



A Framework Convention: An Institutional Option for Internet Governance

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As discussion of Internet governance proceeds over the next year, the question of reforming institutional arrangements will move to the center of the debate. It will be difficult if not impossible to agree on an existing institution to take responsibility for Internet governance. Some parties are reluctant to have any formal institution at all involved with governance. Other parties have problems with existing non-governmental arrangements. Others refuse to grant additional authority to existing international organizations like the ITU.

Solving the institutional problem will not be easy. It is complicated further by the borderless nature of the Internet, and by the lack of consensus yet about the nature of the Internet or of the issues that should fall under the heading "governance". While some of these issues will be addressed by the Working Group on Internet Governance that has been convened by the Secretary-General of the United Nations, it is unlikely that the Working Group will reach definitive conclusions in the short time it has. The main reason is that considerable time will be required to reach agreement on the basic principles and norms that apply to international governance of the Internet.

It is time to face the fact that global Internet issues will require institutional innovation, both in the negotiation process and in the institutional mechanisms that the process proposes. The new arrangements will require multi-sectoral engagement – of government, industry, and civil society – as well as improved developing world participation.

The situation is very similar to that which was faced in dealing with climate change in the 1980's. In that case, the first step taken to deal with the problem was to agree that the problem existed and to agree on its dimensions. The second step was to agree on the norms that should be applied. Similar to Internet governance, a large number of national actors and different international organizations were involved in climate change issues (the World Meteorological Organization, the United Nations Environment Programme, UNESCO, to name a few), and there was significant interest by non-governmental organizations. It was recognized that any regime to deal with the issue would have to have a sound basis in international law, and therefore an international convention would be needed.

Rather than seeking to solve all of the problems of climate change in a single convention, a method that risked getting bogged down in contentious detail and taking considerable time, the governments and organizations concerned decided instead to pursue what they called a "framework convention." This convention would establish the principles and norms under which international action would

proceed, and set up a procedure for negotiating the more detailed arrangements that would be necessary to deal with climate change. The conference of States party to the convention would become the oversight body and negotiating forum and its secretariat could provide the necessary studies.

The United Nations Framework Convention on Climate Change (UNFCCC) was adopted in 1992 and has provided a basis for subsequent negotiation that has led to progress in dealing with the issue. Almost all States (189 in total) are parties to the convention, although not to all of its protocols.

The situation with regard to Internet governance is remarkably similar. A large number of national governments are involved, as are a number of international organizations (ITU, WIPO, WTO, UNESCO and the United Nations itself, to name a few), as are many civil society organizations. Any effort to deal with Internet governance will have to be firmly grounded in international law, suggesting a convention as a means of providing the necessary standing. The time is ripe for agreement only on principles and norms, as well as on procedures for dealing with future issues as they arise.

A United Nations Framework Convention on Internet Governance seems to be a reasonable option for States to consider.¹ What would such a convention contain?

First, it should define clearly what the governance problem is and its boundaries. Like the UNFCCC, it should have agreed definitions for key concepts in the Internet, including the Internet itself and who is concerned with its governance.² In working out those issues, the principle of subsidiarity, which advocates cross-border legislative solutions only when it is considered more effective than action taken at national, regional or local levels, is an appropriate starting point for discussion. Many issues may be better resolved at a regional or national level rather than at the international level. For example, some content related issues (hate speech, pornography, gambling) involve cultural differences that may be difficult to resolve at a global level beyond acceptance of general principles.

Second, a framework convention should clearly establish the norms that should be applied to governance. This could include such elements as maintaining the openness and freedom of the Internet as a communication channel and ensuring unimpeded global access. Norms could also be defined to address issues that are considered misuses of the channel, such as spam. A framework convention

¹ An analysis made in 1998 of likely problems of Internet governance suggested this. See John Mathiason and Charles Kuhlman, "An International Communication Policy: The Internet, international regulation & new policy structures," Paper prepared for the International Telecommunications Society Annual Convention, Stockholm, July 1998.

² For one attempt to define "Internet" and work out the implications of that definition for international governance, see *Internet Governance: The State of Play*. Syracuse, NY: The Internet Governance Project, September 9, 2004. <http://dcc.syr.edu/MainReport-final.pdf>

should indicate those areas in which further agreements need to be reached, particularly in terms of conflicting regimes (like intellectual property and freedom of expression). The norms should clearly define and legitimize the role civil society and private sector organizations, which have been critical to the development and maintenance of the Internet, will play in the formal governance process.³

Third, it should establish agreements on when negotiations should take place – a kind of trigger mechanism based on disputes among other areas, or with the functioning of the Internet. It could establish the concept that when additional legal agreements are needed, these can be in the form of protocols to the Convention.

Fourth, it should empower the meetings of States party to the Convention to act as a kind of overseer of that limited set of Internet related issues that are deemed appropriate for governance. It is important that the States party set the basis for vigorous participation of civil society in this function.

In general, a one-size-fits-all approach to Internet governance is not likely to succeed. The various policy issues associated with new communications technologies differ widely in scope, impact and substance, and may require different solutions. Furthermore they are all at different stages of development, and are not equally amenable to global consensus or collaboration.

For a United Nations Framework Convention on Internet Governance to be elaborated and agreed, considerable further work needs to be done. The conclusions of the Working Group on Internet Governance can be part of that work, as can the work of members of civil society, as well as governments. This is a great opportunity to both protect and promote the Internet as one of the world's most important global services and to innovate in the creation of the institutions that will be needed for that purpose.

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³ While there are precedents for the involvement in civil society in international decision-making, going back to the United Nations Charter in 1945 (or, to 1919 if the ILO's tripartite structure is considered), the Framework Convention would be an opportunity to advance this element of governance in an area where civil society clearly comprises a significant set of actors.