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Government of Israel general remarks regarding the WGIG Consultations in Geneva April 18-20 2005

The purpose of this paper is to comment on four issues from the agenda for the third meeting of the Working Group on Internet Governance, held in Geneva, 18 – 20 April 2005.

Developing a common understanding of the respective roles and responsibilities of all actors involved in governance arrangements (item 2 on the provisional agenda). We refer to the WGIG document dated 3 April 2005, “Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance” (referred to below as “The Paper”).

Article 48 of the WSIS Declaration of Principles (WSIS-03/GENEVA/DOC/0004) states, that “the international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations.” The drafters of The Paper refer to this part of Article 48 as “WSIS Criteria” and use these criteria to assess “different types of governance mechanisms.” These “governance mechanisms” are defined in The Paper as: standards-making mechanisms; policy coordination mechanisms; development assistance mechanisms; and non-governmental mechanisms.

This methodological approach is process oriented. It assumes, *a priori*, that the WSIS Criteria are one and the same for all of the “governance mechanisms” under examination. This methodology is at variance with the issue oriented approach taken regarding the key public policy areas earmarked by the WGIG for further investigation and discussion, which are extensively analyzed in the many draft working papers prepared to date, especially the latest draft Assessment Reports regarding Clusters One, Two, Three and Four issues. Furthermore, The Paper ignores these draft reports entirely.

These draft working papers demonstrate clearly that the respective roles and responsibilities of the actors involved in the governance arrangements must be examined differentially, in the context of the issues themselves. For example, the working papers (Assessment Reports) on Cluster One issues (infrastructure) consistently point out that the existing mechanisms have “so far functioned properly from a technical point of view for more than two decades and that adjustments, where needed, both for technical and political reasons, have to be made in a proper and adequate way related to the functioning, stability, security and further development of the Internet.” (see Cluster One B Assessment Report, Cluster One B2 Assessment Report and Cluster One B3 Assessment Report). Compare this to the Cluster 3 Assessment Report on e-commerce, taxation and trade, that comments: “The practical possibility for governments, the private sector, civil society and international



organizations to participate directly in the decision-making processes or organizations that govern e-commerce, taxation and trade also varies according to the nature of the work.” (Emphasis at source).

In the end, the methodological approach taken in The Paper, that is, the attempt to apply WSIS Criteria to “governance mechanisms” in an undifferentiated manner, fails. The authors of the paper concede that the “the coordination of different issues may be approached in a variety of ways... The WSIS criteria themselves may well be regarded as having different shades of meaning in different contexts. For example, it is obviously not the case that “full involvement of all” must mean that everybody should have the same role in the development of policies, the preparation of decisions, the actual decisions and then the implementation of decisions.” However, the authors of the paper make no attempt to actually examine the topic at hand in its differing contexts, along the lines of the various key issues defined by the WGIG.

From the above, it would seem that the analysis of the “common understanding of the roles and responsibilities of all the stakeholders” should be issue and context related, drawing on the conclusions of the various Assessment Reports.

A further weakness in The Paper is that it defines the WSIS Criteria in a partial manner that misrepresents the intention of Article 48 of the Declaration of Principle. The full language of Article 48 is as follows: “The Internet has evolved into a global facility available to the public and its governance should constitute a core issue of the Information Society agenda. The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations. **It should ensure an equitable distribution of resources, facilitate access for all and ensure a stable and secure functioning of the Internet, taking into account multilingualism.**” (Emphasis supplied) The Paper pointedly ignores, in its “definition” of WSIS Criteria, the final sentence in Article 48, thus focusing solely on process without giving any regard to the efficacy of the existing mechanisms in achieving the larger goals expressed in that penultimate sentence. We note that the existence of “multilateral, transparent and democratic international management of the Internet....” (ie “WSIS Criteria” as defined in The Paper) does not necessarily ensure “a stable and secure functioning of the Internet.”

This definitional failure leads to an unbalanced, incomplete and skewed examination of the topic at hand (“Developing a common understanding of the respective roles and responsibilities of all actors involved in governance arrangements”). For example, The Paper comments on ICANN that “the very nature of this legal set up is the reason why some hold the view that ICANN is in contradiction with the WSIS criterion that recognizes policy authority for Internet-related public policy issues as the sovereign right of States.” Such a statement can only be made in disregard of an assessment of ICANN in accordance with the terms of reference of the last sentence of Article 48 as well as in disregard of the conclusion of the relevant Assessment Report on ICANN.

The Paper also assumes, *a priori*, that the Internet must be subject to governance by institutions: governmental, intergovernmental or private. In fact, the Internet owes its



robustness not to institutional governance, but the wisdom of those with the power to “govern” to allow the Internet to develop with a minimum of outside intervention. This was the policy of the National Information Infrastructure policy-makers in the United States, and it allowed private sector and academic sector contributions to the development of the Internet that have made it so successful. In fact, wise Internet governance (for whatever the term “governance” means) must recognize the positive and indispensable role of the private and academic sector. It should also recognized that solutions to some of the existing problems that plague the Internet today might be dealt with best using technical measures developed by the private sector, either with or without supporting legal or institutional mechanisms. For example, DRM is being developed to foster dissemination of protected works over the Internet in reliance on technical measures to protect right-holders. Filtering and blocking software developed by the private sector protect children against harmful content on the Internet. Major ICT players in the private sector are searching for a technical solution to spam. We believe that “Internet governance” should be kept to a minimum, and applied only where necessary. We believe that unnecessary interference with the operation of the Internet, may serve to destabilize it, make it less robust, or interfere with the free flow of information and ideas.

In conclusion, we believe that the current paper inadequately addresses the questions posed to it, though its final conclusions point in the right direction. Assessment of the roles and responsibilities of the various “actors” should be context and issue oriented, and directly related to the Assessment Reports. It should take fully into account the criteria stated in Article 48 of the Declaration of Principles and not just those identified in The Paper as “WSIS Criteria.” And finally, the underlying policy should be to support continued development of the Internet by the private and academic sectors, allowing for “governance” only where necessary to ensure that the Internet continue to serve all nations, all people and at all times in a secure and timely manner.

Assessing the adequacy of existing governance arrangements (item 3 on the provisional agenda). The draft Assessment Reports appear, for the most part, to present balanced and objective assessment of the existing governance arrangements. However, as stated above, we believe that the positive role of the private and academic sectors has been underplayed, presented negatively, or ignored. An Assessment Report should be prepared on the public policy issue of “how much governance” – ie, the role of the private and academic sectors in the development of the Internet, and to what extent this activity should be “governed.” In this context, the WGIG should take note of The Report of the Task Force on Financial Mechanisms for ICT for Development, Document WSIS-II/PC-2?COC/7-E, of 27 January 2005, which emphasizes the positive role of the private sector in ICT development in developing nations.

Possible recommendations for “proposals for action, as appropriate, on the governance of the Internet (item 4 on the provisional agenda). Existing and effective institutions controlling Internet infrastructure today should not be tampered with, unless proposed changes have the reasonable potential for reinforcing a stable and secure functioning of the Internet. Issues of International importance requiring global cooperation should be assessed for the possibility of improved cooperation by existing



institutions, including the creation of international treaties where they would be efficacious. Any intervention on these issues should be taken only as a last measure, where it is clear that the stable and secure functioning of the Internet will not be compromised. In addition, as a matter of policy, the private sector should be recognized as the primary engine of Internet robustness and development. This role should not be superseded by governance mechanisms and institutions that, while being more “multilateral, transparent and democratic,” might also hamper the stable and secure functioning of the Internet.

Towards a working definition of Internet and Internet governance (item 5 on the provisional agenda) Article 13 b) of the WSIS Plan of Action states that the WGIG should, *inter alia*, “develop a working definition of Internet governance” and “identify the public policy issues that are relevant to Internet governance.” This mandate assumes that a consensus can be reached as to the meaning of “Internet governance.” We believe that such a consensus shall be difficult to reach. The term means different things to different people. It is a loaded term, containing not only descriptive content, but prescriptive content as well, reflecting the views of whoever is tendering the definition and the perceived stakes that are involved.

The practical steps taken by the WGIG to identify public policy issues and to create draft issue papers and Assessment Reports relating to these issues, provide a strong basis for making recommendations to the WSIS – without actually defining “Internet governance.” In the end, the WGIG might say that the issues it has defined and addressed are those that relate to Internet governance (as described in the Preliminary Report of the Working Group on Internet Governance (Document WSIS-II/PC-2/DOC/5-E, 21 February 2005)), and that any further attempt to define the term would not be of any positive value.