

Global Geneva's Contribution to CWG-Internet public consultation

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Global Geneva is a Swiss non profit, based and registered in Geneva since 2011. As a think-tank, it dedicates most of its efforts observing and thinking beyond international relations, what are 'global politics', and transnational and global governance. Global Geneva is a member of the *Coalition for a Just and Equitable Internet*, and a signatory of the *Just Net Coalition* contribution to the Sao Paulo Conference (April 2014) related to Internet Governance Principles.

Abstract

The future of Internet governance cannot be assimilated to the future of ICANN. This contribution offers a fresh and thought provoking vision of a complete new grand design. Without minimizing the importance of technical functions such as IANA, the contribution takes a look at Internet Governance through a more "constitutional and universal" perspective. By proposing a 2-entity eco-system in order to protect an Internet universal Charter (principles), and turn it into reality, this contribution is trying to bring innovation and disruptive thinking. This contribution starts with a double assumption. 1/ If multistakeholderism is a smart tool to foster dialogue, invented by business schools to serve corporations facing social and policy issues, it cannot deal effectively with public policy making and social justice. Only Democratic values, principles and processes can deliver a sustainable governance for the Internet at a national and global level. 2/ Based upon experiences such as WTO, ILO, UNEP, IGF, and examples of convention to write new constitution, the proposed 2-entity eco-system, a World Internet Forum (WIF) and a World Internet Organization (WIO), tries to set a system that provides legitimacy, efficiency, and accountability, under a charter of universal principles.

The Next Best Stage for the future of Internet Governance Is Democracy

If 'multistakeholderism', initiated and applied by corporate managers and consultants in the eighties and later developed by entities like Pr. Klaus Schwab's WEF, is an interesting methodology born in US business schools^[1] to foster dialogue^[2] among "interested parties", over many complex issues, Democracy and its fundamental values, principles and mechanisms are still our best bet to ensure fair and sustainable international Internet governance for the common and global good. Only with that double acceptance will it be a road ahead for a just, safe, open and distributive Internet. The challenge is not about opposing constantly the intergovernmental multilateralism to a so-called multistakeholder model: the challenge is obviously to establish a governance that will primarily have in mind all citizens, and all the users who pay for their access to the Internet. The benefits to shareholders/stakeholders are important, but we need to change our angle of vision, and to have in our long term view common values that will address a more global understanding of why and how the Internet can benefit all in a social justice framework, and not just a for-profit logic, respecting Democratic process and principles, still making the Internet technically robust, diverse and operational. It is a difficult task, but the world has dealt successfully with challenges of greater magnitude. As the tenants of the current eco-system are simply trying to make a 2.0, or 3.0 Internet governance software with old and dated, sometimes vague concepts, we believe that time has come for fresh thinking.

The editors of this contribution being French citizens, the way this submission is conceived is necessarily molded out of their origins and culture. We apologize for that. It is therefore neither an *anglo-saxon* thinking nor dress-up, and the author apologizes for twisting any reader's mind due to this *franc* and opinionated *élan*. This submission was not made out of any concern to collect "+1" or self approval by partisans, to accommodate any grouping or factions, and with no desire to please or not to please any entity or authority. It is a contribution to the debate. Not a campaign initiative. After a "Wrong Turn in the Internet Governance" in the late nineties as described, by Prof. Michael Froomkin and Prof. Milton Mueller, it is today a great challenge for all citizens and honest politicians to come back thoughtfully to Internet Governance. A technical approach ("make it work, document it later") or a business approach (multistakeholderism) is not what governance is about. Today Internet is fully related to politics. This is good news for politics, as this future Internet governance will influence the making of better global politics.

The author's choice was not to address a specific ICANN/IANA issue, which is a serious but rather small part of the current challenge but the "future of Internet Governance", not the future of ICANN itself. A 'big picture' approach seemed to be appropriate to deliver a more universal and balanced proposition. A grand design is sometimes a good way to assess the entire scope of concern, and, indeed, it has often delivered better lasting solution. Reforming the League of Nations was a much too difficult task – what can be done when an American president launched an idea that his US Congress refused to ratify? In that very complex case, creating a full new entity, with a grand design, was a much greater success, and ultimately has kept until now warmongers mostly deprived of their globalizing dark temptation.

1_Criticism of the current state of Internet governance

Internet governance is transiting a difficult time, and there is now an unavoidable necessity for Democracies to stand for their citizens' rights, well-being and prosperity.

The global criticism of the current state of Internet system of governance, which is largely characterized as "asymmetric", has roots into a few major concerns such as:

_1.1 : When it comes to governance, the 'multistakeholder' (MS) model has proved that it does not exist. Everyone can enjoy and understand what an MS approach is, which can be assimilated to a process convening or self-convening as many stakeholders, if not all, to engage an open and respectful dialogue. But this qualification doesn't make a 'model', and does certainly not bring new systemic concepts within the corpus of political science, even though some stakeholders can't help but putting this terminology in every sentence, and at every corner and crossroad when passing over some difficulty to convince others about their view on Internet governance. To this day, there is no known or agreed definition by political science or law academics over a so-called multistakeholder model when it comes to public policy making. This terminology is over-played by people who pretend Internet governance owes everything to multistakeholderism, whose appearance is often dated back to 2004. Therefore critics are legitimate to challenge conceptually, ideologically, historically and politically multistakeholderism as THE core principle to rule over Internet governance.

_1.2 : The need for the technical community that keeps inventing the Internet is to be able to work, not through command, but by code consensus. Only when the result and reality show resilience, comes time to document these efforts. This methodology has certainly defined part of the cultural behavior of the tech communities, as in the meantime prevented innovation and disruption in the governance of the Internet. Can anyone test treaties, regulation before documenting it? That would be really innovative and disruptive but the cost for such testing would probably be politically and socially unbearable. This successful techie approach is not appropriate to establish a sustainable governance. Still, this is what happened when it comes to understand the so-called "multistakeholder model". It became documented afterward by the tenants of the Internet's system of governance. It is not difficult to understand why a post-justification became a high priority as the Internet governance was coming under scrutiny by civil society and governments. Discussion papers edited in 2011, in partnership with Google – the editor is currently an ICANN board member- came very late to justify and explain why the system was the way it was i.e. 'multistakeholder'. Amusingly, the paper identifies a former UN Secretary General as the 'one' who inspired the multistakeholder model back in 2004. It would be worth asking the renowned Ghanaian diplomat his views on this: did he think of a model of governance, or did he simply convene stakeholders in order to have governments back in the discussion? Most of all content published regarding multistakeholderism is directly linked to neo-liberal organizations such as the WEF, or to partisans of the current system of governance of the Internet. Neutral and independent academic work is still to be conducted to establish the fundamentals and reality of that "model of governance".

_1.3 : The need for the "Siren Servers" - as Jaron Lanier labels them - to maintain their constantly growing profits, technical supremacy and expertise at all levels, be it architecture, software, infrastructure, encryption, IP development, routing, marketing services, advertising services, lobbying, metadata mining, monetization, is also a challenge to any alternative thinking. What works for the "Siren Servers" is often what the big players impose on smaller players or simple users to preserve competitive advance and advantage, and their monopolistic position.

_1.4 : The unachieved objective set by the Tunis agenda to "re-embed" governments in the system of governance of the Internet at a global level, and not just over their respective national law space, when it comes to public policy making (infrastructure development, transnational agreements and liberalization, social benefits and empowerment, social justice for all citizens, collecting due tax, regulating unfair competition, avoiding concentration and abuse, protection of rights and laws) is a source of tension at the international level. The Tunis agenda has called for each stakeholder role to be recognized, including civil society and users. With already 10 years gone with the wind, the UN WSIS process has to either die or come to rebirth. With the strong opposition of the current tenants of the internet economic system, the narrative has gone out of control, characterizing the UN or governments as a danger, a risk or a threat to the so-called "ungoverned, ungovernable

Internet". It is hardly conceivable that governments, in particular those of Democratic extraction, or the UN are to be considered as negative forces ready to refrain or destroy the Internet wonder. Refusing to consider the potential dangers of cyber-crime and cyber-war would be irresponsible as well. All of that is fueling critics against the current system of governance, if one might call it a system.

_1.5 : Today's asymmetric governance in the Internet space is also amplified by the difficulty of a majority of citizens in the world with no, limited or expensive access to the Internet to be heard, or only through the channel of civil society entities, having themselves limited funds to bring their case and cause to the general acknowledgement, and therefore raising more and more voices from that corner of the world. In addition to that, most of the main stream media are so far not following seriously the Internet governance issue and debate, leaving it to a small group of "usual suspects".

_ 1.6 : Mass surveillance, in particular by one major democratic country, also a leading force in the field of Internet technology, and online and offline services, shocked many global citizens and their representatives all over the planet, bringing many to question the sincerity of a government that champions *Freedom of expression*, flagging it as a constant inspiration to conduct its international policy making, and obviously consistent with the defense of its legitimate interest. But as Internet belongs to and participates in the creation of global politics, such a pro-domo behavior looks rather selfish, on top of being an infringement of citizen rights.

_ 1.7 : Funding of investment to support infrastructure development and digital empowerment around the world is a constant source of conflict between most non-US telecom operators and their US counterparts, digital service providers, and US authorities. This is adding to the asymmetry condemned by many. It is also obvious that the infrastructure gap is of high concern in terms of justice between developed and developing countries.

_ 1.8 : Multistakeholderism could help each participant to come to a better understanding. Reality is that this methodology has now driven the Internet Governance debate in a dead end, polarizing parties and being unable to define a common language. Many supporters of the Multistakeholder approach have opposed the creation of common definitions, although a very necessary step to have any fruitful dialogue.

It is fair to salute all of those who made the Internet what it is today. Still Internet cannot prosper and impact societies any further without facing a crisis, if the global community of users, players and policy makers does not recognize that Internet governance is not anymore a simple technical

challenge allowing both business to prosper, and military and police forces to act under their respective governmental will with no respect for global citizens rights and treaties of mutual cooperation and peace between nations. To ask ICANN to reset by itself its own relation to the US government and the IANA function– indeed a critical issue to all encryption certifications (data-mining of algorithmic keys)- would be more or less like asking the US to think for the US how to best reset the US asymmetric role. For 10 years this option brought no result.

Due to the magnitude of its transformative ability to change our societies in all of its aspects, we have to recognize that the Internet has now to face its political endeavor, its global commons aspects and its obligation to rely on various public policy arrangements, in the name of public interest, as global and as consensual could they be. Internet has definitely placed a foot into the world of Global Commons, as it brings social justice challenges at the forefront of a globalized world. This implies a coordinated effort at a public policy and political level in a true democratic fashion, in order to deliver sustainable benefits to all citizens, protecting their rights, and still making sure that technological innovation keeps flooding the interconnectivity of more networks, more root zones and more citizens. It cannot be accepted that in terms of public policy making, the “equal footing” championed by the multistakeholder approach could imply that the voice of a state equates the voice of a corporation, be it a successful one making billion of profits - larger than the GDP of that many states - without paying its due tax to the communities that contribute to the private profits of its shareholders.

The asymmetric governance of the Internet cannot survive in its current form. Global Geneva’s contribution is opting for a full new grand design that will allow Internet principles to be fully understood and implemented, and not just adapted to an evolution of what is currently the limited and asymmetric form of the Internet governance eco-system. New thinking is the key word. Let’s be innovative and disruptive.

2_A new system of governance for the Internet

We are of the opinion that there are three levels of understanding to further articulate the next system of governance related to the Internet, and its many issues and challenges:

- A: intergovernmental level, (binding agreements, national and international public regulation, international law)

- B: global citizens level, (Internet principles, consensus, best practices, empowerment, fair competition, innovation, capacity building)
- C: arbitrage and justice level (unlocking deadlocks, dispute settlement and court decision).

2.1 : Intergovernmental level

Establishment of a World Internet Organization (WIO) able to legitimize common public policies, regulations and standards related to interconnectivity issues. Some of them could be of 'soft power' essence – commonly accepted but recognized by treaties -, some of 'hard power' – new regulations or new policies. WIO would have full legitimacy, with the largest constituency among States, their signatures duly recognized by each other. WIO would be part of, and contribute to, the international law and policy making framework. Each opportunity to vote by WIO constituency (governments) could be vetoed once, and only once, by the WIF (see below). In the latter case, a new round of discussions and negotiations should take place.

The WIO executive board would have a mandate to bring initiatives and suggest reforms for approval and implementation by its constituencies, and would have to forward, document and submit any suggestion approved by the WIF (see below) on both the Internet public policy level, WIO bylaws or Internet governance level. To enter the Internet governance law framework, all of these suggestions would be approved by the WIO constituency, with a 75% majority, if not vetoed by the WIF (see below), or after a second round of negotiations within WIO, if once vetoed. WIO would not enter daily operations of the Internet governance. Still it would be the reference authority for IANA, due to its role with regard to DNS/root zone management, encryption and IP addresses. It cannot be that an entity responsible for such critical functions could be regulated, or placed under an authority supposed to be regulated or having just a technical perspective; putting IANA under the control of TLD registries and root servers operators sounds even more dangerous. IANA functions would be handled in an independent fashion.

Thinking of innovation, if there were to be more than one root zone, the WIF, and not WIO, would create a board to oversight their setting, ruling, and inter-connectivity in full transparency and independence. Once set, this board would be handled and managed with the same precaution as for IANA, under WIO authority but not under its direct handling. The check and balance would still be into the WIF's hands.

WIO would be the right entity to handle tax avoidance issues.

2.2: Global citizens level

Establishment of a World Internet Forum (WIF) able to defend values, (see Internet Charter or Internet Principles), public concerns and support a just, capable and thriving interconnected space. The WIF would be the venue

for a permanent dialogue between global citizens and all players in the field starting with accredited civil society representatives. The WIF would suggest and promote ideas, programs, policies (to WIO and governments), working in close relation with the other UN entities from Human Rights to Climate Change, Environment, Development, Trade, Intellectual Property to fund and support approved initiatives by the WIF. The WIF would be the 'natural' entity able to deliver empowerment and capacity building to any stakeholder, in particular to public authorities and public servants expressing such a need. The WIF would also be able to update the Charter if needed.

ICANN would be able to pursue its role for collective service fees, edit new TLDs, under the supervision of the WIF. It would not handle global public policy matters.

Regulatory proposals to WIO or initiatives driven by grouping international entities (public private partnership, public or private) should be endorsed by a 75% majority of the forum constituencies. No unanimity would be required. No veto would be allowed by a single government – no Security council here! The dialogue within the forum would be of multistakeholder essence, but profit-oriented participants would be excluded from voting with respect to regulatory proposal to WIO and changes to the Internet Charter – no doubt, the for-profit participants would keep their capacity to express their view, thanks to their powerful means.

The exact setting of the WIF constituency would be discussed thoroughly during the preparatory period (see roadmap).

The WIF would be part of the UN system, but its constituencies would not be governments (see WIO), but global citizens and civil society recognized players of the field. All continents should be equally represented.

When values would be at stake, the WIF would address an official request to the entity, government or stakeholder responsible for not respecting the Internet Charter. This could lead to a resolution by the UN, and possible sanctions.

The location of IANA at WIO, and ICANN at the WIF, have probably to do with the fact that ICANN should be assimilated to a domain development and service entity when it comes to domain name. IANA would be the technical, safety and security entity. IANA should have a special link/status/contract with WIO in order to avoid un-wanted interferences from governments. A 75% majority at WIO would be requested to act/modify/contest a IANA decision, making it difficult for governments to go beyond reasonable and consensual demands. Again the WIF could veto a potential decision by WIO, once.

Among the WIF constituencies, there should be room for an online/remote participation of global users and global citizens. A citizen initiative should be considered, if able to embrace 5 continents, and criteria to be defined during the preparatory process (see roadmap) in order to suggest programs or regulations at the WIF level, then possibly at WIO level. The preparatory work (see roadmap) should take this into account, so that for the very first time citizens would have an opportunity to voice directly their concerns. The digital

wonder of today allows the lawmakers to think of this democratic and inclusive process to be part of the new Internet Governance eco-system. Such an initiative could not be vetoed and the WIF would have to finalize a proposal/initiative.

2.3 Arbitrage and justice level to address deadlocks and disputes.

Establishment of a double system of arbitrage/settlement and justice/constraint, taking into account the positive lessons from WTO and WIPO. The arbitrage operandi would be placed under WIF scrutiny, in a transparent, accountable and responsible fashion. If no arbitrage/settlement could be concluded at the WIF by a specific board, the case would be brought to the appreciation of the court of justice, seated at WIO.

The WIF board of settlement could be called in on issues/conflict related to actions by stakeholders.

Action against the WIF could be taken to WIO.

As the UN system offers many different models of governance – see ILO, WTO, WIPO, UNDP, UNEP... - it offers a lot of opportunity to adapt any governance to the specifics of any major field of concerns. The UN system is flexible enough to envision a new system of governance, taking the lessons of other systems of governance, and considering the specifics of the Internet. The UN system can bring legitimacy to new entities or mandates, having to combine both international binding agreements and treaties with efficiency and a required speed to cop with the extension of the Internet space, impact and outcomes.

3_An innovation in international governance of the Internet could impact many other field of interests.

Since 1945, after a year of preparation and 4 months of intensive discussions in San Francisco, the UN Charter was signed by 50 future member states on June 26, the UN being installed on October 24, the same year. A fascinating new governance product of the largest war ever, the Second World War, a globalized one. As an innovative political space, the UN even though it has been often criticized has faced many new challenges and 'invented' many innovative entities and programs, related to both immediate and long term issues. One major innovation within the new system of Internet governance would be the fact that WIO and WIF would both have strong capacities to act, but would also be linked through a check and balance relation. As the WIF

would be the “guardian” of a charter/framework of the Internet principles, it would be legitimized to veto an agreement at WIO level, which would not be in agreement with the Internet charter. A WIF veto would oblige any such agreement at WIO level to go through one additional round of negotiations. One possible option would be having the WIF as a member of WIO, the only one with no voting rights, but a veto rights on first round. A second negotiation would have to be conducted, in a fair understanding that the same proposal could not be presented again without some serious amendments. An opposition between the WIF and WIO would lead to a major crisis which makes this new system of governance interesting if citizens and leaders wish to keep it alive.

Any dispute against WIO should be taken to the UN general secretariat.

4_Funding of the new system of governance for the Internet

4_1: **WIO** would be funded by its constituencies.

4_2: The **WIF** would be funded for the most part by service charges for Internet unique identifiers (domain naming – extension) collected globally by ICANN, and in addition, specifically by registries for .net, .org, .com, etc. The current ISOC/PIR capacities would be transferred to the WIF. ISOC being a community based organization would, like any other civil society organization, have to fund itself within its membership, or any other appropriate system. The PIR expertise and staff could be incorporated as a WIF department, but at reasonable cost. Such a funding for the WIF would be more or less similar to the way WIPO is getting the majority of its funding.

4_3: The work on the **Internet Charter** would be undertaken by the UN.

It seems consistent to think that the WIF will require more budget support than WIO, which needs a secretariat but a rather small staff.

5_Roadmap for implementing the new system of governance for the Internet

Democracies and members of the United Nations are now facing major challenges. As NetMundial will come to a conclusion on April 26, 2014, the Brazilian government should call for the UN to launch the following process, and suggest to help and participate in the preparation and Sao Paulo follow-ups with a few other major governmental partners (Germany, France, Saudi Arabia, India, China, South Africa and the US). In 1944 and 1945, 4 countries prepared the draft of a UN Charter (China, United Kingdom, the Soviet Union and the United States) after representatives of 26 countries pledged their Governments to continue fighting together the Axis Powers on January 1st, 1942, when the term 'United Nations' was first used by Franklin D. Roosevelt.

Such a call to the United Nations, following the Brazilian president's speech in front of the UN General Assembly and the Sao Paulo meeting would show obvious and strong consistency at both local and international level by the Brazilian head of State following the Brazilian conference. The call would be to:

5.1 : Set a process to finalize an "Internet Charter" by convening civil society, users and their representatives, the technical and research community, and governmental and UN delegations in limited number. No corporations or business associations should directly participate to establishing that Charter - they already have enough power to voice their views and try to influence the writers of such an Internet Charter.

5.2 : Set a common process to precisely define the two new bodies (WIO & WIF), their linkage, including check and balance between them, transparency and accountability, and their common adequate roadmap. The US will have to accommodate these requests, in order to end the asymmetric governance and market dominance of the Internet. This will take away the risks that the Internet is facing today. A non digital-war treaty ratification should be a natural complementary objective to that process through the WCIT/ITRs channel. A Cyber war non proliferation treaty would be welcome.

5.3 - Set a technical advisory group to best assess the core functions of the Internet, and see how to adequately transform them, or not, and how and where to position them in the framework of a WIO -WIF system. This process would be supported by a neutral group of engineers able to assist and advise the first two processes in their reflection and capacities at a technical level. Clear criteria are needed to select the participants.

_5.4 – Such a global project needs leadership, under the neutral oversight and arbitrage of the UN general secretariat. A special appointment is necessary to have a high level diplomat or a former foreign affair minister, a former prime minister, or a personality of undisputable command, a man/woman of high reputation able to handle that process with the support of a small group of special assistants. He/she would have the support of a small multistakeholder advisory board to help him/her cope with the spirit of the overall process (WIF_WIO) and philosophy.

It seems reasonable to think that 5.1, 5.2, 5.3, 5.4 could be achieved over a 1-year time frame, paving the way to another 6 months to found, fund and constitute the proposed entities and system of arbitrage and justice, and do the switch from the old system. Until then, the current system would basically be stable.

[1] Strategic Management : A stakeholder approach by R. Edward Freeman, 1984, Boston, Pitman.

[2] Stakeholder Theory and Organizational Ethics by R. Phillips, 2003, Berret-Koehler Publishers