

A Contribution to the Seoul OECD Ministerial Meeting on 'The Future of the Internet Economy'

A Development Agenda for Internet Governance – Call for a 'Framework Convention on the Internet'

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This paper was written as a contribution to the agenda of the first meeting of the United Nations (UN) Internet Governance Forum in 2007. The UN World Summit on the Information Society (WSIS) struggled with the subject of a legitimate means of making international public policy in the area of Internet governance but remained inconclusive on any precise mechanism to meet this imperative. WSIS ended with an exhortation to all parties to keep working together to explore possibilities in this direction. It adopted the Tunis Agenda and it set up a "new forum for multi-stakeholder policy dialogue – called the Internet Governance Forum (IGF)"¹ to, *inter alia*, facilitate this process. The IGF has now met twice, in Athens in 2007 and in Rio de Janeiro in 2008, and the Forum has adopted 'development' as its overarching theme. This input to the Athens meeting states some expectations for how a 'development agenda' can be developed for global Internet policies and suggests that the very first step for this is to have a framework of principles, that represents progressive ideals, for all bodies involved in Internet governance to follow in their activities. While different institutional mechanisms for evolving such a framework can be tried, a multi-stakeholder 'Framework Convention on the Internet' is proposed as one possibility.

This dated paper, of August 2006, is deliberately being presented as such (with very few modifications, primarily cutting out a small section) to show what kinds of expectations were placed on the IGF, when it started to take shape, for it to assist in global Internet policy making. The paper is especially contextual now, two years later, both in the face of

1. the scheduled Organisation for Economic Co-operation and Development (OECD) Ministerial Meeting with the purpose to "forge broad principles that can provide an enabling policy environment for the Internet Economy", which makes one wonder if the OECD, a by-invitation-only club of rich countries, is the right forum for making such policy principles which, given the inherently global nature of the Internet, can by default be expected to apply to the whole world, and,
2. the systematic way in which the policy-related mandate of the IGF has been eroded over the last two years, largely by a collusion of business sector interests, those who run Internet governance bodies at present, and paradoxically, by the rich countries represented in the OECD, who after shunning the more legitimately global forum, now gather to do global Internet policy work on a much more favourable 'home ground'.

A newly added last section will briefly expand the above two points that make the arguments of the original paper even more topical today, and the imperative contained in them even more important and urgent.

¹ WSIS Tunis Agenda, para 72

In recent times, 'development agendas' in the World Intellectual Property Organisation (WIPO) and World Trade Organisation (WTO) have challenged the inequitable basis of global policy regimes. The first meeting of the IGF is an appropriate occasion for developing countries and civil society to articulate a 'development agenda for Internet governance'. The imperative for this is in the fact that the Internet plays an ever-increasing role in shaping many social and economic areas at global-to-local levels and constitutes a very significant political space.

However, dominant political and business interests have captured advantageous positions with respect to the governance of the Internet. There is great urgency, therefore, for developing countries and civil society to challenge the primarily business-led vision of the Internet and to establish its character as an essential social infrastructure that should be driven by the political vision for the emerging information society laid by the WSIS. The first meeting of the IGF should underscore this political vision as providing the guiding principles for Internet governance and begin a process of supporting development of new mechanisms for global governance of the Internet.

The IGF is the right forum to propose a global 'Framework Convention on the Internet' for the above purposes. In fact, the Tunis Agenda's call for "enhanced cooperation" for developing "globally applicable principles on public policy"² regarding the Internet can be interpreted as a mandate for moving towards a framework convention process.

Global Policy Frameworks and Development Agenda

In the last few decades, as forces of globalisation have pulled people and nations closer, global policy frameworks have become increasingly relevant to people's daily lives. These global policy frameworks, however, are often developed and promoted by dominant countries and interests and do not serve the needs of the developing and less developed countries equally. In many instances, such frameworks have manifestly been detrimental to the developing and the least developed countries. For instance, a United Nations Development Programme (UNDP) report estimates that "under the WTO regime, in the period 1995 to 2004, the 48 least developed countries will actually be worse off by \$600 million a year, with sub-Saharan Africa actually worse off by \$1.2 billion ... [and] that 70% of the gains of the Uruguay Round (of WTO) will go to developed countries"³.

What has marked the last few years, however, is the fact that developing countries have come together and challenged these dominant policy paradigms and proposed alternatives that are more just and equitable. In the arenas of WTO and WIPO, these alternatives have been referred to as 'development agendas'. While the specificities of course differ, 'development agendas' in global policy frameworks have come to denote alternatives to the dominant paradigms, which are seen as partisan to developed countries and other dominant interests. They expose the basic premises of the dominant policy frameworks that have been passed off as 'natural' and 'neutral' and as equally beneficial to everyone.

While the need for new 'development agendas' to challenge partisan policy frameworks is being acknowledged in some critical areas of globalisation, the relevance of a 'development agenda' for the governance of the very forces that have unleashed the current and the most forceful wave of globalisation – the new ICTs – should be self-evident.

² WSIS Tunis Agenda, para 69–70

³ Quoted in "An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancun" by Joseph E Stiglitz.

The Evolving Context of Internet Governance

The hallmark of status-quoist arguments in Internet governance (IG) has been to present IG mostly in terms of technical issues – like stability, security and robustness of the infrastructure – where there can be no two opinions. It is, however, not difficult to establish the political nature of the Internet and its governance, if we look at how the Internet has evolved from a simple communication protocol to one of the strongest social phenomena in the world today.

When the Internet was an experimental communication platform, it was ‘governed’ by the public-spirit values of its inventors, whereby principles of openness, transparency and egalitarianism got embedded in its basic design. In the second phase of its governance, the Internet was identified by the US, the country of its origin, primarily as a platform for national and global commerce – an electronic marketplace. This was decidedly a political stance, and the governance mechanisms for the Internet were set up to serve this objective. Early US government policy papers, like ‘A Framework for Global Electronic Commerce’, which led to the birth of ICANN⁴, are some obvious indicators of this fact.

Not only have commercial interests been established as the basis for IG mechanisms, the latter also take their cue from the dominant view of the US establishment – both political and business – about what the political principles for global market and commerce should be. Some of these principles are being strongly challenged by the ‘development agendas’ in WTO and WIPO.

Worldwide, the Internet is seen today as much more than a platform for commerce. It has grown into a potent social force, which the world community has described as a “central element of the infrastructure of the Information Society”⁵. According to the WSIS Declaration of Principles, the emerging information society’s political vision is of “enabling individuals, communities and peoples to achieve their full potential in promoting their sustainable development and improving their quality of life”⁶. However, the policies and governance mechanisms for the Internet have yet to take note of this political vision.

From the first generation governance of the Internet as an experimental communication protocol, and its second generation governance as primarily a platform for commerce driven by the political and business interests of one country, it is now necessary to move to the Internet’s ‘third generation’ governance framework, in accordance with its characterisation as the central element of the infrastructure of the information society, taking note of the political vision given for the information society by the WSIS.

The Political Nature of the Internet

Some of those who do agree that the Internet has strong political implications often argue that these implications may best be dealt with in the arenas that are already dealing with the corresponding substantive policy issues – like WIPO with intellectual property rights and hopefully with access to knowledge; and WTO with trade, including services like telecommunication. There is some merit in these arguments, because substantive expertise is essential in determining Internet-related policies in each of these areas. However, it is important to note that as the Internet becomes the arena of a lot of global and sub-global social and economic activity; (1) any governance issues for Internet-based activities may

⁴ Internet Corporation for Assigned Names and Numbers. A US incorporated non-profit which does many of the basic technical governance functions for the Internet.

⁵ WSIS Tunis Agenda, para 30

⁶ WSIS Declaration of Principles, para 1

have substantial links to the nature and governance of the infrastructure itself, and (2) once on the Internet, the nature of the activity itself may undergo substantive changes, bringing in new governance issues. Also, there are core infrastructural areas, which need political governance, that have cross-domain relevance and often fall between the stools in terms of lack of attention from any of these substantive domains. The increasing threat to the network neutrality principle⁷ for the Internet is one such key issue. In violation of this principle as more and more 'intelligence' gets embedded in the network itself, it becomes pliable to multiple business, social and political options, which need governance even more than before.

The above factors make the Internet and its governance a highly political space, which dominant interests have already been exploiting. Absence of any formal processes early on for its political governance has undoubtedly allowed the Internet to evolve in an open, global and more or less egalitarian manner. However, **it appears that Internet's period of innocence may be over as economic and political powers realise its importance and put their attentions to it**. Increasingly, political power is being exercised in relation to the Internet but mostly in an illegitimate manner.

The default or actively enforced control over the governance of the Internet, whose influence in our social and economic affairs is growing rapidly, may in the future be used even more to push forward a neo-liberal world order that serves entrenched interests. To give just two examples of such a trend: the increasing replacement of traditional global telecommunication networks with Internet-based ones has been used to convert a pro-developing countries interconnection regime to a pro-developed countries one⁸; and while the Internet is supposed to be a vehicle for freer flow of information, the default intellectual property rights regimes in the ICT sector and on the Internet – often merely practices enforced by technology company oligopolies – seem to increasingly work towards making intellectual property rights barriers to information even stronger than existed in the pre-digital era.

It does not take much foresight to realise that the Internet will play an ever-increasing role in the governance of many social and economic areas at all levels, global to local. **The threat is that as we are pulled towards greater, and perhaps inevitable, 'harmonisation'⁹ of national policies in many arenas – whether of content, intellectual property rights, privacy or consumer protection – such harmonisation will happen on the terms of those who have captured advantageous positions with respect to the governance of the Internet. It is therefore important to identify the looming danger early, and for developing countries and progressive forces in civil society, to construct an alternative basis and mechanism for IG. Internet governance should thereby be primarily oriented to realising the information society opportunity for moving towards achieving the ideals and goals of social and human development. This will constitute the 'development agenda' in IG.**

⁷ A basic architectural principle for the Internet, whereby the network itself is (mostly) dumb and all intelligence resides with the devices at the ends of the network. This principle makes the network neutral to different activities or applications over it, and thereby promotes innovation.

⁸The International Telecommunication Union (ITU)'s asymmetric telephone inter-connection regime worked in favor of developing countries, while the present 'self-regulated' Internet inter-connection regime works in favor of developed countries, with poorer countries paying for both sides of the traffic, to and from developed countries.

⁹The terms 'harmonisation' and 'coherence', used in the international policy arena, have often caused concern with respect to the default political principles on which such 'harmonisation' or 'coherence' is sought.

Shaping a Development Agenda for Internet Governance

Most demands of developing countries during IG-related discussions have come on piecemeal issues, like inter-connection charges and capacity building. This is akin to early engagements with global policy regimes like WTO and WIPO, where specific concessions were sought within the existing political framework of the system. However, in recent times, developing countries have realised the limitations of such negotiations and have come up with comprehensive 'development agendas' that challenge the basic political vision and direction of these institutions. Developing countries need to bring up a similar challenge at the level of political principles in the sphere of IG as well.

For this purpose, first of all, it is important to identify the political principles underlying the present IG establishment and then to propose alternative visions. **At the very basic level, it is important to challenge the primarily business-led vision for the Internet and recognise it as an essential social infrastructure that should be driven by an egalitarian and inclusive political vision.**

The Internet should be claimed as a public infrastructure with a strong public goods perspective. This of course does not mean discouraging private investment in ICT infrastructure, which is very much needed, but promoting such investments within a strong public policy framework, which is pro-development and people-centric.

In many ways, this new infrastructure, as a basis of socio-economic opportunity and access to knowledge, has strong similarity to a public education infrastructure, which developed countries invested in during the period that can be considered formative for their present socio-economic strengths. It is in keeping with the internationally recognised 'Right to Development' for developing countries to take a public goods view of this new infrastructure, which gives them leapfrogging opportunities, and to make appropriate social, political, and economic investments into it. This right should be invoked in framing the political principles that should guide the global governance of this important infrastructure, apart from other recognised rights about freedom of expression, right to information, access to education, political participation, etc., for all of which access to the Internet is fast becoming a necessary condition.

In claiming its public goods nature, it is important to define the Internet as encompassing all four layers – logical, applications, content, and physical or connectivity-infrastructure – and IG as concerning all these layers as well. There are important issues in each of these layers that require a public goods approach. IG needs to be driven by public interest, overriding narrower commercial or business interests, which would of course mean also facilitating free and fair trade and commerce, apart from other important social and political activities. The Internet cannot be allowed to contribute to creating a new alternative world where dominant players rule the roost, and public interest is subservient. That would be living out the worst fears about globalisation. **The Internet should instead be politically driven to shape the people-centred and development-oriented information society for which WSIS called.**

It is important for developing countries to get together with progressive civil society actors (WIPO's development agenda is a good example of such an alliance) and develop the basic political principles for governance of the Internet. At the same time, the political basis underlying the present IG establishment has to be systematically challenged. For example,

its allegiance to an unidentifiable 'Internet/technical community' (as if technologists have a prior political claim to the Internet) or even the 'user community' (as if present non-users have no political stake in the Internet) needs to be politically deconstructed. Similarly, many other 'justifications' underpinning the current IG establishment, like the insistence that most IG activity today is politically neutral, can easily be countered. On the other hand, the special character of the Internet, which transcends present political boundaries and confers a new kind of 'global citizenship' needs to be acknowledged and provided for adequately in any IG mechanisms. This means that a simple inter-governmental arrangement is completely inadequate to the new context.

Many developing countries, and off-and-on some developed countries other than the US, have called for complete internationalisation of IG mechanisms, chiefly the ICANN. Such a call will hold more traction when the political principles of its global governance are laid out and work begins on identification of a suitable mechanism for such internationalisation. By default, the US retains control by stating the not-completely-illogical need to keep some political oversight of ICANN, whose political basis is too unclear for it to be its own boss. In any case ICANN claims that it only does technical policy, which means that the lever of political oversight should anchor somewhere else. It should not be difficult to appreciate that the technical management of the most essential infrastructure of the emerging world cannot be self governing and sovereign with no relation whatsoever to any political basis and legitimacy.

Developing Countries Have the Greatest Stake in Strengthening the Internet Governance Forum

The IGF is the only international forum for IG that is truly open and is not (yet) under the stranglehold of the interests that occupy the dominant political space in IG. This is therefore the ideal forum for developing countries and civil society to bring up a 'development agenda' in IG. **It is in the specific interest of developing countries to strengthen the IGF, and to make sufficient political investments into it. And the first meeting of the IGF may be crucial for defining its scope and strength.**

In the IG and the information society arena, regrettably, there appears to be great distance between governments of the developing countries and global civil society. There may be strong reasons – political as well as structural – for this, both on the part of the governments and civil society. However, it is important to remember that there is much closer cooperation between developing country governments and civil society in many other global policy arenas, to repeat the examples at WTO and WIPO. Therefore, if development issues in IG are more clearly articulated, many areas of close convergence are likely to emerge between these governments and civil society.

Developed countries and business interests may appear to have little to gain from changes to the present IG regime. However, it may be pertinent to note that while the Internet provides the opportunity for a more globalised world with more shared social space, a global political regime for Internet governance which is perceived as just and equitable by all is imperative to realise this possibility fully. **If not, it is not difficult to foresee a future where countries increasingly balkanise the Internet to conform it to their national boundaries and national policies, and in this a great opportunity may be lost.** Apart from its ethical basis therefore, supporting a development agenda for IG may in any case be in the interest of all involved. The principle involved here is simple: if we want to live together as one economic unit, we will need to have enough political integrity and one-ness in the global system. This requires legitimate political mechanisms and principles

with global application. The Internet is the first truly globally shared space, and it can only be preserved through an appropriate global political system about it.

Evolution of political structures does take time, but common political principles are a relatively easier leading step. Having a broader framework of principles within which more specifically applicable principles and policies can evolve, which is what a 'Framework Convention' essentially means, is even easier, and therefore recommended as the next step that the world community should explore. As said earlier, the Internet and the information society have some unique features whereby a purely inter-governmental system will not be adequate. More creative multi-stakeholder options will have to be considered for such a 'Framework Convention' mechanism.

The IGF is the space to carry on from where we left off at the WSIS. Translating the political vision for the information society into the basis and mechanisms of governance of its central infrastructure, the Internet, is one of the most important unfinished tasks of the WSIS.

Exploring a 'Framework Convention on the Internet' at the Internet Governance Forum

It is widely acknowledged that the WSIS just about prefaced the process of developing a more legitimate governance structure for the Internet. Its main outcomes in terms of IG have been (1) the setting up of the multi-stakeholder IG Forum for policy deliberations, and (2) calling for starting a formal process for a, somewhat vaguely worded, "enhanced cooperation" among all actors in IG for developing "globally applicable principles on public policy"¹⁰ regarding the Internet. It is important for the global community to use the IGF to develop broad principles for governance of the Internet that recognise the far-reaching social significance of the Internet in terms of the values that have been adopted in the form of various international declarations of rights – including civil and political rights as well as economic, social and cultural rights, and the right to development – and the WSIS documents.

The first meeting of the IGF is therefore the right opportunity to call for a 'Framework Convention¹¹ on the Internet', which should lay out the broader public policy principles concerning the Internet. This framework should define the Internet, its social significance and the principles for its governance. Early work for such a framework can be done within the IGF itself.

In fact, WSIS's exhortation for launching a formal process for an "enhanced cooperation" involving all stakeholders for developing "globally applicable principles on public policy" regarding the Internet can itself be interpreted as a mandate for moving towards a 'Framework Convention' process.¹²

¹⁰ WSIS Tunis Agenda, para 69–70

¹¹ Framework conventions are more appropriate than detailed treaties or conventions in evolving areas such as IG, where, in the first instance, laying out the broader principles is important. These principles can then guide more detailed agreements among various actors on specific issues. The UN Framework Convention on Climate Change is a good example of an existing framework convention.

¹² A framework convention or a similar process for Internet governance has also been proposed by the Internet Governance Project and by Association for Progressive Communications (See www.internetgovernance.org/pdf/igp-fc.pdf and www.itu.int/wsis/docs2/pc3/contributions/co103.pdf).

Two Years After WSIS – Where Are We on Global Internet Policies?

(This note has been added to the original paper. It will very briefly discuss a few points that contextualise the paper to the present time, the third year of the IGF when it seems to be losing purpose and steam vis-a-vis its policy role, and, on the other hand, an OECD ministerial meeting being held to frame broad principles for governing the Internet.)

A policy dialogue forum needs to be judged from the ways it has or has not contributed to making appropriate policies in a sufficiently participative way. **Unfortunately, not only has there been little policy-related outcome, IGF has systematically been subjected to efforts to change its very purpose into being a best practices sharing platform.** It is not that the proponents of this change are especially eager to share practices; they see this as a good counterfoil to IGF's primary mandated function. Best practices can be useful from a policy perspective, but merely showcasing them was never IGF's purpose. A group of civil society organisations together formed a dynamic coalition¹³ on a 'Framework of Principles for the Internet'¹⁴. The dynamic coalition was almost disaffiliated for being considered not adequately multi-stakeholder, though it had civil society groups from practically all the continents.

It is little surprise that the private sector and 'technical community'¹⁵ did not want to touch anything that clearly had to do with global Internet policy making, processes which are the primary mandate of the IGF. What may be more surprising, however, is that developed countries have mostly sided with the business sector and 'technical community' to minimise the policy role of the IGF¹⁶, and they have shown no interest in the work on developing a 'Framework of Principles for the Internet' at the IGF.

On the face of it, it may look a little incongruent for these developed countries to assemble for precisely the same purpose in an OECD ministerial meeting in Seoul. The Internet is so inherently global that any set of principles that get adopted by the politically and economically most powerful nations will reign by default. Is it not then inappropriate to shun a much more legitimately global UN Forum and seek development of Internet policies, with obvious global implications, within a club of by-invitation-only, rich and powerful countries; and meanwhile, as stated above, to not seek a strengthening of IGF's policy role, and probably actually work to weaken it¹⁷?

The Tunis Agenda also mentions the need for a process of 'enhanced cooperation' to evolve globally applicable policy principles for the Internet. No one seems to know where this process stands. In fact there are many doubts about what is the process meant to be. The term 'enhanced cooperation' has mostly been used in EU diplomacy and policy circles and has been introduced into the IG arena without clear articulation of its meaning and intention in this context. It was introduced in the last phase of WSIS, where there seemed to be no consensus on how to internationalise the oversight of ICANN and even the European countries, the US's closest allies throughout the WSIS, were not willing to sign on to an agreement that formalised the US's continued oversight without at least agreeing to a probable process of its replacement. The vague term 'enhanced cooperation' was the compromise.

¹³ Dynamic coalitions are informal groups at the IGF working together on some defined agendas.

¹⁴ This coalition includes IT for Change, the author's organisation.

¹⁵ A term with unclear meaning, used inter-changeably both to mean people with technical expertise and those involved with extant Internet governance bodies.

¹⁶ The more cultural, social and rights-based issues oriented Council of Europe, however, has been doing some useful engagement with the IGF.

¹⁷ The role and stance of the US is strongest and the most consistent in this regard. However, most other OECD countries have, for all practical purposes, mostly toed the US's line.

Interestingly, 'enhanced cooperation' is precisely what OECD countries seem to be doing at Seoul. A glossary of terms maintained on an EU website¹⁸ defines 'enhanced cooperation' as follows: "Enhanced cooperation allows those countries of the Union that wish to continue to work more closely together to do so, while respecting the single institutional framework of the Union." So the countries of OECD simply decided to go their way on global Internet policy and 'work more closely together'. However, there are two issues that are relevant here. First, the Internet is more clearly and inherently a global issue than most others, so its policies are not appropriate, certainly not legitimate, to evolve in a closed group of a few countries, especially when these countries have the collective political and economic muscle to ensure that these policies become the default global policies. Second, it may still be the only option, since policy requirements abhor a vacuum, if other more legitimate global forums have been fully explored and they are strengthened as required to be able to do this work, but for some reasons are not able to produce results. This we know has not been the case. The above definition of enhanced cooperation, significantly, does add the all important rider 'while respecting the single institutional framework...'.

The question that this paper poses to the OECD ministerial meeting, therefore, is: Can the OECD countries be persuaded to respect and strengthen the 'single institutional framework' of our global information society, to the extent that such a framework obtains, and work with and strengthen the IGF and also a more legitimately multi-lateral and multi-stakeholder 'enhanced cooperation' process for global Internet policy making? That would make their OECD Ministerial exercise of seeking to frame the principles for the future of the Internet more legitimate and acceptable to the world community.



IT for Change Bridging Development Realities and Technological Possibilities

IT for Change (ITfC) is a non-profit organisation located in India. ITfC envisions a society capable of, and comfortable with, innovative and effective use of information and communication technologies (ICT) as a tool, to further goals of progressive social change.

This paper is a part of ITfC's 'Information Society for the South Project'. This project interprets information society changes in light of the development needs of the South. It seeks to develop research and advocacy capacities in the South with regard to the information society discourse.

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¹³ http://europa.eu/scadplus/glossary/enhanced_cooperation_en.htm