as depicted in the reports on WSIS is clearly proud about itself. On a conceptual level, civil society takes pride in itself for extending and modifying the as yet narrowly defined ICT agenda of the Summit. On an organizational level, civil society takes pride in its ability to integrate a broad

variety of different actors and to generate productive working structures. The open, integrative approach of civil society is based on the assumption that all people who join believe in the same set of common principles (including who and what is outside the boundaries formed by those principles). It is its openness, its universality and willingness to debate that characterizes civil society as an autonomous space and that forms the source of its legitimacy.

The first PrepCom of the second phase of WSIS took place in Tunisia in spring 2004. For this reason, a greater number of Tunisian organizations attended the civil society meetings. In Tunisia, NGOs consist of "GONGOs" (governmental NGOs) and, to a considerably smaller degree, of independent NGOs.¹⁸ Most Tunisian organizations allowed to register as civil society participants for the PrepCom belonged to the first category. The Tunisian participants took issue with many established procedures and positions; they also tried to prevent consensus on statements and speakers. The conflicts among various civil society groups participating in the PrepCom in Tunisia point out a dilemma inherent in the constitution of civil society. Civil society's general openness depends on other actors' consent with and respect for the more or less tacit limits of this openness. Civil society networks risk their source of legitimacy when they exclude groups or individuals which dismiss their norms and values.

4 Civil society between space, network and stakeholder

The two case studies presented in this article focus on the formation and activities of transnational civil society actors. In terms of concrete policy results, both civil society groups seem to have achieved rather little. The At-Large membership lost most of its standing and power in ICANN. What is left of the originally promised nine board seats and the envisaged role as a watchdog are mostly advisory functions. Civil society at WSIS fought for a coherent vision of information societies that give priority to human rights and development goals. However, only small, mostly symbolic traces of this vision can be found in the Summit documents. Moreover, the Plan of Action lacks the commitment of governments civil society had called upon.

The two case studies also have in common that the few policy changes civil society did achieve are due to the support of sympathizing governments. Without the intervention of the Clinton Administration, ICANN would never have allocated half of its board seats to Internet users. Likewise, civil society's impact on the WSIS Declaration always occurred indirectly, through cooperation with supportive governments. Civil society failed in both cases to reach its goal to become accepted as an independent actor in its own right.

Yet, the consequences of these meager results couldn't be more different. The idea of an At-Large membership as a representation of users in Internet Governance was regarded as a failure by most observers and participants. It fell apart after ICANN terminated the membership. Today, only a small number of At-Large advocates are still involved in ICANN. Their work is tightly controlled by ICANN. Civil society activities at WSIS, on the other hand, has been widely regarded as a successful

¹⁸ Most of the latter are not acknowledged by the government and therefore illegal.

project. This impression remained even after the civil society groups gave up cooperating and drafted their own declaration. Also, the civil society network at WSIS didn't disintegrate after the completion of the first part of the Summit.

There are several possible explanations for these different reactions to seemingly similar circumstances. Perhaps the most obvious one is that the ability to modify political preferences and change the substance of policies is just one form of impact. As Arts (2003) has suggested, "three faces of power" should be distinguished. The influence of non-state actors can also assume a discursive form. In the field of agenda setting, the impact of ICANN's At Large membership and the WSIS civil society network did indeed differ to a considerable degree. The At-Large membership was unable to gain any influence on the evaluation and interpretation of the elections. ICANN maintained full control over the empirical data, the stories and scandals told about the electorate. (NAIS 2001; Hofmann 2002)

By contrast, the civil society network's metaphor of "people centered communication societies" proved to be very powerful in the context of WSIS. It offered a conceptual framework many groups and individuals could relate to. The linkage with human rights and the UN Millennium Development Goals created a clear political profile that was by and large acknowledged by most democratic governments. Without persistent lobbying, human rights would not have become such a central political issue in the debate on the information society. The civil society coalition even managed to orchestrate their withdrawal from the official negotiation process as a powerful moral statement on the mediocre results of WSIS. Hence, the WSIS civil society network was far more successful in the field of agenda setting than the At-Large membership.

However, the reports on civil society activities at WSIS mention a second great accomplishment that may account for the different reactions. It is the ability to integrate many different groups and individuals to form a coherent civil society entity that could speak with one or at least a small number of voices. The capacity to self-organize constitutes a second major difference between the At-Large membership and civil society at WSIS. The global At-Large membership never succeeded in generating an organization independent of ICANN. To be sure, ICANN at least passively blocked attempts to create an autonomous user organization. More importantly though the At-Large membership lacked the impetus necessary for kicking off an autonomous trans-national movement. The At-Large membership consisted of a very large number of anonymous voters and a very small number of professional NGOs. Only the latter group took the idea of user representation in ICANN seriously enough to commit itself to its implementation. While the WSIS civil society has been expanding over time, the At-Large members in ICANN failed to convince the silent majority of voters to participate in DNS policies.

Civil society at WSIS instead succeeded in developing a collective self and an organizational structure that embodied and stabilized this identity. The conceptual seed of this self goes back to a platform of communication and media experts formed months before the official preparatory activities started. However, the actual civil society alliance expanded rapidly beyond this core body. The fact that the network grew and became more and more heterogeneous has been an important part of its identity.

Until Tunisian GONGOs joined some working groups, heterogeneity had a clearly positive ring and resonated well with the idea of communication *societies*. The ability to collectively develop broad visions and agree on detailed positions contributed to this positive perception of cultural variety. The civil society groups regarded themselves as what Alexander (1998: 97) has coined a "network of understandings".

The boundaries of this symbolic self are composed of perceptions of the "other": governments, intergovernmental organizations such as the ITU or UNESCO, and the private sector. The civil society statements always advert to other actors. They criticize immoral motives, political blindness or the lack of political will, they decry the dominance of corporate interests, overly simplistic assumptions and similar shortcomings (Hamelink 2004 for a practical example). In this sense, the identity of civil society depends also on its concrete context. The boundaries of this identity are created through interaction with governments and the private sector in a given policy area. The communication with governments and private stakeholders thus serves at least two goals, the ascertaining of political autonomy and the probing of common ground.

Unlike the At-Large membership in ICANN, the civil society alliance at WSIS managed to develop an organizational structure that was regarded as legitimate by both civil society members and non-civil society actors. The At-Large members at ICANN on the other hand were dismissed on the grounds of lacking representativity. Regardless as to whether or not civil society can be representative, there was indeed hardly any link between those who participated in ICANN and those who had merely cast a ballot. The civil society alliance at WSIS created a number of bodies, which were open and inclusive enough to accommodate also those who could not attend face-to-face meetings. Important decisions were usually discussed also online. In a more general sense, civil society's organizational structure enabled links between those who actively participated in the World Summit and those who preferred or had to watch from afar. Thus, the civil society formation at WSIS was linked with those outside the Summit activities. These links to other spheres of civil society activities beyond the World Summit are a major source of its dynamic development, its political autonomy and legitimacy.

Recapitulating the comparison of two case studies, there is one aspect worth emphasizing because it may deserve more attention. As yet, transnational civil society is more an idea than a stable entity or institution. In each policy area, civil society faces anew the challenge to constitute itself as a legitimate actor. The transformation of civil society from a symbolic space between the private sector and governments towards a stakeholder with a clear profile and at least rudimentary working structures is a demanding task. Assuming that additional voices in transnational politics are a positive, democracy enhancing phenomenon, the accomplishment of building and sustaining such voices per se should not be underestimated. In other words, transnational civil society networks should not solely be judged on the grounds of "output" or achieved effects such as policy changes or agenda setting, but also on the basis of their self-organizing capacity; their ability to contribute to the public discourse. As Fernando Cardoso put it: "The legitimacy of civil society organizations derives from what they do and not from whom they represent or from any kind of external mandate. In the final analysis, they are what they do. The power of civil society is a soft one. It is their capacity to argue, to propose, to experiment, to denounce, to be exemplary. It is not the power to decide. Such legitimacy is, by definition, a work in

progress. It is never attained once and for all. It is gained in the arena of public debate and must be continually renewed and revitalized. This open-ended conversation, involving many actors pursuing different - and sometimes divergent - interests, is more than the sum of its parts. The debate and deliberation generated by civil society is at the heart of contemporary global governance." (Cardoso 2003)

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