

Internet Governance: Quo Vadis? A Reponse to the WGIG Report

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IGP's Response to the WGIG Report

The United Nations Working Group on Internet Governance (WGIG) has issued its report. After more than eight months of work, WGIG reached consensus on only a few key matters. It remains to be seen whether the report will give governmental, private sector and civil society actors the concepts and consensus needed to navigate successfully the negotiating sessions of the World Summit on the Information Society. The question to be asked now is: *quo vadis?* Where do we go from here?

The report succeeded in supplying a consensus definition of Internet governance, one which we found useful. It also succeeded in identifying a range of important public policy issues. On the key problems of defining roles and responsibilities of actors and proposals for action, however, the WGIG Report provides less clear guidance.

The Proposals for Action

The most important thing, of course, is the report's proposals for action. The WGIG reached a clear consensus on the creation of a new multi-stakeholder forum to deal with Internet issues. As the report states:

40. [T]here would be merit in creating such a space for dialogue among all stakeholders. This space could address these issues, as well as emerging issues, that are cross-cutting and multi-dimensional and that either affect more than one institution, are not dealt with by any institution, or are not addressed in a coordinated manner.

The report does not provide much detail about the way such a "space" could be organized, other than that it should be open to all stakeholders and involve especially those from developing countries.

In its discussion of governmental oversight and the role of governments in the Internet, the report could not reach a clear consensus. It noted that:

50. There is a wide range of governance functions that could include audit, arbitration, co-ordination, policy setting, and regulation amongst others but not including involvement in day-to-day operational management of the Internet that does not impact on public policy issues.

The report did not propose a specific set of governance functions or a specific organizational model. Instead, it set out four different organizational models in a very brief outline format, none specifying particular governance techniques or functions. Looking at the four models, it is clear that there are really only two positions expressed. One, called Model 2, says that other than creating the new multi-stakeholder discussion

forum, not much needs to be done. The second, consisting of the other three models, says that in addition to the forum there needs to be some formal intergovernmental organization to centralize public authority over global Internet governance, although there are differences among the models in the details.

Roles and Responsibilities

On the fundamental issue of roles and responsibilities, the report seems to have been guided by a consensus that “public policy” is the exclusive domain of governments. Most of the proposed institutional changes would, in accord with that philosophy, give government a “leading role” in defining and implementing public policy, often excluding civil society and the private sector from direct participation except as observers and advisors. In our opinion, however, this represents a false consensus, because the report does not advance an analysis of when Internet policy becomes “public” and how one can reliably separate such “public policy” matters from operational administration, technical standardization, resource allocation and assignment, or ordinary business and social activity on the Internet. As a decentralized network of networks, Internet policies often emerge through collective action by distributed, private actors. Moreover, on the Internet, policy issues are often intimately and inextricably related to technical and operational decisions.¹ As a result, the report’s unelaborated conception of the role of government makes it possible that any and every aspect of the Internet might be subject to direct intergovernmental intervention, to the exclusion of civil society and the private sector.

Where Are We Now?

At this point, the question can fairly be asked, has WGIG brought us much further than we were at the end of WSIS I? An analysis of the report suggests that WGIG has indeed moved us further, but we must now be more analytical if we are to know where to go.

WGIG has moved us forward by clearly demonstrating that there are Internet governance problems that need to be addressed. This consensus provides a starting point. Though one could disagree on individual items, the WGIG report offers a convincing list of public policy issues that are either unaddressed by or uncoordinated across existing international regimes. In addition to that, it is clear that there is unfinished business with respect to ICANN’s supervision that must be addressed. The unilateralism of the US government in contracting with ICANN and monitoring changes in the DNS root zone file is not consistent with WSIS principles and is correctly criticized in the WGIG Report.

In terms of how to solve these problems, the report’s definition of Internet governance provides a useful starting point. The report says

¹ A good example of the latter is ICANN’s authority to add top-level domains to the DNS root. It is not at all clear how the “public policy” aspects of a TLD award can be extracted from ICANN’s role of assigning technical resources. As an example, would the governments who criticize the <.xxx> decision as an incursion on their territory prefer that they evaluate and vet every TLD application directly? In that case, ICANN is redundant and governments would have to take over its functions completely. Or would they grant to themselves the right to change TLD awards, after the fact? In that case, the unpredictability we would probably get might be the worst of both worlds.

10. Internet governance is the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision making procedures, and programmes that shape the evolution and use of the Internet.

The term governance is appropriate. It is derived from the Latin word “gubernare” – the action of steering a ship” – and suggests a softer form of governance than the kind of government that takes place at the national level. At the global level many actors who are either sovereign or independent must be part of the steering process. Steering in that sense is agreeing on what rules of the road should be followed to avoid collisions and then letting all of the parties embark on the voyage.

Still, global governance must be based on authoritative agreements among governments. Authoritative agreements not only have to be legitimate, they have to be *justiciable*. In international law, justiciable agreements are those that are included in conventions -- legally-binding international treaties. Thus, if Internet governance is to be obtained, it must be treaty-based. And the treaties must have universal adherence to be fully effective.

We acknowledge the widespread reluctance of almost all parties in this process to take up the burden of a new international convention. We realize that everyone is looking for short cuts. We are convinced that short cuts don't really exist and won't work. They will simply defer the day of reckoning and prolong the current state of tension and lack of resolution of outstanding governance problems.

While some conventions already exist that affect isolated issues related to the Internet, like intellectual property, elements of telecommunications policy, organized crime or child pornography, there are currently none that affect the Internet as a channel or the management of Internet resources. And as the WGIG Report notes, treaties and regimes developed in specific areas may conflict with norms and principles that are important in other areas of governance.

Moving Forward

The consensus notion of a multi-stakeholder forum suggests that further discussion, debate and negotiation should take place. This can build on the growing body of analysis that informed the WGIG work, but clearly must be given a greater sense of direction. *The forum, therefore, has to be seen as a preparatory element for something else.*

The three models suggesting new institutional frameworks based on new intergovernmental bodies are also premature. Until it is clear what the institutions are expected to do, and the necessity for doing it, consensus would be hard to obtain. In other words, without agreed principles and norms, there can be no agreement on rules, organizations and decision making procedures.

Yet, something must be done. The definition of Internet governance proposed by the WGIG suggests a sequence in which agreements must be made. First, there must be a definition of the principles and norms on which governance is to be based.

If the first stage is to agree authoritatively on principles and norms, the negotiation of a framework convention is clearly a reasonable, practical and feasible mechanism. Framework conventions in areas like climate change have allowed States, with the input of non-State actors, to reach agreements that will provide a legally-binding context for subsequent efforts to deal with issues. Negotiating a framework convention would provide a focus for policy analysis and discussion through a new multi-stakeholder forum – but would also provide a specific *objective* for the discussions.

Negotiation of international conventions can either take place within an existing institution, or if one cannot be agreed, can take place on an ad hoc basis reporting to a more general intergovernmental body like the United Nations General Assembly or the Economic and Social Council. Eventually, a convention would have to be adopted by the General Assembly – the only universal body whose competence covers all of the elements in Internet governance – prior to signature, ratification and entry-into-force. Secretariat support to the negotiations, including monitoring and facilitating the forum as part of the process, could be provided by an existing organizational unit, or by an ad hoc unit attached to an existing organization, much as was done with WGIG. This would keep the financial implications of the negotiation process to a minimum.

Once a framework convention has entered into force, its periodic meetings of States parties would constitute a general intergovernmental body in which issues could be resolved. This would provide intergovernmental oversight to the Internet without the creation of a more complex and definitive structure, unless, as rules and procedures were worked out in subsequent negotiations, a more formal institutional structure was found necessary at some future time.

So, this can provide an answer the question: Quo Vadis? Set in motion a time-limited process for negotiating a set of authoritative agreements that will determine the basic principles and norms for global Internet governance. Focus policy research, dialogue and negotiation on the process through a multi-stakeholder forum. Review the progress of the process on a regular basis, with the involvement of stakeholders. As problems that affect the security, stability and openness of the Internet develop whose solution cannot wait, build them into the process. Provide adequate secretariat support and use it to help focus and facilitate.

This paper was drafted by John Mathiason and Milton Mueller