

A new policy-making paradigm for the Information Society

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Abstract

Information and communications technologies (ICTs), especially the Internet, helped accelerate the diffusion of information and knowledge, and thereby the pace of change of what is fast becoming a true information society. Consequently the balance of power shifted power away from government policy-makers in favour of non-governmental, often transnational actors. Therefore, governments should adopt a new policy making paradigm for the Information Society, which successfully involves these non-government actors in creative ways. Based on my study of discussions with industry, policymakers and non-governmental actors in the US, EU and beyond, and on extensive personal experience and involvement in international ICT fora such as the WSIS, ITU, OECD and WTO, this paper aims to present this paradigm: setting a basic framework and finding a range of solutions to policy problems in partnership with relevant stakeholders.

Globalisation contributed to the erosion of nation-states, including a diminishing role for government and the increased power of transnational, non-governmental actors. Often, this was accompanied by a reduction in government resources. These shifting power relations led to the top-down government-industry-citizens paradigm being radically challenged, with government losing its dominant status.

Hence, policymakers need to rethink entirely how to devise policy, laws and regulations, to cope not only with the pace of change but also with this major shift in power relations. This is particularly true in the world of ICTs, and increasingly so for society as a whole. It is in this context that the European Union and the United States are formally reviewing their respective ICT frameworks.

Intergovernmental regimes and most national bureaucracies are skewed towards governments but also often based on making rules and regulations, rather than problem solving. A return to more fundamental ways of regulating in the spirit of better regulation could work: setting a framework of ground rules rather than detailed and burdensome codes, whilst acknowledging that a multi-pronged approach to making ICT policy is the only way forward. Simply having regulations would be useless in solving ICT policy issues, for example 'spam'.

It is now accepted by most that stakeholders need to be involved in national and international policy making, lest policies are at odds with the converged, fast moving information society. However, how cooperation between stakeholders can be enhanced remains vague. It is a challenge to decide how stakeholders should be represented, who should lead in what area, depending on their actual importance in the information society – and even who makes those calls. Cultural differences, in particular different acceptance levels of the role of non-governmental actors, makes a global drive for the inclusion of all relevant stakeholders a long term goal at best.

This model would also serve to improve relations between stakeholders. Too often the power of non-governmental, transnational actors has been seen only as a threat instead of an opportunity. Involving them rather than controlling and (over) regulating them, would create the necessary, inherent checks and balances without the burdens. It would ultimately lead to more accepted, fluid and efficient policy, and trust among stakeholders.

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Introduction

The International Society is still in a phase of transition, with globalisation making the meeting of civilisations a reality. The concept of civilisations and nations has rapidly evolved towards the end of the twentieth century. This is particularly true for the Information Society. The dynamics and outcomes of the recent UN World Summit on the Information Society (WSIS) in particular highlighted the rationale and necessity for a radical evolution: governments should adopt a new policy making paradigm for the Information Society, which successfully involves non-governmental actors in innovative ways.

Transnationalisation and the information age : challenges ahead

In the 1920s, Russian economist Kondratiev predicted that following the age of electrical engineering and petrochemicals that did eventually dominate much of the 20th century, an information technology cycle would start around the 1980s.² This prediction has now proven true: with the rapid evolution of computing and electronics after World War II and the parallel expansion to near global reach of telecommunication networks, information has become a fluid resource accessible (almost) globally. The advent of information and communications technologies (ICTs) and the Internet in particular have served to accelerate the diffusion of information and knowledge, and hence, the pace of change of what is fast becoming a true information society.

Importantly, this easier, freer flow of ideas has seen an increasing sharing of knowledge throughout the world. Rather than only the élites, the general public are now able to travel and communicate easily across borders, removing further barriers and filters to communication between people worldwide. This rapid exchange of ideas translated into an unprecedented cross-fertilisation of knowledge, leading to ever faster and far-reaching progress – scientific and medical collaboration using ICTs is a good example of this trend.

excellent and friendly advice Dr Irene Wu at the US Federal Communications Commission and Dr Sharon Gillett at the Massachusetts Institute of Technology in the early stages of developing this paper.
² Nikolai Kondratiev: *The Major Economic Cycles* (1925) and "The Long Waves in Economic Life," *Review of Economic Statistics*, 17(6) (November 1935).

Whether public policy related to the Information Society has mirrored this rapid evolution remains questionable. Government, by contrast to the fast moving actors of the Information Society, is often slow to act. This can be due to bureaucracy or to the desire to fully understand a policy issue before addressing it through rules and regulations, even if it takes time.

Over the past fifteen years or so, a flurry of new regulations were issued to deal with ICTs and the Internet in particular. They were often accompanied or followed with calls to further amend these new regulations or expand them in order to reflect technological changes or new market developments. This has been the case with calls to ban any type of unsolicited electronic communications for instance, an ill-judged way of curbing spam that could have hindered the further development of the Internet rather than enhanced or protected it and its users. This clearly remains an unsatisfactory approach: there is a lack of regulatory certainty; regulations are based on an information society still in its infancy, and where therefore drawing regulatory conclusions is a delicate exercise in second-guessing the near-future; and simply, regulations take too much time to be developed for them to have the desired impact in time before the next technology arrives that may radically alter market and social dynamics. As for the policymakers in charge of elaborating these regulations, they are often generalists or at best telecommunications policy experts, whose understanding of ICT issues is sometimes too limited. At the WSIS for instance, a significant number of government representatives were career diplomats without any ICT background, who agreed wording and principles during the negotiations without having the time to consult experts in their capitals.

Furthermore, the full economic and social impact of ICTs is not yet fully understood. It is always evolving as new technologies appear that further change not only the ICT sphere, but society as a whole. Making ICT policy and governing more generally in a world so rapidly affected by those technologies therefore presents a huge challenge for governments: to radically rethink both what and who to take into account when developing policy and regulations. Above all, this involves assessing the wider context of the evolving role of Government in society.

Erosion of the nation state and shifting balance of power

Historically, governments chartered and commissioned corporations. A shift started from the 19th century: some countries started granting company owners limited liability, thereby elevating their status to that of independent legal persons – this was especially true in Europe and the United States, before it started spreading to other regions.³ Starting from about 1870 with the expansion of industrial powers, another major factor – globalisation – further accelerated the erosion of nation-states, notably diminishing the role of governments and increasing the power of transnational, non-governmental actors. Increasingly, trade liberalisation and technological progress reinforced each other : liberalisation has provided the opportunity for producers to locate anywhere and yet retain access to their markets; emerging information networks have provided easy means by which customers can purchase, and producers can coordinate production, on a global scale. Altogether this process saw the increasing integration and interdependence of economies and societies around the world.

With the Internet, citizens themselves have also become more powerful. Cross-border, mostly uncensored communications have enabled a freer and faster flow of information, trade and ideas than ever before. The barriers represented by the lengthy duration of the postal process and by the Government's role of intermediary in cross-border relations and communications slowly eroded in the 20th century, with the telephone and fax, then the Internet catalysing this process. Cross-border communications between people and between organisations are now almost entirely beyond the control of governments and traditional institutions, and new tools have enabled many to increase their potential to create as well as to disseminate globally their creations and ideas. With an estimated one billion people using the Internet⁴, online cross-border commerce, mail, chatting, creating and distributing of music or political views – through blogs for instance – have developed easily and rapidly whilst the institutions traditionally overseeing cross-border relations saw their control lessened. This is evidenced with the rapid rise of previously unknown music bands bypassing the traditional music business to find success through Internet promotion

³ Samuel Palmisano, 'The Globally Integrated Enterprise', *Foreign Affairs*, May/June 2006.

⁴ At 31st December 2005, there were an estimated 1,022,863,307 internet users worldwide (15.7% of mankind) according to InternetWorldStats.com. (Last accessed 17 August 2006)

and distribution.⁵ The responses by certain governments to censor and clamp down on Internet communications only serve to further demonstrate how social relations, domestic and cross-border, have been radically altered by ICTs. Hence, globalisation is both enhanced and hastened by these developments, towards the multiplication of direct transnational links between communities of affinity and people more generally.

Beyond the changes forced by the increasing political and economic interdependence brought about with globalisation, this now mainly unsupervised type of exchange across borders contributes further to the rapid evolution of the nature of the nation-state, if not its erosion altogether.

In many places, this trend has been paralleled by a reduction in government resources.⁶ Generally, these resources have diminished due to political pressure to reduce public spending. There are also structural reasons such as the rising costs of Government: the system is often flawed when based and funded on assumptions of government service delivery made at the end of World War II, before evolutions in health or demographics radically altered demand towards ever increasing spending needs. This has meant that governments had to reduce their human resources, thereby diminishing expertise in some areas, a phenomenon compounded by the privatisation of certain activities. Consequently Government lost specialised capabilities in some sectors. This is evident in telecommunications (and ICTs more widely) where governments cannot expect to rival private sector expertise and resources. Yet, governments continue to dominate official governance processes, without the recognition of the increasing importance in the ICT ecosystem of many non-governmental actors, from private companies to scientists.

These evolving interactions and shifting power paradigms may have led to the traditional government-industry-citizens pyramid being radically challenged in the ICT sphere, with Government losing its dominant status. Even though it can be argued that publicly and democratically elected governments 'automatically'

⁵ See 'Teen network sites in battle for the bands', *The Guardian - Technology*, July 26, 2006 at <http://technology.guardian.co.uk/news/story/0,,1830246,00.html?gusrc=rss>; Last accessed: 26 July 2006; and 'The single is dead, says Alan McGee', *The Guardian - Arts*, July 18, 2006. (<http://arts.guardian.co.uk/news/story/0,,1822845,00.html?gusrc=rss>, Last accessed July 26, 2006)

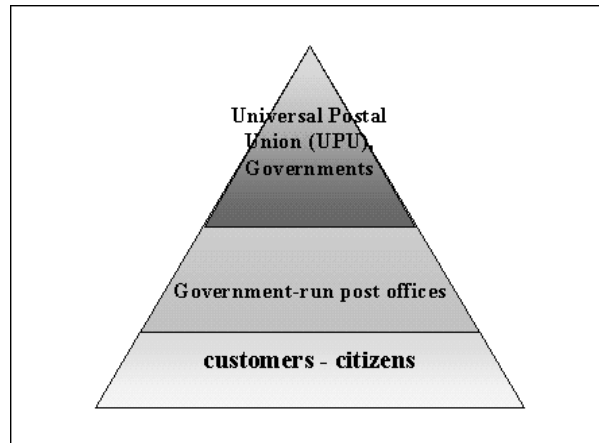
represent civil society, the reality is that the traditional top-down approach to governance is challenged by the emergence of a mixed, more collaborative approach, where beside Government many other layers of society are involved – a wide range of stakeholders including academics, industry, communications user associations and trade unions, scientists, human rights groups and many more, reflecting the increasing importance of ICTs for all in society. Some, within the Internet Society for instance, have suggested a near-180 degree change in those relations, with end users of ICT services rising from the bottom of the decision making chain for communications policy to becoming leading drivers, as shown on Box 1.

At a time of accelerating convergence, when the European Union and the United States amongst others are formally reviewing their ICT frameworks, policymakers need to rethink entirely how to develop the policy framework and its laws and regulations, so that it can not only cope with the pace of change but also with the major shift in power relations between the various actors in our society.

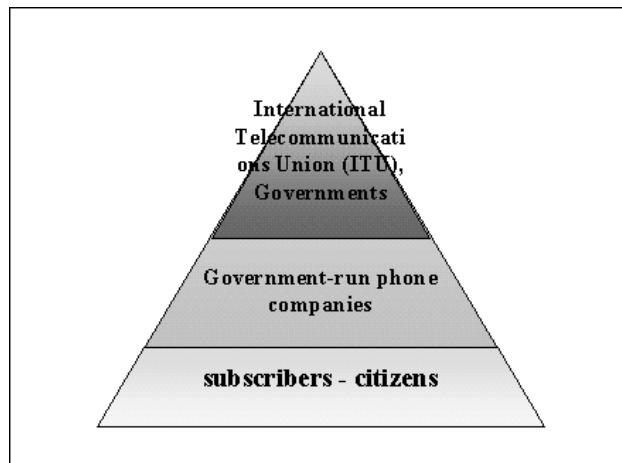
⁶ Keohane and Nye: *Transnational relations and world politics*, Cambridge: Harvard University Press (1971) and Joseph Nye, 'Globalization's democratic deficit: how to make international institutions more accountable', *Foreign Affairs* (July/August 2001).

Box 1: Who Makes the choices?⁷

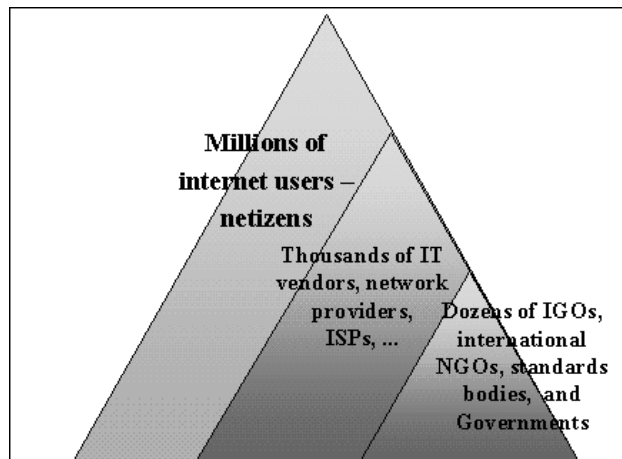
a) Postal governance – 1950s: who made the choices about postal service?



b) “Phone governance” – 1970: who made the choices about phone service?



c) New net governance: who made choices about the Net?



⁷ Adapted from Michael R. Nelson, Vice President, Policy, Internet Society : ‘Ensuring that the “Internet is for Everyone” ’, presentation at the OECD Workshop on the Future of the Internet, Paris, 8 March 2006 ; <http://www.oecd.org/dataoecd/44/13/36274510.pdf>, last accessed 17 August 2006.

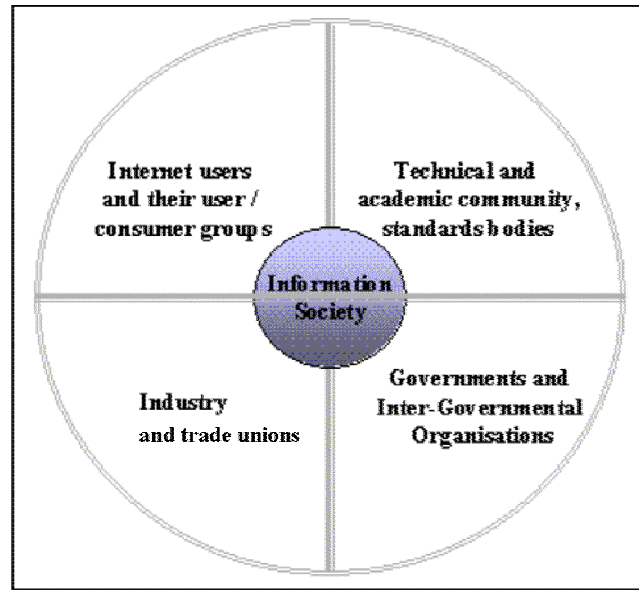
Beside these genuine shifts in power relations, various groups have increasingly sought to affirm their place in international ICT discussions. This has been apparent with the rise in activity and importance of communications consumer associations such as the International Telecom User Group (INTUG) promoting more choice and cheaper prices through competition; NGOs seeking to address the growing digital divide within societies and between nations; or traditional NGOs concerned about freedom of expression in the Information Age such as Amnesty International, with its campaign against Internet censorship.⁸ Many more advocacy groups have brought to the fore issues where their viewpoint and expertise has filled gaps in international discussions.

At the same time as the importance and role of these advocacy groups grew, in the absence of any existing framework key actors in the international society – academics and technologists in particular – naturally established formal and informal networks that could help them organise the new ‘net’ environment that they were pioneering. After the emergence of the Internet in the late 1960s, awareness of this technology and its potential uses and impacts indeed remained mainly with expert groups of ICT developers and a largely academic and research user base, represented by groupings such as the Internet Society or the Internet Engineering Task Force (IETF). These highly flexible, decentralised and pluralistic governance arrangements are now inherent components of the fabric of the Internet.⁹ Simply put, the Information Society is such a symbiotic ecosystem today, as illustrated in Box 2 below, that it would be impossible – nor practical or desirable – to govern it without the full, truly meaningful involvement of non-governmental actors.

⁸ See www.intug.net about INTUG; <http://web.amnesty.org/library/Index/ENGACTION300162006> and <http://irrepressible.info/> about Amnesty International’s campaign against Internet censorship.

⁹ The Internet Engineering Task Force (IETF) was set up in 1986 and the Internet Society (ISOC), established in 1992 to provide an institutional home and financial support for the Internet standards process which by then had to accommodate growing commercial interests in this network of networks. See William H. Dutton and Malcolm Peltu: *The emerging Internet governance mosaic: connecting the pieces*, Oxford: Oxford Internet Institute (November 2005); and ‘Addressing the Issues of Internet Governance for Development: A Framework for Setting an Agenda for Effective Coordination’, William H. Dutton’s substantive contribution for the first meeting of the Internet Governance Forum (2006), available at http://www.intgovforum.org/contributions_for_1st_IGF.htm (Last accessed 02/08/06).

Box 2: the new Information Society ecosystem



Rethinking the policy process

It is in this context that the European Union and the United States are formally reviewing their respective ICT frameworks. In the US, legislation including the current discussions around the rewrite of the legal framework for telecommunications is subject to Congressional hearings, allowing the voices of a wide range of stakeholders to be heard by the legislators. As for the EU, the “European Framework Directive” devised in the 1990s was a direct result of extensive consultation in Europe with unprecedented direct participation by industry and consumer groups. The result was a light, technology-neutral regulatory regime for telecommunications in Europe. Launching its public consultation on the review of this Framework in June 2006, the European Commission made a specific call for stakeholder input¹⁰. Brussels is increasingly hosting stakeholder consultations across the board : a welcome development, which will hopefully see relevant actors in the information society truly engaged with and by European authorities in mapping out the regulatory future for ICTs in the region.

¹⁰ European Commission Communication on the Review of the EU Regulatory Framework for electronic communications networks and services, 29 June 2006, COM(2006)334; pp.4-7. See http://ec.europa.eu/information_society/policy/ecom/tomorrow/index_en.htm (Last accessed, 17 August 2006)

In the UK as in the Netherlands for instance, the involvement of stakeholders in policy development alongside Government is now seen not as an utopian idea, but rather as part of the process. It is a necessity in order to achieve policy objectives efficiently: “[the Dutch] acknowledge that they have been greatly assisted by the formal involvement of businessmen and women sitting on commissions in each ministry. [...] [T]he representation of companies gives especially valuable insights into the impact of regulations on the ground.”¹¹

Real life examples include some converged communications regulatory authorities such as OFCOM in the UK, with its dual regulatory role for broadcasting and telecommunications. OFCOM has built-in processes for stakeholder input and transparency such as its several policy and technical coordination boards, that include representatives from across the sector and whose deliberations are made public on the OFCOM website. Consultation with industry has for a long while been the guiding mechanism in formulating spectrum policy in the UK for instance.¹²

This principle of stakeholder involvement was one of the main messages to come out of the UN’s World Summit on the Information Society (WSIS) which concluded in 2005, the first international conference of its kind to address the question of ICTs.¹³ This message is not true only in the Information Society field, where the pace of change and the impact of fast-changing post-modern societal interactions are possibly the clearest. The UN as a whole has been grappling with the issue of multi-stakeholder participation for some time and it is now becoming a pressing matter to address for the UN family. If some argued from the 1970s for the regulation of transnational networks and corporations, it was soon realised by many that the way forward for true transnational governance would be through partnerships between the different actors. Started in bodies such as UNCTAD, the accepted wisdom is now that nation-states and their intergovernmental processes should aim to include other relevant, transnational actors in their discussions. Sometimes this is by necessity: the welcome advent of liberalisation has meant that in many countries, technical expertise

¹¹ Better Regulation Task Force: ‘*Regulation – Less is More: Reducing Burdens, Improving outcomes: a BRTF report to the Prime Minister*’. London: Better Regulation Task Force (March 2005); p.30. (<http://www.brc.gov.uk/publications/lessismoreentry.asp>; Last accessed 27 July 2006)

¹² More on OFCOM’s governance structure and in particular its Content Board and Consumer Panel, can be found at: <http://www.ofcom.org.uk/about/csg/>. (Last accessed 27 July 2006)

¹³ www.wsis.org (Last accessed 27 July 2006)

has largely shifted further to the private sector. It remains that the various stakeholders have interdependent roles and mandates – they all need one another. We are now coming to an age where it can truly be argued that stakeholders need to be involved in national and international policy making, lest policies are at odds with the converged, fast moving global information society.¹⁴

Good examples of the need to involve stakeholders across international and in particular UN processes are peacekeeping and disaster relief, where it is widely recognised that close cooperation with regional organisations and the involvement of civil society in peace-building and relief efforts is essential. For the work of the new UN Peace-building Commission for instance, local actors and NGOs on the ground would bring to the debate an unrivalled knowledge and expertise of the situation, of the human problems and of the social realities, which policymakers and programme managers are sometimes divorced from. This would be a natural evolution and integration into international policy thinking of a marketing and environmentalist motto, which increasingly governs much of what happens internationally and transnationally: ‘Think Global, Act Local’.

The challenge of stakeholder involvement in government dominated processes

However, how cooperation between stakeholders can be enhanced remains vague. It is a challenge to decide how stakeholders should be represented, who should lead in what area, depending on their actual importance in the information society – and even who makes those calls.

Focussing on ICTs, these organisations that see themselves as having a role in global ICT discussions need to consider these issues and undertake a process of internal audit then transformation to improve their activities in the long term. In the context of the WSIS process, a major recommendation was for ‘enhanced cooperation’ between governments and between all stakeholders. It follows that bodies which have or want to have a role in the ICT world, from the ITU to the OECD or UNCTAD and UNDP, should put in train a number of important reform processes to improve access for and participation by stakeholders.

¹⁴ Richard Buckley (ed.): ‘Controlling MNEs’, in *Multinational Business: beyond control?* Cheltenham: UGI (1997).

As for many other global considerations, it will be important in driving multi-stakeholder inclusion to adapt the overall idea to cultural realities on the ground, without losing the original thrust. In places like Kenya or South Africa, it is using the particular strength of the local cultures and their traditional informal networks that successful policy making mechanisms involving non-governmental actors were put in place over the last 15 years, notably in the telecommunications arena.¹⁵

In the past few years, the United Nations have tried to address the issue by aiming to develop these multi-stakeholder processes more strategically. At the World Economic Forum in Davos in 1999 UN Secretary General Kofi Annan urged the business leaders to join a “Global Compact” to bring companies together with UN agencies and civil society to support several basic globally recognised principles in the areas of human rights, employment, the environment, and anti-corruption. No initiative taken by the Global Compact is binding, and there is no oversight mechanism to ensure that the companies that subscribe to the principles actually adhere to them.¹⁶ Unfortunately this initiative, which has spread around the world by now, has also been controversially debated by academics and activists. Beyond the UN Secretary-General’s desire to build strong interlinked communities at the international level, some describe the Global Compact as a “learning network”, others see it as a disaster for the credibility of the NGOs involved in it, tainted by criticisms of having given in to the establishment and ‘corporatism’. Indeed, those critics argued that the fact that the Global Compact office has recently switched to a stricter policy for the use of its logo illustrated the direction of corporate use of this initiative for pure marketing purposes. Such debates would not help the case for multi-stakeholder partnerships.

¹⁵ See Robert Horwitz: *Negotiated Liberalization Stakeholder Politics and Communication Sector Reform in South Africa*, paper presented at the 2001 TPRC Conference available at <http://www.tprc.org/tprc01/agenda01.htm> and <http://www.arxiv.org/abs/cs.CY/0109097> (Last accessed 3 August 2006); and Alice Wanjira Munyua: *New Generation of Policy Development: The Case of Multi-stakeholder ICT Policy Process in Kenya*, paper developed for CATIA (*Catalysing Access to ICTs in Africa*) and the Association for Progressive Communications, Nairobi (available at www.catia.ws/Documents/NewGeneration%20of%20Policy%20Development%20in%20Kenya%20Version%202.doc; last accessed 3 August 2006)

¹⁶ See www.unglobalcompact.org .

It is in fact recognised that change at the international political level has not been radical enough yet. Research has shown that civil society participation in the wider global governance processes has been very limited.¹⁷ Civil society and business groups are nowadays more welcome to sit in as ‘observers’, often only on an ad hoc basis, and sometimes to submit input as “experts” or “consumer interest groups”. So their input remains limited, and governments remain by far the most prevalent actors in international decision-making. States still have a somewhat disproportionate say over governance (and that is not to say that states should not remain at the top of the political governance pyramid). To take the earlier example of certain NGOs being banned from taking part in some of the WSIS discussions, this move was very much driven by a single government: should one voice silence so many others, which would have helped enrich rather than threaten the debate? There needs to be more transparency and a real desire to embed multi-stakeholder processes in national and international regimes.

The 2004 Cardoso report on better involvement of civil society within the United Nations commissioned by Kofi Annan in 2002 could be read as a reaction to this. Once again the report demonstrated that civil society is needed as a balancing force with much more credibility. The Cardoso report also addressed in much detail the complexities of involving stakeholders, and put forward clear recommendations for multi-stakeholder involvement across the UN.¹⁸

The Cardoso report was presented to the 59th session of the UN General Assembly in October 2004. A debate at the UNGA heard many governments respond to the Cardoso proposals with purely *political* considerations: they reiterated as a matter of principle the primacy of governments in international relations, and the *inter-governmental* nature of international processes such as the UN. This stance effectively derailed the Annan-Cardoso momentum: there was no agreement then, and no major progress since.

¹⁷ WSIS Civil Society website, at <http://www.worldsummit2003.de/en/web/735.htm>. Last accessed 14 July 2006

¹⁸ See the ‘Report of the Secretary-General on the implementation of the Report of the

But the barriers to a smooth involvement of stakeholders are not only procedural or political. There are major, inherent barriers on the way to a truly multi-stakeholder, inclusive information society, which are often replicated in political stances: the cultural and/or national understandings of the stakeholder environment and stakeholder relations. Cultural differences, in particular different acceptance levels of the role of non-governmental actors, make a global drive for the inclusion of all relevant stakeholders a long-term goal at best, if one is realistic. It is understandable that in a communist regime for instance, the relations between industry and government are much more intricately linked than would be the case in most capitalist systems. Local customs have also much to do with the conception of the links between the state and individual and social groups. Property rights, which often are an underlying basis for the development of the non-governmental sphere of society, are very differently oriented in Europe and the USA than in parts of the Middle East or Asia, for instance: the role of the State is simply much more preponderant in some societies and cultures than others. It was therefore no surprise that during the third preparatory committee of the World Summit on the Information Society (WSIS) a majority of countries (52 vs. 35) voted *against* the involvement in WSIS discussions of entities not properly vetted as ‘recommended organisations’, in the narrow WSIS accreditation language. It is interesting to note in this context that the WSIS was widely heralded as the first UN summit to so comprehensively involve civil society and industry: the result of this vote gives an idea of the difficulties ahead in trying to mainstream the concept of multi-stakeholder participation in ICT policy making internationally.¹⁹

These are not easy issues to deal with, and multi-stakeholder inclusion should be carefully mainstreamed across the various intergovernmental processes. As highlighted above, some of the factors to be considered and balanced against one another in mainstreaming stakeholder engagement would include among other issues to address:

Panel of Eminent Persons on United Nations–Civil Society Relations’, 59th session of the General Assembly, Agenda item 55 on ‘Strengthening the United Nations System’. GA/10268 (4th October 2004). Available at <http://www.un.org/reform/panel.html> (Last accessed 17 August 2006)

¹⁹ See Communication rights in the information society (CRIS): ‘China blocks open discussion at WSIS with procedural maneuvering’ (20 September 2005), available at <http://files.crisinfo.org/content/view/full/951> and <http://hrichina.org> (Last accessed 13/06/06).

- a. assessing each potential participant's competence and genuine representativity of (a) particular interest group(s);
- b. the need to coordinate, harmonise and simplify accreditation and access to intergovernmental discussions, especially across the UN family;
- c. if accreditation is based on merit, determining what constitutes merit for the purposes of the UN family or of a particular body;
- d. the need to deploy a fast administrative and decision making process for applications for accreditation;
- e. building stakeholders' capacity to contribute effectively to discussions, whilst introducing or reinforcing accountability and transparency mechanisms for *all* stakeholders;
- f. and in the case of ICTs in particular, "*try to preserve and strengthen the so far successful insulation of the technology's essential core infrastructure from political and commercial manipulation*"²⁰.

Rethinking channels of dialogue and future proofing a 'better regulation'

Intergovernmental regimes and most national bureaucracies are not only skewed towards governments but also often based on making rules and regulations, rather than problem solving.

Rules made at national levels, and which international processes increasingly impact on, often remain symptomatic of the bureaucracies that created them: burdensome, sometimes un-transparent and too often subject to change due to political rather than truly societal concerns. This lack of visibility and transparency needs to be addressed to realise the 'better governance' agenda that underpins the multi-stakeholder process. At the same time, the temptation has been high among governments worldwide to put in place new regulations every time a new technology appears, which may in the distant future change the dynamics of a market sector – the arrival of Voice over the Internet (VoIP) is a good example, which challenges the traditional telephony market and that some countries have decided to ban even before the technology had truly spread in the country. These constant pressures neglect the fact that long-term effects of these new technologies cannot really be predicted appropriately enough to evidence

²⁰ William H. Dutton (2006), p. 3.

the need for regulation. Further, by the time that the regulations have gone through the traditional lengthy and burdensome legal and parliamentary processes, they run the risk of being outdated the day they are enacted.

In the spirit of *better regulation*, and with the realisation that ICTs are a General Purpose Technology, whose unhindered development could benefit and support the entire economy²¹, there is a need to both return to more fundamental ways of regulating to protect citizens and society – setting a framework of ground rules rather than detailed and burdensome codes – whilst acknowledging that a multi-pronged approach to making ICT policy is the only way forward. As pointed out recently by a leading new media entrepreneur and thinker: “*Applying old rules in a new setting like this is wrong-headed and could be seriously damaging [...] So far, regulation of the web has mainly rested on a collaborative model. There’s been self-regulation by the industry and co-regulation. Now that’s been established that laws have not been and never were suspended online, there’s always a legal back-stop position for serious issues like child protection and identity fraud. But, more than anything, the Internet age makes greater demands of consumers to manage their own use and to protect themselves and their families. In many ways it’s a more democratic and adult environment; a world away from the paternalism and interventionist attitude of broadcast regulation.*”²²

This was demonstrated for instance with the problem of ‘spam’, where the consensus slowly emerged globally – first through expert groups, then at the OECD and eventually with the endorsement of the World Summit on the Information Society (WSIS) – that simply having regulations banning spam would be a useless way of combating the problem. In fact, regulations needed to be implemented in conjunction with “*consumer and business education; appropriate enforcement; the continued development of technical and self-regulatory measures; best practices; and*

²¹ See for instance the Bank of Canada’s 2001 assessment “Information Technology and the Canadian Economy” at <http://www.bankofcanada.ca/publiccomm/speeches/sp01-15.html> (Last accessed 17 August 2006)

²² Anthony Lilley: ‘Why broadcast rules won’t work on the Internet’, *The (Manchester) Guardian*, 26 June 2006, Media Guardian p.8.

international cooperation”²³ and with the engagement of all the actors involved, from governments to internet providers and consumer groups.

We increasingly see governmental and intergovernmental actors willing to move towards better regulation. In its 2005 report to the British Prime Minister ‘Regulation – Less is More: Reducing Burdens, Improving outcomes’, the UK Better Regulation Task Force strongly advised the mainstreaming of better regulation throughout UK legislation, by removing obsolete regulation; making the current system less burdensome; improving the development of new regulations; changing the way government deals with information submissions to ease the burden; reduce the demands for information; change the way policy objectives are achieved to ease the burden; so that ‘policy outcomes are achieved with the minimum of bureaucracy’²⁴. The European Commission specifically addresses these aspects and raises the prospect of both streamlining reviews of European telecommunications markets by national regulatory agencies, and applying a better regulation process to the review of the EU Framework for electronic communications, with the announced aim of removing outdated provisions.²⁵ It is to be hoped that these welcome announcements will be followed through in practice, and will encourage others at national and international level to follow suit.

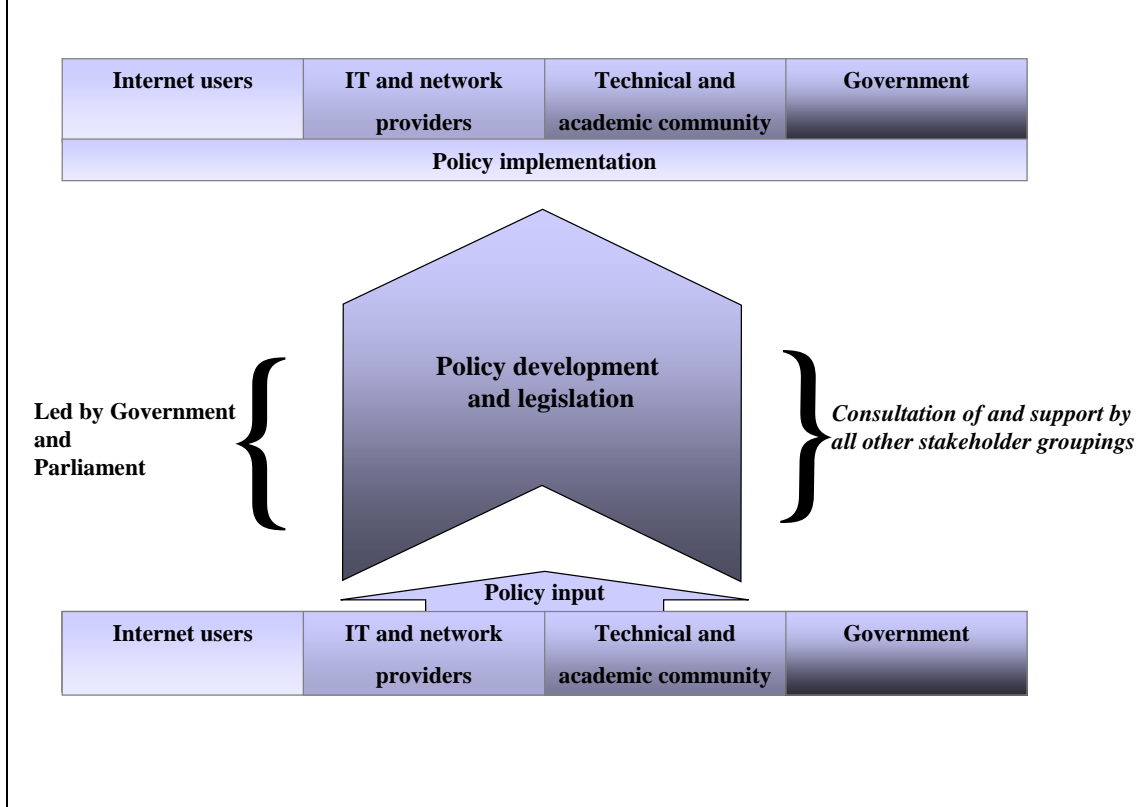
A new paradigm for ICT policy making would need to include both a multi-stakeholder and a better regulation dimensions, as illustrated in Box 3 below. All actors should be involved in policy input, support the policy development process and engage in implementation collectively. But there is no easy path towards this more inclusive, better policy-making paradigm. Not only procedures but also minds and attitudes will need to evolve.

²³ Paragraph 41 of the WSIS Tunis Agenda for the Information Society, WSIS-05/TUNIS/DOC/6 (rev. 1), available at www.wsis.org. See also the OECD’s work on spam at www.oecd-antispam.org (Last accessed 17 August 2006)

²⁴ Better Regulation Task Force (March 2005).

²⁵ See European Commission Communication COM(2006)334, *op.cit.*, pp.10-11.

Box 3 : a new paradigm for policy-making for the Information Society



Moving to this new paradigm: the case of the OECD

The set-up of the Organisation for Economic Cooperation and Development (OECD) presents an interesting starting point, and a good example of what *could* be done to involve stakeholders better, and hence, enrich policy making. One of the OECD's strengths, and what sets it apart from academic institutions and typical think tanks for instance, is its inter-governmental nature. But the active participation of stakeholders in its deliberations is possibly what contributed most to making it a thought-leading organisation internationally.

A 30-country strong economic and social intergovernmental organisation, the OECD has involved certain stakeholders in its deliberations for some time, and not just on an ad hoc basis. Indeed, in March 1962 soon after the OECD was created, two special types of members were not only allowed to participate in OECD discussions, but they

were also given a formal advisory role: the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC)²⁶.

TUAC is a key element of this co-operation, as the official voice of the labour movement at the Organisation. TUAC represents the views of the trade union movement in the industrialised countries - more than 60 million workers in 30 countries - and has worked with the Organisation to help ensure that policies for global markets are balanced by an effective social dimension. TUAC is involved in OECD work at several levels throughout the policy making process, from input into consultations as OECD policy recommendations are developed through to helping to ensure that they are implemented and, when necessary, updated. TUAC's affiliates consist of 56 national trade union centres in the 30 OECD countries. During their twice-yearly Plenary meeting – TUAC's decision-making body – affiliates agree policy statements, work programmes, TUAC's budget, and affiliation fees. They finance TUAC activities, decide priorities and policy and elect the TUAC officers. At the same time, TUAC regularly briefs its affiliates on the work under way in the OECD, co-ordinates policy statements on major areas of interest and evaluates the outcome of OECD meetings and publications.

BIAC's members are the major business organisations in the 30 OECD member countries, comprising over 8 million companies. Via its 31 standing committees and task forces, BIAC mirrors all economic policy issues the OECD covers. Each BIAC Member Organisation designates national experts to BIAC committees. Committees consist of both company representatives and member organisation staff. BIAC Committee Chair and Vice Chairs provide leadership for overall activity and serve as the primary BIAC contacts to the appropriate OECD committee. BIAC Task Forces address specific and other long-term issues within a committee. Ad Hoc Groups address emerging topics to enhance committee work in specific areas. All BIAC positions are consensus documents, permitting BIAC to speak with one voice on

²⁶ See OECD website at http://www.oecd.org/document/53/0,2340,en_2649_201185_1910965_1_1_1_1.00.html (Last accessed 2 July 2006; 'Policy Brief: Labour and the OECD: the Role of TUAC', in *OECD Observer*, Paris: OECD (February 2006), available online at <http://www.oecd.org/dataoecd/4/12/36051509.pdf>, last accessed 01/08/06; See also TUAC's website at <http://www.tuac.org/> and BIAC at <http://www.biac.org>.

behalf of the OECD business community. Indeed, both BIAC and TUAC aim to present a consensus view of their memberships.

This structure gives business and the trade union movement access to the intergovernmental policy debate and at the same time allows policy makers a dialogue with the social partners. Relations between the OECD and BIAC and TUAC are facilitated and enriched by the procedural flexibility with which contacts can be organised, which can be informal contacts, or formal political or technical consultations. The role of both Advisory Committees is not just limited to being heard: they truly contribute to the Organisation's work, by discussing directly the potential impact of technologies or of proposed policies, thereby allowing more solid studies, more solid conclusions, and eventually more solid policies to be devised and implemented by the Organisation and its Members.

Although unique in its inclusiveness among intergovernmental processes, this system could yet be improved: stakeholders nowadays can not be reduced to representation by only business and trade unions, and this is clear in the Information Society section of the OECD. Led by the Committee for Information, Computer and Communications Policy Committee (ICCP)²⁷, this section of OECD has involved advocacy and expert groups on an ad hoc basis, even when they were not formal members of BIAC or TUAC. This contributed to more informed debates, more informed policy and decision makers. It resulted in a number of effective initiatives, where the competences of private and public experts were combined with success, such as in the OECD Anti Spam Task Force. However, the time may have come to make these arrangements more formal, with the ICCP truly congregating all relevant stakeholders to discuss and shape the future of ICT policy. Indeed, as TUAC put it, “[g]iven the growing impact of globalisation [...] and the realisation of the need for participatory strategies by governments for all the stakeholders in market-based economies, this dialogue is more important than ever.”²⁸

An option to represent the stakeholders that do not fit into the categories of governments, business or trade unions, such as a number of advocacy groups or other

²⁷ ICCP webpages can be found at: www.oecd.org/sti/ict (Last accessed 17 August 2006)

²⁸ See *OECD Observer* (February 2006), p.2.

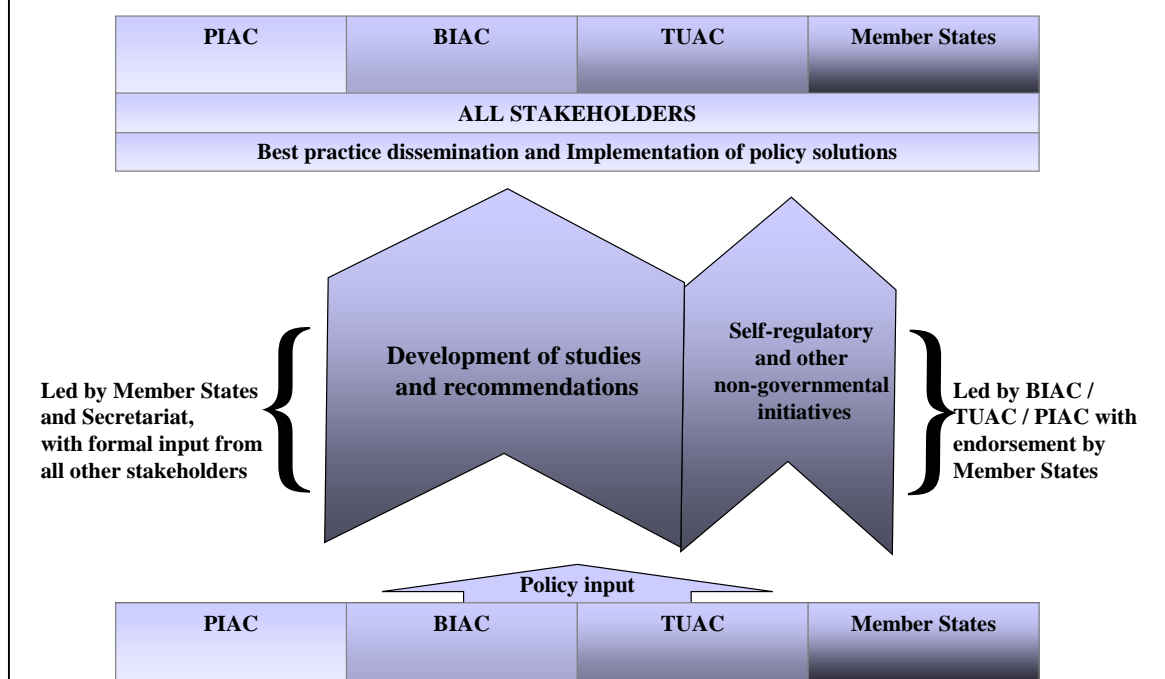
international bodies like the Internet Society, is to create a new Public Interest Advisory Committee (PIAC). This new committee should mirror the efficient accreditation and coordination rules of BIAC and TUAC, be given the same ‘advisory’ status, whilst ensuring that participation is affordable for the relevant groups. The Committee would channel the much necessary opinions and ideas of advocacy groups. With the combined representation of the whole spectrum of stakeholders, this key principle of WSIS, ICCP would be better equipped to study and shape better regulations and better policy for information and communication technologies.

There is broad and strong support among OECD Member States for multi-stakeholder participation in ICT international processes. Taking into account the various considerations around accreditation of civil society participants evoked above, and pushing this process as a matter of priority for member states at senior level, the OECD can take the initiative through ICCP and show *by example* how the information society of tomorrow can and should work.

It will be a long time before the concept of multi-stakeholder participation is truly and efficiently embedded in intergovernmental and national processes. But looking one organisation at a time, later harmonising the processes across the international system, there is an evolutionary way to successfully arrive at this new paradigm for an inclusive, dynamic information society.

The new policymaking paradigm could be adapted to the OECD workings with the creation of this Public Internet Advisory Committee fairly easily, as illustrated in Box 4. The process towards it could be led by the OECD ICCP Bureau (its Chair and Vice Chairs) assisted by the OECD Secretariat, with input and consultation throughout the process of developing this enhanced structure, of OECD Member States, BIAC, TUAC, but also the civil society groups that recently took part in OECD discussions on an ad hoc basis, who would eventually take part in PIAC. Details to be worked out in this process include the considerations highlighted earlier, such as who would lead PIAC, how it is to be funded, etc.

Box 4 : a new OECD paradigm for policy-making for the Information Society



Building trust through interdependence

In summary, this new policy-making paradigm is about setting a basic framework and finding a range of solutions to policy problems in partnership with relevant stakeholders. Not only would the involvement of all actors be indispensable for efficient policymaking: it would serve to improve relations between stakeholders. Effectiveness would be achieved through the responsabilisation and collaboration of the various actors in the Information Society, rather than entrenchment in ivory towers.

By knowing each other, working with each other, understanding better each other's concerns, interests and objectives, stakeholders can develop relations of trust that would enable smoother social interactions between them, and eventually, a better policy making process. As the OECD recognised, "*Relations with [the Organisation's industry and trade union advisory committees] BIAC and TUAC have become an important element of OECD's own functioning. The relationship is based on a climate of mutual trust and acceptance. An essential feature, particularly from the administrative point of view, is strict parallelism of treatment. Discussions with BIAC*

and TUAC enhance OECD's task of guiding consultations with and between governments."²⁹

Too often the power of non-governmental, transnational actors has been seen only as a threat instead of an opportunity.³⁰ *Involving* them rather than *controlling* and (*over*) *regulating* them, would create the necessary, inherent checks and balances without the burdens. "*As the world continues to integrate, reconciling the tensions between efficient global economics and local democratic politics will test everyone's imagination.*"³¹ Let us be both imaginative and courageous, and make this new paradigm a reality. It would ultimately lead to more accepted, fluid and efficient policy, and trust among stakeholders.

²⁹ OECD Website, *Relations with BIAC and TUAC*. Available at http://www.oecd.org/document/53/0,2340,en_2649_201185_1910965_1_1_1_1,00.html (Last accessed 2 July 2006)

³⁰ Jagdish N. Bhagwati, 'Coping with antiglobalisation: a trilogy of discontents', *Foreign Affairs*, January/February 2002.

³¹ 'LEADER: Global Corporations', *The Financial Times*, 13 June 2006. (www.ft.com)