



The internet governance debate is one where civil society advocates can make a real difference

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Internet governance brings together two largely impenetrable realms for the average WSIS delegate: the nuts and bolts of the internet - what it is, how it works- and who manages those nuts and bolts. It is too early to predict what the final impact of the Working Group on Internet Governance (WGIG) will be. But there is no doubt that it has created a much-needed space. "At a time of global malaise, indifference and lack of faith and legitimacy in many of our global and national governance institutions, the internet governance debate is one where civil society advocates can make a real difference," concludes APC's Karen Banks in this report which covers the main issues at stake in the internet governance debate.

The Geneva Phase of the WSIS produced a political declaration and action plan which was adopted by all governments and intended to guide the Tunis 'implementation' phase of the WSIS¹.

However, governments were unable to reach consensus on two issues – both controversial, both complex and highly political, both finding governments from developed and developing countries positioned roughly, in opposing camps – the issues of 'financing mechanisms' (to put it bluntly, who pays) and 'internet governance' (who controls or sets the rules).

Governments found a way through this deadlock by requesting the UN Secretary General form task forces that would grapple further with these two issues and produce final reports for consideration by governments during PrepCom 2, February 2005 (financing mechanisms) and PrepCom 3, September 2005 (internet governance).

Internet governance brings together two largely impenetrable realms for the average WSIS delegate, let alone an interested general public: firstly, the nuts and bolts of the internet - what it is, how it works and secondly, who controls it, who should control it, and whether it should be controlled at all?

In the case of governance, debates on internet governance come at a time of broad-based dissatisfaction with international governance institutions and processes, with resistance coalitions challenging some of the most powerful international rule-making bodies (such as the World Trade Organisation and the World Intellectual Property Rights Organisation). It also coincides with a period marked by internal evaluation and proposed reform of the United Nations system, including reform of the UN Security Council, that will culminate in the Millennium Summit Review in September, 2005².

¹ http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1161|1160

² UN Secretary General's Report: "In larger Freedom"
<http://www.un.org/largerfreedom/contents.htm>

The debates of Phase I around rules related to patents, copyrights and trademarks and the human rights agenda were also fraught with contention. For many in civil society, the finally agreed positions were in the case of the former highly disappointing, and in the case of human rights, acceptable. But, whatever their opinion of the outcomes, if delegates thought that debates around these issues were concluded in Phase I, they were deluded. The ongoing work around internet governance and preparations for the Summit in Tunis have put them back squarely on the table.

It is too early to predict what the final impact of the Working Group on Internet Governance (WGIG) will be. But there is no doubt that it has created a much needed space to generate greater understanding of what all consider to be a critical global resource, to what extent it can or cannot, should or should not be regulated and what the respective roles and responsibilities of governments, civil society, the private sector and international organizations should be in emerging internet governance arrangements.

WSIS phase I (upto Geneva December 2003) and issues

So what were the issues that brought governments to a stalemate in Geneva?

Defining internet governance: narrow or broad³

During discussions about the scope of internet governance and the issues involved, some delegates envisaged a "narrow" or restricted definition of governance "of" the internet – largely, technical coordination issues, some of which are currently carried out by ICANN – the organization based in the United States which deals with issues such as the delegation of administration of 'top level domains' such as .edu, .com, .org and the process of deciding on new top level domains. A particularly thorny issue was that of who controls the 'root zone file' which contains references to all country code domains (such as .uk, .in, .br, .cn). Many felt that control over such resources should be a sovereign right of nation states, and not under unilateral control of any one nation state.

Others took a broader or extensive view of governance "on" the internet, relating to what the internet carries – the content. This includes dealing with issues such as the possible regulation of spam, viruses and crimes that are carried out on the internet such as fraud, money laundering, hosting of child pornography etc. Debates around regulation of content also veered into potentially dangerous territory with some states expressing desires to define and regulate 'illegal and harmful' content, which, depending on a state's definition of 'harmful' could include the content of gay and lesbian groups, many activists communities and monitors and watchdogs of corporate and government accountability.

Responsibility: a new intergovernmental process or the status quo?

The second issue was concerned with issues of responsibility for internet governance, legitimacy of existing governance bodies and representation issues.

"Many developing nations, particularly China, South Africa, Brazil and most Arab States expressed the view that internet governance was a matter related to national sovereignty and that an intergovernmental process, preferably under the UN (with the ITU⁴ being specifically mentioned), was needed where governments could discuss policy issues of international scope," explains Adam Peake in a paper on internet governance commissioned by the APC.

³ Extensive discussions about Internet Governance were held during the 6th meeting of the UNICT TF. The Global Forum on Internet Governance produced some useful reference material: <http://www.unictf.org/sixthmeeting/background.html>. APC also wrote a report on the meeting which can be found here: <http://www.apc.org/english/news/index.shtml?x=18720>

⁴ International Telecommunications Union (ITU). The ITU is the UN body concerned with telecommunications.

“Most developed nations, including the United States, European Union, Japan, Canada and Australia, supported the current system of private sector leadership. They were referring to the narrower definition of internet governance, particularly to ICANN's responsibilities, but also to general understanding that the internet had developed successfully through self-regulation and that this should be encouraged to continue. They took the view that the system works so there is no need to change it.”⁵

Meaningful participation in governance processes

A third issue is the less-than-satisfactory situation many developing country governments and civil society advocates find themselves in with respect to the ability to participate in a meaningful way in global governance processes. Issues such as having sufficient capacity, technical and other expertise, resources (time and money) and the fact that most governance institutions are based in the northern hemisphere, are all factors which prevent delegates from developing countries from being active and equal partners in international decision-making and engagement in governance processes that lead to real impact on the ground at home.

Although many of the debates during Phase I were complicated by a general lack of understanding and confusion around how the internet works, this was overshadowed, and rightly so, with an overarching desire to assess and reform existing governance mechanisms to reflect the principles outlined in the Geneva documents - that they be multi-lateral, transparent and accountable.

The Working Group on Internet Governance (WGIG)

Mandate

After consideration of the above debates, a mandate for the WGIG was established which is stated in the Geneva Documents. In summary it is to:

- Develop a working definition of internet governance;
- Identify the public policy issues that are relevant to internet governance;
- Develop a common understanding of the respective roles and responsibilities of governments, existing international organisations and other forums as well as the private sector and civil society from both developing and developed countries.

Composition

Civil society was instrumental in influencing the criteria setting and nomination process for the working group. The Civil Society Internet Governance Caucus developed general criteria – including the need for geographic and gender balance, a mix of skills (technical, academic, networking and facilitation) and formed a nomination slate of some 15 candidates, (10 of which were finally selected by the UN Secretary General), through an open consultation process with all civil society caucuses and working groups active in the WSIS⁶. The final composition of the 40 member WGIG is government (18), private sector (6) and civil society (15⁷). There are 31 men and 9 women.

⁵ More information can be found in <http://rights.apc.org/papers.shtml> - Internet governance and the World Summit on the Information Society (WSIS) – Adam Peake, commissioned by APC

⁶ <http://www.net-gov.org/docs.php>

⁷ Including Carlos Afonso, planning director at APC's Brazilian member, RITS and APC's Networking and Advocacy Coordinator, Karen Banks.

Work: Fact-finding, assessment and recommendations

The work is divided into 3 broad phases: fact-finding, assessment of existing internet governance arrangements and options/recommendations for reform of existing and new forms of internet governance arrangements.

Fact-finding

The fact-finding phase of the work has been completed and was the basis, in addition to a draft definition of internet governance, for the first report⁸ which was presented to delegates during PrepCom 2 (Feb, 2005).

The group produced a series of 'issue papers'⁹ which outlined the challenges of global governance of around 25 issues ranging from administration of IP names and numbers, to competition policy in relation to telecommunications, to universal access, 'cybercrime', spam and pornography and intellectual property rights.

The papers identified strengths and weaknesses of current governance mechanisms in relation to each issue.

Assessment of existing internet governance mechanisms

The second phase of the work builds on the first phase and aims to "establish [...] the key public policy areas for further investigation and discussion".¹⁰

To enable a more effective working mechanism, the issues identified in the fact-finding phase have been clustered into 4 'issue baskets':

- issues relating to infrastructural issues and the management of critical internet resources
- issues relating to the use of the internet, including spam, network security, and cybercrime.
- issues which are relevant to the internet, but with impact much wider than the internet, such as Intellectual property rights and trade
- issues relating to developmental aspects of internet governance, in particular capacity building in developing countries, gender issues and other access concerns.

Each issue will be assessed according to the following criteria, drawing on language from the Geneva documents and a 'report card' will be developed for each set of issues based on the following:

- Process criteria – the extent to which existing arrangements involve a multi-stakeholder process which is multilateral, transparent, democratic and with the full participation of all stakeholder groups.
- Roles and responsibilities criteria – the extent to which different stakeholder groups are able to fulfill the different roles and responsibilities recognized by WSIS
- Outcomes criteria – the extent to which existing arrangements have contributed to achieving an equitable distribution of internet resources, providing access for all, ensuring a stable and securing functioning of the internet, and multilingualism;
- Coordination criteria – the extent to which governance of internet-related issues are addressed in a coordinated manner.

⁸ <http://www.wgig.org/docs/PrelimReportPrepCom.pdf>

⁹ <http://www.wgig.org/working-papers.html>

¹⁰ <http://www.wgig.org/docs/Clusters.pdf>

It will be prefaced by a document which outlines aspects that are of a more general nature, including:

- Types of governance mechanisms - treaty mechanisms, standards-making mechanisms, policy coordination mechanisms, development assistance mechanisms, non-governmental mechanisms
- Applying the WSIS principles - more comprehensive definitions of multi-lateralism, transparency and democracy
- Assessing the actors against the WSIS Criteria - understanding more fully the roles and responsibilities (existing and emerging) of inter-governmental organizations, non-governmental organizations, governments, civil society and the private sector in internet governance arrangements

The assessment phase has been a very useful exercise in 'demystifying' just what goes on in the world of internet governance, who's involved and whether or not they're doing an adequate job.

The report from this phase will be presented during an open consultation of the WGIG from April 18-20 in Geneva with the possibility for online/remote participation as well.¹¹

The options/recommendations phase

The third and final phase of the WGIG's work will be to provide delegates with options, possibilities, recommendations for reform of existing internet governance mechanisms or the exploration of new forms of internet governance arrangements.

It is this last phase of course that everyone is eagerly awaiting. Already, governments, civil society groups and other actors are tabling possible options for new or reformed internet governance arrangements either through informal consultations, discussions at related events such as the ICANN meetings, meetings at the ITU or any appropriate opportunity that presents itself.

Final report

The WGIG began its work in November 2004 and is working to a timeline to come back to governments with a final report¹² by mid July 2005. This will give governments and all delegates two months to consult before negotiating language for the Tunis¹³ documents in September 2005 at PrepCom 3.

Challenges, bottle-necks, points of divergence and convergence

Increasing role of governments in internet governance

In some respects, many civil society advocates will find their views more in line with those of developing rather than developed country governments, particularly considering the more comprehensive interpretation of 'multi-lateral' which is understood, at least in the context of the WSIS, to include the full participation of all stakeholders - including civil society - and the need for more accountable, transparent and democratic governance mechanisms.

¹¹ <http://www.wgig.org/meeting-april.html>

¹² <http://www.wgig.org/WGIG-Report.html>

¹³ http://www.itu.int/wsis/documents/doc_multi.asp?lang=en&id=1397|0

For example, some aspects of Brazil's proposal (supported by many developing countries during PrepCom 2) which calls for a new form of multi-lateral governance coordination, and an emphasis on 'practical matters that our citizens are in need [of]'¹⁴ including lower interconnection prices, free and open source software and affordable hardware - may ring true with civil society advocates. But, the devil is in the detail and the extent to which all stakeholders are enabled to engage in any future mechanisms.

Brazil recognizes that governments and civil society are marginalized in the current ICANN structure. But the weakness of their position is that they see the solution to internet governance residing in multi-lateralism in its classical sense i.e. where decisions are taken on an inter-governmental basis. This is too simplistic a view and it fails to recognise that the internet is not something that can be ruled by governments alone. The fact that the internet's basic design -as a communications network that could even survive nuclear attack- essentially means that it is not susceptible to traditional multi-lateral governance. It requires governance based on achieving the maximum participation by all stakeholders. Unless Brazil and other progressive developing governments can appreciate this, their proposals will lack credibility and traction with the result that Brazil's initiative to push for an international treaty on internet governance in Tunis may fail.

Governments are in the main seeking a far greater role in governance of the internet. Civil society must be vigilant to ensure that this role is commensurate with the appropriate role of governments in relation to public policy. We need to ensure that governments' role in internet governance is one which prioritises the creation of an enabling governance environment, not a role which aims to control and regulate the activities of its citizens in relation to access to and use of the internet.

ICANN versus the ITU

Civil society advocates need to be nuanced and sophisticated in their approaches to the debates around the issue of 'ICANN versus the ITU'. Neither organization is shy in making its position known to the international community of its willingness, and appropriateness, to be or become the cornerstone institution in the realm of internet governance. Sometimes in quite subtle ways, other times, verging on the confrontational.

On the one hand, when put under the microscope, ICANN does not fair too badly (compared to other institutions) in relation to the WSIS criteria of multi-lateralism, accountability and democracy. But civil society has had its 'hands burnt' on several occasions with ICANN - with the promise of real democratization of ICANN through the 'at large' mass-voting experiments in 2000 summarily quashed by the ICANN powers-that-be, unhappiness with the re-delegation of the .org domain and the lack of real power of the non-commercial spaces within ICANN (the At Large Advisory Community - ALAC¹⁵, and the Non Commercial Users Constituency - NCUC¹⁶).

If nothing else, ICANN must address the issues of (perceived or real) unilateral control, its incorporation in the US (a country with legislation that effectively places trade embargoes on domain sales to countries deemed 'unfriendly' to the current administration) and the rather impenetrable nature of participation by the public.

On the other hand, although the ITU can certainly be considered multi-lateral in the classic sense of the word (organizations formally constituted by more than two governments) it would be hard pressed to pass the WSIS principle of "full participation by all stakeholders". The ITU has some of the worst conditions for civil society participation among UN agencies.¹⁷

¹⁴ <http://www.wgig.org/docs/Brazil.pdf>

¹⁵ <http://alac.icann.org/>

¹⁶ <http://www.icann.org>

¹⁷ WGIG paper: Competition Policy, liberalization, privatization and regulations, para 7.

This battle between ICANN and the ITU is a distraction from getting to grips with the core issues of internet governance. The ITU's bid to take over ICANN's functions is problematic because it remains an inter-governmental organization and would have to be transformed into a multi-stakeholder body, which seems unlikely.

ICANN's world-wide campaign to promote its value does not ultimately address its core governance weaknesses: primarily that it has not succeeded in developing a legitimate form of multi-stakeholder governance nor has it managed to develop a transparent and accountable system of decision-making commensurate with administrative fairness which is the essential role of any administrative body.

The real question is whether ICANN can be transformed into a legitimate multi-stakeholder body with administrative fairness and transparency at its core. If that is not possible, a new multi-stakeholder form of governance will need to be developed.

In all likelihood, notwithstanding the battles ahead in relation to ICANN and the ITU, the types of proposals most delegates will be looking for will be those that are practical, achievable, an improvement on existing arrangements and that respond directly to the issues which brought internet governance debates to a stalemate in Phase II.

Internet governance issues

The most controversial issues in the internet governance debate, certainly from a civil society perspective, are around human rights and privacy, intellectual property and competition policy.

From a civil society perspective, human rights are non-negotiable.

Almost all world governments have signed the Universal Declaration of Human Rights and must be held accountable to their deployment, observance and redress when abused. Issues such as privacy and freedom of expression are not considered to be negotiable on the basis of cost, convenience, sovereignty or any other matter – but the reality is that human rights have become subject to a balancing act, particularly in relation to areas of content regulation and freedom of expression.

Intellectual property rights has been the thorn in WSIS's side and continues to be so in internet governance debates. There are those who consider (from all stakeholder groups) that this issue should not be addressed by the WGIG. Some considering that it is already adequately dealt with in WIPO, others that we can only do more harm than good by increase the weighting an already grossly-imbalanced regime in the favour of rights holders.

Competition policy is also controversial in that some feel that its inclusion in internet governance means endorsing a neo-liberal (free-trade, free-market and pro-capitalist) economic position. Others think that competition policy is an essential dimension of creating an enabling policy environment for the private sector and to protect consumers. There is another perspective which differentiates privatization from competition and accepts that while the history of privatization within the telecom model has been problematic, especially in developing countries, there is value in enabling the entry of new players into the market, whether they are privately owned businesses or community-owned networks. This form of regulated competition requires strengthening of the regulator powers in relation to the government and industry in favour of citizens and consumers. It also opens opportunities for community organizations, co-operatives

<http://www.wgig.org/docs/WP-competition.pdf>><http://www.wgig.org/docs/WP-competition.pdf>

and small and medium businesses to offer internet access over open access networks and to take advantage of new technologies like wireless access and internet telephony.

Internet governance and financing mechanisms – the missing link

The issue of the relationship between financing the information society and internet governance requires more attention. Providing internet access to isolated and poor people and connecting them to the global information networks contributes to a global public good, but is only paid by the poor people themselves. The addition of more countries and users to the internet increases the value of the network for everybody, and in particular for ICT industries in developed countries that gain new markets for devices, software and connectivity, both among the newly connected as well as among the already connected that communicate with them.¹⁸

Big industries are 'free riders' that benefit without paying, and a global tax on internet domain names would be justified and provide reliable resources for developing countries to connect to the network.

This possible financial mechanism was not considered by the other UN-convened Task Force on Financial Mechanisms. However, it is worth putting on the agenda of WGIG and may be one of the conditions for the transformation of ICANN because it mobilises resources to contribute to the internet connectivity of the poor as a global public good and as an enabler of the implementation of the Millennium Development Goals.

A similar approach to consider is a tax on spam. The funds collected could help developing countries connect their citizens to the internet and the global information society. This would provide a global public good in two senses: by reducing the problem of spam to the benefit of all and enhancing access to global information networks by developing countries and people with a positive network effect for all.

Internet governance that controls or enables

Finally, there is a tendency for discussions around internet governance to lean towards the more regulatory or controlling aspects of governance (such as content regulation and filtering and prevention of trans-border online activities that are illegal) rather than the more enabling aspects of internet governance such as creating policy frameworks that are based on development objectives, capacity building and citizen empowerment and sustainability.

Conclusion

The WGIG is indeed an optimistic experiment in a true multi-stakeholder approach to international policy processes. If the WGIG succeeds in its work, it could lay out frameworks and options based on laudable principles that could, if the political will is there, be applied not only to the realm of internet governance but have resonance and provide opportunity for democratization of other global governance processes. At a time of global malaise, indifference and lack of faith and legitimacy in many of our global and national governance institutions, the internet governance debate is one where civil society advocates can make a real difference.

This report was produced for APCNews by Karen Banks, APC's focal point for WSIS and member of the Working Group on Internet Governance (WGIG)

¹⁸ From "Financing the Information Society in the South: A Global Public Goods Perspective", By Pablo Accuosto (ITeM) and Niki Johnson (Jun 2004, commissioned by APC)
<http://rights.apc.org/documents/financing.pdf>