THE NEED FOR INTERNATIONAL INTERNET GOVERNANCE OVERSIGHT

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A key issue addressed by in Phase I of the World Summit on the Information Society (WSIS) was the bridging of the global digital divide. To this end, an Action Plan was published which provides concrete action lines to be implemented at the national level within a specified time, and which include the provision of information and communication technology (ICT) services to key institutions such as schools, Government offices, libraries and hospitals. Implementation of these initiatives will enable widespread publication and access to information and will result in ever increasing dependency on the Internet. This has raised many key issues, including security, capacity building, multilingualism, cost of establishing infrastructure and protection of related investments.

The accelerating trend toward ubiquity and reliance on the Internet has made it an indispensable global resource, which in turn obligates everyone to cooperate in its construction, development and operation. This new reality has resulted in many stakeholders calling for a larger role in its international governance. In its 2003 Declaration of Principles, the WSIS affirmed that the international management of the Internet should be multilateral, transparent and democratic with the full involvement of stakeholders. The WSIS recognized the roles of the various stakeholders. Specifically, policy authority for Internet-related public policy issues is the sovereign right of States and international organizations also have an important role in the development of Internet-related policies. The WSIS also recognized the important role of civil society, and that of the private sector in the technical and economic fields. The Working Group on Internet Governance (WGIG), which was tasked by the United Nations Secretary-General to study this subject, reasserted these roles in its definition of Internet governance.

In its report, the WGIG indicated that a vacuum exists within the context of existing Internet governance structures, since there is no global multi-stakeholder forum to address Internet-related public policy issues. It concluded that there would be merit in creating such a space for dialogue among all stakeholders.

The WGIG dedicated an entire section of its Report to the discussion of Internet public policy and oversight. In that section the WGIG set out four models for consideration. Three of these models varyingly propose the creation of an Internet Council in which Governments would take a leading role and other stakeholders would have an advisory/observer role. Although these three models have many common elements, each one is a bit different from the other.

The remaining model proposes that there is no need for a specific oversight organization and that it "may be necessary to enhance the role of ICANN's Governmental Advisory Committee (GAC) in order to meet the concerns of some Governments on specific issues."

In view of my participation at most of the WSIS Preparatory Committee (PrepCom) meetings and as a member of the WGIG, I felt it appropriate in this chapter to shed some light on the oversight function, which was one of the most important subjects discussed in the WGIG Report. This issue has generated the greatest differences in viewpoints, and the debate is expected to continue for the next while. Hence, I will discuss the establishment of a Global Internet Council as proposed in the WGIG Model 1 (see Figure 1, below) which many believe is the most appropriate approach to address the issue of global Internet public policy and oversight.

Figure 1: WGIG Model 1

52. This model envisages a Global Internet Council (GIC), consisting of members from Governments with appropriate representation from each region and with involvement of other stakeholders. This council would take over the functions relating to international Internet governance currently performed by the Department of Commerce of the United States Government. It would also replace the ICANN Governmental Advisory Committee (GAC).

53. The functions of the GIC should include:
   • Setting of international Internet public policy and providing the necessary oversight relating to Internet resource management, such as additions or deletions to the root zone file, management of IP addresses, introduction of gTLDs, delegation and redelegation of ccTLDs.
   • Setting of international public policy and coordination for other Internet-related key issues, such as spam, privacy, cybersecurity and cybercrime, which are not being fully addressed by other existing inter-governmental organizations.
   • Facilitating negotiation of treaties, conventions and agreements on Internet-related public policies.
   • Fostering and providing guidance on certain developmental issues in the broader Internet agenda, including but not limited to capacity-building, multilingualism, equitable and cost-based international interconnection costs, and equitable access for all.
   • Approving rules and procedures for dispute resolution mechanisms and conduct arbitration, as required.

54. The relationship between the GIC and technical and operational Internet institutions, such as the reformed and internationalized ICANN, should be formalized. In this model, ICANN will be accountable to GIC.

55. The GIC should be anchored in the United Nations.

56. For the issues dealt with in this body, the Governmental component will take a leading role. The private sector and civil society will participate in an advisory capacity.

The Debate on Oversight: A Matter of Perspective

It is a commonly accepted truth that the appearance of an object can vary depending on one's perspective. This truth naturally applies, to a great extent, to the issue of international governance of the Internet, which has been the subject of significant review and consideration by the governmental, commercial, social and academic communities. The intensity of this effort is increasing as the WSIS process progresses. Different perspectives on the issue have resulted in conflicting opinions, to the point where some, in good faith, are convinced that their view is correct, and that the views of others are not, when in reality the same thing is being observed from different perspectives. To add to the complexity, some are convinced that they alone know what is in the interest of others, and therefore their position must be accepted by all.

Those who have not been following the evolution of this debate over time may understandably encounter difficulty in fully understanding the issues due to their complexity. Another impediment to understanding is the 'headline' reporting in the media, which does not always provide analysis and explain the different perspectives. I believe that many of the differences concerning the stakeholder roles required, and the mechanisms proposed, for the global governance of the Internet stem from these and related sources.

Why Global Oversight is Needed

Before I address the issues that make Internet oversight the subject of so much attention by the international community, I would like to make it clear that the discussion of oversight does not imply abandoning existing arrangements associated with management and operation of the Internet. However, several questions remain, e.g.: What is meant by oversight? Why are governments concerned? Is oversight really needed?

The subject of oversight is very broad and cannot be covered rigorously in just a few pages. The Merriam-Webster dictionary defines oversight in terms of watchful and responsible care, and regulatory supervision.

With relation to Internet governance, the WGIG defined the following key policy areas:

- Issues relating to *infrastructure and the management of critical Internet resources,* including administration of the domain name system and Internet protocol (IP) addresses, administration of the root server system, as well as multilingualization;

- Issues relating to the *use of the Internet* (e.g. spam, network security and cybercrime, intellectual property rights), including issues whose impact is broader than the Internet, such as intellectual property rights and international trade, or that are related to development and capacity building.

Issues related to Internet governance do not generally affect just one country without also impacting others; in fact, they can impact all countries. Among the first Governments to encounter and address these issues was that of the United States. Most Governments of both the developed and developing worlds have now also become concerned by these issues. The participation of States in international Internet policy setting and oversight has become an important factor in giving them confidence to encourage investment, and to increase reliance on modern ICT.

National Governments are the most representative entities for the public, as they are appointed by the people, and they are responsible for the development of public policy within their territories. It therefore follows that governments must also be responsible for the setting of international public policy. The private sector and civil society cannot take the place of Governments in undertaking this role. However, their participation and support to Governments through the provision of advice and opinions is an important element in the successful execution by Governments of their policy setting and oversight role.

Since the Internet is a global network which knows no national boundaries, and the security of the Internet is of concern to all States and impacts their national security, it is not reasonable for one Government to undertake the oversight role on behalf of all the Governments of the world. This view was affirmed by the WGIG, which stated the principle that "No single Government should have a pre-eminent role in relation to international Internet governance."

The Internet Corporation for Assigned Names and Numbers (ICANN) is responsible for issues relating to the management of critical Internet resources. This includes coordination of the allocation and assignment of Domain names and IP addresses as well as operation and evolution of the domain name system's (DNS) root name server system. ICANN also develops policy related to these functions. ICANN is constituted in the United States and operates under a memorandum of understanding with the Department of Commerce of the US Government. ICANN in turn established a number of contractual relationships with other organizations as well as a number of Advisory bodies to assist in the policy making and management of the Internet naming and numbering resources, and in the operation of the root name server system.

ICANN can be said to provide a unique, centralized service for operation of the Internet, at a global level and in a non-competitive mode. Furthermore, in executing its mission ICANN can also be said to be performing an international industry regulatory function. Examples of the regulatory functions performed by ICANN include:

- Regulation of the pricing and structure of the domain name registration industry. It determines ('licenses') the top level domain (TLD) registries and controls the prices charged by the registries.

- Policy and regulation on the use of Internet naming and addressing resources, including establishment of new generic and country code TLDs.

- Policy and regulation of dispute resolution, through a compulsory and binding mechanism, on domain name related intellectual property.

Public organizations which develop policy and regulations traditionally function in a procedurally defined, transparent and consultative manner and are publicly accountable. Although ICANN has worked to achieve a transparent and consultative approach through an international diverse Board and by establishing various advisory groups, as a private entity it cannot be held publicly accountable to the international community.

Oversight of industry self-regulation mechanisms is traditionally the role of national Governments and intergovernmental organizations. In the case of ICANN, this role is currently being undertaken by the US Government. The input of other national Governments and public interest groups to the ICANN process is limited to provision of advice and for this reason; an important element of international legitimacy is missing.

Global oversight is also needed to address the category of international public policy issues which relate to the use of the Internet, such as spam, network security, cybercrime, privacy, content control and capacity building in developing countries, and which are outside the range of ICANN's mandate. Although many of these issues are addressed by existing multilateral organizations others are outside the scope of existing global organizations, or are not being fully addressed on a global basis.

The Case for Establishing a Global Internet Council

It can be seen from the discussion above that:

- Oversight of the monopoly, regulatory and policy functions of ICANN is needed;

- This oversight is currently provided by a single Government;

- There are some areas of international public policy for which oversight is needed, and which are outside the scope of existing organizations and are not being fully addressed;

- Policy authority for Internet-related public policy issues is the sovereign right of States.

It follows that a global organization in which Governments have a leading role is needed to perform the public policy setting and oversight functions including the role currently performed by the US Department of Commerce with input from all stakeholders. With

establishment of the Council, and the internationalization of ICANN, ICANN would continue to execute its technical and operational functions under a United Nations-like host-country agreement. ICANN's Government Advisory Committee would no longer be required.

The involvement of States in the overall Internet governance process through a Global Internet Council would provide international legitimacy and ensure accountability for ICANN and other existing and future Internet governance institutions where required. It would also legitimize the governance process in the eyes of national Governments and facilitate agreements on Internet-related public policies, as well as provide international legitimacy to dispute resolution and arbitration procedures relating to international intellectual property rights.

The Council also would facilitate full participation in Internet governance arrangements by developing countries. It would help overcome many of the obstacles faced by development programs in these countries, including but not limited to capacity-building, multilingualism, equitable and cost-based international interconnection costs, and access for all. The Council also would provide continuity to the WSIS process by ensuring implementation of the WSIS principles and action plans through IG processes and institutions.

Establishing the Council

To facilitate its establishment, the Council should be anchored in the United Nations. This would provide an existing and credible legal framework and reduce costs by providing access to an existing administrative support capability. Furthermore, by obviating the need for establishing new laws to regulate the relations between States, it would help expedite the process of setting up the Council; a factor which is particularly important given the expected termination in 2006 of the Memorandum of Understanding between ICANN and the US Government.

In order to ensure that the Council can keep up with the fast pace of Internet development, it is important that the decision making mechanisms for the Council be designed to be efficient while adhering to the principles of democracy, transparency and accountability. To this end, the Council could have an Executive Committee, with representation from the various regions of the world, which would meet on an as required basis to address issues and make recommendations to the full Council. To ensure involvement of all stakeholders, representatives from the private sector and civil society would participate in an advisory capacity in both the Executive Committee and the full Council. The Council would also have a solid linkage and synergy with the proposed multi-stakeholder Internet Governance Forum, which would debate and propose policy positions for adoption by the Council and, where required, coordinate their implementation.

Conclusion

The creation of a Global Internet Council would enable:

- Required international Internet public policy setting and regulatory oversight to be driven by States with involvement of all stakeholders, in a manner consistent with the principles established by the WSIS;

- Implementation of the WSIS goals, principles and action plans for the establishment of an inclusive, people centered and development oriented information society;

- Continuation of the current roles of the private sector and civil society in the technical management and operation of the Internet;

- Continued stable and safe functioning of the Internet;

- Strengthened support for issues requiring national Government involvement for their successful implementation e.g. capacity building, multilingualism.