

“A Funny Thing Happened on the Way to the Forum...”

Multistakeholderism, International Institutions and Global Governance of the Internet

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The growth of the Internet has created new problems in public policy, law and regulation. Efforts to resolve those problems can lead to institutional change and even institutional innovations. The arena where some of the most interesting changes are taking place is the complex, overlapping set of international institutions governing information and communication and thus by extension the Internet. Put most generally, I am interested in the role of the global Internet in the re-formation of political authority over communication and information technology in transnational settings. This is of course a very big research area. In this paper I propose to focus on one small part of it: the United Nations' recent decision to create an “Internet Governance Forum” (IGF).

The IGF is currently being constructed by the UN as a place for “multi-stakeholder” policy dialogue, which means that participation in it will not be exclusively confined to governmental delegations but will include private business, civil society organizations, academic and technical groups, international organizations and individuals (“stakeholders” in UN parlance) as well. All will have (more or less) equal status. IGF is not a negotiating body nor does it have any decision making power. It brings stakeholder groups together for discussions, and may issue reports about those discussions and issues. It is authorized to address a very broad range of Internet governance issues. Although it will not have formal treaty-making or negotiation powers, its deliberations, recommendations and reports may acquire enough credibility and legitimacy to influence more authoritative international institutions. Its functioning will thus be affected by tensions and complementarities with existing international institutions that govern the Internet, such as ICANN and the United States, the ITU, WIPO, UNESCO, the Council of Europe, and the EU.

As a subject of analysis, the Forum should be of interest to scholars in telecommunication and information policy for several reasons. First, the IGF constitutes a legitimation and institutionalization of multi-stakeholder participation in Internet governance by the UN system, which is unusual though not entirely unprecedented. Second, like all new institutions the Forum is an artifact of a political bargain. The bargains underlying its formation emerged from the World Summit on the Information Society (WSIS). More specifically, the Forum served as the consensus response to the multi-pronged assault on ICANN and the current, US-dominated regime for Internet governance. The nature of that bargain tells us a lot about the power relations among the parties. Likewise, the gradual whittling away of the potential scope and significance of the Forum also telegraphs information about the interests and strategies of the key players. Third, as a determined experiment in the use of the “multistakeholder approach” to global governance, the Forum provides an opportunity to address its theory and practice.” Multistakeholderism is a neological-mouthful that I prefer to abbreviate as MuSH. There is ongoing scholarly debate about whether there is an important change taking place in the relationship between non-state actors and intergovernmental institutions. Is the inclusion of civil society and the delegation of authority to private industry changing the structure, procedures and outcomes of international institutions? (Keck and Sikkink 1998; Cutler, Porter et al. 1999; Keck and Sikkink 1999; Biersteker and Hall 2002; Bob 2005; Hofmann 2005)

This paper will make three major arguments:

- IGF’s scope and mandate, and the expectations surrounding it, are shrinking progressively as incumbent international organizations and regime partners, especially ICANN, take measures to ensure that it does not emerge as a rival to their authority. I explore from a normative perspective some of the implications of this.
- IGF is also weak because of its funding sources. Funding is a key aspect of, and constraint on, institutional arrangements and innovations. This may seem obvious

but analysis of this aspect of global governance is almost completely absent from most Internet governance debates.

- The idea of “global civil society” as a factor in global policy making opens doors to wider participation and serves as a useful counterpoint to the dominance of states and business interests. In that respect it has much to commend it. But unless we are careful some of the proposed methods of institutionalizing civil society participation could become a form of static neo-corporatism; as such it poses institutional issues that are not being fully recognized and thought through.

The paper proceeds according to the following outline: Section 1 summarizes the concept of “multistakeholder governance” as it is evolving in the UN system. Section 2 describes the Forum as a product of the WSIS negotiations. In particular it highlights the conflict over ICANN that occurred and documents the positions of the U.S. government, developing countries led by Brazil, and the European Union, and the role taken by WSIS civil society. Section 3 describes the current structure and agenda of the IGF. Section 4 documents different conceptions of what the Forum could do which emerged during public consultations, and arranges them in order of strength. It then shows how the Secretariat and various stakeholder groups have consistently succeeded in selecting the weakest of these conceptions. Section 4 synthesizes the parts above into a general analysis of the politics of the Forum.

## 1. The Philosophy of Multistakeholder Governance

The “democracy deficit” afflicting international institutions is widely recognized. The national states who negotiate policy positions in intergovernmental organizations typically reflect a narrow range of dominant interests in their own territory. Many aspects of the public interest are transnational in nature. One recent response to this problem promotes the ideas of transnational “civil society” and “multi-stakeholder governance” as default solutions to the problem of democratizing international institutions. (Calabrese, 2004; Florini, 2000; Keane, 2003; Price, 2003) *Transnational civil society* here refers to non-

state actors developing and advocating some conception of the public interest across national borders. The concept embraces both international NGOs such as Amnesty International, and Internet-enabled “transnational advocacy networks” (TANs) that link and coordinate organizations and individuals in less formal structures. (Keck & Sikkink, 1998) The participation of nongovernmental actors in international institutions is further legitimized by new conceptions of “multi-stakeholder governance.” An admittedly ugly neologism, *Multi-StakeHolder* (MuSH) has etymological roots in the United Nations complex of organizations, where involved participants are often referred to as “stakeholders.” A somewhat idealized definition of the “multi-stakeholder process” (Banks, 2005, 85) is “the coming together of different interest groups on an equal footing, to identify problems, define solutions and agree on roles and responsibilities for policy development, implementation, monitoring and evaluation.” Operationally, this means participation in intergovernmental policy deliberations by representatives of NGOs, businesses, and other interested parties alongside governments – sometimes as the peers of governmental representatives, but more often in consultative or advisory roles.

During WSIS, there were numerous conflicts over the role of civil society participation. Although governments and intergovernmental organizations did not ultimately afford CS equal status, they courted long term change by using rhetoric about partnership and equal status, raising expectations. By dashing those expectations, they de-legitimized a purely intergovernmental model among many civil society and business sector actors and fueled demands for more reform. Moreover, the “roles and responsibilities” of governments relative to non-state actors in the formation of policy was a central preoccupation of the WSIS Internet governance battles. ICANN was controversial among many governments because it gave policy making authority to non state actors; by the same token civil society actors who had become accustomed to the equal status they had within ICANN processes were shocked by the second-class status they confronted within the UN system. The outcome of the WSIS fight over Internet governance was two new experiments in MuSH governance: the Working Group on Internet Governance (WGIG) and the Internet Governance Forum, which can be seen as a longer term continuation of the WGIG discussions. The experience of the WGIG, where parity among 40 civil society, business

and government representatives truly existed, reinforced notions of equality and moreover proved how much governments needed the expertise of civil society participants.

## 2. WSIS and the Forum: UN out to Take over the Internet?

WSIS was a four year United Nations conference process. It was created when the International Telecommunication Union succeeded in linking the promotion of information and communication technologies (ICTs) to the development goals of the United Nations Millennium Declaration.<sup>1</sup> Feeding on concerns about a global “digital divide,” WSIS was intended to marshal support for the finance and construction of telecommunication and information infrastructure in undeveloped and developing countries.

But the WSIS agenda morphed in two important ways as it progressed. First, transnational advocacy groups mobilized to broaden its scope beyond technology, pushing a number of equity and human rights claims related to communication-information policy. Self-organizing as “WSIS civil society,” they played a major role in setting the tone of the summit. Second, conflicts among states over the governance of the Internet unexpectedly came to dominate its agenda. Governments and the ITU challenged both the unilateral power held by the U.S. government over the Internet Corporation for Assigned Names and Numbers (ICANN), and the prevalence of non-governmental policy making mechanisms for the Internet. The outcome of these political cross-currents was the creation, first, of a fully-multistakeholder Working Group on Internet Governance (WGIG), and then, its institutionalization for five years as a new international organization, the “Internet Governance Forum.” The Forum is alleged to be an innovation in global governance because it embodies “multi-stakeholder” methods and would “facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet.”<sup>2</sup>

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<sup>1</sup> UN General Assembly [Resolution 56/183](#) (21 December 2001)

<sup>2</sup> Tunis Agenda, para. 71.

The final WSIS statement, known as the Tunis Agenda, was a product of intense negotiations over wording. It could reasonably be characterized as a purely verbal resolution of political issues. The intergovernmental agreement had four main results:

a) It praised the "the existing arrangements for Internet governance" which were described as "the private sector taking the lead in day to day operations, and with innovation and value creation at the edges." (para. 61) The document, however, did not endorse ICANN specifically, and in fact never mentions it by name - a reflection of its continuing lack of acceptance by many governments.

b) It attempted to pave the way for long-term changes in Internet governance, including ICANN. The official WSIS statement challenged specific aspects of the current ICANN regime. Paragraph 63 rejected the need for other countries to manage their ccTLD via the U.S.-dominated ICANN regime. Paragraph 68 says that all governments, not just the US, should have "an equal role and responsibility" for the DNS root and for Internet public policy oversight. Reflecting a rift between the US and the European Union, the Tunis Agenda calls for "enhanced cooperation" among governments. The EU claimed that the WSIS statement constituted, "a worldwide political agreement providing for further internationalization of Internet governance, and enhanced intergovernmental cooperation to this end." "Such cooperation," an EU statement continued, "should include the development of globally applicable principles on public policy issues associated with the coordination and management of critical Internet resources."

c) It insisted on the authority of national governments to define "public policy" for the Internet. The WSIS document formalizes the division of Internet governance into two parts: the domain of "technical management" or "day to day operation," which should be left to the private sector and civil society, and the domain of "public policy-making," which is supposed to be ruled by governments. This distinction is not clear and is difficult to apply, however. The document does not clarify how this

distinction is to be drawn, thus reinforcing further the likelihood that negotiations and discussions around it will continue for some time.

d) It authorized the creation of an Internet Governance Forum. In paragraph 72 of the Tunis Agenda the world leaders at WSIS called for the creation of the Internet Governance Forum (IGF) and identified the type of tasks it was authorized to do. IGF was conceived as a “lightweight” multi-stakeholder forum for discussing Internet governance issues, with no binding authority from its recommendations. The scope of Internet-related issues the Forum can address is quite large. It was not made a permanent organization but was authorized for a period of five years, after which its future would be reassessed.

As should be evident from the discussion above, the IGF was the only tangible product of the Summit’s foray into Internet governance. No consensus could be reached between the US and its critics regarding political oversight over ICANN and IANA. Many insiders at the summit felt that an agreement to do something tangible and visible was required if the entire WSIS was not to be written off as a failure. The face-saving effect of the IGF’s creation was to prolong discussion of Internet governance for five years – but this was done without resolving any of the political tensions that had made it an issue in the first place. This meant that many of the political struggles shifted to the definition of the scope and structure of the Forum.

### 3. Bootstrapping: IGF as Organization

One can identify three distinct influences on the formation of the IGF: a) UN bureaucracy and the self-preservation agenda of people within it; b) intergovernmental politics and the need to satisfy the governments of developing countries, particularly the G77; and c) the desire of the US government, and its ICANN regime, to protect itself by diverting attention to other areas of Internet governance.

UN bureaucracy. From the outset, the new IG Forum looked a lot like the Working Group on Internet Governance that preceded it. Its Executive Secretariat was headed by Markus Kummer, the Swiss diplomat who coordinated the WGIG. The chair of its Advisory Group was Nitin Desai, the Indian diplomat who had presided skillfully over the WGIG's public consultations and many of its private meetings. As is typical of UN politics, a few countries began to jostle for being designated as the "host" of the IGF, with Hungary and Greece making their intentions known and the advocates of Geneva successfully staving these challenges off. One needs to view Kummer and Desai as "entrepreneurs" within the UN system, winning positions for themselves by offering a product – an ability to make the UN system relevant in the Internet governance process – to the world's governments and the UN administrative hierarchy. The WGIG was considered a relatively successful experiment, during which Kummer managed to demonstrate the legitimation and consensus-building aspects of the multistakeholder model while winning the trust of the U.S. and business actors as a non-threatening actor. Thus it was perfectly natural for the UN to see the IGF as a continuation of the WGIG and its main personnel.

Intergovernmental politics and ICANN. These political factors surfaced clearly when an advisory group containing representatives from government, business, civil society and technical groups was selected. The constitution of its AG was in fact a clear signal that the IGF's ability to engage in institutional innovation would be starkly limited by UN politics, inter-governmental politics, and the prospective concerns and rivalries of other international organizations. The size of the AG and its composition reflected intensive lobbying. Given the "lightweight" mandate of the Tunis Agenda, most people expected, and many advocated, that the advisory group be very small, so that its decision making remit was narrow, politics would be minimized, factions could not be formed, decisions could be made quickly. But after a down to the wire process, the AG numbered 40 people, as had the WGIG. (And, little known to people not directly connected to the process, both the WGIG and the Forum AG permitted attendance at their private meetings by a dozen or so designees of international organizations and a few other privileged parties taken on as "special advisors" by Desai or Kummer.) Note that the AG members were essentially handpicked in a non-transparent process by the IGF Secretariat, rather than being

selected and put forward in a bottom up process by outside groups. One reason for the larger size of the AG was the desire of developing countries, and particularly African nations, to insist on a certain number of slots to reflect their political, linguistic and geographic diversity. Indeed, at one point the G77 countries proposed having three separate secretariats, one for governments, one for business and one for civil society. This option was widely criticized by private sector and civil society participants as inconsistent with multistakeholder dialogue, as each sector would go into its own room.

And when the final list of AG designees was published, many were stunned by the overwhelming dominance of the non-governmental slots by people with major roles in the ICANN regime. Of the 20 non-governmental positions, three were sitting ICANN Board members; one was an ICANN staff member; two more were former ICANN Board members; two represented ccTLD operators; two represented Regional Internet Address Registries (RIRs). To that one can add an IETF representative often utilized by ICANN as a consultant, and the Internet Society's public policy advocate (ISOC is the corporate parent of the IETF and the owner of the .org registry). The AG also included a former US Commerce Dept official who had only months earlier been the NTIA official responsible for supervising ICANN.

In connection with this, one must mention the fact that one of the most difficult problems facing the new IGF was fundraising. Unlike ICANN, which has "taxing" authority over the businesses who enter the market via its contractual authority over the DNS root and a claim to support from the member-supported and quite wealthy internet address registries, the IGF has no money aside from what other organizations, notably states or businesses or other IOs, choose to give it. And prior to the MAG selections, and indeed all during the WSIS and WGIG processes, ICANN as an organization had been cooperative. ICANN's 2006 budget set aside \$200,000 for a contribution to the Forum.

#### 4. Concepts of the Forum

The IGF held some early consultations to discuss its processes and structure.

During these consultations, different conceptions of the nature and scope of the Forum emerged.

The US Government did not send high-level diplomats to the consultations, and in its statements made it clear that it wants the IGF to be a presentation forum, where Internet wizards and other wise westerners educate the rest of the world on how to build the Internet. Similarly, Canada called for a “capacity building” for development emphasis, stressing one-way education. Somewhat surprisingly, we learned that the European Union did not consider “enhanced cooperation” to be part of the Forum process. Negotiations over enhanced cooperation should be part of a separate, purely intergovernmental process, they indicated. This led many in civil society to conclude that the European commitment to multistakeholder participation is less than robust. All of these groups tended to view the Forum as a single annual event, and opposed the creation of any ongoing infrastructure of working groups or bottom up policy development. Likewise, other international organizations (aside from the special case of ICANN) did not like the idea of building a bottom up policy development process into the IGF. If communication and information policy is turf over which they overlap and compete – and it is – the idea of a newcomer occupying a big chunk of that space or, worse, establishing itself as an umbrella forum over all of them, would not be welcomed. Internet businesses and global business lobbies such as the International Chamber of Commerce urged the Forum to stay away from controversial issues, and not to tread on topics that are already handled by International organizations already well under their control, such as Internet identifiers and intellectual property rights (via WIPO).

Other stakeholders put forward a stronger view of the IGF’s role. Brazil, and presumably other G77 nations, called upon the Forum to start discussing a framework convention to develop globally applicable public policy principles for the internet, picking up on an idea floated by the Internet Governance Project. WSIS civil society urged the forum to take on all relevant issues, especially the controversial ones. Some civil society advocates called for using the Forum to engage in a holistic, cross-institutional assessment of internet governance mechanism, in order to evaluate their compliance with good governance

principles. And civil society seemed unified that the Forum should be an ongoing process, not a once-off event, with its own bottom-up working groups based on email lists.

If we take these alternative, conflicting views of what the Forum should do and arrange them on a spectrum corresponding to how strong or wide the scope of the Forum’s activities should be, we get something like this:

Table 1

Strength (rank)	Forum’s Role	Forum Process	Advocates
1	Discuss and develop global public policy principles; feed into framework convention negotiations	Bottom-up, ongoing working groups focusing on specific issues; External selection of stakeholder representatives	Brazil and G77 Some civil society, academic
2	Horizontal assessment of existing international organizations and their adherence to WSIS principles	Bottom-up, ongoing working groups focusing on specific issues; External selection of stakeholder representatives	WSIS civil society Some academic and technical Some civil society
3	Place to safely discuss controversial IG issues, gain recognition for new policy issues	Top down, Secretariat-selected advisory group	Some developing countries Some civil society
4	Avoid controversial issues, avoid assessment of other IOs; discuss “best practices” and engage in education and capacity building	Top down, Secretariat-selected advisory group	ICANN, USG, ISOC, business lobby, other international orgs

At each decision point, the Secretariat has chosen to follow the weaker two models (3 and 4). There are strong pressures from the US, some business interests and the ICANN regime to locate itself firmly in #4; but countervailing pressures from civil society and some G77 countries have occasionally moved it into #3 space. At present it seems to hover

somewhere between 3 and 4. How far the IGF's scope and mandate, and the expectations surrounding it, will shrink remains to be seen.

A key factor in the IGF's decision calculus is its basic need for survival as an organization, which means that it needs both to win over potential funding sources and avoid alienating parties that have money and might provide it. Aside from the ICANN's willingness to make a significant

The idea of "global civil society" as a factor in global policy making opens doors to wider participation and serves as a useful counterpoint to the dominance of states and business interests. In that respect it has much to commend it. But a lot of the energy surrounding civil society stems from its reliance on open, self-selected caucuses and working groups formed during the WSIS process. Some of these left over WSIS civil society groups have gradually formed their own procedures for selecting representatives and making collective decisions. Most have not. The broad civil society mobilization that characterized WSIS Phase 1 has atrophied to a great degree. That situation is worsened by the fact that the Forum Secretariat has chosen to rely on a top-down, patronage system for selecting civil society representatives instead of tapping into the bottom up structures initiated by WSIS. Over the long term it would be very easy for this kind of top-down selection process to filter out certain views and people deemed unacceptable by the powers that be, and to co-opt members of civil society who want to climb the ladder into the inner circles. In that respect some of the proposed methods of institutionalizing civil society participation could become a form of static neo-corporatism. Unfortunately these decisions are being made not through careful consideration of their long term institutional implications, but by the shorter-term needs of the Forum Secretariat for political and financial survival.

One should not underestimate the potential for the Forum to morph into something unexpected and unintended, the possibility that something dramatic and course-changing could take place at the Athens meeting, or even the possibility that after a couple of years the whole idea will be buried beneath the yawns of a public that fails to see its relevance.

Defenders of the Forum cite its early fragility and the need for it to crawl before it walks, and walk before it learns how to run. A lot can happen in five years.

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