

WHY THE WGIG PROCESS MATTERED

William J. Drake

Did the Working Group on Internet Governance (WGIG) process matter? That might seem like an unusual question to pose in the Conclusion to a book such as this. Nevertheless, it is worth recalling that at various stages along the way, there was skepticism in some circles about the wisdom of the exercise. Tellingly, such skepticism was particularly pronounced among proponents of two polar opposite views: those who believed that there was no need for any sort of UN-based discussion of Internet governance, because everything was working just fine; and those who believed that everything was not fine and there was one single and obvious solution, namely to establish greater intergovernmental control over the Internet. Alternatively, some of the same people at times expressed fears that the WGIG would matter, but in ways they would not like. If I had a one US dollar for every time I was told--almost exclusively by my fellow Americans--that the WGIG was actually a UN plot to “take over the Internet” and give it to the International Telecommunication Union (ITU), I could have a quite nice dinner--in Geneva no less. If in addition I had a one US dollar for every time I was told that the WGIG was a plot *against* the ITU, I could have a nice dessert, and coffee too.

Rather than attempting to summarize the very diverse perspectives offered by the WGIG colleagues and staff members who agreed to participate in this project, this Conclusion will take a different approach. I will advance seven arguments for why I believe the WGIG process mattered and made significant positive contributions to the evolution of the global debate on Internet governance. These contributions pertained to both procedural and substantive matters, and are detailed below.

Procedural Contributions

1. The WGIG process demonstrated the benefits of multistakeholder collaboration.

While the WSIS was mandated to be a multistakeholder process, its actual conduct called into question the precise nature of this commitment. The modalities of participation gave Governments and session Chairpersons a good deal of discretion in their treatment of observers, and the private sector and civil society frequently found themselves to be on a yo-yo string--in one moment allowed into the room with sharply limited speaking opportunities, in the next told to sit silently, and in the next thrown out entirely. This naturally generated a very high degree of discontent among observers and, in the case of civil society, periodic discussions about the merits of continuing to participate and hence legitimate the WSIS' claims to multistakeholderism. Such treatment was particularly problematic with respect to Internet governance, a field in which the private sector and civil society play leading roles in the

development and management of the resources, services, and applications involved. In Phase I, significant damage was done to the WSIS' reputation among technologists, industry, and civil society, and the prospects were dim that these stakeholders would endorse and willingly abide by agreements negotiated without their meaningful participation.

The WGIG experience was very different, and it helped to reorient the dialogue somewhat during WSIS Phase II. The contributions to this volume collectively underscore that the WGIG comprised individuals with sometimes sharply different styles, priorities, and preferences. Nevertheless, this actually facilitated, rather than obstructed, the process. The open, intensive, and peer-level nature of the dialogue meant that WGIG's members could not simply make statements and then sit back and take it for granted that the rationales for their positions were clear and unassailable. As Nitin Desai notes in his Preface, they were obliged to explain the logic behind their views, and to listen and respond to the concerns of colleagues who might have different and even orthogonal perspectives. They had to persuade, and when that effort failed, accept that nonconsensual points would not be included.

This approach yielded a Report that all members could endorse, and that all WSIS participants could accept as a useful framing device to be considered in their subsequent deliberations. It is highly unlikely that a Report produced by a purely intergovernmental group would have fared as well, not only because the excluded stakeholders probably would not have supported it, but also because Government representatives could have deadlocked in the absence of alternative ideas from the other quarters. And the latter mattered a great deal; the private sector and civil society participants indisputably contributed heavily to the WGIG's discussions, conceptual work, and writing.

Of course, in a narrow sense, the WGIG simply wrote a report. It was not a negotiating body, and its decisions did not commit anyone to any course of action, and this key fact undoubtedly made multistakeholderism acceptable to many Governments. In contrast, its rules of the game certainly did not apply at Phase II's Preparatory Committee (PrepCom)-3 in September 2005, at which many developing country Governments, including some that were represented in the WGIG, sought to exclude observers from the text drafting groups. Writing a report that would inform negotiations was one thing, but writing actual negotiating texts apparently was something else entirely.

These considerations notwithstanding, it is notable that the WGIG's Open Consultations were truly open, and allowed all participants to weigh in on an equal basis in a large group setting. Similarly, and despite any qualms expressed in the period prior to the group's formation, today nobody publicly disputes whether peer-level multistakeholderism was the right model for the WGIG to have followed. And most importantly, in its aftermath, the WGIG experience has been routinely cited by even the most ardent champions of state-led governance when

advancing their visions of future mechanisms. This has applied in particular to the proposed Internet governance Forum, but the proposals that have been advanced for intergovernmental oversight of core resources also envision varying degrees of multistakeholder participation as well. As such, it seems sober enough to suggest that the WGIG experience has added significant weight to the political and functional arguments that Internet governance generally must be conducted on a multistakeholder basis. That so many governments that have otherwise been reticent about including the private sector and civil society have come to understand the necessity of doing so in the Internet governance arena is arguably a key example of the collective learning that has characterized the WSIS process.¹ Whether such multistakeholderism can be extended beyond consultations, agenda setting, and technical operations into actual policy decision making, or into extant and exclusionary intergovernmental and private sector bodies, of course remain open questions.

2. The WGIG process facilitated the WSIS negotiations.

WSIS Phase I provided the first opportunity for the international community to have a truly inclusive dialogue on Internet governance. It was inclusive in the dual sense that all interested stakeholders could weigh in on all the myriad issues and institutional arrangements that are now understood to be entailed by the term, Internet governance. Not surprisingly, the debate often had an exploratory, freewheeling, and unstructured character. Whether in the large Plenary and Subcommittee sessions or in the smaller *ad hoc* working group that considered Internet governance beginning with PrepCom-3 in September 2003, participants interjected whatever individual issues they thought important to mention at the moment, or made interventions comprising briefer observations or position statements on a range of diverse issues. Often these interventions did not build on the ones made previously, or referred back to something that had been said by speakers who took the floor much earlier.

In the aggregate, this process resulted in deliberations that bounced back and forth between topics without focusing and cumulating in a manner that would facilitate progress toward the resolution of any given item. One consequence was frustration in some quarters that the conversation was “all over the place” and “going nowhere.” Conversely, this condition was congenial for those who were opposed to negotiating texts on Internet governance in the first place, since it could be cited to suggest that the whole enterprise was ill conceived and should

¹ For more examples of this phenomenon, see, William J. Drake, “Collective Learning in the World Summit on the Information Society,” in, Daniel Stauffacher and Wolfgang Kleinwächter, eds., *The World Summit on the Information Society: Moving from the Past into the Future* (New York: United Nations Information and Communication Technology Taskforce, 2005), pp. 135-146. The entire book is available in one file at, <<http://www.unicttaskforce.org/perl/documents.pl?id=1544>> The chapter was also published as a working paper of Computer Professionals for Social Responsibility and is separately available at, <<http://www.cpsr.org/pubs/workingpapers/2/Drake.>>

be abandoned. The fragmentary dialogue also revealed the emergence of a heterogeneous array of positional alignments on each of the many issues on the table. This problem was compounded by the fact that many participants were still in the process of working through the issues to arrive at national or organizational positions, so their views were at times unclear or subject to change. All these dynamics served to compound the deep divides that had opened up between particular parties on issues such as what is now referred to as the “oversight” of decision making concerning the Internet’s core resources or logical infrastructure. That WSIS Phase I would prove unable to reach consensus on Internet governance was hardly a surprise.

Governments’ decision to call on the UN Secretary-General to create the WGIG unblocked the negotiations and allowed the December 2003 Summit in Geneva to agree the Declaration of Principles and Plan of Action. Moreover, once the WGIG process got underway, it brought a growing sense of order to the WSIS Phase II deliberations. At the Open Consultations held in conjunction with the WGIG meetings and at PrepCom-2 in February 2005 and PrepCom-3 in September 2005, the WGIG’s evolving parsing and clustering of the issues became a sort of template that imparted greater structure to the larger debates.

Rather than allowing everything to be on the table simultaneously, the session chairpersons sequentially focused the dialogues on separate issues or bundles of issues, e.g. the working definition, the “vertical issues” like interconnection charging or security, oversight, the forum, etc. This led to more bounded and focused discussions of each topic and thereby helped to clarify not only the issues at stake, but also the participant’s positions and coalitions. That in turn facilitated the bargaining process both in the large group meetings and in the private side consultations and off-site discussions. Moreover, as a multistakeholder collaboration employing specialized expertise, the WGIG was able to specify the issues to an extent that would have been difficult to achieve in an intergovernmental drafting exercise, particularly one conducted in a large group setting. It also may be that the relative lull in the debate while the group’s results were pending reduced the temperature a bit and gave WSIS participants more time to coordinate and work out positions. In short, in these and other senses, the WGIG process facilitated the WSIS negotiations and helped them to get further than they might have otherwise.

3. The WGIG process promoted public engagement in the Internet governance debate.

Directly or indirectly, the social shaping of Internet governance affects everyone who uses the Internet. Nevertheless, the overwhelming majority of Internet users worldwide have been largely or totally unaware of what is happening in the WSIS Internet governance debate. This disconnect was especially acute during WSIS Phase I when, as we have noted, the direction of the dialogue was often difficult for even the participants to follow. To peer in from the outside and make sense of the deliberations based on press accounts or even the materials available on

the ITU's helpful website probably required a level of dedication that most Internet users simply lacked.

The WGIG process went a long way toward making the debate transparent and intelligible to anyone with sufficient motivation. As it did for those involved in WSIS, the WGIG's parsing and organization of the issues provided non-participants with a manageable cognitive mapping of the terrain and imparted some structure to both the meetings they were following from geographically dispersed locations and the larger global dialogue. Moreover, excellent use was made of Internet tools. Beginning with the WGIG's second meeting in February 2005, the Secretariat worked with various partners to provide live and later archived webcastings of the Open Consultations via its website, www.wgig.org. From the third meeting in April 2005, these were complemented by real-time text transcriptions of the sessions. The website also offered the WGIG's voluminous documentation, including even the issue papers drafted by members as informal working inputs. Public comments were solicited and posted to the website, and these included both formal statements and participation in online chat spaces. A questionnaire was formulated to solicit structured replies on specific issues from both WGIG members and the wider world in the website's wiki workspace. Finally, during and after the completion of the WGIG's work, the group's leadership traveled widely to explain the process and product to many of the most keenly interested stakeholder groups.

All of these activities made it much easier for stakeholders and the general public around the world to follow the debate, interject their views directly into the proceedings, and otherwise mobilize around the WGIG process. The catalytic effects were often palpable; the impact on the open listserv of the civil society Internet Governance Caucus provides an illustrative example. Launched after Phase I's PrepCom-2 in February 2003 and hosted by Computer Professionals for Social Responsibility, the list began as a coordination tool and workspace for the two dozen or so civil society participants in WSIS who had a particularly keen interest in Internet governance. Over time the list's population began to grow, but it skyrocketed after the WGIG process took off. At the time of writing, the list has about 280 subscribers, including many people from international institutions, industry, and the technical community, and has morphed into what is arguably the premier public virtual space for sustained and intensive dialogue on Internet governance issues.

Inevitably, while the WGIG process clearly promoted public awareness and engagement, not all of this translated into sound understandings of its procedures and products. Particularly depressing in this regard has been the coverage provided by the English language press, much of which has remained stubbornly clueless. A great many journalists have ignored the multistakeholder character of the WGIG and referred to it simply as a "UN group" populated by representatives of various nondemocratic regimes; persisted in ignoring the Report's broad vision of Internet governance issues and mechanisms, preferring instead to focus solely on the

oversight question; claimed that the WGIG offered four oversight options because it deadlocked and could not agree on one, when the latter was never intended or attempted; depicted the Report as arguing for a “UN takeover of the Internet;” and retained as the overarching theme the much hyped struggle for oversight authority between the Internet Corporation for Assigned Names and Numbers (ICANN) and the ITU, long after that was no longer the main issue. These misframings of the WGIG process and product were widely recirculated on Internet listservs and picked up on and amplified by a multitude of local press outlets and web blogs to the point that they became the conventional wisdom and Durkheimian social facts. Particularly in the United States, where there has generally been little press coverage or public knowledge of the WSIS, they undoubtedly helped to agitate and mobilize politically salient opposition to the entire process. Not surprisingly, members of the US Congress have issued statements proclaiming that the WGIG recommended a UN takeover and voicing vehement opposition to this dastardly plot to grab “our” Internet. What, if anything, could have been done to avoid all this is an open question, but it is nevertheless safe to say that the WGIG process got peoples’ attention.

Substantive Contributions

4. The WGIG demystified the nature and scope of Internet governance.

As the debate took shape during WSIS Phase I, many participants expressed uncertainty about the precise meaning and reach of the term, Internet governance. Some of this was due to a lack of clarity concerning the core concept, *governance*. Many people apparently equated the term with *government*. To proponents of greater governmental and intergovernmental involvement, this equation seemed to offer an opening to push their case. Conversely, to opponents of greater government involvement, the term seemed to constitute an invitation to potentially damaging meddling.

These interpretations of the term were heavily colored by two additional factors. From the time in the late 1990s that the term, Internet governance, took hold in the popular lexicon, it had generally been equated with the management of the Internet’s core resources or logical infrastructure---e.g. the root zone file, the root server system, and domain names and Internet Protocol (IP) addresses---and later, by extension, the activities of ICANN. And beginning in the same time period, with support from many developing country Governments, the ITU had begun to push for a greater role in Internet governance, perhaps to include replacing ICANN. Hence, the term became a heavily contested concept, and the question of its meaning became bound up with a simmering power struggle between intergovernmental and private sector interests and governance models. Not surprisingly, some industry and technical organizations, most notably the International Chamber of Commerce and the Internet Society, strategically

called into question whether Internet governance was even a valid concept that merited international discussion.²

The WGIG's Report and Background Report contributed significantly to ending the sometimes confusing and divisive debate over the concept. Insofar as that debate was distracting attention from and blocking progress on the consideration of other aspects of Internet governance, this was a substantial contribution to the global dialogue. The WGIG's analysis proceeded in four steps. First, it emphasized that in terms of both etymology and normal language usage, the core concept, governance, refers not to government, but rather to the act of steering. That is, governance is about a process, rather than the identities of the social actors that engage in it, which can be in public, private, or non-profit sectors. Second, it argued for the necessity of a holistic conception of Internet governance that goes far beyond the realm of core resources like names and numbers to encompass the full range of shared mechanisms, public or private, that shape the Internet and its utilization to convey transactions and content.

Third, and by extension, the WGIG proposed a broad and holistic working definition: "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."³ And fourth, it demonstrated the utility of this approach by presenting overviews and assessments--schematically in the main Report, and in significantly greater detail in the Background Report--of some of the many shared mechanisms or international regimes and programs involved in Internet governance. To varying degrees, the group analyzed, *inter alia*, the shared public and private frameworks for intellectual property, trade, e-commerce and applicable jurisdiction, "information security" and network security, technical standardization, privacy and consumer protection, freedom of expression, development, and of course, Internet names and numbers.

² For an extended discussion on the definition and nature of Internet governance, see, William J. Drake, "Reframing Internet Governance Discourse: Fifteen Baseline Propositions," in, Don MacLean, ed. *Internet Governance: A Grand Collaboration* (New York: United Nations Information and Communication Technology Taskforce, 2004), pp. 122-161. The entire book is available in one file at <<http://www.unictf.org/perl/documents.pl?id=1392>>. The chapter was also published as a working paper of the Social Science Research Council's Research Network on IT and Governance, 2004, and is separately available at, <<http://www.ssrc.org/programs/itic/publications/Drake2.pdf>>. For another view on some related issues, see, Jeanette Hoffman, "Internet Governance: Eine regulative Idee auf der Suche nach ihrem Gegenstand", in, Gunnar Folke Schuppert (Hrsg.), *Governance-Forschung – Vergegenwärtigung über Stand und Entwicklungslinien, Band 1 der Reihe*, "Schriften zur Governance-Forschung" (Nomos-Verlag: Baden-Baden, 2005), pp. 277-301. The chapter is also available in English as, "Internet Governance: A Regulative Idea in Flux," at <<http://duplox.wz-berlin.de/people/jeanette/texte/Internet%20Governance%20english%20version.pdf>>

³ *Report of the Working Group on Internet Governance* (Geneva: WGIG, 2005), p. 4, available at <<http://www.wgig.org>>

In addition, it assessed some issue-areas in which governance mechanisms are problematically absent or in a nascent state, such as international interconnection costs and spam. The WGIG's analysis demonstrated that the working definition met the criteria of being adequate, generalizable, descriptive rather than normative, concise, and process-oriented, and that it was equally applicable to the above and other Internet governance mechanisms.

While views were of course diverse with respect to individual issues and governance mechanisms, the response to the WGIG's analytical orientation was quite positive. Just a few rather minor quibbles were expressed in the written replies to the WGIG Report that were submitted by diverse stakeholders around the world, and in the statements made at the July 2005 Report release event and at PrepCom-3 in September 2005. Almost everyone who addressed these matters expressed satisfaction with the working definition and the larger analytical orientation in which it was embedded. Gone were the complaints, frequently heard in early stages of the WSIS process, that the whole debate was conceptually confused and hopelessly unmanageable.

Gone too was the excessive attention to the "ITU vs. ICANN" controversy. Like the question of whether governance meant government, to which it became intimately linked, this overarching theme of the pre-WGIG debate had significantly impeded progress toward a comprehensive Internet governance assessment and dialogue. It also fed an artificial sense of polarization; in the view of at least some vocal participants, you either had to be in one camp, or the other---no middle ground or orthogonal positions could be understood when viewed through this prism. And it was rather unlikely to lead to significant change, since the US Government, global business, and other stakeholders had consistently made it clear that they could never sign on to an agreement transferring ICANN's responsibilities to the ITU. Nevertheless, the fire had burned bright in the pre-WGIG period and made it difficult to see much of anything else.

Yoshio Utsumi, the Secretary General of both the ITU and the WSIS, set out his view of the WGIG's mandate in a statement read at the beginning of its first meeting. Among other things, the WGIG had,

...no need, for instance, to discuss such issues as free flow of information, countering spam, network security, regional root servers, privacy protection or misuse of ICTs. Instead, we should focus on the core activity of the management of Internet resources by ICANN, in particular top-level domains, which is where important issues remain unresolved. Without having a shared common understanding and, most importantly, a narrow definition of Internet Governance, discussions in the Working Group are

likely to remain unproductive. The Working Group, therefore, should strive to interpret the term “Internet governance” in its most narrow context.⁴

The WGIG did focus on the structure and functioning of ICANN---and that of the ITU as well. Both were assessed in relation to the Geneva Declaration of Principles stating that Internet governance should be “multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations.”⁵ Careful analysis and deliberation made clear that there was rather little support in the group for recommending a transfer of a multistakeholder organization’s role to an organization in which, *inter alia*, many Internet businesses chose not to participate and from which civil society was, in effect, largely excluded. As such, the matter was not addressed in the WGIG Report, and the members who advocated intergovernmental oversight of the Internet’s core resources instead opted in their respective oversight models to propose new entities for this purpose. PrepCom-3 in September 2005 debated at length on the merits of such proposals, rather than on the ITU vs ICANN theme. In short, the WGIG process helped the WSIS to move on, at least as of the time of writing.

5. The WGIG began the holistic assessment of “horizontal issues,” including development, and made some broad but useful recommendations on key “vertical issues.”

Of course, the international community never sat down and created a grand master plan that systematically mapped out the full range of issues that might require shared international regimes and programs pertaining to the Internet’s development and use. Instead, Internet governance mechanisms generally have been created on a piecemeal and demand-driven basis to respond to individual technical, economic, and political challenges. The cumulative result of this process has been the establishment of a highly distributed governance architecture comprising a heterogeneous array of public and private sector arrangements. Their attributes naturally vary significantly along such dimensions as their institutional setting (whether they are linked to formal organizations or are free standing), agreement type (treaties, contracts, memorandums of understanding, recommendations, guidelines, declarations, custom), decision making procedures (rules on participation, representation and recognition, or on voting vs. consensus) rule strength (formal or informal, binding or voluntary agreements), scope (the number and interrelatedness of issues covered), domain (the number and character of parties),

⁴ Yoshio Utsumi, Secretary General, World Summit on the Information Society, “First Meeting of the Working Group on Internet Governance (WGIG),” November 23-25 2004, at <<http://www.wgig.org/docs/Utsumi.pdf>>.

⁵ World Summit on the Information Society, *Declaration of Principles---Building the Information Society: A Global Challenge in the New Millennium*, WSIS-03/GENEVA/DOC/4-E, 12 December 2003, p.6, <<http://www.itu.int/wsis/docs/geneva/official/dop.htm>>.

compliance mechanisms (monitoring and enforcement), distribution of benefits (via markets or administrative procedures), and so on.

It would be useful to assess this distributed architecture in a holistic or horizontally crosscutting manner. Doing so would help the international community to identify potential weaknesses and gaps in the coverage of important issues, such as country code top level domains (ccTLDs), interconnection charges, spam and consumer protection, competition policy and restrictive practices, and the preservation of cultural and linguistic diversity; to address any procedural and substantive tensions or unrealized synergies between extant governance mechanisms, and hence the possible need for enhanced coordination among them; to draw “lessons learned” about best and worse practices from inter-institutional comparisons and contrasts; and to consider the merits of alternative design solutions to outstanding issues in light of other experiences and general patterns. That said, the holistic analysis of diverse governance mechanisms is a challenging exercise and falls outside the mandate of today’s vertically segmented and functionally specific governance organizations and networks. Due to these and other considerations, it never had been seriously attempted.⁶

Accordingly, the WGIG’s attempt to undertake this sort of assessment was pioneering and highly instructive. Rather than creating an elaborate new conceptual apparatus, the group based its efforts on criteria of evaluation that had already been accepted by the world’s governments. These were the above-mentioned “WSIS Principles” stating that Internet governance should be “multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations.” A range of governance organizations, regimes and programs were assessed for conformity with these standards, and this proved a revealing and helpful exercise, not only with respect to the “ITU vs. ICANN” question. The results of this effort are reflected primarily in the WGIG’s Background Report, which is not a formally agreed consensus document. In a future Forum, the approach could be helpfully built out in a more systematic manner and used to encourage continuing progress toward conformity with standards of good governance in diverse arenas.

One might also argue that the WGIG’s analysis pointed to the need to treat development promotion as a horizontally applicable standard of evaluation. In truth, the group began from a baseline of treating development as a separate domain, i.e. as one of four clusters of “vertical” or functionally segmented problem sets; this approach is reflected in the Background Report. However, as the dialogue proceeded, it became clear to at least some participants that it would have been preferable to position development promotion alongside the Geneva Principles and

⁶ For more detailed discussions of the merits of holistic analysis and the need for a forum in which to conduct it, see, William J. Drake, “Reframing Internet Governance Discourse: Fifteen Baseline Propositions,” 2004.

to systematically consider the extent to which each governance mechanism served the purpose. Reaching agreement on precisely how to do this would have been difficult in the time available, most notably because there are rather different points of view about what constitutes development and the best way to advance it. Obtaining consensus on the precise meaning of the terms included in the Geneva principles was difficult enough. However, there were two dimensions of this arena that are less open to diverse interpretations and controversy, and to which the group devoted greater horizontal attention: ensuring the effective and meaningful participation of all stakeholders from developing countries, at least in the most relevant mechanisms; and building capacity in terms of knowledge and human, financial and technical resources. All these issues merit significantly greater and more systematic consideration going forward than was possible within the WGIG's constraints.

Finally, the WGIG reports also addressed a series of key "vertical" issues. These were grouped into four clusters: issues related to infrastructure and the management of critical Internet resources (e.g. the root zone file and root server system, domain names, IP addresses, technical standards, peering and interconnection, telecommunications and convergence, and multilingualization); issues related to the use of the Internet (e.g. spam, e-commerce, network security, and cybercrime); relevant issues with an impact much wider than the Internet (e.g. intellectual property and international trade); and, as was just noted, issues related to development (particularly participation and capacity building). From these clusters, the group selected thirteen issues meriting special attention in the WSIS context: administration of the root zone files and system; allocation of domain names; IP addressing; multilingualism; interconnection costs; Internet stability, security and cybercrime; spam; meaningful participation by all stakeholders in global policy development; capacity building; intellectual property; freedom of expression; data protection and privacy rights; and consumer rights. On each of these it offered some rather broadly framed recommendations that could be readily agreed in a multistakeholder setting. While they are far from being revolutionary, these recommendations did help to sort through the myriad of vertical issues involved in Internet governance, and to establish priorities for further discussion. Accordingly, many of them have been taken up in the post-WGIG period, most notably at PrepCom-3 in September 2005, and at the time of writing they appear likely to receive mention in the texts to be adopted at the Tunis Summit in November 2005.

6. The WGIG offered four models for the oversight of core resources that helped to focus the global debate on the governance of the Internet's core resources.

As it clearly would have proven futile, the WGIG did not attempt to agree on a singular approach to the oversight of the Internet's core resources, or logical infrastructure. Instead, the group simply decided to include on an equal basis, and without comment, four alternative models proposed by particular clusters of members. While Nitin Desai genially and

diplomatically described them as “four equally beautiful brides,” it would be fair to say that rather few WGIG members found more than one to be particularly attractive. Happily, since the objective was merely to provide the WSIS with options to consider, a broadly shared sense of aesthetics was not necessary.

Three of the models envisioned some sort of enhance intergovernmental authority over public policy aspects of Internet governance. Model 1 proposed a Global Internet Council (GIC) to which other stakeholders would relate in a purely advisory capacity. The GIC would be anchored in the United Nations system; take over the functions of the US Department of Commerce with respect to the authorization of changes to the root zone file; replace ICANN’s Government Advisory Committee (GAC) and have formalized authority over a reformed and internationalized ICANN; set policy on core resource issues, and on Internet usage issues that are not being fully addressed by other intergovernmental organizations; facilitate the negotiation of binding agreements, such as treaties; foster and provide guidance on development issues; and approve rules and procedures for dispute resolution mechanisms and conduct arbitration, as appropriate. In short, the Council would be a powerful, omnibus organization with a broad reach covering much of the Internet governance terrain.

Model 4 was more institutionally elaborate. It proposed an intergovernmental Global Internet Policy Council, with other stakeholders serving in an advisory capacity, which again would have broad authority over public policy matters; a World Internet Corporation for Assigned Names and Numbers, a private-sector led body comprising a reformed and internationalized ICANN linked to the United Nations; and a Global Internet Governance Forum that would be responsible for facilitating coordination and discussion of Internet-related public policy issues, and in which all stakeholders would participate on an equal footing.

Model 3 was less ambitious. It proposed an International Internet Council, apparently a multistakeholder entity in which governments would play a “leading role” on policy matters after taking into account other stakeholders’ advise. This Council would take over the US government’s roles in relation to ICANN and the Internet Assigned Numbers Authority (IANA); address international public policy issues relating to Internet resource management and other issues that do not fall within the scope of existing intergovernmental organizations; foster certain developmental activities; potentially make the ICANN’s GAC redundant; and be accompanied by an adequate host-country agreement for ICANN.

Finally, Model 2 represented a sharply different vision. The model posited that there is no need for a specific oversight organization, whether operated by one government or many. Instead, the model merely suggests that it may be necessary to enhance the role of GAC in order to meet the concerns of some Governments on specific issues. In addition, like Model 4, it called for the creation of a Forum that would be characterized by the full and equal participation of

all stakeholders, and would provide coordination functions and produce analysis and recommendations on some issues.

Two of the four models have gained significant support in the post-WGIG debate. At PrepCom-3 in September 2005, Saudi Arabia (speaking for the Arab Group) and Iran in particular played catalytic roles in assembling a coalition of developing countries favoring Model 1's GIC. In parallel, the European Union (EU) took off from Model 3 to propose a new approach that is simultaneously less specific on institutional forms but more specific on the functions to be performed. The EU position called for a "new model of international cooperation" that would not replace existing mechanisms or institutions, but rather would build on the existing structures in a multistakeholder manner. Governments would lead on public policy matters and collaborate "at the level of principles" on five issues related to names and numbers:

- a. Provision for a global allocation system of IP number blocks, which is equitable and efficient;
- b. Procedures for changing the root zone file, specifically for the insertion of new top level domains in the root system and changes of ccTLD managers;
- c. Establishment of contingency plans to ensure the continuity of crucial DNS functions;
- d. Establishment of an arbitration and dispute resolution mechanism based on international law in case of disputes;
- e. Rules applicable to DNS system.⁷

The response to the EU statement was rather extraordinary. The developing country proponents of the GIC professed great interest in the concept, which they took to share much with their own approach, and moved quickly to enter into consultations with the EU. As it turned out, these discussions apparently brought out the differences between the two visions more than the similarities. For its part, the United States expressed surprise and consternation at the EU proposal, which the State Department and other branches of the Government proceeded to publicly denounce. The United States expressed interest instead in a proposal formulated by Argentina that, *inter alia*, called for the evolution and internationalization of Internet governance through existing and future mechanisms, institutions, and forums; the reinforcement of government involvement in the ICANN's GAC, and of the Regional Internet Registries; the continuing internationalization of ICANN; and the strengthening of developing country participation in Internet governance.

⁷ European Union (UK), "Proposal for addition to Chair's paper Sub-Com A internet Governance on Paragraph 5, 'Follow-up and Possible Arrangements,'" Document WSIS-II/PC-3/DT/21-E, 30 September 2005, at, <<http://www.itu.int/wsis/docs2/pc3/working/dt21.doc>>.

The Chairperson of PrepCom-3, Ambassador Masood Khan of Pakistan, sought to promote compromise by advancing an informal “Food for Thought” paper. This called for, at the conclusion of the transitional period, examination of the establishment of an intergovernmental Council for global public policy and oversight of Internet governance. But his effort did not blunt the sharp edged differences that had emerged among the Governments, and the Prepcom ended in deadlock. At the time of writing, it is to be resumed in Tunis just before the Summit, on 13-15 November 2005. The EU has sought to clarify its position and find common ground with the United States, but strong opposition to any changes has taken hold in the White House, the Capitol, and elsewhere, so prospects for compromise presently seem remote.

Whatever happens in Tunis and beyond, and whatever one may think of the respective approaches being advanced, there can be little doubt that the WGIG exercise has proven to be highly consequential. Some of the models outlined in the Report have been interjected directly into the international negotiation process, and have crystallized the issues and clarified the divergent preferences of the various parties. After three years of run-up, the cards are now mostly on the table and the battle lines are drawn. This is a phase the international community has to go through, and the WGIG process helped it get there.

7. The WGIG proposed the establishment of an Internet governance Forum.

In its Report, the WGIG outlined the need to create a new Internet governance Forum that would be linked to the United Nations. The Forum would be open to all stakeholders from all countries, and anyone could bring up any Internet governance issue. It would not constitute a continuation of the WGIG, nor would it be duplicative with any other currently pending proposal for new collaborative mechanisms, such as the aforementioned GIC or the Global Alliance for ICT and Development. However, its plenary sessions would be modeled on the WGIG’s Open Consultations, and it would be supported by a very lightweight Secretariat that is guided by a multistakeholder coordinating process. Overlap or duplication with existing institutions would be avoided, and it would draw on the research and work carried out by others, most notably partners in the academic and research institution communities. Extensive use would be made of the Internet and other information and communication technologies to enhance efficiency and ensure a continuing process of communication, information exchange, and collaboration, as needed.

The Forum was envisioned as filling a vacuum in the current governance architecture, as there is no global multistakeholder setting in which Internet-related public policy issues can be addressed by the international community as a whole. Similarly, there is no setting in which to conduct the sort of holistic or horizontal analysis described previously; monitor emerging trends in Internet governance generally; address any issues that “fall between the cracks” of

existing functionally segmented organizations and networks, or issues that are multidimensional or cross-cutting and hence ill-fitted to mandates of any one grouping; promote capacity building with respect to the specialized requirements of participating in Internet governance arrangements; or encourage inter-organizational coordination, as appropriate. More specifically, the Forum's possible functions were specified as follows:

- Interface with intergovernmental bodies and other institutions on matters under their purview which are relevant to Internet governance, such as IPR, e-commerce, trade in services and Internet/telecommunications convergence.
- Identify emerging issues and bring them to the attention of the appropriate bodies and make recommendations.
- Address issues that are not being dealt with elsewhere and make proposals for action, as appropriate.
- Connect different bodies involved in Internet management where necessary.
- Contribute to capacity-building for Internet governance for developing countries, drawing fully on local sources of knowledge and expertise.
- Promote and assess on an ongoing basis the embodiment of WSIS principles in Internet governance processes.⁸

The global response to the Forum proposal has evolved in a rather interesting manner. The initial reactions of some of the larger, wealthier, and more powerful developing countries was rather muted; their primary concern was with establishing intergovernmental authority over public policy aspects, broadly defined, rather than with having the opportunity for multistakeholder dialogue and analysis. The United States remained noncommittal, and presumably viewed its possible 11th hour agreement to a Forum as a concession that could be made when refusing to agree to oversight changes. But many other industrialized and developing countries--most notably the least developed countries, which would be among the primary beneficiaries---were more receptive. For their parts, industry groups generally expressed skepticism about the need for a new entity, while WSIS civil society participants were more enthusiastic.

Regarding the latter, in its written reply to the WGIG Report, the Internet Governance Caucus offered a fairly detailed response that included some complementarities but also some notable differences from the WGIG's approach. In particular, it stated that civil society supports the establishment of a Forum as long as it is truly global, inclusive, and multi-stakeholder in composition, and as stakeholders from all sectors are able to participate as equal peers. Moreover, the Caucus suggested that the Forum should not be anchored in any existing specialized international organization, but rather should be organized as a legally freestanding entity. If this proves to be impossible, then the Forum should be organized directly under the

⁸ Report of the Working Group on Internet Governance (Geneva: WGIG, 2005), pp. 11-12.

auspices of the UN Secretary-General. The Forum should not by default have a mandate to negotiate hard instruments like treaties or contracts, but in very exceptional circumstances when the parties all agree, could include a mechanism that allows for their development. Otherwise, the Forum would normally focus on the development of soft law instruments like recommendations, guidelines, declarations, etc. The Caucus also suggested that the Forum could provide, *inter alia*, the following functions:

- a. Inclusive dialogue, with a differentiated architecture allowing for peer-level interaction where appropriate, i.e. in working groups (here the ITU model is instructive, i.e. in the different ways study groups and plenaries work);
- b. systematic monitoring of trends;
- c. comparative, cross-sectoral analysis of governance mechanisms, with an eye toward "lessons learned" and best practices that could inform individual and collective institutional improvements;
- d. assessment of horizontal issues applicable to all arrangements, e.g. the promotion of transparency, accountability, inclusion, and other principles of "good governance";
- e. identification of weaknesses and gaps in the governance architecture, i.e. "orphaned" or multidimensional issues that do not fall neatly within the ambit of any existing body;
- f. identification of potential tensions between separately developed mechanisms, and possibly efforts to promote enhanced coordination among them;
- g. promotion of decentralized convergence among positions and initiatives, where possible;
- h. pre-decision agenda setting that could, *inter alia*, feed into the work of other bodies.⁹

While the prospects were still uncertain going in, an interesting dynamic took hold in the September 2005 PrepCom-3. One government after another took the floor to express its support for the creation of a Forum, albeit at times with slightly different formulations of its purpose and potential functions. With the oversight battle having blown up, the United States expressed its support for the Argentine proposal, which endorsed the Forum. Industry participants regrouped to a position that the Forum would need to be well managed, low cost, clearly tasked, and so on. At the time of writing, the only WSIS participant still on record as opposing the creation of the Forum is the Internet Society.

In short, it appears that there is now widespread support for the establishment of an Internet governance Forum. This would constitute a significant achievement for the WSIS, and would fill a gap in the governance architecture that plainly needs mending. It is also a further and

⁹ GLOCOM on behalf of the WSIS Civil Society Internet Governance Caucus, "Initial Reactions to the WGIG Report, 19 July 2005," Document WSIS-II/PC-3/CONTR/23-E, 1 August 2005, at <<http://www.itu.int/wsis/docs2/pc3/contributions/co23.doc>>.

particularly clear demonstration that the WGIG Report mattered. What remains is to ensure that the Forum concept is developed in a manner that meets its full potential.

Conclusion

The WGIG process mattered. It demonstrated the utility and necessity of multistakeholder participation in Internet governance; facilitated the WSIS negotiations; promoted public engagement; clarified the nature and scope of Internet governance; began the holistic assessment of horizontal issues, and offered some useful recommendations on key vertical issues; advanced politically salient options on the oversight of core resources; and proposed the creation of a Forum, which appears likely to happen. By any measure, this is a rather good record of achievement on the part of a group of individuals coming from very diverse backgrounds and perspectives and working under difficult time and budgetary constraints. It is also a testimony to the virtue of open global dialogue on Internet governance that sets aside any efforts to preempt or preconfigure the agenda based on narrow special interests. One can only hope that this will be a model for the global debate going forward, in the Forum and beyond.