

UN's Working Group on Internet Governance

Comments on WGIG Working papers

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.1) Introduction: The perspective informing these comments

These comments are provided by an academic engaged in teaching and research on international communication issues and on the role of new ICTs and information in international relations for more than 15 years. My approach to these issues may be summarised as a history-friendly, evolutionary perspective on the international political economy of communication, information and new ICTs.

From this perspective it is clear that the WGIG is charged with a multi-dimensional agenda of challenging, politically and economically sensitive issues. For, when it comes to the international governance of 'modern' communication systems, the 'technical is intrinsically political' --as the initial example of the telegraph and the formation of (what is now) the ITU in the mid-nineteenth century clearly indicates. Indeed, the latter example, which instituted a novel system of multi-lateral regulation for the first modern and rapidly globalising communication system --despite the rivalries of contending colonial and imperial powers-- provides a powerful model to inspire current efforts to create something equivalent in the case of the Internet.

From this perspective it is also evident that the WGIG and its advisers have achieved much in producing of an initial set of 'Working Papers'. These seek to map and state the multiple issues at stake in a comprehensive and coherent fashion in line with the principles and framework of the WSIS process. I must acknowledge this as quite an achievement given the complexity of the task and the sensitivity of the issues. That acknowledgement remains even if I will express some critical comments on aspects of these draft papers in what follows.

.2) Comments on: 'Developing a common understanding of the roles of all actors involved in governance arrangements'

.2-i) Towards a Common Understanding of the Roles and Responsibilities of all Stakeholders in Internet Governance

.2-ii) Criteria for the term "transparency, accountability, democracy" with regard to Internet Governance arrangements

2.A) Why International Internet Governance emerged on the WSIS Agenda

There is one important consideration that seems central [and helpful] to the discussion of these issues, but which is missing from the current drafts of these working papers: a (brief) reflection on the reasons why and how the international dimension of Internet Governance emerged so prominently on the WSIS agenda.

To address this *lacuna*, I would suggest the inclusion of something along the following lines in order to indicate how the very existence of WGIG and its current agenda of issues did not arise out some unfortunate accident (or conspiracy). Rather, They have emerged from a complex of material factors, including some related to the very diffusion and evolutionary trajectory of the Internet.

Table 1) Factors Promoting ‘regime change’ in Internet Governance

.1) International diffusion:

The increasing prominence of international Internet regulation concerns is directly linked to the expanding global role of the Internet and its diversifying spatial scope since the late 1990s (e.g. its especially rapid growth in Asia and Latin America).

.2) Security/military Concerns:

Growing concerns about security/military and geo-political aspects of the Internet. These have undermined the salience of the radical anti-statist ideologies, which often informed Internet discourses in the 1990s. This has been especially evident in the USA since the advent of ‘War on Terrorism’, and other international policy developments post-September 2001.

.3) ICANN increasingly criticised and/or perceived as ‘flawed entity’ in terms of its processes, structures and international legitimacy

ICANN has been much criticised for failing to deliver on its original promises and expectations. As the Internet has diffused internationally, ICANN’s legitimacy, and its status as an organisation that is subject to oversight and control of a single government, has been increasingly called into question.

.4) Techno-economic develops or ‘convergences’:

The very success of Internet-based protocols and techniques is now leading to multiple new convergences with the mainstream telecoms sector [e.g VOIP] and thus eroding the salience of arguments that it is special and beyond the reach or relevance of regulatory frameworks

.5) Increased role of ‘e-Government.’ As major market for Internet/ICT firms

Since the end of the dot-com boom, ‘e-government’ applications and services have been created as increasingly important ‘markets’ for Internet and ICT supplying firms. This has shifted the latter’s prior discursive positions which strongly opposed various forms of governmental regulation and ‘interference’.

.2.B) The ‘Subsidiarity’ Principle

The concept of ‘Subsidiarity’ may be helpful when it comes to implementing and operationalising relevant principles and criteria for the terms "transparency, accountability, democracy" in the case of Internet Governance arrangements.

As the draft working paper notes, terms such as ‘democracy’, or even transparency or accountability, are far from universal -- rather, they are highly culture, place, or group specific in their meanings and definitions. They are defined and understood in very different ways by various stakeholders and cultural or political groupings. Indeed, the same applies to many other terms related to the governance and operations of the Internet (e.g. ‘fair’ or ‘open’ access; ‘bad content’).

The principle or concept of ‘Subsidiarity’ suggests that rules and norms related to Internet governance should be delegated to the lowest possible tier of regulation without affecting the overall operation of the system. For example, it suggests that only those aspects that are central to the international operations of the system need be defined and regulated at the global level (e.g. root server system). At the same time, others may be delegated to the regional or national level or to other domain-specific rule setting and regulation levels in keeping with locally specific cultural and political values.

The introduction and adoption of the subsidiarity principle in this context would help reduce the number and scope of unnecessary ‘universal’ rules and norms and thus accommodate greater diversity. Indeed, it would seem to well-match the much-cited ‘flexibility’ characteristics or capabilities of the Internet compared to prior electronic communication systems.

.2.C) ICANN: General Assessment in terms of WSIS Criteria

The description of ICANN in the section on ‘Assessing the Actors Against the WSIS Criteria’ of multilateralism, transparency and democracy seems highly imbalanced and stilted. Quite frankly, it reads more like a public relations gloss than anything approaching like a balanced and impartial assessment. For example:

- Whilst it vaguely mentions ‘debate’ on such matters, the description fails to reflect the major flaws in ICANN’s performance, even in terms of that organisation’s own original goals and constitution;
- It fails to describe or list the major criticisms that have been made of that organisation on grounds of efficiency and procedures as well as equity considerations;
- In terms of the multilateralism criterion, it should be clearly stated that ICANN lacks international legitimacy due to its being subject to the direct oversight and interference of one government only. However benign that state may be perceived to be, it must be clear [and stated] that the very structure offends the criterion of multilateralism and ill-matches the increasingly international scope of the Internet.

.2.D) Impact of the Private Sector on Governance

This section provides a compact discussion of key trends and developments related to the growing role of the private sector with respect to provision, governance and regulation. However, in addition, it should mention that the electronic

communication industries (both ‘old’ and ‘new’) possess specific economic characteristics or incentives, which tend towards relatively high levels of concentration (vertical and horizontal integration). For example, the established telecoms services corporations are now also major players in the ISP markets in many countries. Such considerations indicate how ‘market-based’ regulation approaches may not suffice to ensure open or effective competition and so public sector regulation will continue to play a role in protecting the public interest and ensure consumer choice.

.2.E) Non-Governmental Organisations: Changing Composition & Culture

This section should include some consideration of the significant changes that have occurred in the character, composition and incentive cultures surrounding non-governmental organisations since the rapid commercialisation and growth of the Internet (e.g. IETF and ISOC). Up to the early 1990s, the relevant organisations were largely organised and managed by technical specialists based in academic or state (including military) based research organisations. Since then, staff employed by private sector (and especially large-scale) corporations, with very different kinds of incentive structures, interests and value orientations, have become major actors in these bodies.

These shifts are structural and irreversible as they are intricately bound up with the expanding commercial scope of the Internet and the growing role and influence of private sector based regulation and standard setting. Nevertheless they amount to significant changes in the composition and orientation of such ‘professional organisations’ and their associated cultures and practices. The very notion of ‘the Internet community’ as comprising a relatively small and autonomous group of scientific and technical peers --which framed or animated such professional actors up to the early 1990s—no longer holds. Today the set of stakeholders involved in the Internet is not only numerically much larger. More importantly, it is marked by significant cleavages with respect to power and other resource endowments, conflicting values and interests guiding the actions of influential professional and gatekeepers, and so on.

The WGIG should identify the key contours of such changes and their implications for the evolving scope of Internet governance in line with the WSIS goals and principles -- for example, with respect to:

- Adequate oversight mechanisms to ensure the maximum adherence to open standards and inter-operation of systems in the face of major corporations incentives towards proprietary or closed standards;
- Ensuring that wider user and public interest issues are adequately addressed and represented in the decision-making processes of such forums (e.g. in tackling the problem of ‘spam’);
- The forms and scope of effective multi-stakeholder participation to represent the interests and orientations of final users and small-firm users [especially as such groups generally lack the scale and range of specialist capabilities at the disposal of large corporations]

.2.F) Civil Society Involvement in Global Governance Arrangements

This section should emphasise past and current challenges concerning the effective representation of final household users in electronic communication markets and their regulation. Such considerations are essential in order to assess the future potential and practicalities of multi-stakeholder participation in international Internet governance.

The key challenges to be addressed here include:

- Final users (whether defined as citizens or consumers), have tended to assert very little influence on the design and material impacts of regulatory changes in electronic communication services;
- Even at the national level, past research suggests that (final) consumer protection groups tend to lack the competencies and capacities to effectively intervene in electronic communications policy or regulatory processes (e.g. compared to well-resourced user organisations representing larger industrial firms users);
- These challenges are amplified when it comes to considering the scope and forms of effective representation of ‘ordinary’ users in Internet governance issues at the international level.
- Thus, there appear to be considerable inequalities between different interest groups with respect to resources and capacities required to influence the design and implementation of Internet governance regimes. The inequalities in access to such resources between, on the one hand, suppliers and large-scale users of Internet services and, on the other hand, ordinary household users (even if the latter constitute the ‘majority’ of users) comprise major challenges for the realisation of effective or democratic participation.

Such material inequalities in the distribution of relevant capabilities and other resources need to be recognised and addressed if goals such as ‘multi-stakeholder’ governance is to be translated into something other than an empty if worthy ideal or slogan.

.3) Comment on: Physical and secured infrastructure issues [Cluster 1a]

The WGIG is to be commended for including this important dimension of Internet governance as it has been frequently neglected or ignored in many discussions of Internet governance. Such neglect is often associated with narrow definitions of the Internet which restrict it strictly to the TCP/IP code layer—a peculiar form of technocentrism which ignores how the Internet is only rendered possible, accessible and operable thanks to a whole cluster of related ICT devices, systems and networks. Such definitions tend towards characterisations of the Internet and its governance as some sort of detached and mystical or free-floating ‘cyberspace’ that is somehow isolated from material interests, conflicts or constraints.

In contrast, this WGIG working paper describes some of the physical and secured infrastructure issues, including those of telecoms infrastructure and access as well as international peering and interconnection arrangements. However, I suggest that the WGIG should expand its treatment of such issues to more fully describe and address how:

- These comprise some of the most important material and economic stakes impacting on Internet access, use and governance.

- Many segments of these Internet-related domains are dominated by complex sets of interlocking corporate interests and high levels of concentrated ‘market’ power. [We may also note that new ICT related corporations are highly concentrated and global in scope compared to other sectors].
- Yet these sites of major (‘big buck’) economic stakes largely comprise a veritable ‘black box’ with respect to the kinds of public regulation associated with basic telecoms services
- They also currently comprise a challenging ‘black box’ with respect to the kinds of transparent, multilateral and multi-stakeholder modes of governance implied by the WSIS principles.

In particular, the WGIG should consider whether and how this dimension of international Internet governance might be identified as a priority site for multi-lateral initiatives – which are publicly accountable and transparent in form.

.4) Comments on: Issues relating to the logical infrastructure of the Internet:

- .i) IP Numbers [Cluster 1b],**
- .ii) Domain Names [Cluster 1b] &**
- .iii) Root Servers [Cluster 1b]**

These issues are central to the current debate on international aspects of Internet governance --even if they do not monopolise the key agenda items as noted in my comment (no 3) immediately above. At their core lies the powerful role played by ICANN together with that organization’s problem-laden status, legitimacy and performance given the rapid globalisation of the Internet since the late-1990s.

Here, it is proposed that the WGIG’s deliberations would be facilitated by directly engaging with two particular sets of discursive (or ‘ideological’) hangovers from the digital deliria and dreamware that surrounded the Internet’s early growth and diffusion process during the 1990s. These comprise significant barriers on the path towards an effective and legitimate set of Internet governance proposals in line with WSIS principles.

.4.A) Engaging with the notion of the Internet as essentially ‘non-territorial’ or ‘a-territorial’

Firstly, it is necessary to critically engage with the assumption or assertion, frequently encountered in governance debates, that the Internet is essentially ‘non-territorial’ or ‘a-territorial’ in character. Such ideas are closely associated with narrow, logical-layer or ‘protocol-only’ conceptualisations of the Internet. As noted earlier, such definitions tend to neglect the pressing material (economic etc) aspects of the Internet. They ignore how its operation is only rendered possible, accessible and operable thanks to .i) a whole cluster of related ICT devices, systems and networks, and .ii) also a whole cluster of institutional, policy and regulatory pre-conditions.

In transcending such flawed assumptions, WGIG’s task will be facilitated by adopting a materially grounded conceptualisation the Internet as increasingly (or intrinsically) multi-territorial in scope and form. And so, it logically follows that any legitimate and effective Internet governance framework must be multi-national and multi-lateral in scope

Thus, core issues of ICANN's powers or its problematic role and status have nothing to do with the presumed 'non-territorial' or 'a-territorial' character of either the Internet or ICANN. Rather these are all very material and territorial in form and effect. Indeed, the Internet's current mode of governance is highly grounded in territorial terms. The core problem -- and WGIG's key challenge-- is to transcend the restricted character of ICANN's territorial frame of ultimate authority, by devising a multi-territorial form and mode of Internet governance in keeping with the international evolution and diffusion of the Internet over the past decade.

.4.B) Engaging with Radical Anti-Statism.

Secondly, WGIG's progress with its challenging tasks will be facilitated by critically engaging with assumptions or assertions that the Internet is intrinsically outside the realm of state regulation or antagonistic to 'government interference'. As noted above, such notions were advanced by many 'Net heads' and analysts and were favoured by new ICT supplying firms, most prominently during the early years of the Internet's rapid commercialisation and diffusion in the 1990s.

To some extent, such radical anti-statist notions reflect the nationally specific definitions of core terms (such as democracy, governance and accountability), which lie at the heart of WGIG's agenda of challenges. For example, social scientists have long observed how diverse strands of US political culture, including associated concepts of democracy and citizenship, have tended to be informed by a strong anti-state viewpoint compared even to other 'Western' countries such as France, Germany, and Canada etc. This general orientation of US political culture may have partly pre-conditioned the discourses, which greeted and framed the Internet in the 1990s. But the radical anti-statist features of the latter discourses were further shaped or amplified by specific conjunctural and sectoral factors, not least the rhetorics and ideological orientations then favoured by influential ICT firms and trade associations.

Such ideas have helped shape international Internet governance debates, even if they run counter to the facts of history and political economy related to the Internet and new ICTs. For example, at its core, the Internet is the offspring of a large-scale and sustained multi-year state funded research programme; likewise, the Internet's rapid diffusion and commercial success has been strongly shaped by a whole cluster of political and regulatory innovations -- at national and international levels. The latter range from IPRs, research, trade, and procurement and innovation policy areas to education, e-government and user or technology 'awareness' policy fields.

But the important point here is that the force and scope of such radical anti-statist discourses have abated somewhat compared to the 1990s, especially in the case of influential industrial and policy actors engaged in Internet governance. And as flagged earlier (in comment 2.A, above), such shifts provide WGIG with much greater scope and creative opportunities to design a new framework for global Internet regulation -- one that is legitimately and effectively multi-lateral and multi-territorial in keeping with the basic requirements of a modern international *communication* network.

.5) Internet Discourses and Resources: General ‘Reflections’ on the WGIG Process

Here I wish to address a number of more general issues and reflections that should be considered by the WGIG members as they move towards finalising their proposals and deliberations.

.5.A) ‘Discursive Deficits’: Imbalances in the ‘Debate’

It is notable that the WGIG processes so far have mobilised a wave of activity in the form of discussion, meetings, lobbying, public relations and diplomatic efforts on the part of industrial, policy (state) and civil society interest groups --activities orientated towards various degrees of reform or maintenance of the existing regime for international Internet governance. We should also note that some of this activity has taken the form of open and multilateral discussion and debate in line with the principles of the overall WSIS process, and that more of it takes the more traditional form of secretive, ‘closed-door’ power politics, public relations initiatives or unilateral and bi-lateral diplomatic efforts.

As regards the former, more ‘visible’ category, it should be noted that this does not appear to be as fully international or ‘multi-stakeholder’ in scope and form as one might expect or wish, not least given the increasingly international character of the Internet issues or phenomena at stake. For example, the majority of academic and independent contributions to the WGIG process and other recent forums and meetings still seem to be highly concentrated in terms of their geographical base (the majority seem to be mainly based in the North American and EU regions of the world).

The WGIG is not, of course, responsible for this imbalance in the international range and scope of expressed opinions, viewpoints, value-positions and orientations towards Internet governance. Such ‘discursive deficits’ or ethno-centric etc imbalances are not unique to the policy issues and debates surrounding the Internet. But they are significant facts and real factors-- and something that members of the WGIG should bear in mind and seek to address in their own deliberations.

By their very nature, little can be said in this context concerning the mapping of more traditional and ‘invisible’ efforts currently being directed at shaping changes or continuities in the international Internet governance regime (i.e. secret forms of ‘closed-door’ power politics, public relations and lobbying initiatives, unilateral and bi-lateral diplomatic games). Except that the WGIG must be fully reflexive and take note of their manifestations and effects – however much they may run counter to the principles of multilateral and multi-stakeholder processes which are deemed to inform the WSIS process overall.

.5.B) No Quick ‘Tech-Fix’ to International Inequality or Development Challenges

A second general reflection is directly relevant to several of the WGIG’s working papers, even if it applies with particular force to ‘Developmental Aspects of Internet Governance’. This refers to the frequently encountered assumption that the Internet, as a new communication system, can operate as some sort of ‘tech fix’ or magic multiplier to foster a more equitable, efficient pattern of international prosperity,

peace and welfare. This idea is now very influential in certain development policy discourses and one that is favoured by sections of the high-tech industrial sectors. But in essence, it is not new. We now have a century-long history of such optimistic rhetorics and assumptions surrounding successive waves of new ICTs. We also have an equally long record of broken (undelivered) promises about the role of new communication technologies as autonomous and powerful drivers to foster international development, welfare, peace and prosperity.

Thus, it must be noted that ‘never before has technology held such a prominent place in debate about international development and policy’ (Scott, 2005). This means that in its final deliberations and proposals, the WGIG must establish some critical distance from ill-founded techno-centric ideas and assumptions, however fashionable they may be right now. That does not mean adopting a hostile or anti-technology stance – far from it. But it does mean taking seriously the relevant insights from the now 50+-year-old history of specialist research on the role and influence of (successive waves of) new ICTs in the overall process of socio-economic change and international development.

For example, the WGIG could benefit from a more direct engagement with prior debates related to the wider WSIS process. For example, it should better reflect that, as many civil society organisations have emphasised, Internet and ICT policy strategies must look beyond technology. The WGIG should consider how the ‘information society’ is not only or primarily about technological issues. Rather, it is equally about a ‘communication society’ and about knowledge and/or information issues. Many such civil society contributions to the WSIS process have argued that:

- Current Internet or ‘Information Society’ policy discourses and strategies often fail to treat the wider use of new ICTs as a means towards some social end [e.g. such discourses tend to confuse such tools/means with the final aims or goals of social development and progress].
- The Internet and other new ICTs should be seen as means/tools for the realisation of social development goals/strategies ~rather than being treated as the measure and end-state of socio-economic progress or ‘the good society’;
- Any meaningful conception of the ‘info society’ is equally concerned with questions of access and control of information or ‘knowledge’ structures [info-structures as well as technical infra-structures].
- Institutional and other non-technical factors shaping access/use of knowledge structures, such as IPRs, can be ‘more important than technology’
- Internet issues and stakes comprise not simply those of quantitative ‘economic development’ indicators but they also pose value questions and quality-of-life stakes, including those related to different aspects or definitions of citizenship [people’s citizenship rights & identities]

.5.C) Wider Symbolic Aspects of ‘Internet Governance’:

Of necessity, informed discussion of Internet governance issues requires participants to engage with highly specialised, technical, policy, regulatory and legal issues and their associated esoteric language. At the same time, it is important not to fall into the traps of ‘expert idiocy’ by becoming excessively pre-occupied with the detailed points and so lose sight of the wood from the trees. This is especially relevant to the agenda and challenges faced by the members of WGIG.

In this light, it is important to bear in mind that the issues of international Internet governance have an important symbolic aspect as well as practical and performative dimensions.

This is particularly relevant if we view the issues of international Internet governance and the WGIG's core agenda in the broader context of current debates over the overall reform of UN institutions as they reach their 60th birthday. There is now a widely held view that the UN's core institutions, including their modes of governance and forms of representation, require a fully-fledged reform. One key aspect of that reform is spatial and territorial in scope: to achieve a more internationally balanced allocation of roles, functions, and forms of representation within the UN system.

In this light, if WGIG is to advance proposals for the creation of a new multi-lateral institution to provide more legitimate and effective forms international Internet governance, then it should pay particular attention to the symbolic as well as the practical aspects of its appropriate location. More specifically, it should seek to redress the clear locational bias towards the West (USA and Europe) evident in the existing territorial distribution of UN related institutions

Thus the WGIG should propose that any new multi-lateral institution for international Internet governance should be located in a country in Asia, Latin America or Africa. Given the particularly rapid growth of the Internet in Asia in more recent years, perhaps it seems the most appropriate candidate to host any such new multi-lateral institution.

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